



Ministry of
JUSTICE



Diversity and Fairness in the Jury System

Cheryl Thomas
with Nigel Balmer

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The Research Unit, Ministry of Justice, was formed in April 1996. Its aim is to develop and focus the use of research so that it informs the various stages of policy-making and the implementation and evaluation of policy.

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Cheryl Thomas

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The views expressed are those of the author and are not necessarily shared by the Ministry of Justice.

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Executive Summary

The Jury Diversity Project

Based on continuing concerns about the under-representation of ethnic minorities on juries in this country, the Jury Diversity Project addressed two key questions:

- How representative of the local community are those summoned for jury service, those serving as jurors and juries at each Crown Court in England and Wales?
- Does ethnicity affect jury decision-making?

This four-year research project was unique in several respects.

- It is the first study of the representative nature of jury service to compare the ethnic profile of jurors summoned and serving at each Crown Court in England and Wales to precise ethnic population profiles for each court, and to consider the relationship between juror ethnicity and other factors (gender, age, income, employment, religion, language) that may affect ability to serve.
- Concern about ethnic minority under-representation on juries implicitly assumes that the ethnic composition of juries may affect jury verdicts, and this is the first research conducted in this country to examine whether ethnicity affects jury decision-making. The research used case simulation with real jurors, along with a study of jury verdicts in real cases.
- Despite its scope and innovation, none of the research required exemption from section 8 of the Contempt of Court Act 1981, and illustrates just how much jury research can be conducted in this country within existing restrictions.

The report presents the findings of four separate but linked empirical studies:

- a survey of the socio-economic background of all jurors summoned in England and Wales in one week in 2003 and one week in 2005 (15,746 jurors).
- a survey of the socio-economic background of all jurors in jury pools, on jury panels and juries at three Crown Courts over a four-week period (640 jurors).
- a case simulation study with real jurors exploring whether ethnicity affects jury verdicts or juror votes (27 juries with 319 jurors).
- a study of the relationship between jury verdicts, the composition of juries and the ethnicity of defendants in actual cases at three Crown Courts (186 verdicts).

Myths of jury service

Various assumptions about the representative nature of jury service appear to have become entrenched in this country, influencing reviews of the jury system and policy development in this area. Most of these assumptions paint a picture of widespread jury service avoidance and unrepresentative jurors. However, no research has been conducted to prove or disprove any of these beliefs for over 15 years.

- A key finding of the Jury Diversity Project is that most current thinking about jury service in this country is based on myth, not reality.

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

Reality: The report found that there was no significant under-representation of BME groups among those summoned for jury service at virtually all Crown Courts in England and Wales (83 of the 84 courts covered in the survey).

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

Reality: The study found that, as ethnic minorities are summoned in proportion to their representation in the local population in virtually all Crown Courts in England and Wales, source lists do not need to be changed.

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

Reality: The study found that the main factor affecting non-responses to summonses is high residential mobility, not ethnicity. A Mori survey conducted for the project found no significant differences between BME and White respondents in their willingness to do jury service or support for the jury system (which was high for both).

Jurors serving and not serving

The Criminal Justice Act 2003 removed ineligibility and the right of excusal from jury service for a number of groups (those aged 65 to 69, MPs, clergy, medical professionals and those involved in the administration of justice). But summoned jurors may still be disqualified or excused from jury service (due to age, residency, mental disability, criminal charges, language, medical or other reasons).

- The study found that the most significant factors predicting whether a summoned juror will serve or not are income and employment status, not ethnicity. Summoned jurors in lower income brackets and those who are economically inactive are far less likely to serve than those in medium to high income brackets and those who are employed.
- In 2005, of all those who replied their summonses, 64% of jurors served, 9% were disqualified or ineligible, 27% were excused. Of those excused, most were for medical reasons that prevented serving (34%), or child care (15%) and work reasons (12%). Fifteen percent of all the summonses in the survey were either returned to the JCSB as undeliverable (5%) or not responded to (10%), which occurred most often in areas of high residential mobility.
- The report establishes that most current thinking about who does and does not do jury service is based on myth, not reality.

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

Reality: Analysis showed that, in almost all courts (81 of the 84 surveyed), there was no significant difference between the proportion of BME jurors serving and the BME population levels in the local juror catchment area for each court.

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

Reality: The report reveals that there is no mass avoidance of jury service by the British public: 85% of those summoned replied to their summonses and the vast majority served. The vast majority of Londoners also replied to their summons and served. Where ethnic minorities did not serve this was primarily due to ineligibility or disqualification (residency or language).

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

Reality: The study found no indication that the middle classes or the important and clever in society avoid jury service. Instead, it established that the highest rates of jury service are among middle to high-income earners and that those in higher status professions are fully

represented among serving jurors. The employed are over-represented among serving jurors, and the retired and unemployed are in fact under-represented,

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

Reality: The study establishes that jury pools at individual courts closely reflect the local population in terms of gender and age, and the self-employed are represented among serving jurors in direct proportion to their representation in the population.

Impact of juror eligibility rule changes

- Surveys conducted both before and after the changes to juror eligibility came into effect in 2004 showed that the new rules increased the proportion of those summoned that served from 54% to 64%. Those serving on the date summoned increased by a third, disqualifications fell by a third and excusals fell by a quarter.
- These changes did not affect any single socio-economic group, with one exception. The proportion of serving jurors that were 65 to 69 years of age doubled from 3% in 2003 to 6% in 2005, after their right of excusal was removed.
- The in-depth study of the composition of jury pools at three Crown Courts conducted in 2003 showed that, even before the new rules were introduced, serving jurors were remarkably representative of the local community in terms of: ethnicity, gender, income, occupation, religion and age (except 65-69 years olds).

Composition of jury panels and juries

- The study found that the local population dynamics in individual Crown Court juror catchment areas need to be taken into consideration in assessing how representative jury pools, jury panels and juries are at Crown Courts.
- The study of jury pools, panels and juries at three Crown Courts found a substantial difference in the proportion of racially mixed jury panels and juries at the three courts, reflecting the different BME population levels for each court.
- Virtually all jury panels and juries were racially mixed at Blackfriars (they contained at least one BME juror), while approximately half of all jury panels and juries were racially mixed at Reading and Manchester Minshull Street. Blackfriars' juror catchment area contains one of the highest BME population levels in the country (33%), while Reading and Manchester have BME populations of 10% and 11%.
- The final stage of jury selection (empanelling) is the only stage that does not involve computerised random selection of jurors. There was some evidence that BME jurors on jury panels appeared to be selected to serve on juries less often than White jurors on jury panels, which may be the result of court clerks inadvertently avoiding reading out juror names that are difficult to pronounce.
- There was no significant gender imbalance on juries at any of the three courts: 88% of all juries at all three courts had a male to female ratio of 6:6, 7:5 or 8:4.
- The existing summoning process does not appear to produce sufficient numbers of Welsh speaking jurors to sustain bilingual trials in Wales.

High Ethnicity and Low Ethnicity Courts

- The study determined that racially mixed juries are only likely to exist in courts where BME groups make up at least 10% of the entire juror catchment area. This does not reflect any failure in summoning. It is simply the consequence of BME population levels in these catchment areas and the process of random selection.

- The report categorises the 94 Crown Courts in England and Wales as either High Ethnicity or Low Ethnicity Courts. Only 20 (or 21%) are High Ethnicity Courts, where there is a reasonable probability that BME jurors will be in jury pools and on juries. Most High Ethnicity Courts (12 or 60%) are London courts, where 45% of all ethnic minorities live and where a quarter of all jurors serve.
- Most Crown Courts (74 of the 94 or 79%) are Low Ethnicity Courts, where there is little probability that ethnic minorities will be on a jury. Of these, 13 are Ethnicity Concentration Courts, where the overall BME population is below 10% but where there are high BME populations concentrated in some areas. In these courts, there is likely to be a public expectation that juries will be racially mixed, even though summoning will not usually produce this. This may be particularly problematic because a high proportion of BME defendants and racially-aggravated crimes are prosecuted at some of these courts.

Race and jury decision-making study

- Concern about the possible under-representation of ethnic minorities on juries assumes that the ethnic composition of juries can affect jury outcomes. For the first time in this country, research was conducted on the impact of race on jury decision-making.
- The research used case simulation with real jurors, supplemented by a study of jury verdicts in actual cases. Case simulation was used because it is the most reliable method of determining whether causal connections exist between race and jury decision-making, not because section 8 of the Contempt of Court Act 1981 prohibits interviewing jurors about their deliberations.
- The success of case simulation depends on achieving a high level of authenticity. This study was based on a real case, filmed in a real courtroom, with a real judge, barristers, court staff, police and witnesses. Real jurors were the study participants, jury panels were selected by the Court Service random selection programme, all juries included enough jurors to constitute a valid jury (10-12 jurors) and they deliberated in a real deliberating room.
- The study was conducted with dismissed jurors at Blackfriars Crown Court in London, a court with one of the most ethnically diverse catchment areas in the country and where virtually all juries are racially mixed juries. The study included 27 separate juries with 319 jurors (23 juries with 12 jurors, 3 with 11, 1 with 10).
- All juries saw a film of an identical case where the defendant was charged with causing Actual Bodily Harm (ABH), but where specific case elements were altered for different juries (race of defendant, victim and charges).

Verdicts of racially mixed juries

- The main finding of the case simulation study is that the verdicts of racially mixed juries did not discriminate against defendants based on the defendant's race. In the 27 separate jury verdicts, outcomes for the White, Black and Asian defendants were remarkably similar. Where the jury reached a verdict, in almost all instances (10 of 11 or 91%) the defendant was found not guilty, regardless of the race of the defendant.
- There were more hung juries (16) than verdicts (11), but this reflected the divisive nature of the case. The possibility of reaching a majority verdict produced more jury verdicts (11) than if unanimity was required (1).
- The study provides 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. While the assumption has been that racially mixed juries will not discriminate against ethnic minority defendants, this study showed that racially mixed juries also did not discriminate against White defendants.

Votes of individual jurors on racially mixed juries

- Even though the defendant's ethnicity did not have an impact on jury verdicts, the research found that in certain cases ethnicity did have a significant impact on the individual votes of some jurors who sat on these juries. Statistical analysis of the individual votes of all 319 jurors who took part in the case simulation showed that in certain cases BME jurors were significantly less likely to vote to convict a BME defendant than a White defendant.
- Same race leniency among BME jurors was only present when race was not an explicit element of the case (defendant charged with ABH only). When the same assault was prosecuted as Racially-aggravated ABH, BME jurors and White jurors had similar conviction rates for both the White and BME defendants.
- Same race leniency among BME jurors appeared to reflect their belief that the courts treat ethnic minority defendants more harshly than White defendants.
- In addition, the study found 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.
- Evidence was also found that White jurors showed some same race leniency towards White defendants, but again this was only present in cases where race was not an explicit element of the case. In non-race salient cases, White jurors had very low conviction rates for the White defendant, despite consistently stating that they did not believe his evidence and felt he was dishonest.

In the real world of criminal trials, ultimately the only relevant decision is the verdict of the jury. The crucial finding of the study was that these tendencies towards same race leniency by BME or White jurors did not have an impact on the verdicts of the juries on which they sat.

- Despite the fact that BME jurors were significantly more likely to convict the White defendant than the BME defendant when the assault was not charged as racially-motivated, no juries convicted the White defendant in this version of the case.
- The report concludes that this highlights the benefits of permitting majority verdicts and of having 12 member juries. The fact that 12 jurors must jointly try to reach a decision and that majority verdicts are possible meant that more verdicts were achieved and individual biases did not dictate the decision-making of these racially mixed juries. If juries were smaller or if unanimous verdicts were required, then individual juror bias might potentially have a greater impact on jury verdicts.

Impact of jury deliberation and victim ethnicity

- The main effect of deliberation was to increase the proportion of jurors who felt completely confident in their votes. This is interesting in light of recent American research, which found that deliberating on a jury strengthens jurors' belief in the power of public decision-making and increases voting at subsequent elections.
- Results showed that the probability of a BME juror voting to convict a White defendant fell following deliberation, suggesting that the process of deliberating on racially mixed juries may influence the decision-making of ethnic minority jurors.
- Analysis of individual juror votes also indicated that White jurors on these racially mixed juries were sensitive to the plight of a Black victim. White jurors were most likely to convict a defendant when the victim was Black and defendant was White or Asian (but not when the defendant was Black).

Scope of findings

- These findings relate to racially mixed juries (and jurors serving on these juries) in Crown Courts in a highly diverse local community, such as London.
- Analysis of jury verdicts in actual trials at Blackfriars, Manchester Minshull Street and Reading Crown Courts indicated that there are likely to be court-based differences in jury verdicts. Juries at Blackfriars (which were all racially mixed juries) had low conviction rates, but juries at Manchester Minshull Street and Reading (which were both racially mixed and all-White juries) had high conviction rates regardless of the jury's racial composition.
- 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, therefore, that the Blackfriars' study be replicated in a different Crown Court outside London, where the local community is predominantly White, to examine whether all-White juries discriminate against defendants based on their race.

Conclusion

The Jury Diversity Project found that the juror summoning process does not discriminate, directly or indirectly, against BME 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 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 also not made up of people who are not important or clever enough to get out of jury service. 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. This was the reality of jury service in England and Wales even before the introduction of new juror eligibility rules in 2004, which have nonetheless increased participation in the jury system. On the fundamental question of whether juries discriminate against defendants based on race, the case simulation research with real jurors showed that racially mixed juries in highly diverse communities did not discriminate against defendants based on the race of the defendant. This was despite the fact that race did influence the decisions of some individual jurors who sat on these juries in cases where race was not presented as an explicit element in the case. What remains to be answered is whether all-White juries, which decide cases in most Crown Courts, also do not discriminate against defendants based on race.

Chapter 1. Introduction¹

Background to the Jury Diversity Project

In 2000 a research programme to examine whether, and to what extent, the court system deals fairly and justly with the needs of a diverse and multicultural society was launched by the then Lord Chancellor, Lord Irvine. This programme was a response to the publication the year before of the Macpherson Report. The inquiry into the racially-motivated murder of black teenager, Stephen Lawrence, in 1993 most notably concluded that the police investigation and failed prosecution was marred by “institutional racism”². It also concluded more generally that it was essential for ethnic minority communities to feel confidence in the criminal justice system, and that it was incumbent on all government institutions to ensure that their policies and practices did not disadvantage any section of the community. In response to these general conclusions the Lord Chancellor’s research programme was aimed specifically at examining whether direct or indirect discrimination against ethnic minorities exists in the court system³. Three key questions were to be addressed by the Department’s research programme:

1. To what extent is there evidence of any direct discrimination? How do questions of ethnicity influence decisions?
2. To what extent is there evidence of any indirect discrimination? To what extent do processes have different impacts on people from different ethnic minority groups?
3. To what extent do different ethnic groups believe they are likely to be treated fairly?

The research programme had two phases. Phase one, initially entitled “Race and the Courts”, included four studies, three of which related to ethnic minority experiences with the courts. These included: black and minority ethnic (BME) defendants’ perception of fairness in criminal proceedings⁴; BME tenants’ perception of fairness in housing proceedings⁵; and the impact of

¹ Note on report terminology: There are no ideologically neutral terms that are universally accepted when it comes to analysing relations between people of different heritages. While social scientists in Britain and Europe believe there are problems with the concept of “race”, this is not the case in the United States where the term is widely used and accepted in social science. Because all previous research on “race” and jury decision-making has been conducted in the United States, where this American research is discussed, the report adheres to the “race”-based terminology in use in that field. In all other areas of the report, the “ethnicity”-based terminology currently used in this country has been adopted. As Ratcliffe notes, this lack of consensus over terminology has created a “quagmire of ambiguity”. P. Ratcliffe, *“Race”, Ethnicity and Difference: Imagining the Inclusive Society* (2004)

² W. Macpherson *The Stephen Lawrence Inquiry: Report of the Inquiry by Sir William Macpherson of Cluny* (1999)

³ Lord Chancellor’s Department Research Unit *Courts and Diversity Research Programme* (March 2003) p.1

⁴ R. Hood, S. Shute and F. Seemungal, *Ethnic Minorities in the Criminal Courts: Perception of Fairness and Equality of Treatment* DCA Research Series No. 2/03 (2003)

⁵ S. Blandy, C. Hunter, D. Lister and J. Nixon *Housing Possession Cases in the County Court: Perception and Experiences of Black and Minority Ethnic Defendants* DCA Research Series No.11/2002 (2002)

race, religion, language and culture in care proceedings⁶. A fourth study examined issues surrounding the introduction of ethnic monitoring in civil cases⁷. In 2002, the Department launched the second phase of the research programme under the umbrella of the “Courts and Diversity Research Programme”. Three of the four new research projects again focussed on ethnic minority experiences and perceptions of fairness in the court system, this time among judicial personnel and users of the wider judicial system, including: the experience of BME magistrates⁸, the experience of BME families in care proceedings⁹, and the experience of BME users of tribunals¹⁰.

The fourth and final project, on ethnic diversity and the jury system, differed from the other projects in both objectives and approach. Unlike the other studies, the main objective of the jury research project was not to examine ethnic minority *perceptions* of fairness in the judicial process (question 3); instead the main objective was to examine the *actual operation* of the jury system and the *impact* of the jury process on ethnic minorities (questions 1 and 2). The inclusion of juries in the research programme was considered important given continuing concerns about the possible under-representation of ethnic minorities on juries and recent racially-based legal challenges to jury verdicts. The research was conducted over a four-year period, and took into account changes to juror eligibility rules introduced by the government in 2004. This report presents the findings of a comprehensive investigation into ethnic minority representation in the jury summoning and serving process, as well as the impact of race on jury verdicts. This is the first time the representative nature of jury service in England and Wales has been examined on a court-by-court basis, and the first ever study of the impact of race on jury decision-making in this country.

The jury system

One of the most remarkable aspects of the jury system in England and Wales is that while juries now decide only a small fraction of all criminal cases and almost no civil cases, the right to trial by jury continues to be a highly charged subject. Most discussion of jury policy generates public attention, and virtually every proposal to restrict trial by jury in the last half century has provoked widespread and often impassioned opposition. There is an ancient right for an accused to be

⁶ J. Brophy, J. Jhutti-Johal and C. Owen *Significant Harm: Child Protection Litigation in a Multi-Cultural Setting* DCA Research Series No. 1/2003 (2003)

⁷ S. Candy and V. Stone *The Introduction of a Question on Ethnic Background into the Civil Justice System* LCD Research Series No.1/01 (2001)

⁸ J. Vennard, G. Davis, J. Baldwin and J. Pearce *Ethnic Minority Magistrates' Experience of the Role and of the Court Environment* DCA Research Series No.3/04 (2004)

⁹ J. Brophy, J. Jhutti-Johal and E. McDonald *Minority Ethnic Parents, Their Solicitors and Child Protection Litigation* DCA Research Series No.5/2005 (2005)

¹⁰ H. Genn, B. Lever and L. Gray *Tribunals for Diverse Users* DCA Research Series No.1/2006 (2006). This study also included quantitative analysis of tribunal decisions.

tried only “by the lawful judgement of his equals or by the law of the land”¹¹, and even though there is no modern constitutional right to trial by jury in England and Wales, governments have found the public extremely unwilling to sanction further restrictions to jury trials. Jury service is unique in being the only form of civic participation that is compulsory for almost all citizens (and many non-citizen residents) to perform today, and delivering justice by juries has overwhelming support among the public in England and Wales. Over 80% of the public trust a jury to come to the right decision, think that trial by jury is fairer than being tried by a judge and that juries produce better justice¹². This overwhelming public support and robust defence of legal provisions for jury trials demonstrates the special place juries have in the public mind.

Juries in some form have existed in England for at least eight centuries¹³, but the jury has fundamentally changed over time. Today, it is an institution in which twelve randomly selected members of the public are used to judge guilt or innocence in only a very small proportion of all criminal cases and, in exceptional circumstances, a few civil cases¹⁴. Over 98% of all criminal cases are non-jury trials heard by magistrates alone¹⁵. Only the most serious indictable criminal offences are necessarily tried by a jury in the Crown Court. The only other criminal cases that may be tried by a jury are either way offences, which may be tried either in the Crown Court with a jury or in Magistrates’ Court if both magistrates and defendant agree. There are just over 30,000 potential criminal jury trials in the Crown Courts a year, although juries reach a verdict by deliberation in only just over half of these cases¹⁶.

Despite this small number of jury trials, the issue of the right to trial by jury remains highly controversial. Juries have historically been seen as an important protection for the individual citizen against the power of the state, and are also seen today as a means of increasing public confidence in the courts by involving citizens directly in the administration of justice. It is also

¹¹ “No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land”. Magna Carta Clause 39.

¹² Survey commissioned by the Bar Council, the Law Society and the Criminal Bar Association and published in January 2002. The Crown Court Study in the early 1990s also found that 80% of jurors who had served on a jury rated the jury system as either very good or good. M. Zander and P. Henderson, *Crown Court Study*, The Royal Commission on Criminal Justice Research Study No.19. HMSO (1993).

¹³ The abolition of the process of trial by ordeal in 1215 is widely cited as the origin of the use of juries in criminal cases, although the Normans had earlier used the practice of convening a group under oath to establish the truth. See *Smith, Bailey and Gunn on the Modern English Legal System* (2002) 17-084.

¹⁴ There is now only a qualified right to jury trial in four types of civil cases: defamation (libel and slander), fraud, malicious prosecutions and false imprisonment. See Supreme Court Act 1981 section 69.

¹⁵ In 2004, there were 2.02 million criminal cases committed for trial in the Magistrates’ Courts: *Criminal Statistics 2004 England and Wales* Home Office Statistical Bulletin 19/05 2nd edition (2005) Table 2A, paragraph 2.8. In the same year only 30,067 cases involving a not guilty plea by the defendant were disposed of in the Crown Courts: *Judicial Statistics 2004* Department for Constitutional Affairs Table 6.8 p.90.

¹⁶ There were 16,556 jury verdicts by deliberation in 2004. *Judicial Statistics 2004*. Table 6.10 (showing 7,123 total acquittals by jury deliberation) and Table 6.11 (showing 9,433 total convictions) p.91

possible that jury service may lead to wider public participation in the democratic process¹⁷. Weighed against this are claims that jury trials are more costly and time-consuming than trials in magistrates' courts, and an inadequate means of dealing with the complexity of legal cases. In every decade over the last 50 years, proposals to change the jury system have been made by government committees, royal commissions or reviews of the legal system. In the 1960s the Morris Committee conducted a major review of jury service¹⁸. This was followed in the 1970s by the Faulks Committee review of the use of jury trials in civil cases¹⁹, as well as the James Committee examination of the criminal defendant's right to elect trial by jury²⁰. In the 1980s the Roskill Committee reviewed the use of juries in fraud cases²¹, and in the 1990s the Runciman Royal Commission examined the role of juries in the criminal justice system²². Most recently, the Auld Review of the Criminal Courts reconsidered jury summoning and selection, offences triable by jury and support provided to jurors²³. Despite this plethora of reviews, very little is in fact known about juries in this country; there is no definitive research, for instance, on how representative juror selection is, whether jurors comprehend evidence and judicial directions, or how juries reach their verdicts.

The impetus for changing the jury system has more often than not come from high profile cases and anecdote instead of any systematic monitoring or substantive research²⁴, and those conducting reviews of the jury system have expressed frustration at the lack of reliable evidence on which to base their findings²⁵. Despite this lack of research evidence, a number of widespread beliefs about juries have become entrenched in this country. These unsubstantiated claims tend to paint a disparaging picture of juries and jurors, not least the belief that jury service is only for those not clever or important enough to get out of serving²⁶.

¹⁷ Recent research in the United States found that jury service appeared to increase voting among jurors at subsequent elections, especially if they had previous low levels of voting in the past. J. Gastil, E. Deess and P. Weiser "Civic Awakening in the Jury Room: A Test of the Connection between Jury Deliberation and Political Participation" *Journal of Politics* Vol. 64, No.2 (May 2002), 585-595; J. Gastil and P. Wieser "Jury Service as an Invitation to Citizenship: Assessing the Civic Value of Institutionalized Deliberation" Legal Studies Research Paper Number 06-32, University of Colorado Law School (October 2006)

¹⁸ *Departmental Committee on Jury Service Report*, Cmnd. 2627 (1965)

¹⁹ *Report of the Committee on Defamation*, Cmnd. 5909 (1975)

²⁰ *Report of the Interdepartmental Committee on the Distribution of Criminal Business Between the Crown Court and Magistrates' Courts*, Cmnd. 6323 (1975)

²¹ *Fraud Trials Committee, Report* (1986)

²² *Report of the Royal Commission on Criminal Justice*, Cm. 2263 (1993) (herein referred to as the Runciman Commission)

²³ *Report of the Review of the Criminal Courts* (2001) Chapter 5 (herein referred to as the Auld Review)

²⁴ There is no reliable evidence, for instance, that the right to silence was abused by professional criminals or that peremptory challenge was leading to acquittals by stacked juries, although these arguments were used in introducing restrictions on trial by jury. There have been persistent moves in last few decades to abolish juries in fraud cases, based initially on the argument that juries cannot understand complex evidence and more recently on the argument that these trials last too long and impose an unfair burden on jurors, although there is no research evidence to support either contention.

²⁵ Auld supra note 23, Chapter 5 paragraph 52; Runciman supra note 22; Roskill supra note 21.

²⁶ See Auld supra note 23.

The lack of knowledge about the working of the jury system is often attributed to the introduction of Section 8 of the Contempt of Court Act in 1981, which makes it a criminal offence to “obtain, disclose or solicit any particulars of statements made, opinions expressed, arguments advanced, or votes cast by members of a jury in the course of their deliberations”²⁷. Contrary to common assumption, however, this restriction does not in fact prevent most research about juries²⁸. It does not, for instance, prohibit research on the summoning process, the composition of juries, the types of cases tried by juries or jurors’ views of jury service. It does not even preclude research about jury deliberations so long as this involves case simulation, which is widely recognised as the most methodologically sound approach to understanding how and why jurors and juries reach their verdicts. However, the existence of section 8 has created great confusion about what research can and cannot be conducted with jurors, and the resulting hesitancy of academics to conduct research with jurors for fear of falling foul of the law has created an information vacuum about juries in this country in recent years.

Jury selection and composition

A key issue in jury policy is the question of how jurors are selected and its impact on the composition of juries. While there is no clear constitutional right to trial by jury in this country, the principle most often cited in relation to jury composition is that a defendant is entitled to be tried by a “jury of one’s peers”. Various meanings have attached to this concept over time²⁹, but these have generally included the judgement of:

- One’s equals or neighbours
- A body of fair-minded persons
- An independent or impartial body
- A randomly chosen body
- A representative body

These suggest that specific qualities (independence, impartiality, representation and random selection) are needed for a jury to perform effectively, yet these qualities are not always necessarily consistent with one another. For instance, a randomly selected jury will not automatically be a representative jury; it is in the nature of random selection that some juries will be unrepresentative. Today, a guiding principle in jury selection is that individuals are randomly selected for jury service, although random selection of jurors is a relatively recent invention and

²⁷ The government introduced this restriction following the unsuccessful attempt to prosecute the *New Statesman* for contempt for publishing an interview with a juror in the trial of former Liberal Party leader Jeremy Thorpe for conspiracy to murder.

²⁸ *Jury Research and Impropriety: Consultation Paper CP04/05* Department for Constitutional Affairs (2005)

²⁹ G. Marshall “The Judgement of One’s Peers: Some Aims and Ideal of Jury Trial” in N. Walker with A. Pearson (eds) *The British Jury System* (1975) p.5

was only introduced in England and Wales following recommendations made in the Morris Report in 1965³⁰. The view that currently underpins jury policy in this country is that a randomly selected jury is most likely to be representative and a representative jury is most likely to be impartial.

To qualify for jury service a person must be between 18 and 70 years of age, have lived in the United Kingdom, the Channel Islands or the Isle of Man for any period of at least 5 years since the age of 13 and be eligible to vote in parliamentary or local elections³¹. To vote in elections a person must be either a British citizen, a citizen of a member state of the European Union or a Commonwealth citizen. Selection for jury service is done on a court-by-court basis. Before 2001 each Crown Court Centre in England and Wales was responsible for summoning their own jurors, but in that year the process became centralised for all courts under the new Jury Central Summoning Bureau (JCSB) in order to standardise and ensure greater consistency in the summoning process. The list from which persons are randomly summoned for jury service is made up of electoral lists provided to the JCSB by local authorities. Jurors are summoned for each of the individual Crown Courts separately, and each court has a unique catchment area for jurors based on postcode districts that lie within a specified distance of the court.

Computerised random selection of all jurors in England and Wales was only introduced six years ago after the establishment of the JCSB. The Bureau began randomly selecting jurors by computer in October 1999 for 7 pilot courts, eventually covering every Crown Court Centre (as well as the High Court and county courts) by the beginning of 2001. The introduction of random selection was based on the belief that this method was the best way of achieving fairness in juror selection and representation in juries, but its impact on the representative nature of jurors in the individual Crown Courts has not been studied. **The Jury Diversity Project addresses a key question about juries: to what extent are randomly selected jurors representative of the local population for the courts where they are summoned?**

Ethnic representation on juries

Concerns over whether juries are representative or not have been raised in relation to gender, age and employment in the past, but in recent years the concern has focused particularly on ethnicity. For several decades it has been claimed that ethnic minority groups are under-represented on juries. However, no substantive research has been conducted in this country on any of these issues for at least 15 years, and what little earlier research exists is now likely to be out of date. The Contempt of Court Act restrictions on discussing deliberations with jurors

³⁰ *Report of the Departmental Committee on Jury Service Cmnd 2627 (1965)*

³¹ Qualification for jury service is governed by the Juries Act 1974, as amended by the Criminal Justice Act 2003 Chapter 44, Section 321, Schedule 33.

cannot be directly responsible for this lack of research, as it would not apply to examining jury representation. However, before the Jury Central Summoning Bureau centralised the jury summoning process for all courts in 2001, the logistics for conducting research on juror selection and jury composition in each of the 78 individual Crown Courts in England and Wales would have presented significant obstacles to such large-scale quantitative research. The dearth of research in this area has also been affected by concerns about the sensitivity of requesting ethnic background information from those summoned for jury service. The Department's study on the feasibility of ethnic monitoring in the civil courts found concerns among both court users and court staff that ethnic monitoring information could be used to the detriment of ethnic minorities using the civil courts³². However, under the Race Relations Act it is arguable that the JCSB or the Department for Constitutional Affairs (Ministry of Justice - from 9 May 2007) has an obligation to monitor ethnicity among those summoned for jury service as part of an obligation to monitor policies for any adverse impact on race equality³³. There are a number of distinct stages in juror summoning and the selection of jurors for actual juries:

- Crown Court juror catchment area
- Juror source lists
- Juror summoning process
- Juror eligibility
- Jury pool
- Selection of jury panel
- Empanelling of jury

At each stage there are factors at play that could ultimately affect ethnic minority representation on juries. For instance, ethnic minorities may be more likely than White people to be excluded from the juror summoning and selection process because: they may be more likely not to be on the local electoral lists from which the summoning lists are drawn. If they are on the lists, they may be more likely not to receive a summons. If they receive a summons, they may be more likely to request an excusal or be disqualified or they may be more likely not to respond to the summons. And if they are in the jury pool at court, they may be more likely not to be selected to serve on a jury. However, virtually nothing is known about whether ethnicity affects juror summoning at any of these stages.

³² Candy and Stone *supra* note 7, p.8

³³ *Commission for Racial Equality Assessment Template for Race Equality Scheme* CRE (February 2005)

The catchment area for summoning jurors for each Crown Court is the first important factor; a substantial proportion of ethnic minorities can only be summoned for jury service for a particular court if there is a substantial proportion of ethnic minorities living in the court's catchment area. If there are large numbers of ethnic minorities in the catchment area, the next factor is whether they are also on the summoning source lists (local electoral lists). It has been claimed that ethnic minorities comprise one of the largest categories of persons who may be qualified to serve on juries but are not summoned because they are not registered as electors. A Home Office report in 1999 claimed that 24% of the Black community, 15% of those from the Indian sub-continent, and 24% of other ethnic minorities are not registered to vote³⁴, but this claim was based on a study that did not distinguish between ethnic minorities who are qualified to vote in elections (and are therefore qualified to do jury service) and those who are not. At the actual juror summoning stage, the question is whether the process of random selection results in a representative group of local people being summoned for jury service, and whether the process of and grounds for excusal and disqualification (eligibility) may result in any loss in ethnic minority representation among those appearing at court for jury service (the jury pool). Among the jury pool, the issues are whether the creation of a jury panel (the group of 13 or more jurors from which a jury of 12 will be selected) for individual cases and the process of selecting the final 12 jurors from the panel (empanelling) in any way adversely affects ethnic minority representation on juries.

There have only been two substantive studies of ethnic representation in the jury system in the last 30 years in this country. In the 1970s, Baldwin and McConville examined ethnic representation on juries in Birmingham Crown Court as part of their wider study of the outcomes of jury trials³⁵. This study reported a significant under-representation of ethnic minorities on juries at Birmingham Crown Court in relation to estimates of the ethnic minority population in the Birmingham area. However, this study was conducted almost 30 years ago, and its scope was necessarily limited to only one Crown Court. In the early 1990s, Zander conducted a comprehensive survey of jurors serving in almost all Crown Courts in England and Wales during a two-week period in February 1992 (the Crown Court Study)³⁶, on behalf of the Runicman Commission. The study surveyed jurors about an extensive number of issues related to the experience of serving on a jury and also examined the composition of juries. It reported some limited under-representation of certain ethnic groups and some limited over-representation of other ethnic groups serving on juries. However, the official constraints imposed on this study meant that it was unable to relate ethnic minority representation on juries to ethnic minority

³⁴ J. Airs and A. Shaw "Jury Excusal and Deferral" *Home Office RDS Report No.102* (1999)

³⁵ J. Baldwin and M. McConville, *Jury Trials* (1979)

³⁶ Zander and Henderson *supra* note 12.

populations in each Crown Court area. It was only able to calculate ethnic minority representation on juries on a national aggregate basis. Yet because each Crown Court in England and Wales has its own individual local catchment area for jurors, ethnic minority representation on juries necessarily needs to be measured against the demographics of the local population for each Crown Court, not national population figures.

More recent accounts of ethnic representation of juries include observations of juries in Liverpool, Nottingham and Durham in 2000 made for the Auld Review. The observers reported a “noticeable lack of ethnic mix in jury trials”, yet as Auld himself acknowledged, these observations were both limited and unscientific³⁷. More recently, Her Majesty’s Inspectorate of Court Administration (HMICA) carried out an inspection at 20 Crown Court Centres in England and Wales, in which inspectors reported observing all-White juries or jury pools “in some areas where the ethnic mix of the local area would be expected to produce a greater representation of minority groups”³⁸. Although the report did list the 20 courts inspected, it did not indicate which of these courts it was referring to where greater BME representation on juries was expected, and it is therefore not possible to assess whether these were valid expectations.

While the Birmingham and Crown Court studies examined the representative nature of those serving on juries, they were not designed to examine the impact of the actual summoning and selection process on jury representation. In addition, since these two studies were carried out, major changes have occurred which may have significantly affected ethnic representation on juries. These include: the establishment of the Jury Central Summoning Bureau 2001 which standardised the entire juror summoning process; the introduction of computerised random selection of all jurors in 2001; the 2001 national census revealing changes in ethnic population demographics in England and Wales; and the introduction of new juror eligibility requirements which came into effect in 2004. In this period there have also been legal challenges to the lack of ethnic mix on juries, and recommendations to government to alter both the summoning process and the empanelling of juries in order to achieve greater ethnic representation. In addition, the Crime and Disorder Act 1998 introduced a new class of racially-aggravated offences³⁹, prompting an increase in the recording and prosecution of racially motivated crimes. Such prosecutions introduced an overt racial dimension to jury trials, and raised concerns about

³⁷ Auld supra note 23, Chapter 5, paragraph 52. An overview of jury research prepared for the Auld Review cites the following factors as possibly leading to jury panels being unrepresentative: employment, childcare, non-appearances, mobility and residential status, and called for more detailed examination of employment and occupational profiles of jurors. P. Darbyshire, A. Maughan and A. Stewart, “What Can the English Legal System Learn from Jury Research Published up to 2001” Appendix to *Review of the Criminal Courts* (2001) Auld supra note 23.

³⁸ *A Thematic Review of Quality of Service Provided by HMCS for Jurors in the Criminal Courts*, HMICA (December 2006) section 4.36.

³⁹ Section Part II Crime and Disorder Act 1998, Sections 28-32, 82

whether ethnic minorities should be represented on juries not just where the defendant but where the *victim* is from an ethnic minority group. Despite these developments, no new research has been conducted to determine whether ethnic minorities are in fact under-represented in the jury system, although there have continued to be claims that they are under-represented in both the summoning process and on juries⁴⁰.

While the under-representation of ethnic minorities on juries has been a cause for concern in a number of common law countries⁴¹, the one jurisdiction where the most research has been carried out on race and jury representation is the United States. The vast majority of the 50 states have established special race and ethnic fairness commissions since the early 1990s to address the issue of racial representation in the jury system. Many of these have focussed on the voter registration source lists used for juror summoning and whether the lists should be extended to include, for instance, vehicle licensing lists and telephone directories in order to encompass more ethnic minorities.⁴² In addition, empirical studies have been conducted in the United States on the extent to which the jury selection process may discriminate against ethnic minorities. One significant study of discrimination in jury service conducted in California found that social class exerted greater influence than race in explaining disproportionate jury representation. Ethnic minority jurors with low incomes and less prestigious occupations were under-represented, but African Americans and Hispanics with higher incomes and high prestige jobs were actually over-represented on juries⁴³.

The American experience and research on jury representation is extremely useful in terms of the methodologies used to examine this issue, although caution should always be exercised in drawing too many direct conclusions for the English jury from this research. Despite its substantial international influence, the American experience with race relations is unique in many respects⁴⁴. There are some fundamental differences between the American and British experience with race relations, and these need to be considered in assessing the relationship between ethnicity and jury representation in this country. Perhaps most fundamentally, the American experience is dominated by memories of unfair jury selection procedures that

⁴⁰ Auld *supra* note 23; Darbyshire et al *supra* note 37.

⁴¹ See for instance M. Israel "Ethnic Bias in Jury Selection in Australia and New Zealand" *International Journal of the Sociology of Law* 26, (1998); D. Pomerant *Multiculturalism, Representation and the Jury Selection Process in Canadian Criminal Cases* Department of Justice Canada (1994); C. Petersen "Institutionalized Racism: The Need for Reform of the Criminal Jury Selection Process" *McGill Law Journal* 38 (April 1993).

⁴² A database of all state initiatives to increase ethnic minority representation on juries has been compiled by the National Center for State Courts. See www.ncsc.org

⁴³ H. Fukurai "Race, Social Class, and Jury Participation: New Dimensions for Evaluating Discrimination in Jury Service and Jury Selection" *Journal of Criminal Justice* Vol.24, No.1, pp.71-88 (1996)

⁴⁴ J. Stone and R. Dennis *Race and Ethnicity: Comparative and Theoretical Approaches* (2003)

systematically excluded African Americans from jury service in state courts⁴⁵. There has been no similar experience here. There are also several important structural and procedural differences between American and English juries which impact directly on the question of ethnic representation and jury decision-making. First, the use of peremptory challenges (either party's right to reject a limited number of prospective jurors without providing cause) has not been permitted in jury trials in England and Wales since 1988⁴⁶, but it is still widely used in the United States. Peremptory challenges occur at the *voir dire* stage of jury selection (the questioning of potential jurors to establish possible bias) in the United States and are controversially associated with attempts to prevent ethnic minority representation on juries⁴⁷. Second, while majority verdicts are possible in this country⁴⁸, in the United States unanimous jury verdicts are still required in all federal jury trials and in a number of states. In addition, there is no requirement in the United States that the jury be made up of 12 people, particularly in civil trials, and numerous states use juries with as few as 6 members. Both the number of votes required to reach a verdict and jury size can substantially affect the dynamics of jury decision-making. More generally, in the United States there is also a formal constitutional right to a jury trial in both criminal and civil cases⁴⁹, and while the Supreme Court has sanctioned some limitations to these rights, juries are still widely used for both criminal and civil cases at both the state and federal levels.

The American experience has often been considered in this country in reviews of the jury system, and the adoption of American approaches to expanding the summoning source list for jurors has been specifically advocated here on the grounds that it would increase ethnic minority representation in the jury system. The Auld Review, for instance, recommended widening the pool of potential jurors to improve ethnic minority representation, and specifically recommended amending the law to allow the Jury Central Summoning Bureau to combine a number of publicly maintained directories and lists (telephone directories, driver registration lists) to assist in identifying persons qualified for jury service⁵⁰. However, these recommendations for expanding the juror source lists assume that ethnic minorities are under-represented in the summoning process in England and Wales, yet there is no research evidence to substantiate this. The

⁴⁵ Challenged in the U.S. Supreme Court over a 30 year period from *Norris v Alabama*, 294 U.S. 587 (1935) to *Whitus v. Georgia*, 385 U.S. 545 (1967)

⁴⁶ While challenges for cause and the prosecution's right to "stand by" a juror remain, both are rarely used and are governed under restrictive provisions of the Juries Act 1974 and guidelines issued by the Attorney-General in November 1988, respectively.

⁴⁷ There is a large body of case law on this subject, see *Batson v. Kentucky* 476 U.S. 79 (1986), and *voir dire* is a major subject both of academic study and public commentary.

⁴⁸ In 2004, 23% of all jury verdicts were majority verdicts. *Judicial Statistics 2004* Table 6.11 p.91. Section 17 of the Juries Act 1974 governs the use of majority verdicts.

⁴⁹ See Article 111 Section 2 clause 3, Sixth Amendment and Seventh Amendment

⁵⁰ Auld Review supra note 23, Chapter 5, paragraph 60.

government did not adopt Auld's recommendation for expanding juror source lists, but in its 2002 White Paper, *Justice for All*, it did set out its intention to increase the proportion of the population eligible for jury service, in part as a means of ensuring that juries properly reflect the diversity of the communities they serve⁵¹. Under recent changes introduced in the Criminal Justice Act 2003, anyone summoned to do jury service is now required to serve unless they can show "good reason" to have their summons deferred or excused⁵². This means that some of those previously ineligible or excused as of right from jury service are now required to serve.

The Jury Diversity Project is designed to provide evidence of the extent to which jury pools in each of the individual Crown Courts reflect the ethnic make-up of the local population, and therefore whether there is in fact any need to alter the summoning source lists. In addition, the project conducted summoning surveys both before and after the new juror eligibility rules came into effect, and the findings illustrate what impact, if any, the new rules have had on the representative nature of jury service.

Ethnicity and jury impartiality

What underlies concern over the possible under-representation of ethnic minorities on juries is not just the desire for juries to *appear* fair, but the assumption that ethnic background may make a difference to jury decision-making. This is based primarily on concerns that all-White juries may not treat ethnic minority defendants impartially. While there is no research evidence in this country to support this concern, it reflects more general concerns about the low levels of confidence ethnic minorities appear to have in the criminal justice system. The British Crime Survey has reported that ethnic minorities are more likely to believe that they will be treated unfairly by the criminal justice system as a result of their race, although this attitude appears to be directed primarily at the police and not the courts⁵³, and the most recent British Crime Survey found that BME groups actually had higher levels of confidence in the police compared to White people surveyed⁵⁴. The CAD study of ethnic minority defendants' perceptions of fairness in the criminal courts found that the vast majority of defendants in the Crown Courts did not believe they received unfair treatment due to their race⁵⁵, and there is some evidence that ethnic minority defendants in contested trials are actually more likely to be acquitted than White

⁵¹ *Justice for All*, Cm. 5563 (2002), section 7.27.

⁵² New juror eligibility rules cover all registered electors between 18 and 70 years of age who have been resident in the United Kingdom for five years, unless they have a criminal record or mental illness. *Criminal Justice Act 2003* Chapter 44, Section 321, Schedule 33.

⁵³ *Crime, Policing and Justice: the Experience of Ethnic Minorities - Findings from the 2000 British Crime Survey* Home Office Research Study 223 (2001)

⁵⁴ *Black and Minority Ethnic groups' experiences and perceptions of crime, racially motivated crime and the police: findings from the 2004/05 British Crime Survey* Home Office Online Report 25/06 (2006)

⁵⁵ Hood et al supra note 4.

defendants⁵⁶. However, reports of racist remarks made during jury deliberations in recent years, although few, have fuelled concerns about the impartiality of juries towards ethnic minorities. The introduction of a new class of racially-aggravated offences also raises the issue of jury impartiality towards ethnic minority victims as well. Ultimately, however, there has been no systematic examination in this country of the relationship between jury verdicts and the composition of juries or the ethnicity of defendants or victims.

The relationship between juries and ethnic minority defendants has been the subject of a number of legal challenges since the late 1980s. The first of these concerned the legality of judicial actions to ensure racially mixed juries. For many years, it had been accepted that in exceptional circumstances a judge had the discretion to achieve a racially mixed jury⁵⁷, and judges had sanctioned the use of peremptory challenges⁵⁸, standby of jurors⁵⁹ or summoning from areas known to contain substantial numbers of ethnic minority residents⁶⁰ to achieve this. However, in 1989 the Court of Appeal in *R. v. Ford* ruled that there was no principle requiring that a jury be racially balanced, that race should not be taken into account in selecting jurors, and that a trial judge has no power to construct a multi-racial jury. To do so would, according to the Court, interfere with the element of randomness that currently underpins the conception of a fairly structured jury, interfere with the executive's (Lord Chancellor's) exclusive power over jury summoning and would have to be a power granted to the judiciary by statute⁶¹. This has not prevented challenges by ethnic minority defendants to verdicts of all-White juries. In *R. v Smith (Lance Percival)*⁶², a Black defendant convicted of assaulting a White victim appealed his conviction on the grounds that the jury selection procedures, which resulted in an all-White jury, were incompatible with his right to a fair hearing by an impartial tribunal required under Article 6 of the European Convention⁶³. However, the appeal was rejected on the grounds that no evidence was found of actual bias in the jury verdict. Stronger concerns about juries' ability to deal fairly with ethnic minority defendants arise out of cases in which racial bias among jurors has been revealed. In two cases appealed to the European Court, ethnic minority defendants appealed against convictions by juries where allegations had been made that racist remarks

⁵⁶ B. Mhlanga *Race and Crown Prosecution Service Decisions* Crown Prosecution Service (1999). The study also found that ethnic minorities appeared to receive more favourable treatment than their White counterparts in Crown Prosecution Service decisions on whether to prosecute or not. Also see G. Barclay and B. Mhlanga *Ethnic Differences in Decisions on Young Defendants Dealt with by the Crown Prosecution Service* Home Office Section 95 Findings No.1 (2000)

⁵⁷ *R v Thomas* [1989] 88 Cr. App. R. 370

⁵⁸ See for instance *R. v Broderick* [1970] Crim. L.R. 158.

⁵⁹ See for instance *R. V Christie* [1989] Crim. L.R. 830.

⁶⁰ See for instance *R v Bansal et al* [1985] Crim. L.R. 151.

⁶¹ *Royston Ford* (1989) 89 Cr. App. R 278.

⁶² "Judges cannot influence racial composition of juries" *The Times Law Report* 3 March 2003

⁶³ Article 6 §1 European Convention on Human Rights

were used in the course of the jury's deliberations⁶⁴. In the most recent case, *Sander v UK*⁶⁵, the European Court found that the trial judge's failure to discharge a jury after a juror admitted making racist remarks about the defendant during deliberations did violate the fair trial requirements of Article 6. More broadly, it ruled that sufficient guarantees must exist to exclude any objectively justified or legitimate doubts as to the impartiality of a tribunal, and stressed that a jury must be impartial from a subjective as well as an objective point of view.

Where the summoning process is found not to produce representative juries one possibility is to construct racially "balanced" juries. This approach has been used in this country in the past, and has also been recommended recently by both the Runciman and Auld reviews. There are three main models for constructing racially balanced juries at the final stage of jury selection: *the split jury, the proportional jury and the quarter jury*⁶⁶. The *split jury* was originally introduced in the thirteenth century in England granting Jewish defendants the right to a jury comprised half of Jewish jurors (known as the jury *de medietate linguae*⁶⁷). This right to a split jury was designed to provide protection against unfair verdicts based on prejudice against minority groups, and was used in England until 1870 for other ethnic groups as well and adopted in a number of British colonies⁶⁸. The *proportional jury* model provides for ethnic minority representation on juries not based on fixed representation but according to the proportion of ethnic minorities in the local population. Ethnic representation on juries will therefore vary by court and over time as local populations change. The *quarter jury* model provides for 25% or a minimum of three ethnic minority jurors on any jury of 12. This model is based on psychological studies suggesting that a minimum of three ethnic minority jurors is necessary to withstand group pressure from the majority on a jury⁶⁹. Constructed or "balanced" juries are controversial, in large part because they necessarily deviate from the principle of random selection. However, as Auld pointed out, random selection is a means not an end in itself; and it is intended as a means to creating representative juries that are impartial⁷⁰. The main argument for racially "balanced" juries is to avoid partiality. Public opinion research in the United States showed that the

⁶⁴ *Gregory v UK* Case no. 111/1995/617/707 European Court of Human Rights. In *Gregory* the European Court did not find a violation of Article 6 because there was no clear evidence that racist remarks had been made by any juror. For the current caselaw on the extent to which section 8 of the Contempt of Court Act limits judge's questioning of jurors about jury deliberations in the face of accusations of impropriety, see *R. v. Mirza* [2004] UKHL 2 [2004] 1 All ER 925

⁶⁵ *Sander v UK* Case no.34129/96 European Court of Human Rights.

⁶⁶ H. Fukurai and R. Krooth in *Race in the Jury Box: Affirmative Action in Jury Selection* (2003) refer to these three as the jury *de medietate linguae* model, the Hennepin County model and the Social Science model.

⁶⁷ Meaning "jury of the half-tongue".

⁶⁸ This system of constructing mixed juries was abolished in 1870 with the passage of the Naturalisation Act enabling many foreign residents to serve on juries.

⁶⁹ However, this assumes that unanimous verdicts are required, which is the case in most instances in the US but not in England and Wales. N. Kerr and R. MacCoun "The Effects of Jury Size and Polling Method on the Process and Product of Jury Deliberations" *Journal of Personality and Social Psychology* Vol.48, No.2 (1985) 349-363

⁷⁰ Auld *supra* note 23, Chapter 5, paragraph 58

proportional jury model is most likely to create the appearance of fairness in criminal jury trials, closely followed by the quarter jury model⁷¹.

Both recent reviews of the criminal justice system in England and Wales have proposed the introduction of quarter juries. In 1993, the Runciman Commission proposed that, in exceptional circumstances, a judge could order that three “ethnically similar” jurors to the victim or defendant be included on a jury if requested by the prosecution or defence. The example of “exceptional circumstances” given was one in which “black people [are] accused of violence against a member of an extremist organisation who they said had been making racial taunts against them and their friends.”⁷² More recently, the Auld Review recommended that a scheme be devised allowing the trial judge to construct a jury with up to three people from any ethnic minority group in cases where the court considers that race is likely to be a relevant issue⁷³. To facilitate this, Auld suggested that the Jury Central Summoning Bureau ask potential jurors to provide information on their ethnic origin when returning summonses. Both the Runciman and Auld proposals run counter to the current case law prohibiting a trial judge from becoming involved in the selection of jurors, and in *Justice for All* the Government rejected the idea of ethnic balancing of juries on the grounds that it contradicted the principle of random jury selection and could place ethnic minority jurors in a difficult position and create divisions within juries⁷⁴. The results of the jury project’s summoning survey indicate the feasibility of requesting ethnic background information from potential jurors and the practicality of any further proposals to empanel racially-mixed juries.

Despite these calls for juries to be racially balanced in certain cases, there has not been any empirical research in this country to show whether it is valid to assume that the race of jurors, defendants or victims affects jury impartiality. The only substantive studies of the role of race in jury decision-making have been conducted in the United States⁷⁵. Empirical research there has addressed questions such as: how does a defendant’s race influence a juror’s perception and judgement; how does the racial composition of the jury affect its decision-making process; and is the influence of race on jurors the same in all criminal cases? Case simulation (or “mock jury”) studies in that country have found that while White jurors are influenced by a defendant’s race, this influence is not consistent across cases, and contrary to common assumptions

⁷¹ Fukurai and Krooth *supra* note 66, Appendix A.

⁷² At the time this was a unanimous recommendation of the Commission. Runciman Commission *supra* note 22 at 133-4. However, one member of the Commission, Professor Michael Zander, later retracted his support for this recommendation. See “Lord Justice Auld’s Review of the Criminal Courts: A Response” available on www.criminal-courts-review.org.uk.

⁷³ Auld Review *supra* note 23, Chapter 5, paragraphs 60-61.

⁷⁴ *Justice for All supra* note 51, section 7.29.

⁷⁵ For a comprehensive review of research on race and juries in America see S. Sommers and P. Ellsworth “How Much Do We Really Know About Race and Juries? A Review of Social Science Theory and Research” *Chicago-Kent Law Review* Vol.78 No.3 997 (2003).

racially-charged trials may not be the ones in which racial bias is most likely to occur⁷⁶. One limitation to the American research is that very few studies have been conducted with non-White participants. What little research there has been with non-White participants indicates that Black jurors appear to be influenced by a defendant's race regardless of the existence of any racial issue in a case⁷⁷. In addition, most of the American research has focussed only on the relationship between race and *individual juror* decisions and perceptions, not jury verdicts. Yet in any criminal trial, it is ultimately only the verdict of the jury that counts, not individual juror perceptions. One recent study did find that the racial composition of a jury can affect the *jury's* deliberations and final verdict. However, without similar research in this country, it is unclear to what extent American findings are relevant to juries in this country. **For the first time in this country, the Jury Diversity Project addresses this key question about juries: does race actually affect jury decision-making?**

Why is diversity necessary?

The strongest case for diversity in the justice system is based on research which indicates that diversity among legal decision-makers leads to both increased public confidence in the fairness of courts and an actual improvement in the quality of legal decision-making⁷⁸. A number of recent studies in England and Wales have addressed the relationship between ethnic diversity and confidence in the fairness of courts. The Department's CAD studies in Crown Courts, magistrates' courts and tribunals all found that the lack of diversity among those presiding over judicial proceedings had an effect on ethnic minorities' confidence in the fairness of those proceedings. The survey of defendants' perceptions of fairness in the Crown Courts found that ethnic minority defendants felt having more ethnic minority jurors would increase their confidence in the courts⁷⁹. The study of ethnic minority magistrates found that the most common proposal by magistrates themselves to increase confidence in the courts was that more magistrates and court staff from the local ethnic minority populations be recruited⁸⁰. The study of tribunal users found that even though a substantial proportion of South Asians perceived unfairness in the course of their tribunal hearing, this group was less likely to perceive unfairness when the tribunal was ethnically diverse⁸¹. These studies go some way to illustrating the positive effect ethnically mixed juries are likely to have on public perceptions of the fairness

⁷⁶ S. Sommers and P. Ellsworth "Race in the Courtroom: Perceptions of Guilt and Dispositional Attributions" *Personality and Social Psychology Bulletin* No.26 (2000) 1367

⁷⁷ Sommers and Ellsworth (2003) *supra* note 75; D. Ugwuegbu "Racial and Evidential Factors in Jurors Attribution of Legal Responsibility" *Journal of Experimental Social Psychology* Vol. 15 (1979) 133

⁷⁸ See C. Thomas *Judicial Diversity in the United Kingdom and Other Jurisdictions* Commission for Judicial Appointments (2005)

⁷⁹ Hood et al *supra* note 4, p.116

⁸⁰ Vennard et al *supra* note 8.

⁸¹ Genn et al *supra* note 10.

of proceedings in Crown Courts, although no specific study of this issue has been undertaken in the past. In the United States, comprehensive surveys of the perception of courts across a number of states have demonstrated that jury diversity can have a powerful symbolic value in promoting public confidence in the courts⁸², and that the issue of the perception of the fairness of courts is a vitally important one in terms of both access to and delivery of justice.

The need for diversity on juries has also been substantially strengthened by recent research demonstrating that the actual quality of jury deliberations is improved when juries are comprised of individuals from different ethnic backgrounds. A study in the United States examining whether the racial composition of the jury influenced the content and scope of jury discussions found that, compared to all-White juries, racially mixed juries tended to deliberate longer, discuss more case facts and raise more questions about what important information may have been missing from the trial⁸³. This reflects similar findings of the effect of diversity on judicial decision-making, which have shown that increasing diversity on panels of judges substantially changed the voting behaviour of the judges and improved the quality of the panel's adjudication⁸⁴. In the United States the courts themselves have acknowledged that a connection exists between jury diversity and jury impartiality. In a series of cases establishing the right to a jury pool that is representative of a fair cross section of the community, the Supreme Court established that impartiality is best assured when diverse viewpoints have an opportunity to interact in juror deliberations, and that the exclusion of ethnic minorities imperils jury impartiality⁸⁵. In England and Wales the primacy of the principle of random selection of both jurors and juries is based in large part on the belief that this system is the fairest means of producing generally representative jury pools and juries in the Crown Courts. The underlying principle is that a representative jury pool is more likely to reflect a range of community values, or a jury of one's peers.

The research brief

The Department's original research specification for this study focussed on the juror summoning process. Its starting point was the continued concerns expressed about the under-representation of ethnic minorities on juries, and it set out three specific issues for the research to address:

⁸² *Perceptions of the Courts in Your Community: The Influence of Experience, Race and Ethnicity* National Center for State Courts (2003); F. Bennack *How the Public Views the State Courts: A 1999 National Survey* National Center for State Courts (1999)

⁸³ Such as physical evidence and witnesses. S. Sommers "On Racial Diversity and Group Decision-Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations" *Journal of Personality and Social Psychology* Vol.90 No.4 597-612 (2006)

⁸⁴ C. Cameron and C. Cummings, "Diversity and Judicial Decision-Making: Evidence from Affirmative Action Cases in the Federal Courts of Appeal 1971-1999" *Columbia Law Review* (2003). C. Sunstein *Why Society Needs Dissent* (2003)

⁸⁵ *Witherspoon v Illinois* 391 U.S. 510 (1968), *Taylor v Louisiana* 419 U.S. 522, *Morgan v Illinois* 504 U.S. 719

- Whether any imbalance exists in the representation of ethnic minorities on juries?
- If so, whether there is a failure to approach potential jurors resulting from some aspect of the summoning procedure?
- Whether there is any imbalance in the willingness to serve?

Concerns about the possible under-representation of ethnic minorities on juries implicitly assume that the ethnic make-up of juries will affect jury fairness, particularly towards members of BME groups. As a result, the project proposed, and the Department agreed, to significantly widen the scope of the research to address a much deeper underlying issue:

- Does ethnicity actually affect jury verdicts?

The project also proposed, and the Department agreed, to broaden the scope of the research so that the definition of diversity in this study constituted far more than ethnicity. This extension in the scope of the research reflects findings of diversity research in other policy fields, which have demonstrated that a more complete understanding of the impact of processes and policies on ethnic groups requires an examination of the *relative* impact of ethnicity in relation to other background characteristics (such as gender, age, income and employment)⁸⁶. The use of such a multivariate approach to understanding diversity marks a departure from the other Courts and Diversity studies, and it is hoped that in this way the Jury Diversity Project will help fill to an important knowledge gap in both diversity and legal studies in Britain.

In order to address these questions the research project comprised several distinct but inter-connected studies, each utilising a range of approaches to data collection. The starting point for the research was a **juror summoning survey** of the socio-economic background of all individuals summoned for jury service for each Crown Court in England and Wales in one week. This large-scale quantitative study encompassed over 15,000 individuals summoned for jury service, and provided the basis for examining whether ethnic minorities were summoned in general proportion to their representation in the population in each court's juror catchment area; whether rules for excusal or disqualification for jury service resulted in any significant reduction in ethnic minorities doing jury service in each court; and factors affecting the response rates to juror summonses.

⁸⁶ For a discussion of this see C. Thomas *Judicial Diversity and the Appointment of Deputy District Judges* Commission for Judicial Appointments (2006)

The summoning survey was complimented by a **jury service study**, a longer-term quantitative study of the socio-economic background of only those jurors attending court for jury service (the jury pool). The study was conducted in three Crown Courts (Blackfriars, Manchester Minshull Street and Reading) where there is a substantial proportion of ethnic minorities in the local population. It examined the extent to which BME representation in the jury pool fluctuates on a weekly basis (helping to shed light on the reliability of the results of the one-week summoning survey), and how BME representation in the jury pool translates into BME representation on jury panels and actual juries in individual cases. This study also examined the extent to which jury pools in each court reflected the wider social profile of the local population in terms of age, gender, employment status, profession, income and religion.

To address the more complex, underlying issue of whether race affects jury decision-making, a **jury decision-making study** was conducted using case simulation with real jurors in Crown Courts. The use of case simulation enabled the project to examine both jury and juror decision-making under controlled conditions. A hypothetical case was filmed and edited so that selected factors (the race of the defendant, victim and the racial context of the case) were systematically varied. Different versions of the case were shown to large numbers of dismissed jurors sitting and deliberating as a jury, and the research explored not just the verdicts of these juries and the votes of individual jurors, but also the jurors' perceptions of witnesses and evidence and views of the criminal justice system. The jury decision-making study represents the first time the question of whether ethnicity affects jury decision-making has been examined in this country.

The project also carried out a limited **jury verdict study** based on actual cases, using data on jury verdicts, jury composition and the ethnicity of defendants in the three courts in the jury service study. This study provided useful background information to the jury decision-making study, by examining whether any correlation appeared to exist between jury verdicts in actual cases and the racial composition of the jury, the ethnicity of the defendant or the particular court where the case was tried. These four empirical studies addressed a number of specific questions.

Juror Summoning:

- Do those summoned for jury service reflect the local population in each Crown Court in England and Wales?
- Does the process of excusal and disqualification from jury service adversely affect ethnic minority representation?
- What factors may account for summonses not being returned?

Jury Service:

- To what extent does the jury pool at each Crown Court reflect the ethnic make up of the local population?
- To what extent do individual jury panels and juries at each Crown Court reflect the ethnic make up of the local population?
- Does the empanelling of individual juries adversely affect ethnic minority representation on juries?

Jury Decision-Making

- To what extent does defendant ethnicity affect jury verdicts?
- To what extent does defendant ethnicity affect individual juror decisions?
- To what extent do other factors (ethnicity of victim, charges, jury deliberation, other juror characteristics) affect juror votes?

Jury Verdicts:

- Is there any correlation between conviction rates in actual cases and jury ethnicity, defendant ethnicity or court?

Diversity and ethnicity

Diversity is a broad concept covered widely in a number of academic disciplines in this country, but generally not law. Most studies of diversity in Britain are studies of race and ethnicity⁸⁷, and some of these have encompassed issues in the legal system⁸⁸. However, as diversity studies in other fields and in law in other jurisdictions have demonstrated, caution should be exercised in defining diversity only in terms of ethnicity. These studies have found that a more complex picture often emerges when the significance of ethnicity is considered in relation to other socio-economic background factors⁸⁹. The study of discrimination in jury summoning and serving in California, for instance, revealed that social class actually exerted greater influence than race in explaining disproportionate jury representation among ethnic groups, and the two most important factors affecting jury representativeness overall were occupation and residential mobility⁹⁰. Unlike the other CAD research projects, one of the primary objectives of the jury project was to examine how significant ethnicity is in relation to other socio-economic characteristics of those summoned and serving on juries in this country.

⁸⁷ See Thomas (2005) supra note 78 for a review of diversity literature.

⁸⁸ B. Bowling and D. Phillips *Racism, Crime and Justice* (2002); D. Cook and B. Hudson (eds) *Racism and Criminology* (1993); L. Gelsthorpe (ed) *Minority Ethnic Groups in the Criminal Justice System* (1993); R. Hood *Race and Sentencing* (1992); S. Lewis et al (eds) *Race and Probation* (2006).

⁸⁹ See for instance S. Saggar *Race and Representation* (2000) and *Race and Political Recruitment* (2001); M. Hurwitz and D. Lanier "Explaining Judicial Diversity: The Differential Ability of Women and Minorities to Attain Seats on State Supreme and Appellate Courts" *State Politics and Policy Quarterly* volume 3, issue 4 (Winter 2003). Thomas (2006) supra note 86 is one study of diversity in the court system in this country to adopt a multivariate approach to analysing the significance of ethnicity in relation to a range of other socio-economic factors.

⁹⁰ Fukurai supra note 43.

Although the other CAD studies focussed primarily on ethnicity, most suggested that other background factors appear to influence BME groups' experience of the court system in this country. The demographic factors that are most closely associated with ethnicity are religion and language, and one or both of these were associated with court users' perceptions and experiences of fairness in care proceedings⁹¹, housing repossession cases⁹² and tribunal hearings⁹³. However, two of the CAD studies specifically noted that other factors beyond religion and language may have been more important than ethnicity in affecting experiences of fairness in the court system, although the scope of these studies did not allow for an in-depth examination of these factors. The study of BME magistrates' experience found that even though many BME magistrates felt themselves to be outsiders when they joined the lay magistracy, this was a reflection more of social class than race; all the magistrates, regardless of race, who conformed to the middle-class, educated norm of the magistracy appeared to be fully integrated into life on the bench.⁹⁴ Similarly, the study of housing repossession cases noted that economic factors, such as dependency on housing benefit, appeared to have as much if not more impact on the outcome of cases than ethnicity. In addition, a recent study of diversity in judicial appointments in England and Wales found that gender was more influential in appointment success than ethnicity, with women (not ethnic minorities) accounting for the increase in diversity among Deputy District Judges in recent years⁹⁵. The jury project specifically approaches the question of diversity and juries in terms of measuring the relative impact of ethnicity in comparison to other demographic factors, such as gender, age, income, employment status, religion and language.

Another issue highlighted by several of the Courts and Diversity studies is the need to disentangle the concept of "ethnic minorities". Most government and other official bodies have recently adopted the term "black and minority ethnic" group (or BME), which reflects the Commission for Racial Equality (CRE) guidelines for referring to non-White British ethnic minorities. The term recognises the sometimes shared experiences of the Black and Asian communities, although it is equally important to recognise that religious, cultural and linguistic differences exist between these groups.⁹⁶ Therefore, 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 system⁹⁷. For instance, the study of

⁹¹ Brophy et al supra note 6 and 9.

⁹² Blandy et al supra note 5.

⁹³ Genn et al supra note 10.

⁹⁴ Vennard et al supra note 8 p.85

⁹⁵ Thomas (2006) supra note 86.

⁹⁶ See T. Modood and R. Berthoud, *Changing Ethnic Identities in Britain* (1997); P. Weller *Multi-Faith Directory* (2001)

⁹⁷ Thomas (2005) supra note 78 reviews the literature on this issue.

tribunal users found that when “BME” was disaggregated, disparities in experiences and perceptions of fairness emerged; in that instance, South Asian and some non-European users were considerably more negative in their assessments of tribunal hearings and more likely to perceive unfairness than Black users⁹⁸.

There are also similar concerns about viewing “White” as a single unified ethnic group. The Office of National Statistics (ONS) classification of “White” includes three separate categories: British, Irish and any other White background. In terms of the jury, the two particular groups within the White category that may specifically need to be considered separately are the Irish and Welsh. Revelations of miscarriages of justice in the 1990s involving Irish defendants raised concerns about the ability of the criminal justice system to deal fairly with Irish defendants, and to extent to which this may have affected willingness to do jury service in the Irish community. For the Welsh, the recent consultation paper on the possibility of introducing bilingual jury trials in Wales⁹⁹ has raised questions about the level of Welsh speaking representation among those summoned for jury service in Wales. One of the difficulties in examining ethnicity among smaller ethnic groups (whether White or BME) is often the relatively small number of individuals on which to base reliable findings. The jury project set out to collect ethnicity data on a large scale, particularly in the summoning survey, and wherever sample sizes have allowed, the study has attempted to distinguish how the operation of the jury system impacts differently on different ethnic groups at a more detailed level than simply “White” and “BME”.

Finally, no consistent set of ethnic group classifications was used by all the CAD studies. Many of the studies focussed on “visible minorities,” a classification which defines ethnicity primarily in terms of skin tone. This was done in large part because these studies focused on ethnic minority perceptions of fairness in court proceedings, and the Department’s research programme was initially focussed on the legal system’s treatment of visible minorities, as highlighted by the Macpherson inquiry. The jury project adopted the ONS ethnic group classifications, which encompass both skin tone and country of origin, and adhered to the guidelines laid down by ONS for assessing ethnicity through participants’ self-identification of ethnic group. This was important given the project’s approach to data collection and its objective of carrying out a quantitative assessment of ethnic minority representation in the jury process, measured in terms of its relation to local population data from the 2001 Census. This approach was also important in light of the project’s more comprehensive analysis of diversity,

⁹⁸ Genn supra note 10, p.212

⁹⁹ *The Use of Bilingual (English and Welsh-speaking) Juries in Certain Criminal Trials in Wales: A Consultation Paper* Office for Criminal Justice Reform (December 2005)

which involved relating ethnicity data to other census demographics such as gender, age, income, employment and religion.

The report

This Report contains six substantive chapters and is structured around the three main stages of jury service: summoning, serving and jury decision-making. Chapter two outlines the scope of the research project and the methodologies used in examining each of these stages of jury service. Chapter three examines the first key stage in jury service, the summoning of jurors; it presents the first set of findings from the summoning survey and addresses the questions: are ethnic minorities under-represented among those summoned for jury service for each Crown Court in comparison to their representation in the local population, and do non-responses to summonses indicate any particular unwillingness to do jury service on the part of BME groups? Chapter four addresses the next stage of the summoning process by examining who does and who does not do service serve once summoned. It presents the second set of findings from the summoning survey and addresses the questions: at each Crown Court are ethnic minorities under-represented among those doing jury service in relation to the local population, how does the process of excusal and disqualification from jury service affect ethnic minorities, and are other factors more significant than ethnicity in terms of who does and who does not do jury service? Chapter five presents the findings of the jury service study, examining the representative nature of jury pools, jury panels and juries in three specific courts where ethnic minorities comprise a substantial proportion of the local population. Chapter six presents the findings of the jury decision-making study, examining whether in fact the ethnic background of jurors and the ethnic background of defendants affects jury verdicts and individual juror votes. This chapter also examines whether any correlation exists between jury verdicts and the ethnicity of defendants and juries in actual cases. Chapter seven draws together the main findings of the summoning, serving and decision-making studies, and discusses the implications of the research for ensuring a representative and impartial jury system in England and Wales.

Chapter 2. The study methods

Project objectives

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

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

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

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

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

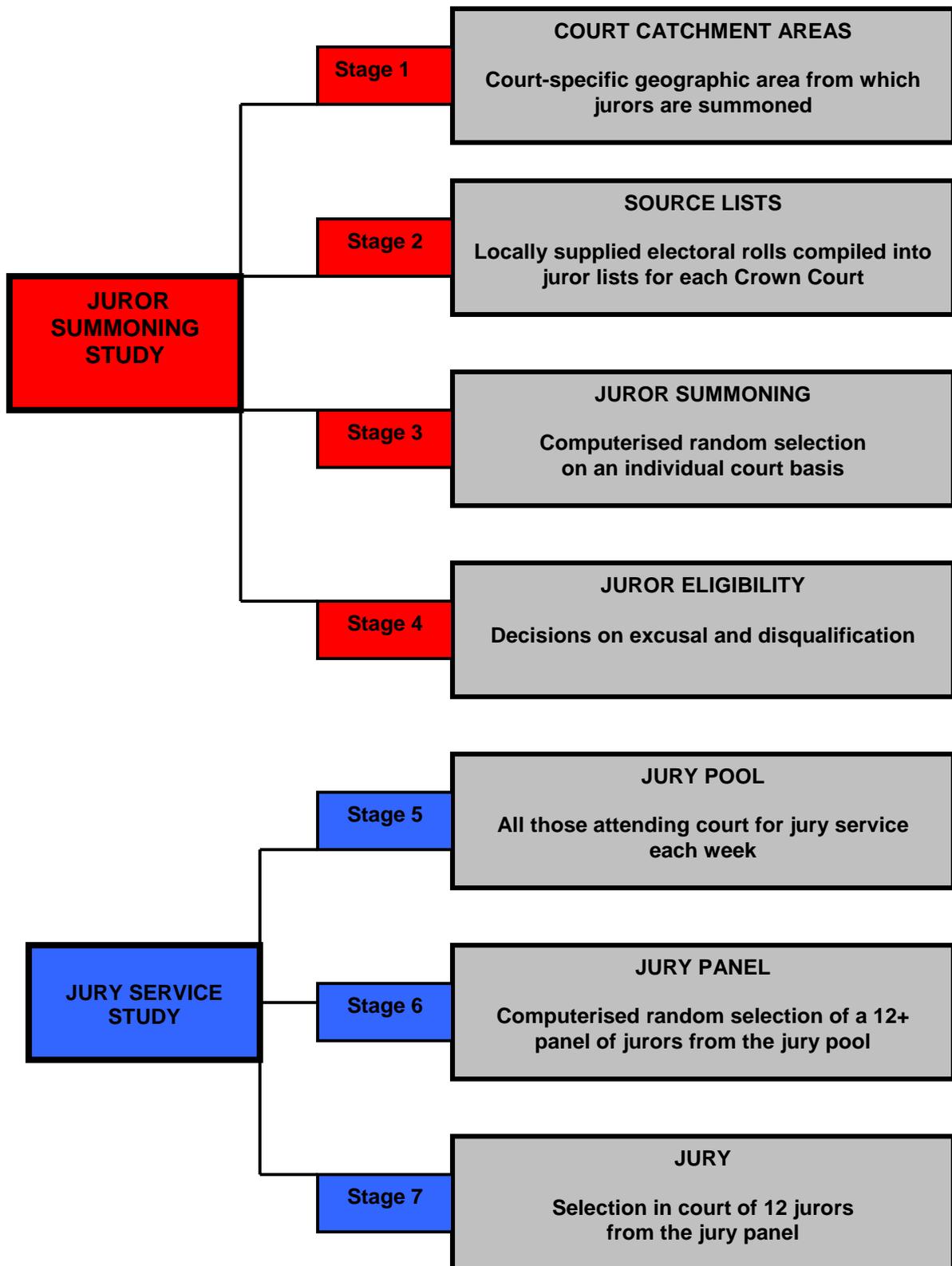
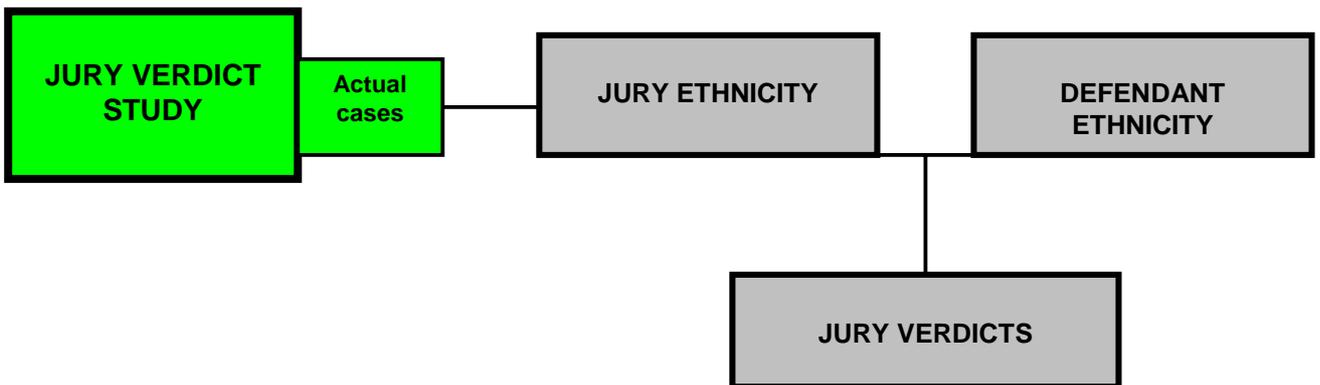
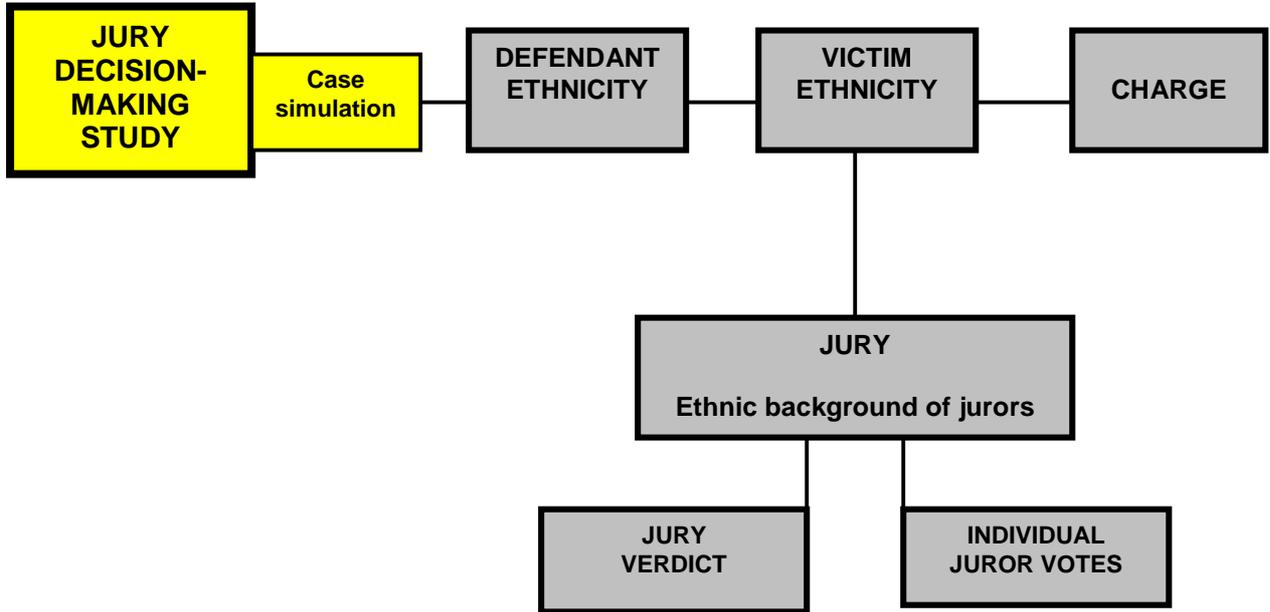


Figure 2.2 Elements of jury decision-making covered by each study



Juror summoning survey

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

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

Methodology

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

¹⁰⁰ See Appendix 7 for questionnaire.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Response rate

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

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

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

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

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

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

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

Analysis

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

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

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

¹⁰⁹ See discussion in Chapter 3.

¹¹⁰ See discussion in Chapter 3.

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

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

Jury service study

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

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

Methodology

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

¹¹² See Figures 2.1.

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

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

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

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

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

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

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

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

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

Analysis

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

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

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

Jury decision-making study

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

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

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

Jury decision-making research

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

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

¹¹⁵ Sometimes also referred to as mock jury research.

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

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

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

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

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

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

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

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

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

¹²² Sommers and Ellsworth (2003) supra note 75.

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

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

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

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

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

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

Materials and methodology

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Table 2.7. Sample size and parameters in case simulation study

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

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

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

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

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

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

Analysis

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

Jury verdict study

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

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

¹⁴¹ See Sommers (2006) supra note 83.

¹⁴² Sommers and Ellsworth (2003) supra note 75.

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

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

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

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

Chapter 3. Juror summoning

The starting point for understanding the representative nature of jury service is the structure of the juror summoning process itself. Specific factors are at play at each stage of the summoning process that could potentially affect representation on juries: from the demographics of the juror catchment area for each Crown Court to the electoral lists from which jurors are randomly selected, as well as the process of excusal and disqualification from jury service. This chapter presents findings from the first phase of the research project, the juror summoning survey, and specifically examines the extent to which those summoned for jury service by computerised random selection are representative of the local population for each individual Crown Court in England and Wales. Chapter four presents the survey results for the final stages of the juror summoning process, examining how the process of excusal and disqualification affects the representative nature of those who serve. The findings are based on a survey of all individuals summoned in one week in February 2005 for 84 of the 94 Crown Courts in England and Wales¹⁴⁶.

Aims and objectives

A number of beliefs about the extent to which the juror summoning process is representative of the population appear to have become entrenched in this country, despite the fact that none of these beliefs have been substantiated by any reliable research evidence. For several decades there have been frequent claims that ethnic minorities are under-represented among those summoned for jury service, and hence are under-represented on juries, even though the Crown Court Study in the early 1990s did not substantiate this. Based on this belief, the Auld Review recommended that the summoning source lists should be expanded to include other publicly maintained lists¹⁴⁷ in order to encompass more ethnic minorities from the local community in the summoning process and to make juries more representative. It has also been claimed that there is widespread avoidance of jury service among the British public, and almost all people summoned in London try to avoid jury service¹⁴⁸. But no reliable evidence has been produced to either prove or disprove such claims. The Jury Summoning Study was designed to provide a systematic analysis of the representative nature of the jury summoning process and, in doing

¹⁴⁶ Two surveys were conducted, one in April 2003 before the new juror eligibility rules were introduced in 2004, and one in February 2005 after the rules came into effect. All the findings in this chapter and Chapter 4 relate to the 2005 survey, with the exception of the findings in Chapter 4 exploring the impact of the 2003 rule changes on representation among serving jurors.

¹⁴⁷ Auld *supra* note 23, Chapter 5, paragraph 23

¹⁴⁸ Darbyshire et al *supra* note 37, p.58.

so, to determine whether any of these claims about the lack of representation in the summoning process and widespread jury service avoidance are borne out in reality.

A key aim of this part of the research was to gain an understanding of ethnicity and juror summoning *on an individual court basis*. The only prior research on jurors and representation in the last 25 years (the Crown Court Study) was only able to examine ethnic representation on juries on a national aggregate basis¹⁴⁹, yet jurors are summoned and serve only for individual Crown Courts. Each of the 94 Crown Courts in England and Wales has its own unique local catchment area from which jurors are summoned, and ethnic minority representation in the jury summoning process therefore needs to be understood in relation to the pool of potential jurors for each Crown Court, not in relation to the proportion of ethnic minorities in the national population. This court-by-court approach to understanding the representative nature of the summoning process sets this study apart from any previous study of juror representation in this country by providing the most accurate picture possible of juror summoning. The specific questions addressed in this chapter include:

1. Whether the proportion of ethnic minorities summoned for each Crown Court in England and Wales reflects the proportion of ethnic minorities in the catchment area for that court.
2. Whether the geographic distribution of non-returns of summonses indicates a failure to reach ethnic minorities in the summoning process, or any unwillingness to do jury service.

Juror catchment areas and source lists

Each Crown Court in England and Wales has a specific geographically-defined catchment area for summoning jurors, and no two court catchment areas are identical. The juror catchment area for each court is determined by postcode districts, and the postcode districts that fall within each Crown Court juror catchment area are based primarily on the distance any individual in that district would have to travel to serve as a juror. For each Crown Court there is, therefore, a unique population from which jurors are summoned. This means that the population dynamics of the juror catchment area, including the size of the BME population in the catchment area, is the first and most fundamental factor affecting the representative nature of juries. The extent to which juries are representative of the local community therefore needs to be measured on a court-by-court basis based on the demographics of each Crown Court's juror catchment area.

¹⁴⁹ See Crown Court Study *supra* note 12.

For instance, while ethnic minorities may comprise 9% of the population in England and Wales, if ethnic minorities comprise only 3% of the population in a particular Crown Court catchment area there can be no reasonable expectation that 9% of all jurors summoned for that court will be from ethnic minority groups. If they were, then the summoning process would be producing unrepresentative jury pools for that court.

The lists from which jurors are randomly selected are made up of electoral registers provided to the JCSB by 376 local authorities in England and Wales¹⁵⁰. These electoral lists are broken down by the JCSB into separate lists for each of the 94 individual Crown Court catchment areas based on postcode districts. Each name on each Crown Court list is then assigned a unique juror number, and the computerised random selection of jurors is conducted using these individual lists for each court. These lists are held for the JCSB by Electronic Data Services (EDS), the private contractor which generates and dispatches all summonses for England and Wales. Because both the juror catchment areas and the summoning source lists are based on postcode districts, this allowed the study to profile each Crown Court's unique juror catchment area for ethnicity and a range of other socio-economic factors based on the 2001 census, which also exists in postcode district format. The representative nature of the jurors summoned and serving at each Crown Court could therefore be measured against the unique population profile for each Crown Court based on the most recent census data.

In adopting this approach, several factors had to be considered that might affect the extent to which census data can provide an accurate picture of the population of individuals who could be summoned for jury service in each court's juror catchment area. One of the key issues here is the extent to which BME groups are under-represented on electoral registers and therefore under-represented on juror summoning source lists. While there appears to be some consensus that BME groups may be under-represented among registered voters, it is unclear which BME groups have the highest levels of non-registration. Two studies in the late 1990s reached different conclusions. One found that Black Africans had the lowest voter registration level (87%) and that Indians and Black Caribbeans had the highest (96%)¹⁵¹. However, another study found that Black Caribbeans and Indians had equally high levels of non-registration as Black Africans (all between 24-26%)¹⁵². Beyond this the Electoral Commission has also shown that other demographic factors (such as age, gender, class, education and geographic location)

¹⁵⁰ The only differences that may exist between the local electoral register and the one submitted to the JCSB relate to those electors that are over 70. Some local authorities remove those over 70 before the lists are given to the JCSB, as they are legally excused from jury service. Other authorities highlight those over 70 on the lists given to the JCSB. If a highlighted elector is randomly selected, he or she will be officially recorded as summoned but will be disqualified on selection and not sent a summons.

¹⁵¹ S. Saggar *The General Election 1997: Ethnic Minorities and Electoral Politics* (1998)

¹⁵² M. Anwar *Ethnic Minorities and the British Electoral System* (1998)

can be more influential than ethnicity in determining voter registration¹⁵³.

The second issue is that the census in postcode district format includes the following individuals who are not eligible for jury service: those under 18, those over 70 and those non-EU and Commonwealth citizens and non-residents. It could be argued that, given the higher birth rate among the BME population and the general likelihood of non-EU and Commonwealth citizens and non-residents being from a BME background, the census data may include a higher proportion of ethnic minorities than the electoral register¹⁵⁴. Another possible issue is the extent to which the summoning source lists are up to date, although this does not appear to be an issue as updated lists are provided to the JCSB by the local authorities once a year¹⁵⁵. Finally, there may also be a more general issue around the accuracy of the 2001 census data, particularly in certain areas of London, although the census data used in this study was not released until 2004 and some corrections had been made to data. Therefore, while there may be some limited differences between census populations and juror catchment populations, and some inevitable issues surrounding the accuracy of census data, using census data has the benefit of allowing very precise comparisons to be made between those summoned from a court catchment area based on postcode districts and the population resident in that area based on the same exact geographic area.

Juror source lists have frequently been the focus of proposed changes to the summoning process in order to achieve more representative juries. It has often been argued that ethnic minorities are under-represented on juries, and that this is due to the fact that they are under-represented on the electoral registers that form the summoning lists. The Auld Review maintained this and proposed that the summoning source lists be expanded to include lists from the Driver and Vehicle Licensing Authority, the Department for Work and Pensions, the Inland Revenue and telephone directories¹⁵⁶ in order to encompass more ethnic minorities from the local community and make juries more representative. This study's approach has been to first answer the most fundamental question of whether in fact ethnic minorities are under-represented among those summoned (and serving) in relation to their representation in the local population. If there is significant under-representation then the issue of the summoning source lists arises; if there is not any under-representation then this would indicate that no fundamental problem exists with the summoning source lists and there is no need to augment these lists.

¹⁵³ Electoral Commission Research Report supra note 111.

¹⁵⁴ Although there may be some balancing here if there are higher percentages of White people among the over 70s.

¹⁵⁵ This is a statutory requirement and is done in October. While some local authorities update their electoral registers more frequently, the updates are only recorded by the JCSB once a year as more frequent updating would be impractical.

¹⁵⁶ Auld supra note 23, Chapter 5, paragraph 23

Summoning process

Every Monday the individual Crown Courts in England and Wales send requests to the JCSB for the number of jurors needed at court in nine weeks' time. The number of jurors each Crown Court requests each week varies for each court, but each court requests roughly the same number each week¹⁵⁷, and most courts make a request each week. The JCSB calculates the number of summonses needed for each court, allowing for possible non-returns, disqualifications, excusals and deferrals, using an individual ratio for each court. The JCSB then runs a computerised random selection programme on each court's list of potential jurors. The juror numbers selected are assigned a jury pool number, which indicates the court and date of commencement of jury service. The resulting summons lists are then sent electronically to a print centre in Washington Tyne and Wear, and within two days the summonses are printed and posted. Approximately 7,500 summonses are sent out each week.

Prospective jurors receive a four-page summons document. The first two pages are the official summons. The last two pages are information pages that must be completed and returned to the JCSB. Information requested includes personal contact details, date of birth, information showing whether the individual is disqualified for jury service and any reasons for requesting an excusal or deferral from jury service. Individuals are disqualified from jury service if they are under 18 or 70 or over, have been charged or convicted of certain offences or have a mental illness¹⁵⁸. Requests for excusal or deferral are not granted automatically and are decided on an individual basis by the JCSB¹⁵⁹. Those who do not return the summons or do not attend court for jury service without good reason are liable to a fine of up to £1000 or could be held in contempt of court.

Conduct of the research

Using 2001 census data in postcode district form, an ethnicity population profile was created for each Crown Court in the country. In order to determine the ethnicity (and other socio-economic characteristics) of those summoned for jury service in each court, the project surveyed all individuals summoned for jury service in England and Wales during one week. A voluntary questionnaire was included in all summonses sent to prospective jurors in that one week,

¹⁵⁷ Ranging from approximately 120 requests per week for the largest courts to less than 20 per week for the smallest courts.

¹⁵⁸ See recent rule changes supra note 31.

¹⁵⁹ If the JCSB refuses an application for excusal or deferral the juror can appeal their decision to a judge at the Crown Court the juror is due to attend.

requesting prospective jurors to self-identify their ethnic group¹⁶⁰ and a number of other socio-economic characteristics¹⁶¹. The survey method was piloted using three different versions of the questionnaire, all of which included an identical question on ethnicity¹⁶², but the questionnaires varied in the number of questions asked. Piloting proved extremely helpful. It confirmed that the methodology would produce a high response rate: 87% of all prospective jurors who responded to their summons also returned a completed questionnaire. But even though all three versions of the questionnaire had high response rates, the lowest response rate was for the version that was most clearly an ethnicity questionnaire, while the highest response rate was for the most detailed questionnaire. This indicated that prospective jurors might be more hesitant to complete a questionnaire if it was obviously about ethnicity than if ethnicity was only one of a number of nevertheless personal questions (e.g., income, religion) asked of them.

All the questions on the final questionnaire were selected based on the results of the pilot survey, information needed but not available from data recorded on the summons and previous research on ethnicity and jury service. Question A (gender) was included because it is not always possible to distinguish gender from information available from the summons (i.e., title). Question B (prior jury service) was designed to help identify any differences between ethnic groups in frequency of jury service. Question C (employment status) was designed to provide basic employment information and was designed to be combined with Question D (income) to assess socio-economic status, as research in the United States had found that ethnic minorities with higher incomes and higher status jobs were actually over-represented in the jury system. Question E (ethnicity) was the main research question. Question F (religion) was designed to help refine ethnicity for certain ethnic groups¹⁶³, and question G (first language) was designed to provide further understanding of how ethnicity may affect ability to do jury service¹⁶⁴. All the questions, except prior jury service, income and first language, were identical to questions on the Office of National Statistics 2001 Census form, allowing direct comparison with local population census data.

¹⁶⁰ According to the Office of National Statistics, self-identification is the method that should be used particularly for obtaining ethnicity data, as ethnic group is something subjectively meaningful for the person concerned. Office of National Statistics, *Ethnic Group Statistics: A Guide for the Collection and Classification of Ethnicity Data*, HMSO (2003) p.7.

¹⁶¹ See questionnaire in Appendix 7.

¹⁶² The ethnicity question used on all the project questionnaires followed the standard ethnic group question for self-completion forms for data collection in England and Wales, provided by the Office of National Statistics. ONS (2003) supra note 160 p.48.

¹⁶³ Religion is one of the important defining characteristics for some ethnic minorities, and ONS has suggested it should be included in any survey of ethnicity. ONS (2003) supra note 160 p.14.

¹⁶⁴ Language may also be an effective way of defining ethnicity for some ethnic minorities. ONS (2003) supra note 160.

Two identical summoning surveys were conducted during the research, however, only the most recent survey conducted in 2005 provides the most up to date information on the ethnic and socio-economic background of those summoned and serving in England and Wales. It is this survey, therefore, which forms the basis of the analysis of jury summoning in this chapter and the analysis of serving jurors in Chapter four. A survey was initially conducted for all those summoned in one week in April 2003, encompassing 8,599 prospective jurors. However, the 2003 Survey was conducted prior to the introduction of new juror eligibility rules, which came into effect in April 2004. The changes to juror eligibility rules were significant and could possibly have affected diversity levels among those summoned. In addition, after 2003 the court catchment areas for jurors were updated to eliminate any overlaps between courts and ensure that as much of the population of England and Wales as possible was included in the summoning process. As a result, a second survey was conducted in the week of 21 February 2005 for jury service during the week commencing 18 April 2005, and this forms both the “study week” and the “survey” referred to throughout this chapter and Chapter four.

Juror summoning findings

The findings in this chapter examine the impact of juror catchment areas, juror source lists and non-return of summonses on ethnic minority representation among those summoned for jury service. Response rates to the survey are examined first, followed by the first main issue: the relationship between the proportion of ethnic minorities summoned to the proportion of ethnic minorities in the local population for each court. This analysis distinguishes between High Ethnicity Courts (where there is a substantial BME population in the court catchment area) and Low Ethnicity Courts (where the BME population level is low in the court catchment area). This part of the analysis also profiles the London Crown Court region in more detail, as this region contains not only the largest BME populations in England and Wales, but a quarter of all jurors in England and Wales are summoned for jury service in London Crown Courts. The analysis then examines the non-return of summons and explores whether there is any correlation between ethnicity and non-returns which may indicate either an inability in the summoning process to reach BME groups or an unwillingness on the part of BME groups to do jury service. This part of the study did not rely on data from the study questionnaire, as those who did not return their summonses or had their summonses returned as undeliverable clearly did not return a study questionnaire. Despite this, it was still possible to examine those courts which had a significantly higher rate of non-returns, and to explore the extent to which ethnicity or other demographic factors characterised areas with the highest non-response rate to the juror summons.

At the time of the survey, the populations of the combined juror catchment areas for all the Crown Courts encompassed almost the entire population of England and Wales¹⁶⁵. Table 3.1 below shows that there was only 3.2% of the entire population of England and Wales that was not covered by a court catchment area at the time of the 2005 survey. However, virtually the entire BME population of England and Wales (98.9%) was covered in the survey.

Table 3.1. Population covered in catchment areas for 2005 summoning survey

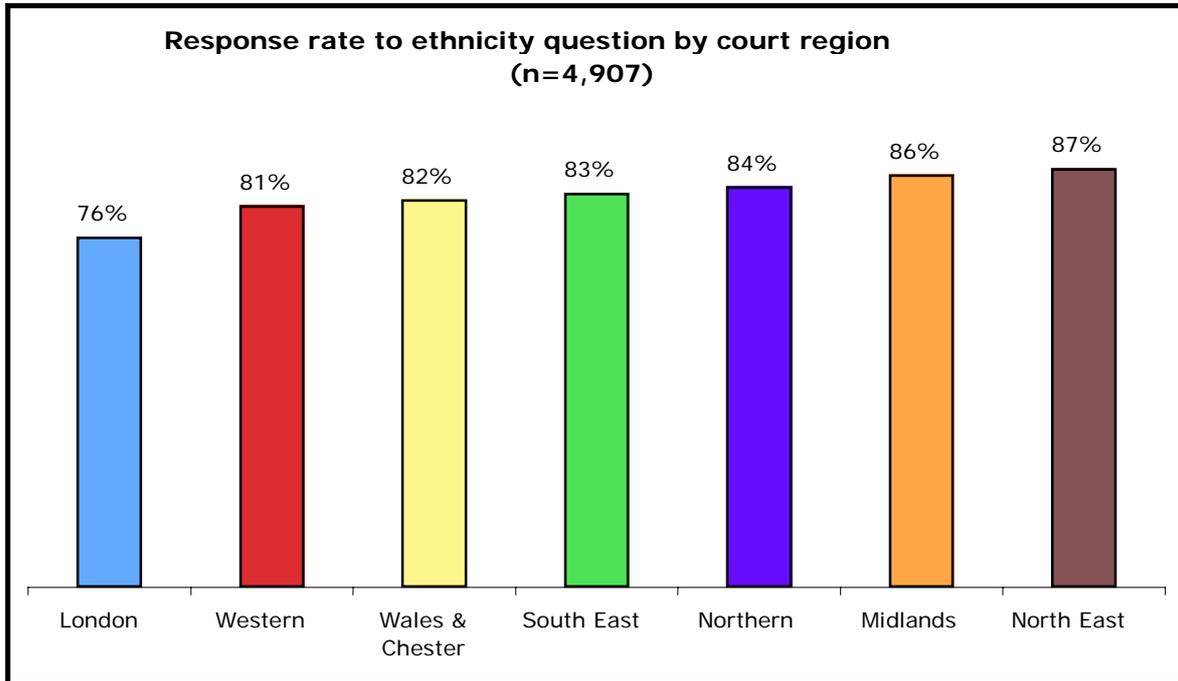
	Number	%
Total population of England & Wales	52,041,916	100%
Total population in CC catchment areas	50,365,610	96.8%
Total population not in CC catchment areas	1,676,306	3.2%
Total White population of England & Wales	475,208,66	100%
Total White population in CC catchment areas	45,893,564	96.6%
Total White population not in CC catchment areas	1,627,302	3.4%
Total BME population of England & Wales	4,521,050	100%
Total BME population in CC catchment areas	4,472,046	98.9%
Total BME population not in CC catchment areas	49,004	1.1%

Among those who replied to the juror summons¹⁶⁶, the overwhelming majority (82%) also answered the study questionnaire. There was also a high response rate to the ethnicity question on the questionnaire. Only 0.3% of all those who returned a questionnaire did not answer the ethnicity question (15 of 4,907). The high response rate to the ethnicity question and the questionnaire lends a high level of reliability to the results of the study. There were regional differences in survey response rate, which are shown in Figure 3.1 below. These differences reflect similar regional trends in response rates to the summons itself (discussed later in this chapter).

¹⁶⁵ Further alterations have been made to the juror catchment areas since the 2005 survey in order to bring most of the remaining population within the juror catchment area of a Crown Court. A few remote areas necessarily remain outside the summoning population, as the distance for a juror to travel to the Crown Court is considered prohibitively far.

¹⁶⁶ For details of the return rate for summons in the study week and how this compares with the average return rate for summonses see discussion in Chapter 2.

Figure 3.1. Response rate to questionnaire by court region



While jurors in the London Region had the lowest response rate to the questionnaire, three-quarters of these jurors nonetheless completed the questionnaire. In addition, response rates varied by court within the London Region; the highest response rate to the questionnaire was from those summoned for the Central Criminal Court (Old Bailey, 87%) and Woolwich (85%), and the lowest response rate was among those summoned for Southwark Crown Court (69%). Among individual Crown Courts across all the regions, the highest response rates to the questionnaire were among jurors summoned for Warwick (97%) and Wolverhampton (95%) Crown Courts.

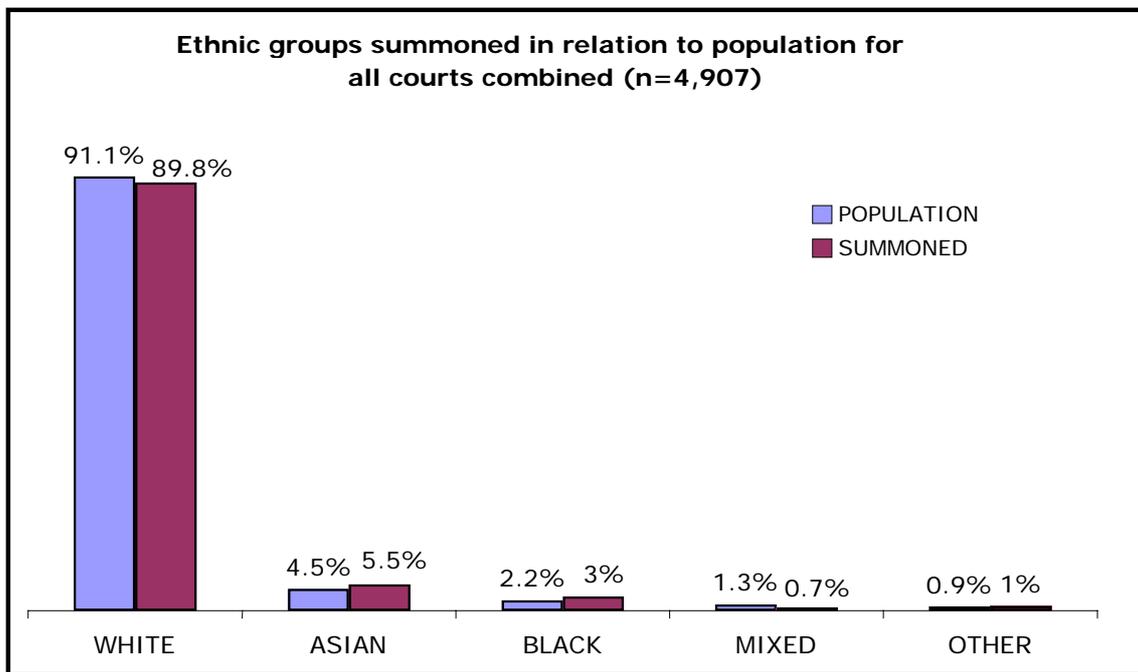
Ethnicity and summoning

Under the restrictions imposed on it, the Crown Court Study in 1992 was only able to consider the overall levels of ethnic group representation among serving jurors in all Crown Courts combined, measured against national population figures for ethnic groups. While some initial results of the survey are presented here in national aggregate form, the emphasis is instead on a court-level analysis of representation. In addition, wherever any “national” population figures are used, these correspond strictly to the combined populations of the Crown Court juror catchment areas only¹⁶⁷, not national statistics for England and Wales. In aggregate, those

¹⁶⁷ These combined figures have also taken into consideration any multiple use of the same postcode districts by different Crown Courts.

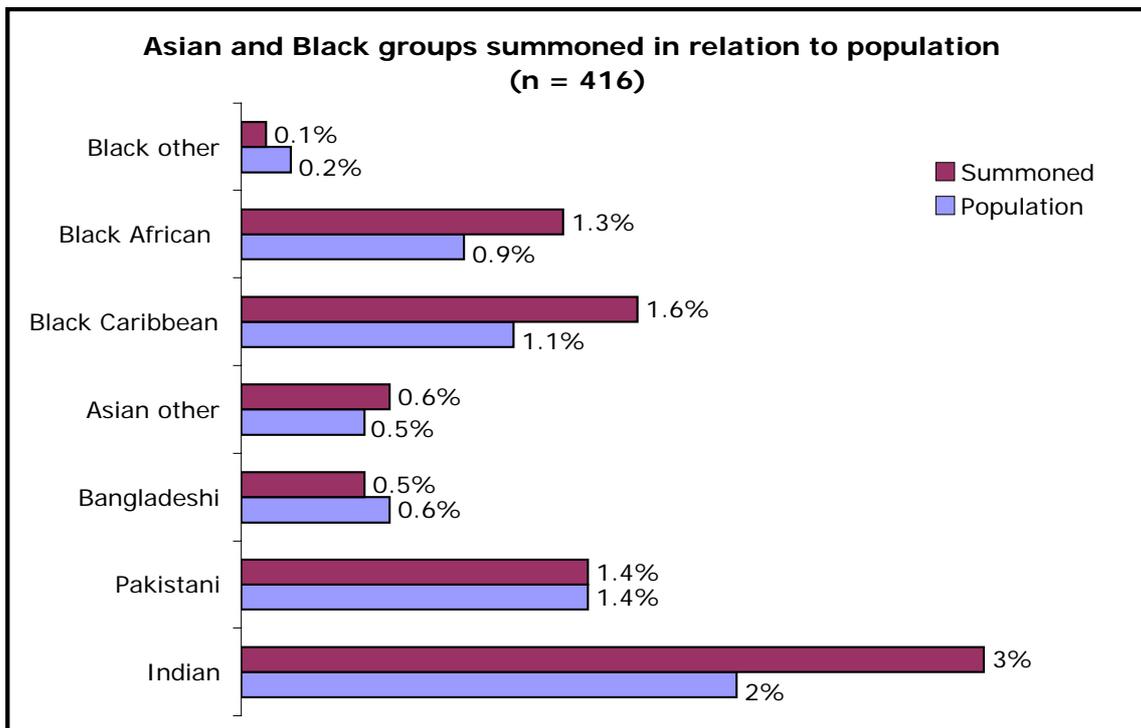
summoned for jury service from BME groups were actually over-represented (10.2%), in relation to the proportion of BME groups in the combined population for all the Crown Court juror catchment areas (8.8%). Figure 3.2 below shows that this over-representation of BME groups in the summoning survey was among both the Asian and the Black populations. Asian groups comprise 4.5% of the combined juror catchment area population, but comprised 5.5% of all those summoned in the survey. Similarly, while Black groups comprised 2.2% of the combined catchment area population, they comprise 3% of those summoned in the survey.

Figure 3.2. Ethnic groups summoned in relation to population for all courts combined



Within the Asian and Black communities, Figure 3.3 below shows that the specific groups over-represented in the summoning survey were Indians, Black Caribbeans, Black Africans and the group referred to as Asian “other”. Pakistanis were summoned in direct proportion to their representation in the population. The only groups under-represented were Bangladeshis and Black “other”, however in both these cases the level of under-representation (0.1%) was very small.

Figure 3.3. Asian and Black ethnic groups summoned in relation to population for all courts combined



Court-based representation

Examining ethnic group representation in the summoning process for all Crown Courts combined can be useful only in very general terms. Juror summoning is carried out only on an individual court basis, and jurors only serve at a specific Crown Court. Therefore, such combined court analysis cannot provide an understanding of the extent to which ethnic minorities are represented in the summoning process for each court. An analysis of BME representation in the summoning process on a court-by-court basis was carried out, comparing the proportion of BME groups summoned in each court to the proportion of BME groups in that specific court’s juror catchment area¹⁶⁸. The results show that there are large differences in BME population levels in Crown Court juror catchment areas. For instance, in five of the London Crown Courts the BME population in the juror catchment area exceeds 30%, while at the other end of the spectrum there are 39 courts in the other six regions where the BME population constitutes less than 3% of the population in the juror catchment area. In some courts, the proportion of BME jurors summoned was less than the proportion of BME groups in the juror catchment area, but equally there were numerous courts where the proportion of BME jurors summoned was actually greater than the proportion of BME groups in the juror catchment

¹⁶⁸ Full details of individual court catchment area populations and jurors summoned for each Crown Court in the study can be found in Appendix 1.

area. What was important to determine was whether these differences were statistically significant for any Crown Court.

One of the difficulties in analysing results at the individual court level is that, in some instances, there are relatively small numbers of summonses issued for many courts (and therefore a small number of replies to the summonses). However, it was still possible to determine whether differences in the proportion of ethnic minorities summoned in relation to the proportion of ethnic minorities in the juror catchment area for each court were statistically significant, taking into consideration the variations in the numbers of those summoned per court. The analysis modelled representation of BME jurors replying to the summons for each court, taking into consideration the number of all summons returned for each court. This meant that for courts where there were small numbers of jurors summoned (and hence small numbers replying to the summons) the expected differences would be larger, and in courts where there were larger numbers of jurors summoned and replying the expected differences would be smaller, reflecting an increased confidence in the data. Results for each court were then compared to BME population levels in each court's juror catchment area, to see if the percentage of BME jurors summoned in the catchment areas fell within or outside the expected levels¹⁶⁹.

Of the 84 Crown Courts in the survey, there were only two courts where differences between the proportion of BME jurors summoned and the BME population in the court catchment area were statistically significant: Great Grimsby and Manchester Crown Square. Great Grimsby had a significantly *higher* proportion of BME jurors summoned (7.1%) than expected given the BME population in the court catchment area (1.8%), while Manchester Crown Square had a significantly *lower* proportion of BME jurors summoned (1.8%) than expected given the BME population in the court catchment area (9.3%).

This is the first major finding of the survey, and provides evidence that the previous claims of ethnic minority under-representation among those summoned for jury service in England and Wales are in fact false. It demonstrates that, in the initial stages, the summoning process is working in the intended way by reaching a group of potential jurors that are ethnically representative of the local population in each court's juror catchment area. The finding is somewhat surprising given the earlier research suggesting that BME groups are under-represented on the local electoral lists that make up the source lists for summoning jurors. One important implication of this is that there clearly is no need to alter the summoning source lists.

¹⁶⁹ See Appendix 1.

The change was recommended by the Auld Review because it was believed that ethnic minorities were under-represented among those summoned. However, ethnic minorities clearly are not under-represented among those summoned for almost every Crown Court in England and Wales. **Computerised random selection of jurors from local electoral lists reaches a representative section of the local population for virtually every court in the country.**

High Ethnicity and Low Ethnicity courts

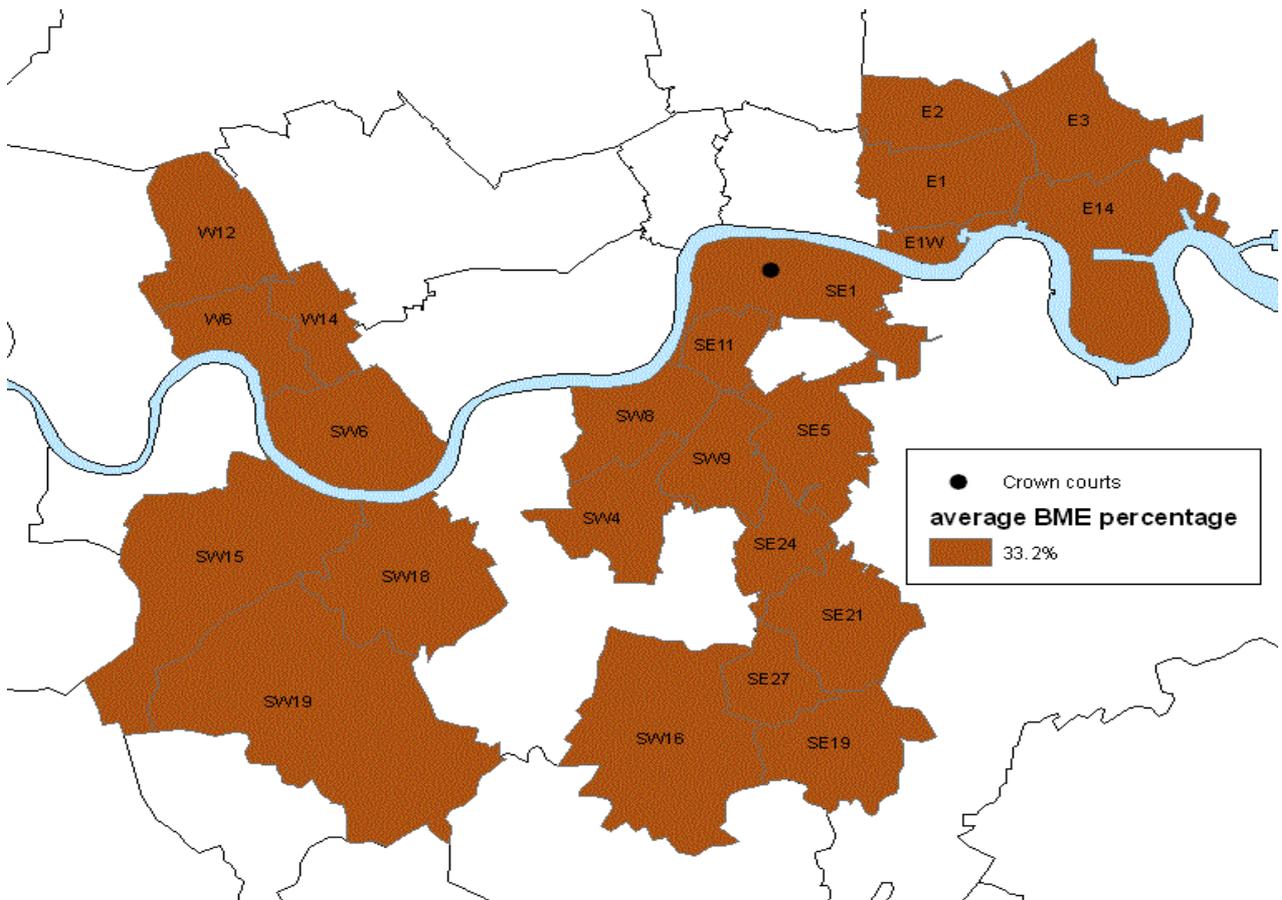
The results of the population profiles for each of the Crown Courts clearly indicate that there are only a small number of courts in England and Wales where BME groups comprise a substantial proportion of the population in the court's juror catchment area. Because summoning and serving is done at the local level and is therefore dependant on local populations, this means that for the vast majority of Crown Courts the percentage of BME groups in the local population is too low to result in the summoning of any significant number of (or even any) BME jurors. This factor is crucial to understanding the representative nature of juries. The extent to which juries are representative of the local community can only be measured on a court-by-court basis based on the demographics of each Crown Court's juror catchment area. The population profiles show that only 20 out of the 94 Crown Courts in England and Wales have a juror catchment area population where 10% or more of the population are from BME groups. Based on this, it was possible to determine the probability of one or more BME jurors being selected for a jury panel in each Crown Court, given the percentage of BME groups in the court population and the average number of jurors serving at each court per week. The results showed that **where BME groups comprise under 10% of the juror catchment area population there is little probability of BME representation on jury panels.**¹⁷⁰

As a result, it is possible to categorise Crown Courts into two broad groups: High Ethnicity Courts and Low Ethnicity Courts. High Ethnicity Crown Courts are those where 10% or more of the population in the juror catchment area are from a BME group, where significant numbers of BME jurors should therefore be represented both among those summoned and those serving, and where there is a high probability that one or more BME jurors will be selected for a jury panel at these courts. In contrast, Low Ethnicity Crown Courts are those where less than 10% of the population in juror catchment area are from a BME group, and it is therefore not likely that BME jurors will be represented in any significant number among those summoned, those serving or selected for jury panels.

¹⁷⁰ For results of the probability analysis see Appendix 2.

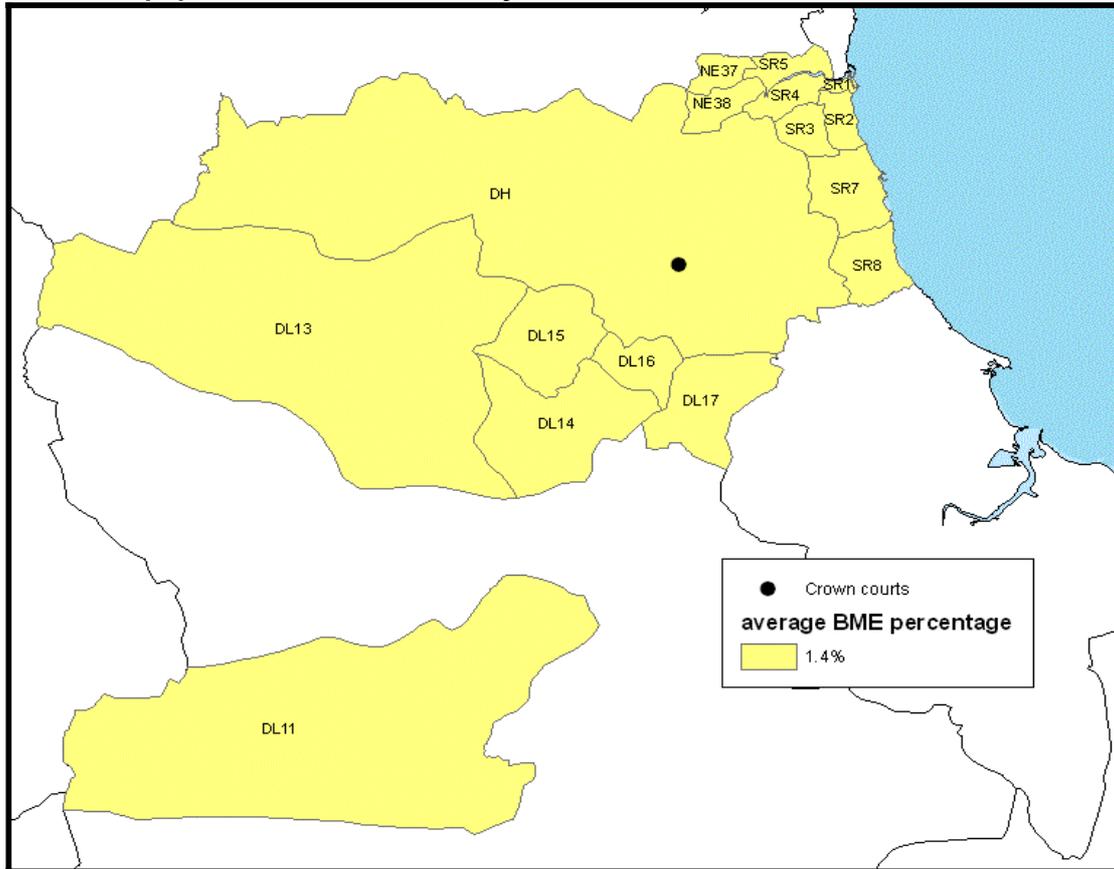
Figures 3.4 and 3.5 below illustrate the differences in BME populations in High and Low Ethnicity Court juror catchment areas. In Blackfriars Crown Court in London (a High Ethnicity Court) the juror catchment area overall has a BME population level of over 33%. In contrast, Durham Crown Court (a Low Ethnicity Court) has an overall BME population level in the juror catchment area of just over 1%.

Figure 3.4. BME population in a High Ethnicity Court: Blackfriars Crown Court



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Figure 3.5. BME population in a Low Ethnicity Court: Durham Crown Court



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High Ethnicity Courts

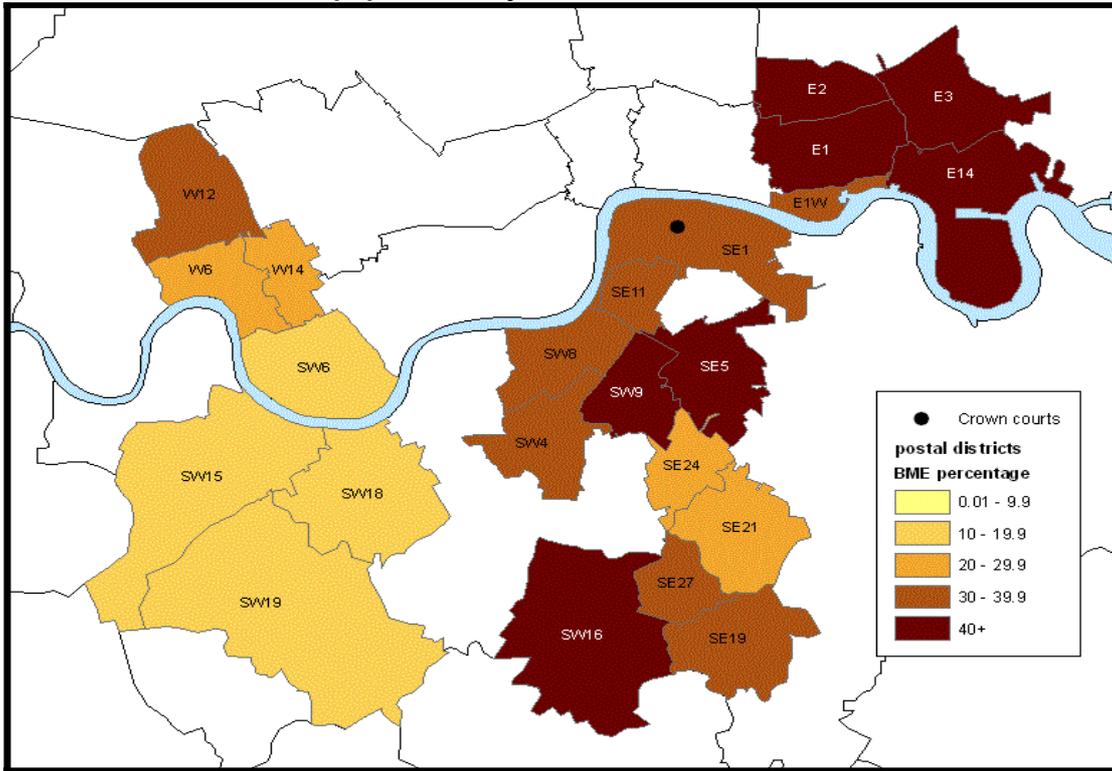
There are only 20 Crown Courts in England and Wales where the census population in the juror catchment area contains 10% or more ethnic minorities (see Table 3.2 below). Of these, 12 are the courts in the London Crown Court Region. The other eight are: Birmingham, Coventry, Leicester and Wolverhampton (Midlands Region); Bradford (North East Region); Luton and Reading (South East Region); and Manchester Minshull Street (Northern Region). The preponderance of London Crown Courts in this group is not surprising. London has the highest level of ethnic diversity in England and Wales, and almost half of the country's non-White population (45%) live in the London region. Proportionally, London also summons the most jurors, with over a quarter of all jurors in England and Wales serving in a London Crown Court.

Table 3.2. BME population levels in High Ethnicity Courts

High Ethnicity Crown Courts	% BME in juror catchment area
Harrow	37.4
Southwark	33.4
Blackfriars	33.1
Isleworth	32.5
Snaresbrook	30.4
Wood Green	29.5
Middlesex	28.9
Central Criminal Court (Old Bailey)	26.9
Inner London	23.3
Birmingham	22.2
Croydon	17.6
Woolwich	15.6
Leicester	14.8
Bradford	14.2
Wolverhampton	13.7
Coventry	13.1
Kingston on Thames	12.4
Luton	12
Manchester Minshull Street	10.5
Reading	10

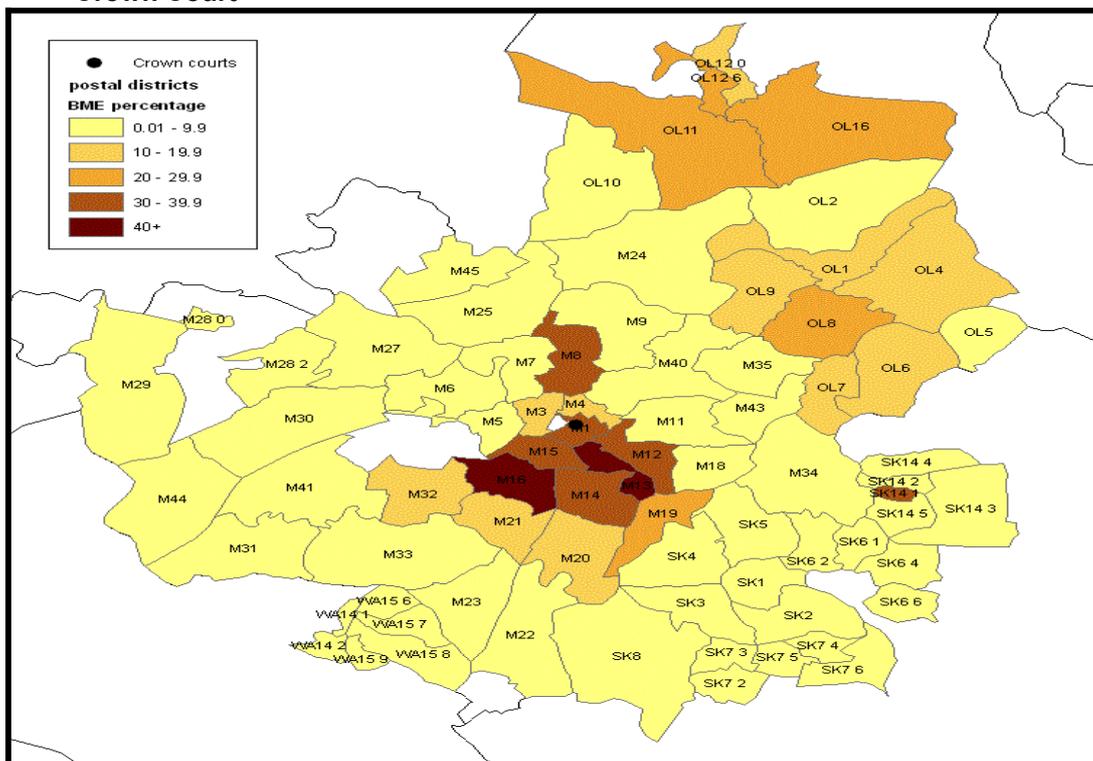
High Ethnicity Courts do not necessarily have high levels of BME populations throughout the juror catchment area. Figures 3.6 and 3.7 below show two different High Ethnicity Courts. Figure 3.6 shows that in the Blackfriars' catchment area there is a consistently high BME population level in each of the postcode districts comprising the catchment area, although this fluctuates from a low of 14% in SW15 to a high of 63% in E1. Figure 3.7 shows that there is a much higher fluctuation in BME population levels in the juror catchment area for Manchester Minshull Street Crown Court, where the BME population in the majority of the postcode districts is actually under 10%, but there are numerous districts where over 20% of the population are from BME groups.

Figure 3.6. Distribution of BME population in juror catchment area for Blackfriars Crown Court



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Figure 3.7. Distribution of BME population in juror catchment area for Manchester Minshull Street Crown Court¹⁷¹

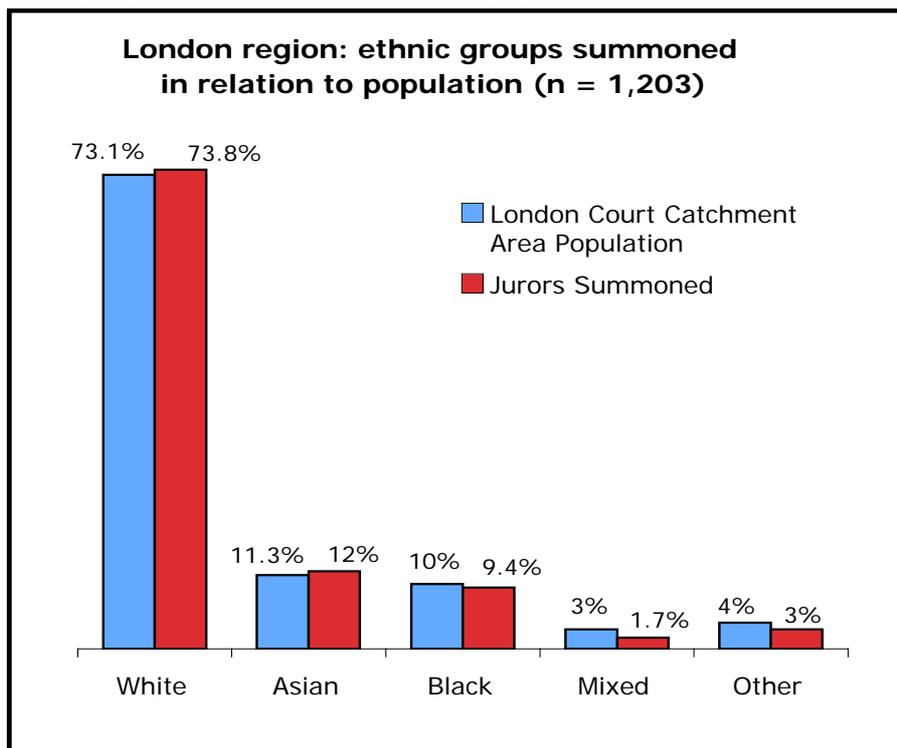


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¹⁷¹ The juror catchment area for Manchester Minshull Street now includes M38, 0L3 and SK23.

High Ethnicity Courts are courts where it is valid to expect that ethnic minorities will be in the jury pool and that one or more ethnic minorities will be selected to serve on a jury. In the survey, there were High Ethnicity Courts where ethnic minorities summoned for jury service were not represented in exact proportion to their representation in the local population: in some case they were over-represented and in some case they were under-represented, but none of these differences were statistically significant. Given the importance of the London Region courts in terms of both BME population levels in the juror catchment areas and the high proportion of jurors summoned for the London courts, if problems exist in the summoning process in achieving proportionate ethnic minority representation among jurors they are likely to manifest themselves in the summoning of jurors at these courts. However, as Figures 3.8 and 3.9 below show, there is a very close correlation between the proportion of different ethnic groups summoned and their representation in the local population for all the London courts combined.

Figure 3.8. Ethnic groups summoned in relation to population for London Crown Courts combined

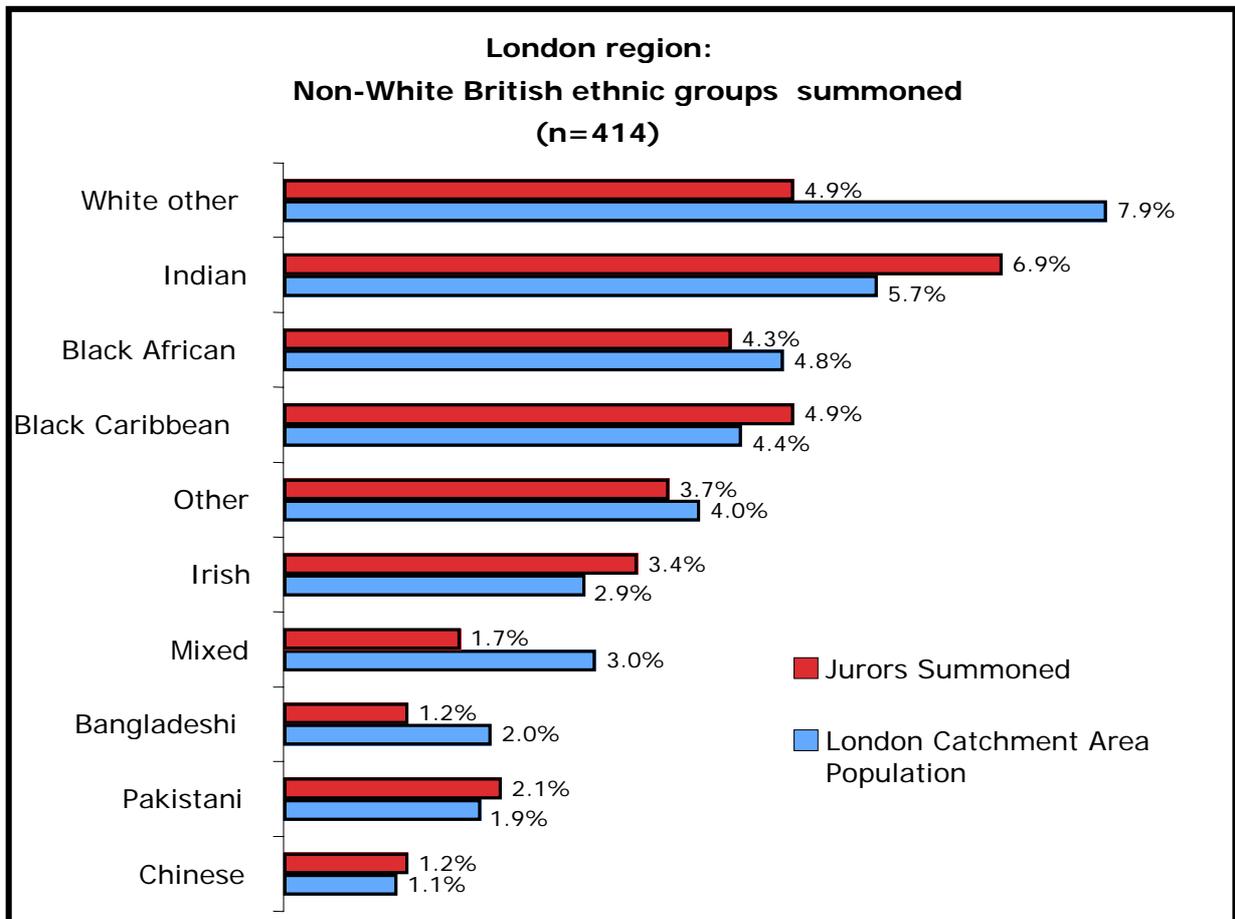


In terms of the five main ethnic groups, there is a very little difference between the proportion of these groups summoned for all the London Crown Courts and the proportion of these groups in the combined juror catchment area population in London. In the survey, Asian and White summoned jurors were slightly over-represented, but in each case by less than 1%. Black summoned jurors

were under-represented, but again by less than 1%. Those classifying themselves in the remaining “Other” ethnic group were over-represented by 1% and those in the “Mixed” ethnic group were under-represented by just over 1%.

Figure 3.9 below examines representation in summoning for the London courts in more detail by breaking the five main ethnic groups down further. For presentation reasons, the “White” category has been excluded from the Figure, but this group was over-represented in the summoning survey (65.6% summoned compared to 62.3% of the London juror catchment area population). Figure 3.9 shows that the other groups that were also over-represented were Indians, Black Caribbeans, Irish, Pakistanis and Chinese. Those ethnic groups where the proportion summoned was lower than the group’s representation in the combined juror catchment areas for the London courts were: Bangladeshi, Black African, Mixed, White other and all other groups combined (any other Asian, Black or other background).

Figure 3.9. Ethnic group breakdown of those summoned for London Region



The other High Ethnicity Courts outside the London Region mirror this close correlation between the proportion of different ethnic groups summoned for jury service at the court level and their representation in the local population.¹⁷²

Low Ethnicity Courts

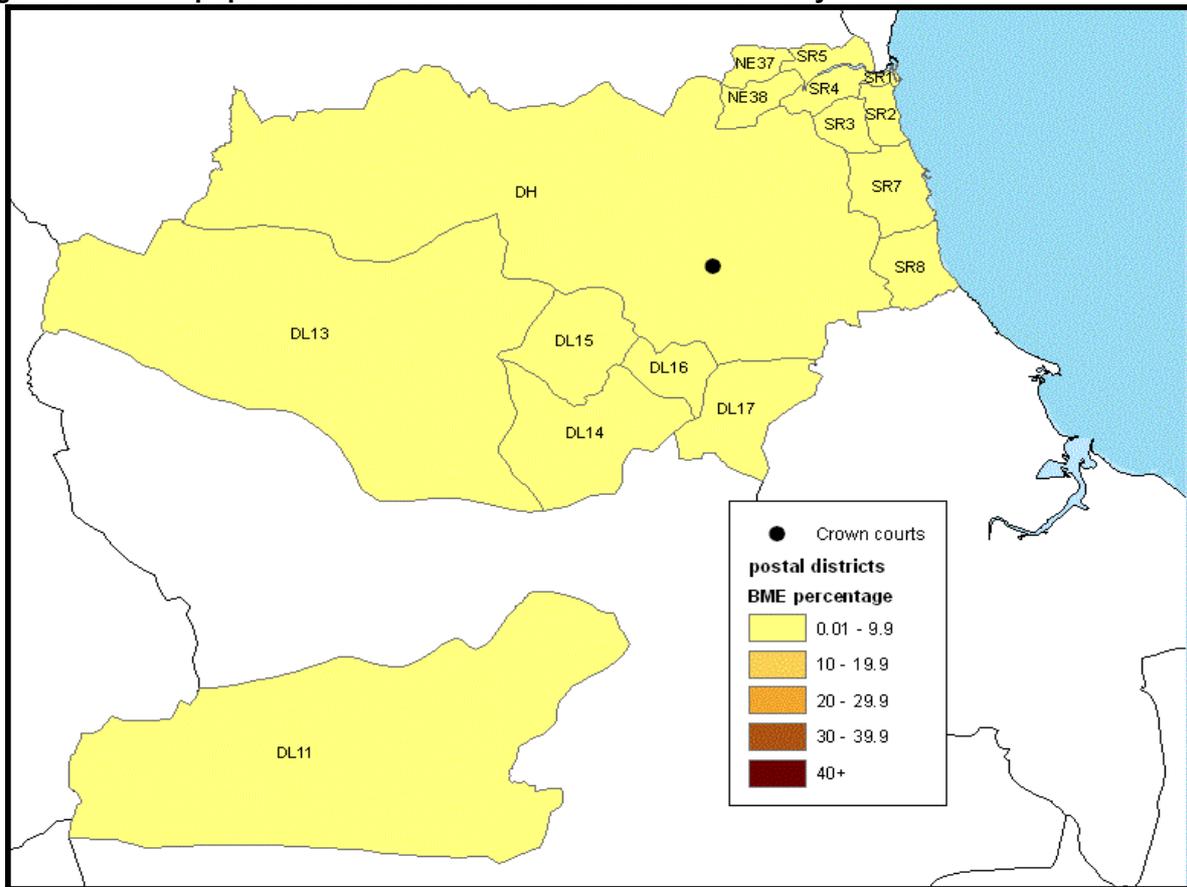
Outside of the 20 High Ethnicity Courts, in all the remaining 74 Crown Courts in England and Wales the BME population level in the overall juror catchment area is below 10%. This is crucially important in terms of understanding the relationship between ethnicity and juror summoning in Crown Courts in England and Wales, as it means that in the overwhelming majority of Crown Courts in this country there are very low BME population levels from which jurors can be summoned. This in turn means that there is 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 BME groups or that BME groups are in any way unwilling to serve on juries. It is simply that there are not sufficient numbers of ethnic minorities living in the juror catchment area to summon any significant number of jurors from BME groups and subsequently to produce any significant numbers of BME jurors. However, within this group of Low Ethnicity Courts, it is important to distinguish between two types of courts:

- **Overall Low Ethnicity Courts:** Where the juror catchment area population contains a low BME population level across the entire catchment area.
- **Ethnicity Concentration Courts:** Where the juror catchment area as a whole contains a low BME population level, but there are large concentrations of BME groups within the catchment area.

As Figure 3.10 below illustrates, Crown Courts such as Durham have very low BME population levels in virtually every postcode district comprising the juror catchment area. Out of the 84 Crown Courts covered in the summoning survey, 51 can be classified as Overall Low Ethnicity courts. In these courts, there is little to no possibility that BME groups will be represented among those doing jury service, as the population simply does not provide the basis for ethnic minorities to be represented either among those summoned or serving.

¹⁷² For details of BME group representation among those summoned for Birmingham, Leicester, Bradford, Wolverhampton, Coventry, Luton, Manchester Minshull Street and Reading see Appendix 1. Also see Chapters 4 and 5 for further discussion of juror representation among different ethnic groups at Birmingham, Reading and Manchester Minshull Street Crown Courts.

Figure 3.10. BME population distribution in a General Low Ethnicity Court: Durham



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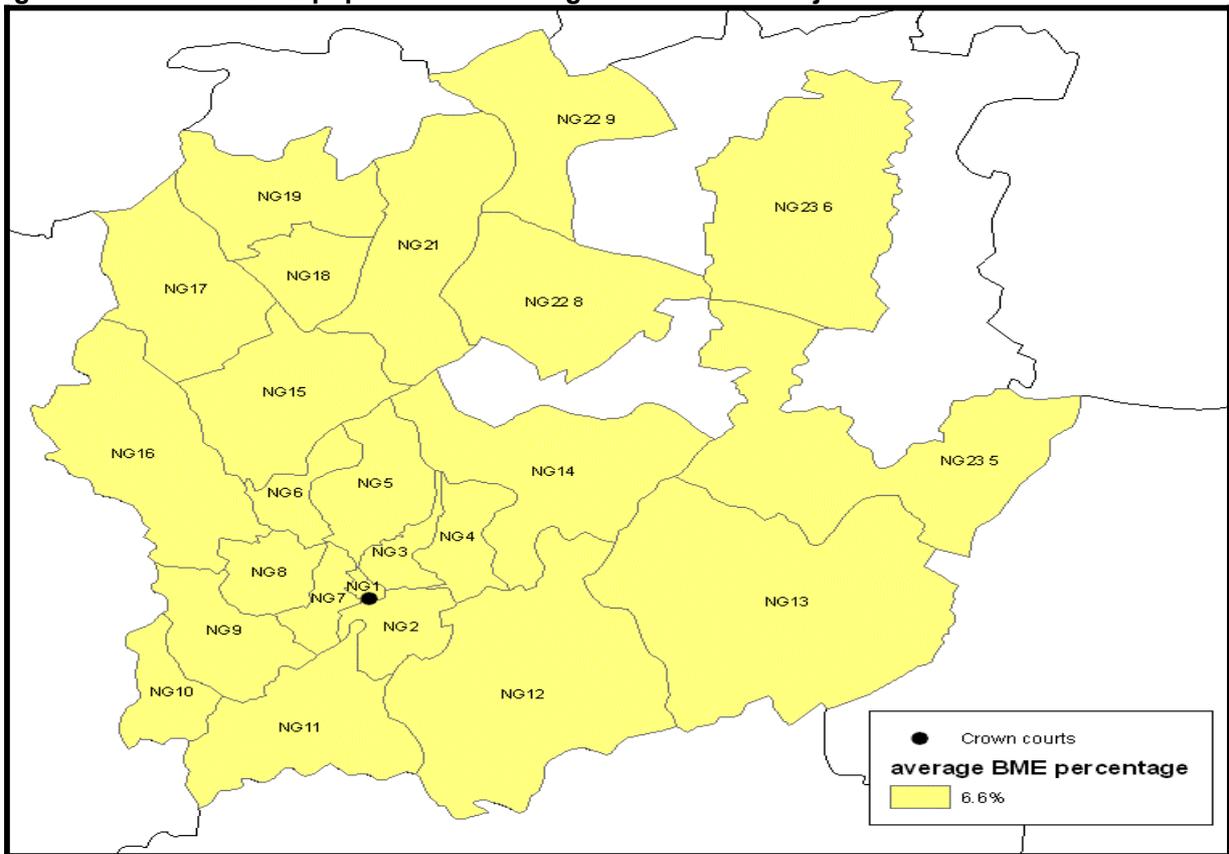
Ethnicity Concentration Courts

There are also a number (13) of Low Ethnicity Courts, in many cases based in major cities outside London, that are best described as Ethnicity Concentration Courts. For these courts, the overall BME population level in the whole juror catchment area is low (below 10%), but the urban areas themselves contain sizeable BME populations¹⁷³. The low overall BME population levels result from the fact that the catchment area encompasses a much larger area than the urban centre, and the populations in the broader catchment areas are overwhelmingly White. The consequence is that the juror catchment area population as a whole has an overall low level of ethnic minority representation, which means that there is little chance of ethnic minorities being summoned or serving on juries in these courts. To illustrate this, Figures 3.11 and 3.12 below show the juror catchment area for Nottingham Crown Court. Figure 3.11 shows the overall BME population in the juror catchment area for Nottingham (6.5%), while Figure 3.12

¹⁷³ See Appendix 4 for details of each of the 13 Ethnicity Concentration Courts and the BME population levels in each court's juror catchment.

shows that there are several districts within the catchment area where the BME population levels exceed 20%. These are concentrated in the city centre, and reflect the fact that the city of Nottingham has a sizable BME population: the local authority is 15% non-white¹⁷⁴ and several districts within the juror catchment area have even higher concentrations of BME groups (28% in NG7 and 21% in NG1).

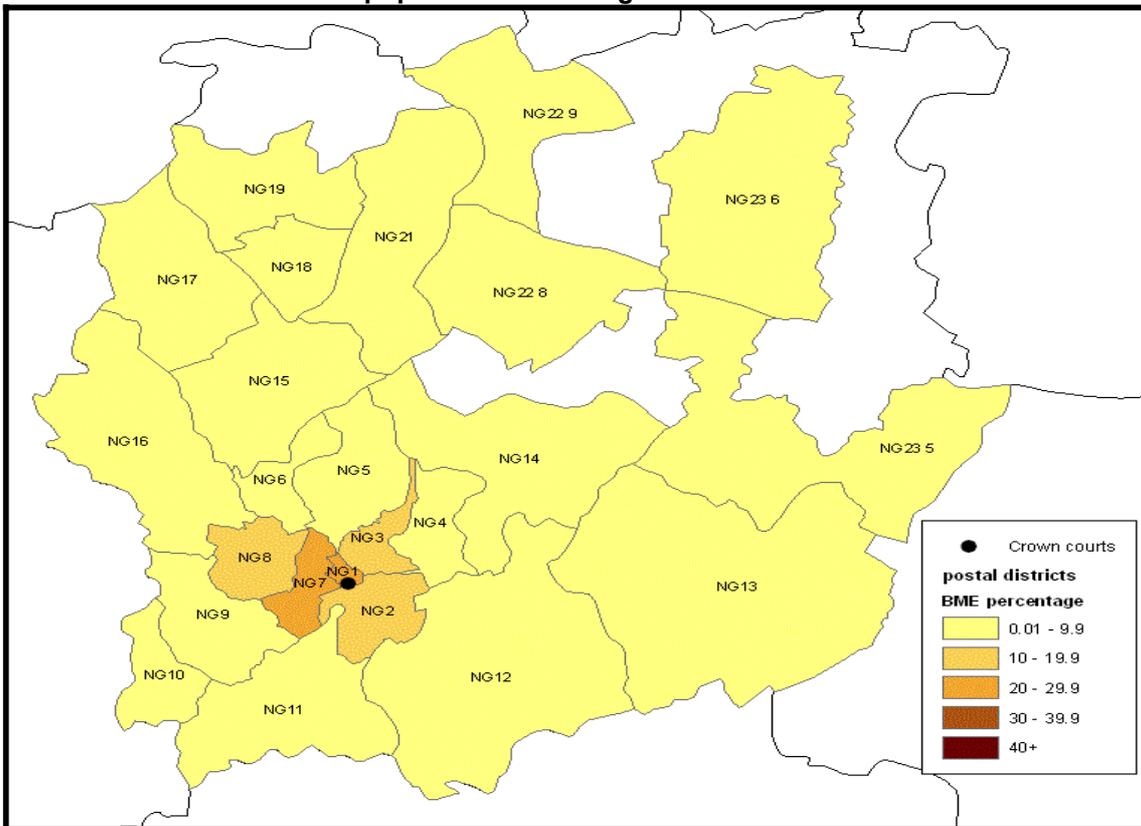
Figure 3.11. Overall BME population in Nottingham Crown Court juror catchment area



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¹⁷⁴ www.neighbourhood.statistics.gov.uk

Figure 3.12. Distribution of BME population in Nottingham Crown Court



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It is important to recognise that low BME population levels in Low Ethnicity Courts do not mean that ethnicity is not a relevant issue for these courts. In fact ethnicity may be a particularly relevant and problematic issue for these courts compared to High Ethnicity Courts. For instance, Nottingham Crown Court’s juror catchment area has such a low BME population level (6.5%) that summoning is unlikely to produce any substantial numbers of BME jurors, but the existence of high concentrations of ethnic minorities in parts of the catchment area means that juror ethnicity is still very likely to be a relevant issue in relation to both defendants and victims. The existence of high concentrations of BME residents in these juror catchment areas is likely to generate an expectation among court users and the public that ethnic minorities will be serving on juries in these courts. However, as the summoning survey has demonstrated, the geography and population of the juror catchment area as a whole mean that this is highly unlikely. This does not reflect any failure of the summoning process. It is instead a matter of population dynamics: there are simply not enough ethnic minorities in the overall juror catchment area to produce any significant number of ethnic minority jurors in the jury pool and hence on juries.

Juror ethnicity is primarily of concern where either BME defendants in general or BME victims in racially-aggravated prosecutions may claim or perceive procedural unfairness due to a lack of ethnic minority representation on juries in their cases. It is only in cases tried in High Ethnicity Courts that significant numbers of BME jurors are available to serve on juries. In both Ethnicity Concentration Courts and Overall Low Ethnicity Courts, the nature of the juror catchment area means that there is little likelihood of BME jurors serving on juries in these courts. As a result, these are the courts where concerns are likely to arise about the fairness of the jury process from the perspective of a BME defendant or victim.

As the summoning survey revealed, Nottingham Crown Court is a Low Ethnicity Court with only a 6% BME population level in the catchment area, which is too low to produce any BME jurors on most juries at that court. Low BME population levels in a Crown Court catchment area do not necessarily mean that there will not be BME defendants tried in these courts. However, recent government statistics show, for instance, that in Nottinghamshire 22% of defendants tried for indictable offences at the Crown Court were from a BME background¹⁷⁵. In addition, victims of racially-aggravated crimes tried in Crown Courts are most likely to be from a BME background, and data from the Crown Prosecution Service Racist Incidents Monitoring Annual Report for 2004-05¹⁷⁶ show that CPS regions with the highest number of racially-aggravated offences prosecuted in the Crown Courts are often ones where the Crown Courts are Low Ethnicity Courts. As Table 3.3 below shows, six of the top ten CPS regions for racially-aggravated offences prosecuted in Crown Courts are Low Ethnicity Court regions:

¹⁷⁵ See Tale 6.3. "Persons tried for indictable offences at the Crown Court by outcome and ethnic appearance, selected areas, 2004" in *Statistics on Race in the Criminal Justice System – 2005* Home Office (2006).

¹⁷⁶ *Crown Prosecution Service Racist Incident Monitoring Report 2004-05*, CPS (October 2005)

Table 3.3. Top ten CPS regions for race-based prosecutions

CPS Region	No. of racially-aggravated cases prosecuted in Crown Courts 2004
Metropolitan & City	254
Greater Manchester	101
Hampshire	98
West Yorkshire	95
South Wales	70
West Midlands	67
Leicestershire	56
Sussex	51
Lancashire	42
South Yorkshire	42

Source: CPS Racist Incident Monitoring Annual Report 2004-05

Only the Metropolitan & City, Greater Manchester, West Midlands and Leicestershire CPS regions include High Ethnicity Crown Courts where racially mixed juries are most likely to be empanelled to try racially-aggravated cases. These CPS regions prosecuted a total of 478 racially-aggravated cases in 2004-05. In contrast, there is little prospect of a mixed ethnicity jury in racially-aggravated cases tried in Hampshire, West Yorkshire, South Wales, Lancashire and South Yorkshire (regions with Ethnicity Concentration Courts) and especially in Hampshire and Sussex (regions with Overall Low Ethnicity Courts). Crown Courts in these regions tried a total of 398 racially-aggravated cases in 2004-05.

Understanding the demographics of juror representation has policy implications. The Auld Review conducted what it acknowledged was an unscientific study of the visible ethnicity of jurors in Liverpool, Nottingham and Durham and found little to no BME representation on juries. This, in part, led to the Review's recommendation that the juror source lists be expanded to include other public lists in order to ensure greater ethnic representation on such juries. But the results of the jury project's summoning survey show that Nottingham, Liverpool and Durham are all Low Ethnicity Courts. What this means is that for all three courts where the Auld Review looked at ethnic representation on juries, the population demographics of the juror catchment area necessarily mean that summoning will not produce any significant number of BME jurors. Ethnic minorities are clearly not under-represented on juror source lists in these three courts,

because they are not under-represented among those summoned for jury service from these lists. The proportion of BME residents in the juror catchment area for each of these courts is simply too small to produce BME jurors on most juries.¹⁷⁷ Therefore, there is no need to expand the source lists for jurors for these courts, and expanding the source lists in the way Auld suggested would have no impact on the number of BME jurors summoned. It would not alter the proportion of BME residents who live in the juror catchment area, and therefore the proportion of BME jurors who are summoned. Only redrawing the juror catchment areas could achieve this in Ethnicity Concentration Courts such as Nottingham and Liverpool, but in Low Ethnicity Courts such as Durham even redrawing the catchment area could not produce a summoning population where 10% of potential jurors were from a BME background.

This analysis of the impact of juror catchment area populations on BME representation on juries also has implications for previous recommendations to create ethnically balanced juries in certain cases. Both the Runciman Commission and the Auld Review recommended that in certain racially-related cases, ethnically “balanced” juries containing up to 3 BME jurors be created, and Auld recommended that all jurors summoned for jury service be asked to state their ethnicity in order to facilitate this¹⁷⁸. 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 even if juror ethnicity were known. 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 court catchment areas and the process of random juror selection. However, the survey findings have clearly identified those Crown Courts where there is already a high probability of a racially mixed jury being empanelled (High Ethnicity Courts), and also determined the probability of one or more BME jurors being selected for a jury panel 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 one or more High Ethnicity Courts exist in most Crown Court regions (London, Midlands, Northern, North East and South East).

¹⁷⁷ This is also likely to explain why HMICA recently reported finding all-White juries in areas where they expected a greater BME representation. It observed the ethnic mix on juries and in jury pools at 20 Crown Court Centres, but only 4 of these (Central Criminal Court, Croydon, Snaresbrook and Southwark) were High Ethnicity Courts where there could be any reasonable expectation that BME jurors will be on a jury. HMICA (2006) supra note 38.

¹⁷⁸ For the details of these recommendations for ethnically balanced juries see Chapter 1 supra notes 72-73.

Non-returns and willingness to serve

Non-returns are summonses that are returned to the JCSB as undeliverable as well as summonses that are not returned at all.¹⁷⁹ There is no evidence to suggest what, if any, proportion of non-returns reflects a deliberate avoidance of jury service. However, unsubstantiated claims have been made that there is a widespread unwillingness to do jury service among the population in England and Wales, and particularly among the London population. Darbyshire, in a paper commissioned for the Auld Review, claimed that most people try to avoid jury service, and that in London five-sixths of those summoned avoid or evade jury service and this has distorted the representative nature of juries.¹⁸⁰ It cannot be assumed that all non-returns represent a wilful attempt to avoid jury service. Those summonses returned to the JCSB as undeliverable usually indicate a change of residency for the individual summoned, and it is also likely that at least a large portion of those summonses not returned at all reflect similar changes in residency.

As study questionnaires necessarily were not returned by those who did not return their summons or had their summonses returned as undeliverable, profiling these specific individuals was not possible. However, it was still possible to examine the relationship between ethnicity and non-returns in order to explore the specific issue of whether under-representation of ethnic minorities in any court could be attributed to the inability to reach them in the summoning process. In addition, this part of the analysis also explored what the non-return of summonses suggested about the willingness to serve among those summoned. The first part of this analysis identified those courts where the non-return rate was significantly higher than the norm, and then explored what this indicated about the willingness to serve and the extent to which ethnicity was factor in courts with high non-return rates. The second part of the analysis addressed the wider issue of the extent to which non-returns are more likely to be influenced by other demographic factors beyond ethnicity.

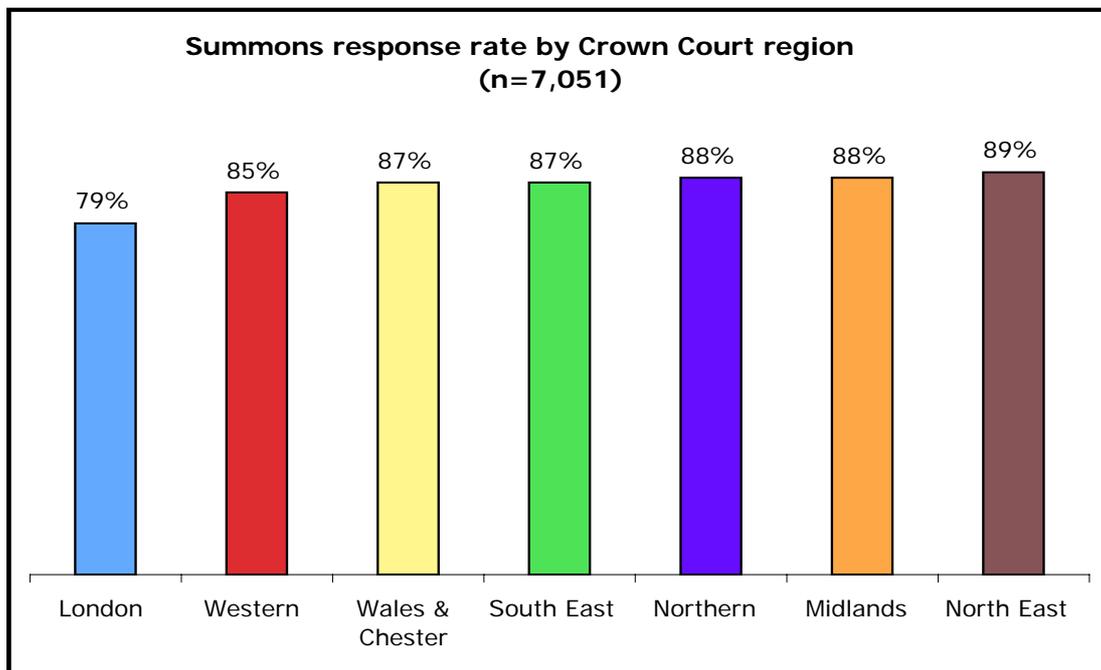
Only fifteen percent (15%) of all the summonses in the survey were either not replied to (10%) or returned to the JCSB as undeliverable (5%). This non-return rate for the week of the study mirrors the overall rate of non-return of summons found by the JCSB on an annual basis, and clearly shows that there is no evidence to support the claim that most people try to avoid jury service. The vast majority of the public (85%) in England and Wales clearly respond to summonses for jury service and, as the analysis in Chapter four will show, the overwhelming majority of those who reply to the summons also serve. As Figure 3.13 below illustrates, while

¹⁷⁹ Failure to attend court in response to a jury summons is punishable summarily by a fine of up to £3,000 or as a contempt of court.

¹⁸⁰ Darbyshire et al supra note 37, p.58

the London Crown Court Region had the lowest summons return rate among all the Crown Court Regions, over three-quarters of Londoners replied to the summons (79%). This clearly refutes Darbyshire's claim that five-sixths (83%) of those summoned in London avoided or evaded jury service. The summoning survey showed that among all the summonses sent to potential jurors in the London court region, less than a sixth (15%) were summonses that were not returned¹⁸¹. And as the analysis of serving will show in the next chapter, the majority of those who are summoned for jury service in London do in fact serve.

Figure 3.13. Summons response rate in survey by court region



Furthermore, a Mori survey carried out for the project in April 2003 also showed that the majority of the public are willing to do jury service and in fact would look forward to doing jury service if they were summoned. The survey included 1871 individuals; 11% of whom had been summoned for jury service in the previous ten years. Three-quarters of those surveyed said they would do jury service because it was their civic duty, and the majority also said they would enjoy the responsibility of sitting on a jury and would look forward to serving on jury. Most of those surveyed also said they did not feel that jury service would interfere with either home or work life (72% and 65% respectively), and 69% of all those surveyed disagreed with the statement that they would not want to do jury service because they did not have confidence in the jury system. The survey also showed that there were no significant differences in the

¹⁸¹ The remaining 6% were summonses that were returned to the JCSB as undeliverable.

public's willingness to do jury service based on ethnicity. For instance, in response to the statement that they would not want to do jury service because they did not have confidence in the jury system, both White and BME individuals had the same low level of agreement (14%) with this view.

All the London courts are High Ethnicity Courts, and the higher rate of non-returns in London compared to other court regions could suggest that there is a close association between ethnicity and non-returns. However, within the London Region the return rate varied considerably for the 12 individual courts, ranging from a low of 71% for those summoned for Blackfriars Crown Court to a high of 91% for those summoned for Woolwich Crown Court. Among all the Crown Courts in all the regions the highest summons response rates were in Wolverhampton, Shrewsbury and Truro Crown Courts (all 97%). Wolverhampton is a High Ethnicity Court, and this also suggests that return rates are not necessarily directly related to ethnicity.

In order to determine whether the levels of non-returns in any individual Crown Court were significantly higher than the mean, analysis was conducted using a model similar to that used to analyse BME representation among those summoned for jury service.¹⁸² Table 3.4 below shows that there were eight Crown Courts with non-return levels significantly higher than the mean. While the majority (6) of these courts are London courts where BME groups comprise a high proportion of the juror catchment area, two of the courts (Southampton and Manchester Crown Square) are Low Ethnicity Courts. While Manchester Crown Square is considered an Ethnicity Concentration court, Southampton is an Overall Low Ethnicity Court (with a BME population of only 4.8%). This, again, suggests that summons returns are not necessarily directly related to ethnicity.

¹⁸² See Appendix 5 for details.

Table 3.4. Courts with summons non-return levels significantly above the mean

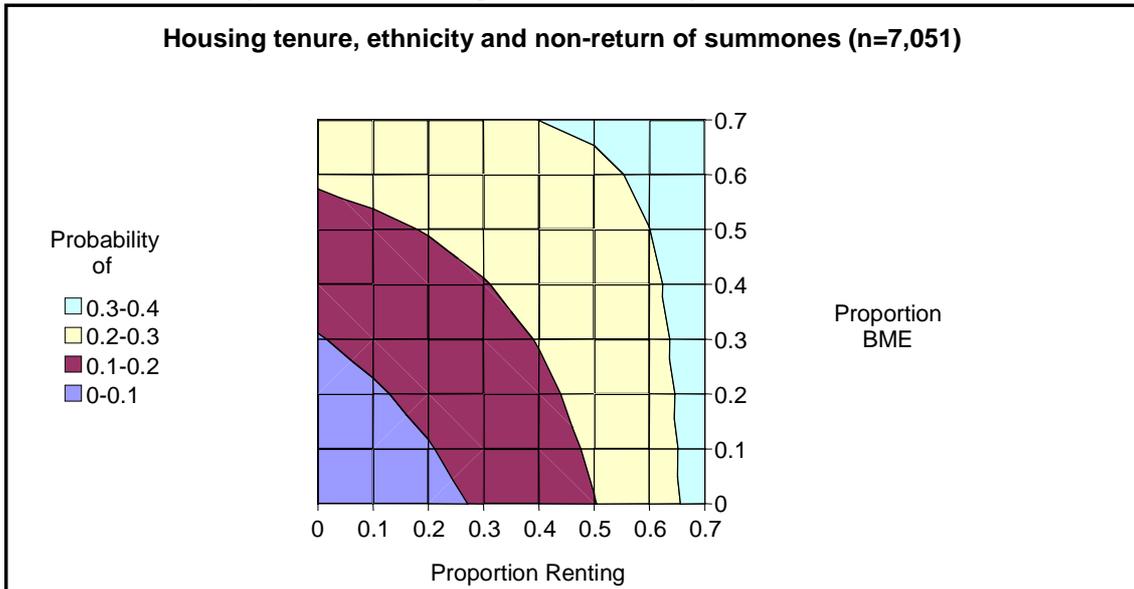
Court	Model mean	2.5%	97.5%	Total	Non-returns
Blackfriars	28.9	21.4	37.0	126	36
Central Criminal Court	25.1	19.6	31.1	217	54
Middlesex	25.7	17.9	34.2	107	27
Southampton	25.3	16.6	35.2	81	20
Isleworth	24.1	18.3	30.4	171	42
Harrow	24.0	16.8	32.0	119	28
Snaresbrook	23.0	18.8	27.4	359	82
Manchester Crown Square	22.8	16.8	29.4	165	37

These findings suggest that an ethnicity-only based analysis may easily present a misleading connection between ethnicity and the non-return of summonses, and it may obscure other social factors that may be more influential in the responses to summonses. For instance, lower income households, which tend to have higher rates of rental accommodation instead of home ownership, also tend to have higher residential mobility rates. High residential mobility rates are in turn likely to lead to summonses not reaching the prospective juror. These social factors may be more prevalent among BME groups in general, or specific BME groups in particular, and in certain geographic areas. Only this type of analysis can provide a more complete picture of summoning and its ability to reach BME groups, and an analysis of housing tenure, ethnicity and summons return rates was conducted to explore this further.

Using the study’s survey data on postcode districts with the highest rates of non-return of summonses, the analysis examined whether ethnicity levels, housing tenure levels or both had an impact upon summonses returned by postcode district. The analysis encompassed all courts, and compared the proportion of summonses returned by postcode district to census data at postcode district level on the proportion of BME residents and the proportion of renting households in each postcode district¹⁸³. As Figure 3.14 below illustrates, the proportion renting, the proportion of BME groups and their interaction all had a highly significant impact upon the probability of summons not being returned. The probability of non-returns increased as the proportion renting and the proportion of BME groups in each sector increased.

¹⁸³ Results are presented in Appendix 5.

Figure 3.14. Relationship between housing tenure, ethnicity and non-return of summonses



Taken together, these findings on the non-return of summonses demonstrate that there is no widespread avoidance of jury service among the British public or among Londoners in particular. They also show that any higher levels of non-returns for courts with large BME populations in the area does not necessarily reflect any particular unwillingness on the part of BME groups to do jury service, but instead reflects the greater residential mobility among these groups.

Summary

This chapter presented the findings of the first part of the juror summoning survey and analysed the impact of the initial stages of juror summoning on BME groups. The findings examined (1) whether random selection of jurors from electoral lists reaches a representative group of potential jurors in each court, (2) how the population dynamics of each individual court's juror catchment area affects the possibility of BME jurors being summoned for each court, and (3) whether there is any evidence of widespread avoidance of jury service among the general public or any particular unwillingness to do jury service among BME groups. Unlike previous studies of the juror summoning process, this study was unique in adopting an individual court-based approach to understanding the representative nature of summoning. Considering juror representation on a national basis can easily present a misleading picture of the summoning process, or obscure differences that may exist among individual courts. 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.

The first part of the juror summoning survey produced a number of important findings, revealing that several long-held beliefs about juror summoning in this country are in fact myths. The first myth to be exposed is that BME groups are under-represented among those summoned for jury service in England and Wales. This view has long coloured policy discussions about juries in this country, and generated numerous proposals for altering the summoning system. However, the survey revealed that the summoning process reaches BME groups in remarkable consistency to BME representation in the local population for virtually all Crown Courts. This indicates that the process of computerised random selection from the electoral lists provided by local authorities is successfully summoning ethnically representative groups of potential jurors for Crown Courts in England and Wales. This may be surprising given that BME groups are generally thought to be under-represented on electoral lists, which form the source lists for juror summoning. But the survey nonetheless clearly demonstrates that the summoning process is working in the desired way. It also shows that proposals by the Auld Review to alter the juror source lists to ensure that more members of BME groups are summoned are, in fact, unnecessary. Random selection of jurors from the existing juror source lists is reaching a representative group of potential jurors in virtually every court.

The ethnicity of summoned jurors has more relevance in some Crown Courts than others. The 94 courts in England and Wales can be classified as either High Ethnicity Courts or Low Ethnicity Courts. Only a minority of courts (20 of 94) can be considered High Ethnicity Courts, where ethnic minorities comprise over 10% of the local population and there is therefore a valid expectation that some ethnic minorities will be in the jury pool and on juries in these courts. Over half of these courts are in the London Region, with the remainder primarily in other large urban areas. But the overwhelming majority of Crown Courts in England and Wales are Low Ethnicity Courts, where the BME population level in the juror catchment area is below 10%. This is crucially important in terms of understanding the relationship between ethnicity and juror summoning in Crown Courts in England and Wales, as it means that for the vast majority of Crown Courts in this country the BME population in the catchment area from which jurors can be summoned is at a level where there is little likelihood that BME jurors will serve on a jury. This is not because the summoning process fails to reach ethnic minorities (it does not). It is simply that there are not sufficient numbers of ethnic minorities living in the juror catchment area to summon any significant number to serve on juries.

A distinction, however, needs to be made between two types of Low Ethnicity Courts: Overall Low Ethnicity Courts and Ethnicity Concentration Courts. Most of the Crown Courts in England and Wales are Overall Low Ethnicity Courts, where the BME population level in the juror

catchment area is low across the whole catchment area and therefore does not provide the basis for ethnic minorities to be represented either among those summoned or serving. However, a handful of Low Ethnicity Courts are Ethnicity Concentration Courts, 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. In these courts, ethnicity may be a particularly problematic issue. The high concentrations of BME residents in specific areas, often in urban centres near the Crown Courts, are likely to create the impression that there are large numbers of BME residents who should be summoned and available to serve on juries. However, the overall geography of the juror catchment area, which is much wider and has a predominantly White population, simply cannot produce any substantial numbers of BME jurors. This again does not reflect any failure of the summoning process; it is simply an effect of the population dynamics of the juror catchment areas. But court users and the general public may nonetheless expect ethnic minorities to be serving on juries, and this may be problematic in certain cases: government statistics show that a high proportion of BME defendants and a large number of racially-aggravated crimes are tried at some of these courts.

The Auld Review observed juries at a number of Low Ethnicity Courts (Nottingham, Liverpool and Durham) and concluded that, because no ethnic minorities were seen on juries at these courts, a change was needed in the way that jurors are summoned. This prompted the Review's proposal to supplement the juror source lists. But expanding the source lists for jurors in these courts would not alter the representative nature of those summoned. Those summoned are already ethnically representative, and the only way to increase BME representation on juries in Low Ethnicity Courts would be to redraw the juror catchment areas so that the BME population level of the entire catchment area exceeded 10%. This might technically be possible with Ethnicity Concentration Courts, but in Overall Low Ethnicity Court catchment areas no redrawing of catchment area boundaries could produce a juror catchment area where more than 10% of the population is from a BME background.

Another myth exposed in this chapter is that there is widespread avoidance of jury service by the British public. The Auld Review drew on claims by Darbyshire that most people try to avoid jury service if summoned and that five-sixths of Londoners avoid or evade jury service. However, the juror summoning survey showed that there is no evidence to support these claims. Almost all people (85%) summoned for jury service replies to the summons, and even in London where the reply rate was lower, the overwhelming majority (79%) responded. It also cannot be assumed that all non-replies represent a wilful attempt to avoid jury service. A third of all non-replies are summonses that are returned to the JCSB as "undeliverable", which in most cases

indicate a change of residency, and it is also likely that many of the summonses not returned at all also reflect changes in residency. Beyond this, a 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.

Finally, concerns that ethnic minorities may be less willing to do jury service than White people because they perceive the system to be unfair were also shown to be unfounded. When non-returns were examined on an individual court basis, there initially appeared to be a connection between ethnicity and non-returns; many (but not all) courts with a significantly higher non-return rate were High Ethnicity Courts with high BME population levels. However, further analysis showed that higher levels of non-returns in courts with large BME populations simply reflected the greater residential mobility among the BME populations in these courts. Summons non-returns are most likely to occur in areas with high levels of rental accommodation, and 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 in these areas, not that ethnic minorities are any less willing to do jury service than White people. The Mori survey also confirmed this. It found no significant differences in willingness to do jury service or support for the jury system based on ethnicity.

Chapter 4. Jurors who serve and do not serve

The analysis of the representative nature of juror summoning by computerised random selection from local electoral lists revealed that, with the exception of two courts, the proportion of ethnic minorities summoned for jury service did not differ significantly from the local population in any Crown Court in England and Wales. The next stage of the analysis examines who serves and who does not serve once summoned for jury service. In particular, it addresses the question of whether the proportion of ethnic minorities who eventually serve as jurors in each Crown Court differs significantly from the local population. To do so, this chapter examines the impact of juror eligibility rules, which by necessity disqualify some individuals from jury service, as well as individual decisions made by the Jury Central Summoning Bureau to grant excusals from jury service. The findings are based on the survey of all jurors summoned for jury service for Crown Courts in England and Wales in one week in 2005.

Aims and objectives

A number of widespread beliefs about the extent to which juries are representative of the population appear to have become entrenched in this country, although they have not been substantiated with any reliable research evidence¹⁸⁴. For several decades there have been frequent claims that ethnic minorities are under-represented among those doing jury service, that the middle class avoids jury service, that those serving on juries are primarily the retired and unemployed, and that women¹⁸⁵, young people¹⁸⁶, the self-employed¹⁸⁷ and those over 65¹⁸⁸ are all under-represented among those doing jury service. These claims led the Auld Review to conclude 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 drawn¹⁸⁹, and 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 it”¹⁹⁰. As the previous chapter noted, it has also been claimed that most people try to avoid jury service and that this is the case for almost all those summoned in London¹⁹¹. The Jury Summoning Study was designed to provide a systematic analysis of the representative nature of the jury summoning process, and to

¹⁸⁴ The most extensive study of jury representation to date, the Crown Court Study, did not find evidence to substantiate most claims of unrepresentative juries. See Zander and Henderson *supra* note 12.

¹⁸⁵ *Justice for All* *supra* note 51, section 7.24

¹⁸⁶ J. Gobert “The Peremptory Challenge – An Obituary” [1989] *Crim. L.R.* 528

¹⁸⁷ Auld claimed that the self-employed are virtually exempt from jury service. Auld *supra* note 23, Chapter 5, paragraphs 27-40.

¹⁸⁸ A claim that clearly contradicts the claim that the retired are over-represented on juries.

¹⁸⁹ Auld *supra* note 23, Chapter 5 paragraph 11.

¹⁹⁰ *Ibid*, paragraph 13. Zander, who conducted the Crown Court Study, went on record as disputing many of these claims in the Auld Review. See Zander “Lord Justice Auld’s Review of the Criminal Courts: A Response” *supra* note 72.

¹⁹¹ Darbyshire et al *supra* note 37, p.58.

determine whether any of these claims about the lack of representation among those doing jury service are borne out in reality.

As discussed in Chapter three, the first main aim of the study was to examine ethnic minority representation in the jury system on a court-by-court basis. Considering juror representation on a national aggregate basis can present a misleading picture of the nature of juror representation as jurors are only summoned from specific local populations in individual Crown Court areas. The second main aim of the study was to understand the importance of ethnicity in relation to a range of other socio-economic factors. Previous research on the court system in this country and on juries in other jurisdictions has indicated that examining ethnicity alone may misconstrue the role of ethnicity in juror representation. This chapter examines how ethnicity affects juror representation in relation to a range of demographic characteristics (such as gender, age, employment, income, language and religion). The objective was to provide a more refined understanding of jury summoning and representation by examining diversity in terms of more than just ethnicity. This wider approach to understanding the impact of diversity was a unique aspect of this research project. The specific questions addressed in this chapter include:

1. Whether the proportion of ethnic minorities who serve as jurors in each Crown Court reflects the proportion of ethnic minorities in the local population.
2. Whether excusals or disqualifications from jury service disproportionately affect ethnic minorities and result in the under-representation of ethnic minorities among serving jurors at each Crown Court in England and Wales.
3. Whether other socio-economic factors such as income, employment, age, gender, religion and language have a greater influence than ethnicity on whether those summoned do serve.

This chapter examines the representative nature of those serving as jurors on a court-by-court basis. It explores the impact of disqualifications and grants of excusals on BME group representation among serving jurors at each Crown Court, as well as the influence of other socio-economic characteristics of summoned jurors on whether or not they serve. This part of the analysis explores the validity of a number of common assumptions about who does and who does not do jury service in this country, exploring the representative nature of serving jurors in relation to a range of socio-economic factors. The project conducted two juror surveys, one in 2003 and one in 2005, before and after the introduction of new juror eligibility rules. The chapter

examines what impact the introduction in 2004 of these new rules may have had on BME representation among serving jurors. The representation of two specific social groups was also examined: the Irish and Welsh. In the context of the criminal justice system, it has been argued that the Irish need to be considered as an individual group that may have particular concerns about the fairness of the legal process. The findings examine the nature of Irish representation in the jury process and what this may indicate about their willingness to do jury service. The issue for Welsh jurors is different, and concerns the possible introduction of bilingual juries in Welsh courts. The government recently carried out a consultation process on introducing bilingual juries in Wales¹⁹², and the analysis in this chapter explores the extent to which the current summoning process produces sufficient numbers of Welsh speaking jurors to support bilingual jury trials.

Findings on serving and not serving

Throughout this chapter, the following definitions apply to categories used to describe the status of those summoned for jury service.

Juror Status	Definition
Served	Those who served on the date for which they were summoned, and those who had their jury service deferred and serve at a later date.
Did Not Serve	Those who returned their summons but were excused or disqualified.
Non-returns	Those whose summonses were returned to the JCSB as “undeliverable” and those who did not reply to the summons.

Figure 4.1 below shows that, of all those individuals summoned during the survey who returned their summonses, 64% served as jurors. Figure 4.2 below shows that among all those summoned from among BME groups, a slightly smaller proportion (57%) served as jurors.

¹⁹² *The Use of Bilingual (English and Welsh-speaking) Juries in Certain Criminal Trials in Wales: A Consultation Paper*, Office for Criminal Justice Reform (December 2005)

Figure 4.1. Percentage of all summoned jurors who served and did not serve

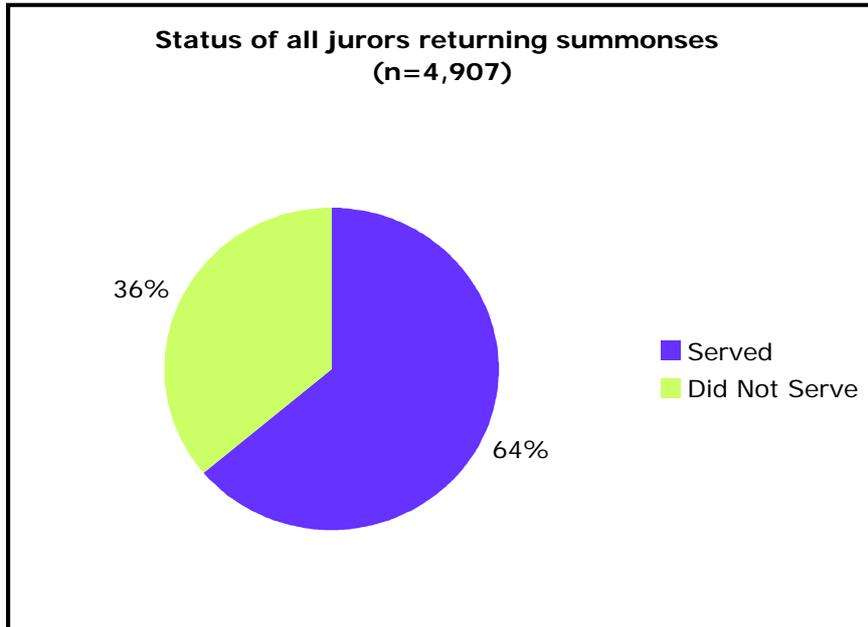
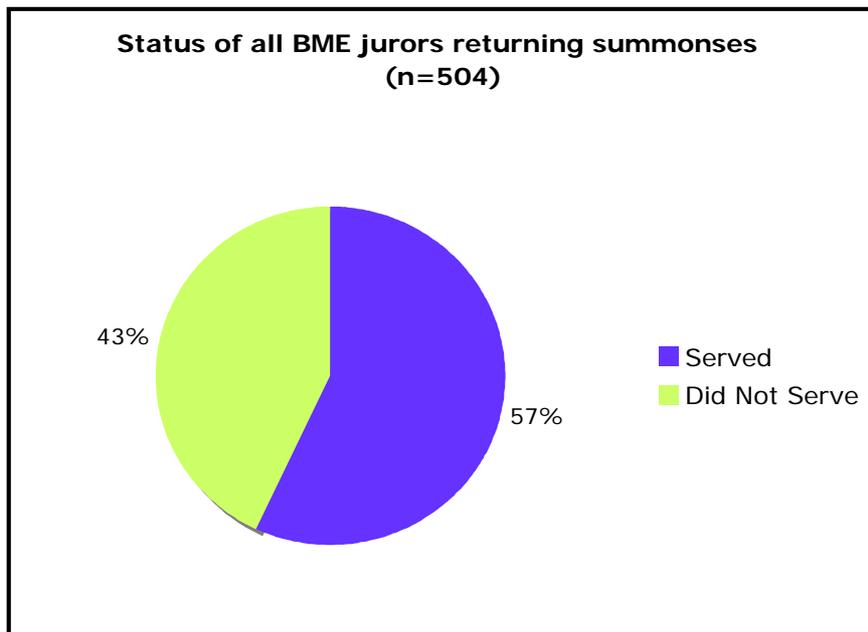
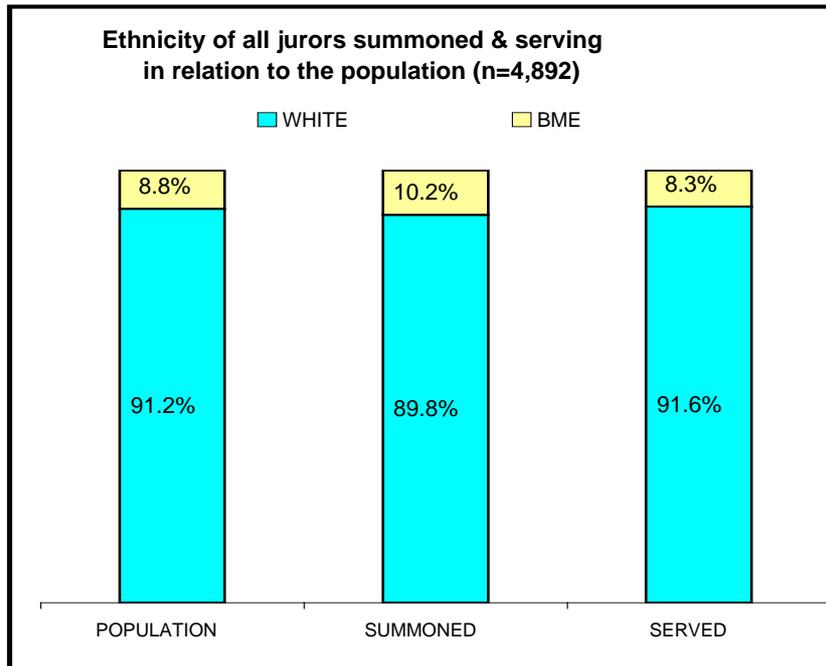


Figure 4.2. Percentage of BME jurors summoned who served and did not serve



Despite the fact that a higher proportion of those summoned from BME groups did not serve compared to all those summoned, Figure 4.3 below shows that the proportion of BME jurors serving is almost identical to the proportion of BME in the population of the combined juror catchment areas for all Crown Courts: 8.3% BME serving compared to 8.8% BME in the population.

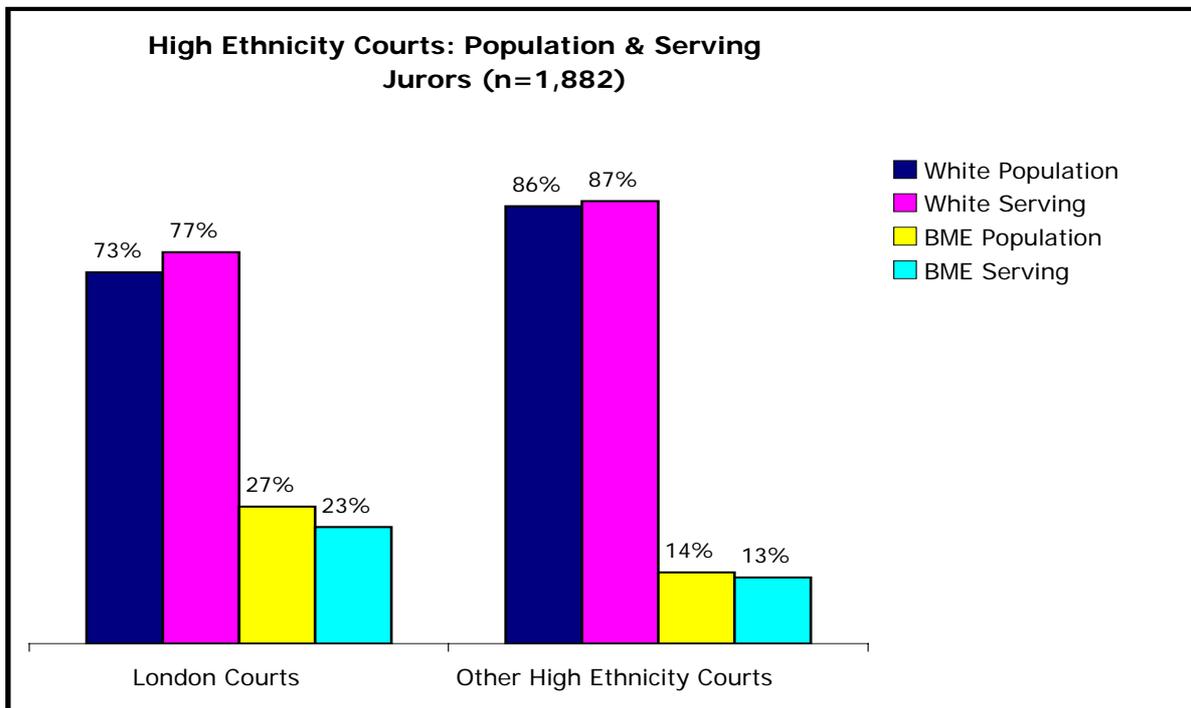
Figure 4.3. Ethnicity of all jurors summoned and serving



Among those summoned for High Ethnicity Courts (those courts with the highest proportion of BME groups in the juror catchment area), BME groups are represented among serving jurors almost exactly in proportion to their representation in the population in those High Ethnicity Courts outside of the London Region. Figure 4.4 below shows that BME groups comprise 14% of the population in these non-London High Ethnicity Courts¹⁹³ and they comprise 13% of all serving jurors. The figure also shows that in the London Region, BME groups are under-represented among serving jurors, where they comprise 23% of all those serving but comprise 27% of the population in the juror catchment areas for London combined.

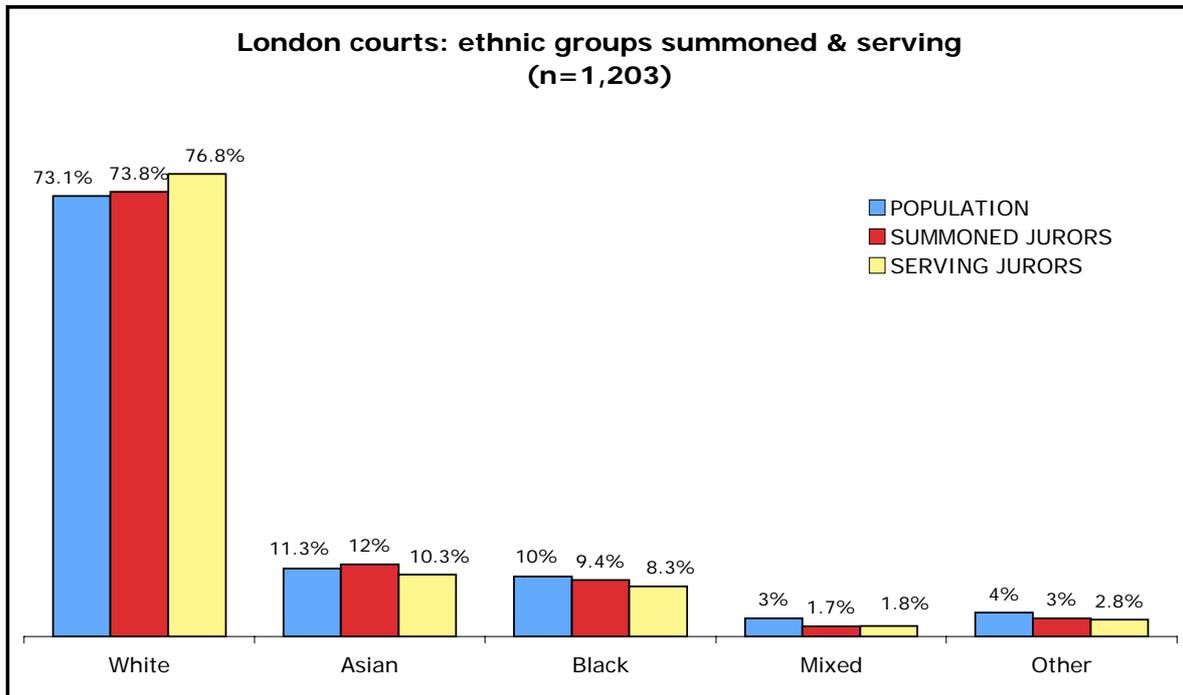
¹⁹³ Birmingham, Wolverhampton, Coventry, Leicester, Bradford, Manchester Minshull Street, Luton and Reading.

Figure 4.4. Ethnicity of serving jurors and population in High Ethnicity Courts



As the London Crown Courts summon over a quarter of all jurors and have the highest BME population levels in their juror catchment areas, this under-representation was examined in more detail. Figure 4.5 below shows that three of the four main BME groups (Asian, Black and Mixed) are slightly under-represented among serving jurors in relation to these groups' representation in the population for all the London courts combined. Black jurors are under-represented by 1.7%, Mixed jurors by 1.2% and Asian jurors by 1%. Those identifying themselves as belonging to any other non-White ethnic group are slightly over-represented (2.8% serving compared to 2.6% in the catchment area population), and White jurors are over-represented by 3.7%.

Figure 4.5. Ethnic groups summoned and serving in relation to population for all London Courts combined



However, as the previous analysis of ethnicity and juror summoning in Chapter three demonstrated, the representative nature of jury service needs to be considered on an individual court basis, as jurors can only be summoned and serve at a specific Crown Court. One of the difficulties in analysing jury service at the individual court level is that there are often relatively small numbers of BME jurors serving in many courts. However, it was still possible to determine whether differences between the percent serving and the percent in the local population were statistically significant, by employing an analytical method that takes into consideration the variations in the numbers of those serving per court¹⁹⁴. The analysis showed that among all the Crown Courts in England and Wales covered in the survey there were only three courts where BME jurors were significantly under-represented among serving jurors in relation to the BME population in that court’s juror catchment area: Birmingham, Leeds and Manchester Crown Square.¹⁹⁵ In Birmingham, while BME groups comprise 22.3% of the juror catchment area population and 22% of those summoned, they comprise only 14.7% of those who served in the study week. In Leeds, while BME groups comprise 6.3% of the catchment area population and 3.6% of those summoned, there were no BME jurors who did jury service in the study week. In

¹⁹⁴ See Chapter 3 for details of the method used.

¹⁹⁵ Full details of the analysis of statistical significance of serving jurors can be found in Appendix 1.

Manchester Crown Square, while BME groups comprise 9.3% of the catchment area population, they were significantly under-represented among those summoned (1.8%) and there were no BME jurors who served in the study week.

Birmingham is the only High Ethnicity Court among the three courts where the under-representation of BME jurors was statistically significant, and the only one therefore where BME jurors could be expected to serve on juries. Figure 4.6 below shows that the under-representation of BME jurors was spread among three of the main BME groups: Asian, Black and Mixed, but that this under-representation was only just over 1% for each group. For presentation purposes White jurors are not presented in this figure, although they were summoned precisely in proportion to their representation in the population (78%) but over-represented among those serving (82%).

Figure 4.6. Ethnic minority jurors summoned and serving in relation to local population at Birmingham Crown Court

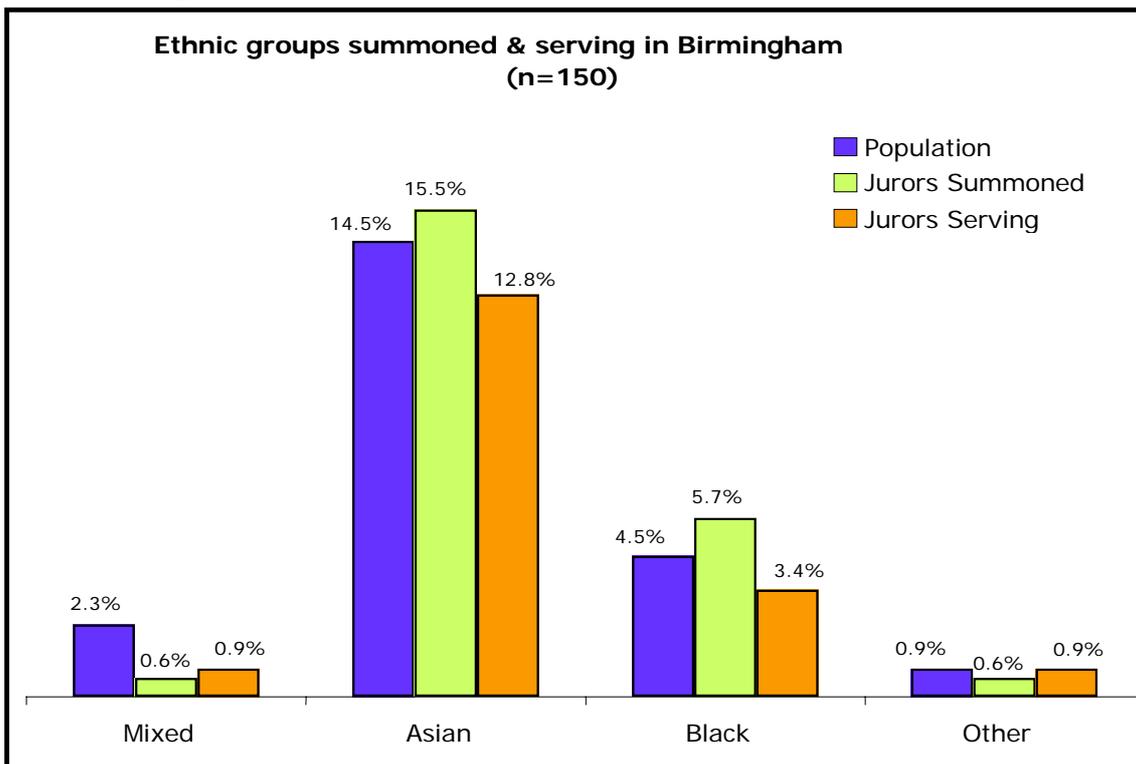
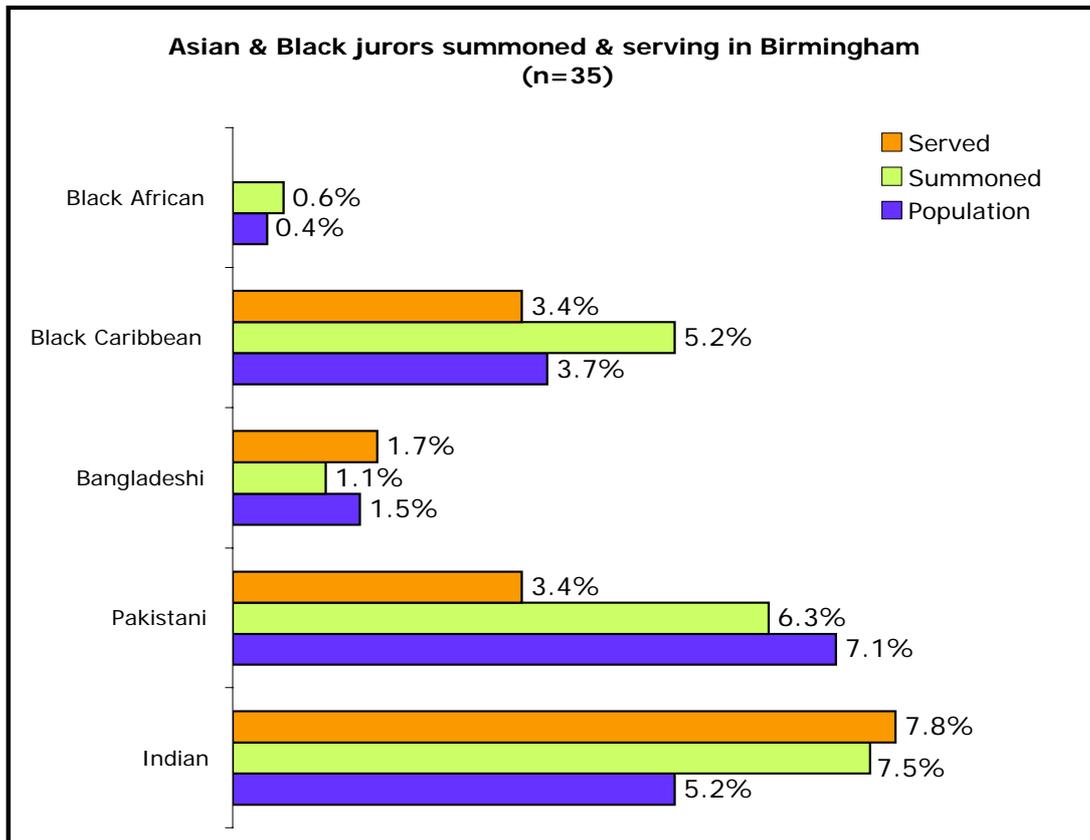


Figure 4.7 below looks in more detail at under-representation among Asian and Black jurors, the two largest BME groups in Birmingham. This shows that it is primarily Pakistanis that are under-represented among serving jurors in Birmingham, that Indians are over-represented in relation to their representation in the juror catchment area, and that Black Caribbeans and Bangladeshis are represented almost precisely in proportion to their representation in the local population.

This finding contrasts with the findings from Baldwin and McConville’s study in the late 1970s of serving jurors at Birmingham Crown Court, in which West Indian and Asian jurors had the highest levels of under-representation¹⁹⁶.

Figure 4.7. Representation of Asian and Black jurors at Birmingham Crown Court



These results highlight the need, wherever possible, to disaggregate ethnicity when examining the representative nature of jury service. At first glance, the “Asian” population in the Birmingham catchment area appears to be under-represented among serving jurors. However, when this general group classification is broken down into specific Asian groups, it is clear that both Indians and Bangladeshis in the Birmingham area are not under-represented among serving jurors, but are in fact over-represented in relation to their representation in the local population. The reality is that all Asians are not under-represented among serving jurors at Birmingham Crown Court, only Pakistanis.

¹⁹⁶ Baldwin and McConville supra note 35.

Relative importance of ethnicity

The analysis in Chapter three showed that, in the 84 Crown Courts covered in the project's summoning survey, BME groups were significantly under-represented only among those summoned in one Crown Court (Manchester Crown Square) and significantly over-represented among those summoned in another court (Great Grimsby). The analysis in this chapter also showed that BME groups were significantly under-represented among serving jurors in only three of the 84 Crown Courts covered in the study (Manchester Crown Square, Birmingham and Leeds), and that only one of these courts (Birmingham) was a High Ethnicity Court, where BME groups comprised over 10% of the juror catchment area population. All of this suggests that factors other than ethnicity may be more influential in whether a summoned juror serves or does not serve.

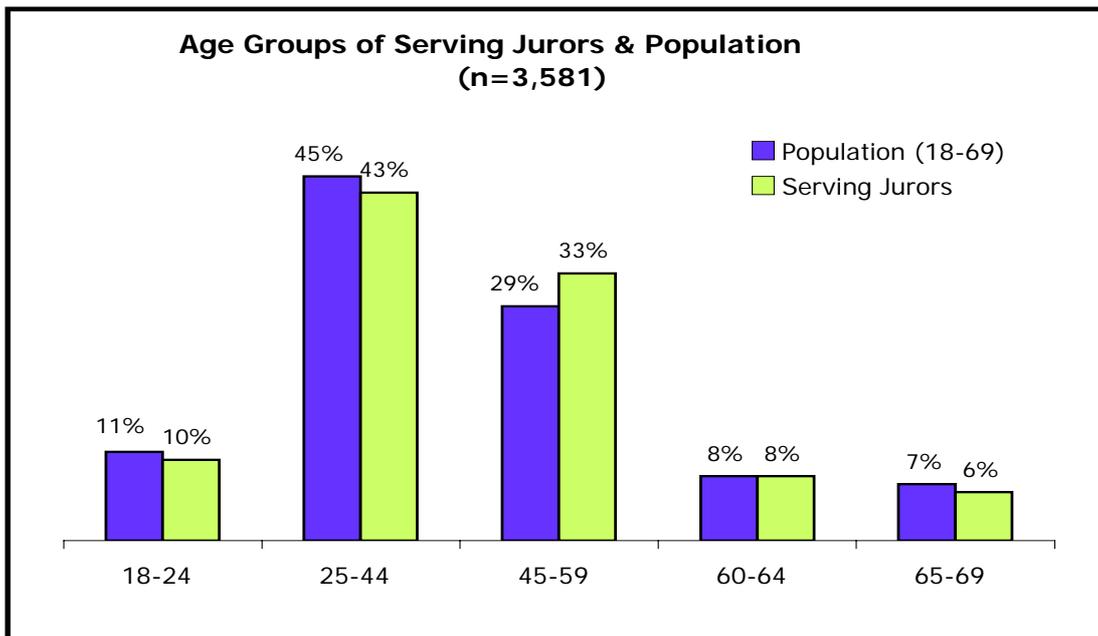
In addition to information on ethnicity, the survey also requested other demographic information from those summoned for jury service, including age, gender, income, employment status, religion and first language. This was done in order to explore the relative importance of ethnicity and other socio-economic factors to whether those summoned for jury service actually serve. This approach to the research reflects the findings of previous research on the need to examine diversity in its wider sense in order to understand the impact of ethnicity¹⁹⁷. Furthermore, it provides the basis for examining whether numerous widespread but unsubstantiated beliefs about who does and who does not do jury service are borne out in reality.

Two multilevel analyses were conducted exploring the relative significance of ethnicity to these other demographic factors. The first analysis examined the importance of various socio-economic factors in predicting whether those summoned served or did not serve. A more detailed analysis was subsequently conducted examining the importance of a range of socio-economic factors in predicting whether those summoned either (1) served on the date for which they were summoned, (2) served but deferred their jury service to a later date, (3) did not serve because they were disqualified or (4) did not serve because they were excused. Multilevel analysis is commonly used to analyse data where units are grouped at different levels (for instance, pupils within schools or survey respondents within households). The multilevel analysis of jury service takes into consideration that particular courts may have generally higher or lower rates of serving. Seven socio-economic factors were examined in the analysis: gender, employment status, religion, ethnicity, prior jury service, income and whether or not English was a juror's first language.

¹⁹⁷ See discussion in Chapter 1 *supra* note 89.

Age was not included in the multilevel analysis because there was a high level of missing data for this one factor. The research survey did not request information from jurors on their age, because all jurors who are summoned are asked to provide their date of birth on the official summons document returned to the JCSB, and the project had access to these data. Unfortunately, even though the JCSB formally requests this information for all those summoned, 16% of respondents did not provide date of birth information to the JCSB¹⁹⁸. Even though age was not included in the multilevel analysis, it is important to consider its impact on serving and not serving, as a number of claims have been made about the under-representation of certain age groups among those serving. For several decades there have been frequent claims that young persons are under-represented among serving jurors¹⁹⁹. However, as Figure 4.8 below shows, those between the ages of 18 and 24 are represented among serving jurors in almost exact proportion to their representation in the population, comprising 10% of all serving jurors in the study week and 12% of the population.

Figure 4.8. Age of serving jurors in relation to UK population



¹⁹⁸ Response to the date of birth question was lowest among those who did not serve (25%) and highest for those who served (93%).

¹⁹⁹ This is despite the fact that the Crown Court Study found that, among serving jurors in 1992, 15% were in the 18 to 24 age group, which made up 14% of the national population at the time. See Zander and Henderson supra note 12 p. 236.

In *Justice for All*, the government also expressed concerns that those over 65 were under-represented among serving jurors²⁰⁰, and the new juror eligibility rules subsequently introduced in 2004 removed the right of those between the ages of 65 and 70 to request excusal from jury service. Figure 4.8 above shows that in the 2005 survey, after the new rule came into effect, 6% of serving jurors were 65-69 years of age, and that there is now no under-representation of the over 65s among serving jurors²⁰¹. Results of the same survey conducted in 2003 showed that, under the old eligibility rules, those between 65 and 69 comprised 3% of serving jurors²⁰², and that the rule change has had the desired effect by doubling the proportion of over 65s serving as jurors. In the 2005 survey, the overwhelming majority (79%) of jurors between 65 and 70 that are summoned for jury service did serve, and among those who were excused from jury service, the majority (56%) were excused for medical reasons that precluded them from serving.

The following presents the results for the multilevel analysis of who serves and who does not serve. Table 4.2 below shows the parameters of each juror background factor used in the analysis.

²⁰⁰ These concerns were based on the findings of the Crown Court Study, which found that only 2% of serving jurors in 1992 were over 65. Zander and Henderson *supra* note 12 p. 236.

²⁰¹ Census data in postcode district form only provide information on those 65 to 74 years of age, but half of this age group (those from 70 to 74) are disqualified from jury service. Therefore, data used in this analysis were the 2001 census figures for the United Kingdom.

See www.statistics.gov.uk/census2001/pyramids/pages/UK.asp

²⁰² In the 2003 summoning survey, of the 3416 serving jurors where age was known, 11% (377) were 18-24 years of age, 44% (91490) were 25-44, 31% (1060) were 45-59, 11% (392) were 60-64, and 3% (97) were 65-69.

Table 4.2. Socio-economic factors examined in multilevel analysis	
Socio-economic characteristic	Parameter
Gender	Male
	Female
Prior jury service	No
	Yes
Income	Under £10,000
	£10,000 - £19,999
	£20,000 - £34,999
	£35,000 - £49,999
	£50,000 - £64,999
	Over £65,000
Employment	Full time
	Part time
	Self-employed
	Retired
	Student
	Looking after family
	Looking for work
	Other
Ethnicity	White
	Mixed
	Asian
	Black
	Other
Religion	None
	Christian
	Buddhist
	Hindu
	Jewish
	Muslim
	Sikh
	Other
First language	English
	Other

Four different models were used to examine which factors were most likely to predict whether those summoned served or did not serve. One model included all the seven socio-economic factors. However, because ethnicity, religion and first language are likely to be related, other models either included ethnicity (but not religion and language), included religion (but not ethnicity and language) or included language (but not ethnicity or religion).

Among the demographic factors examined, three (prior jury service, gender and religion) appeared to have no significant impact on whether those summoned for jury service served or did not serve. Among all summoned jurors, 86% had not previously done jury service, and the analysis showed that whether a summoned juror had previously done jury service or not had no significant impact on whether or not they served. There was virtually no difference between the proportion of those with no prior jury service that served (70%) and the proportion of those with prior jury service experience that served (69%). Among those summoned for jury service in the study, a slightly higher proportion of women than men did not serve (33% of women compared to 27% of men). While this appears to reinforce the view put forward in *Justice for All* that women are under-represented among serving jurors, the analysis in fact found that gender had no significant impact on whether those summoned served or did not serve²⁰³. Among serving jurors, the proportion of men and women was almost identical (51% of those serving were women, 49% men)²⁰⁴. While Christians and Muslims are under-represented among both those summoned and serving in relation to the proportion of Christians and Muslims in the population²⁰⁵, and those with no religious affiliation are over-represented among those summoned and serving²⁰⁶, the multilevel analysis found that this background factor on its own had no impact on whether a summoned juror served or did not serve.

There were, however, four socio-economic factors that were highly predictive of whether those summoned did or did not serve: income, employment status, ethnicity and first language. For ethnicity, while all BME groups were less likely to serve, the only statistically significant difference was for Black jurors, who were less likely to serve than any other ethnic group. Figure 4.9 below shows that 59% of all Black jurors who were summoned did jury service compared to 73% of all White jurors summoned, 69% of all Mixed ethnicity jurors and 62% of Asian jurors summoned.

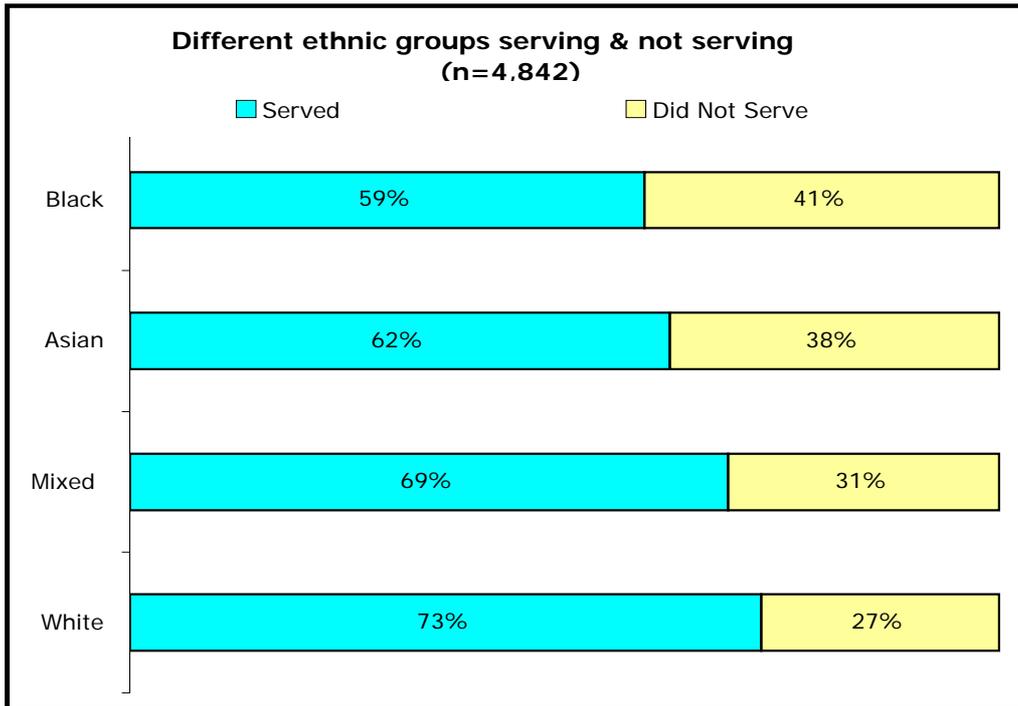
²⁰³ See Appendix 5.

²⁰⁴ In 1992, the Crown Court Study found that men made up 53% of serving jurors and women only 47%. See Zander and Henderson supra note 12 p.234. A decade later, in *Justice For All*, the government's claim that women were under-represented among jurors was based on this finding. *Justice for All* supra note 51, section 7.24.

²⁰⁵ Christians make up 78% of the combined Crown Court catchment area populations, but comprise 70% of those both summoned and serving. Muslims comprise 3.2% of the combined court populations, 3.1% of all those summoned and 2.2% of all serving jurors.

²⁰⁶ Those with no religious affiliation comprise 16% of the combined court catchment area populations, but 23% of all those summoned and 24% of all those serving.

Figure 4.9. Proportion of different ethnic groups serving and not serving

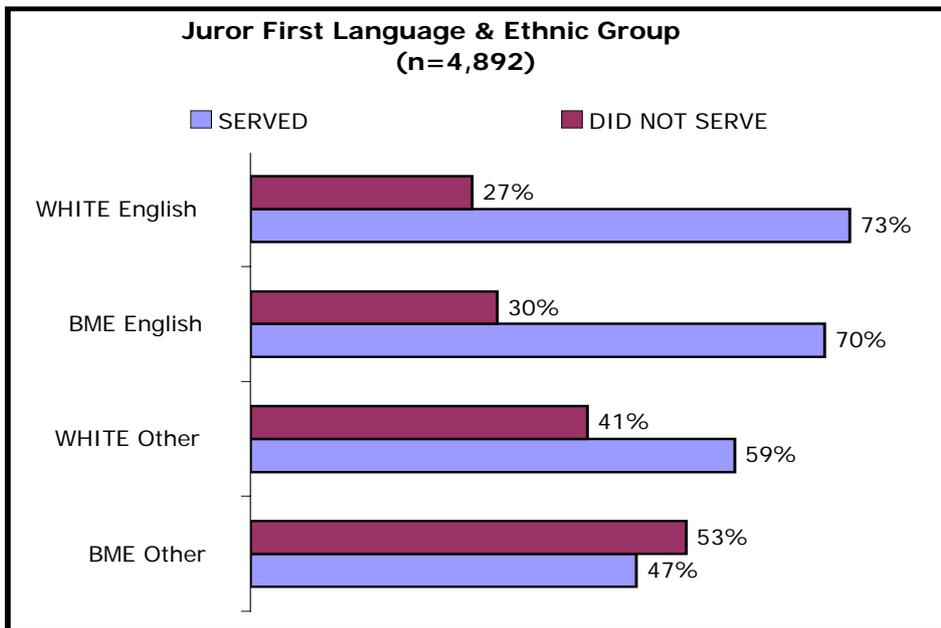


Even though ethnicity appears to have an impact on whether or not those summoned do serve, this needs to be viewed in the context of first language, which is able to explain much of the impact of ethnicity. Those whose first language was not English were significantly less likely to serve; only 51% of those with another language other than English as their first language served compared to 73% of those with English as their first language. Not surprisingly, there was a close relationship between ethnicity and first language: 65% of those whose first language was not English were from a BME group. And as Figure 4.10 below shows, **the only ethnic and language group where more did not serve than served was summoned jurors with a BME background who had a language other than English as their first language (53%)**. White prospective jurors with a language other than English as their first language served more often (59%) than did not serve.

Of all serving jurors where language was known, 4% had a language other than English as their first language (124 of 3420). This was exactly the same proportion of serving jurors who had another language as their first language in the Crown Court study in 1992²⁰⁷. In the 2005 survey, of serving jurors who had a language other than English as their first language, 41% spoke a South Asian language as their first language (either Gujarati, Punjabi, Urdu or Bengali) and 33% spoke a European language.

²⁰⁷ Zander and Henderson supra note 12 p.242.

Figure 4.10. Serving and not serving by ethnic group and language combined



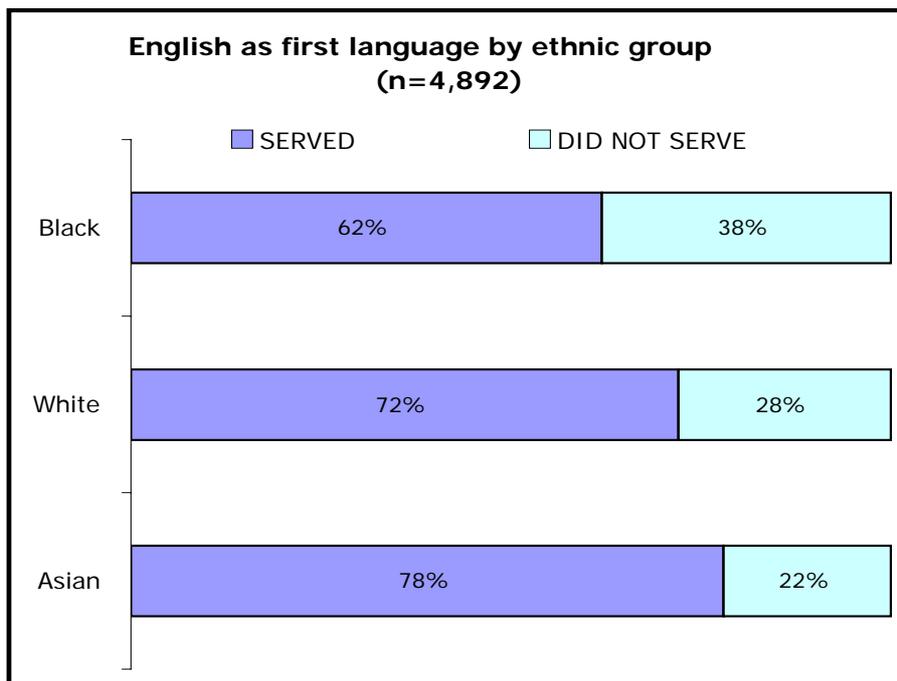
There was also some indication of a significant court level effect²⁰⁸, which suggests that in certain courts there are higher or lower rates of serving as a consequence of the ethnic make-up or languages spoken in the court catchment areas. This is supported by data from the JCSB showing that, in seven Crown Courts, 10% or more of all jurors who were excused from jury service were excused for language reasons: Birmingham (12.5%), Harrow and Isleworth (12%), Wood Green and Blackfriars (11%), Bradford and Southwark (10%). All of this sheds further light on the earlier finding that Birmingham was one of only three courts where BME groups were significantly under-represented among serving jurors (but not among those summoned for jury service). The analysis also showed that this under-representation was primarily among Pakistanis, who were summoned generally in proportion to their representation in the local population but almost half of all Pakistani jurors summoned did not serve. This high rate of excusal for language reasons appears to explain the significant under-representation among BME jurors in Birmingham, and does not suggest that there is any particular unwillingness to serve among Pakistanis in Birmingham, only an inability to serve due to a lack of sufficient command of English.

However, the fact that ethnicity still has an impact in the case of Black jurors summoned for jury service even when first language is taken into consideration suggests that differences cannot

²⁰⁸ variance term = 0.043, SE = 0.021

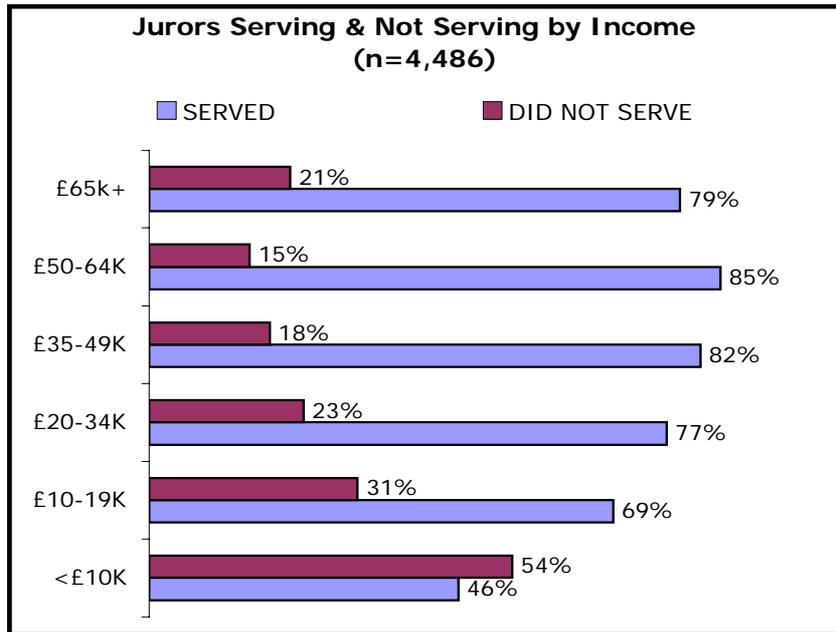
simply be attributed to language. As Figure 4.11 below illustrates, among those whose first language is English, only 62% of Black jurors summoned did jury service, compared to 78% of Asian and 72% of White jurors summoned. This suggests that other factors adversely affect the ability of Black jurors to do jury service. It is also interesting to note that Asian jurors with English as a first language have the highest level of jury service among all groups, even higher than White English-speaking jurors.

Figure 4.11. Serving jurors with English as a first language by ethnic group



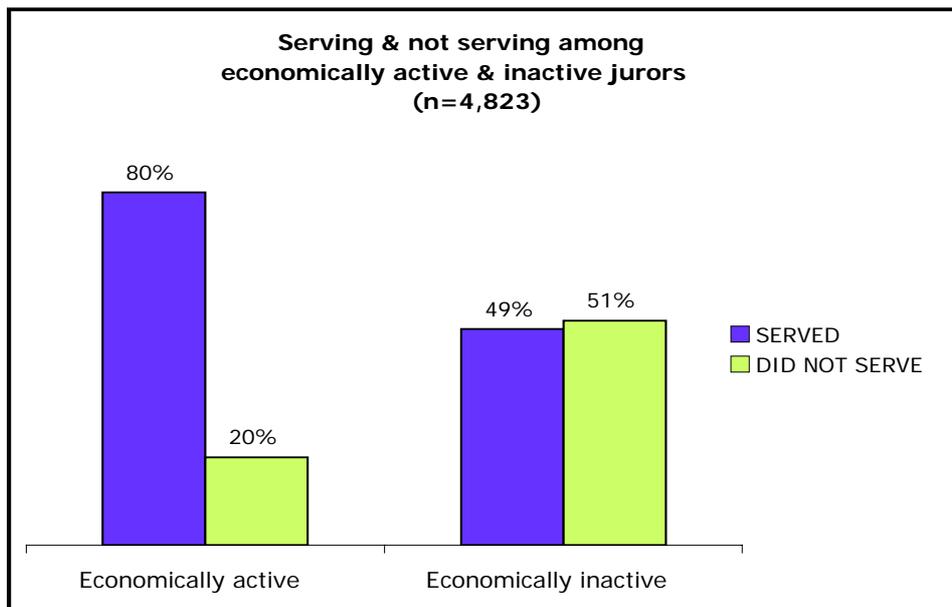
The two remaining socio-economic factors, income and employment status, were found to be significant determinants of serving across all the models of analysis. These proved to be the most highly significant factors, and were more significant than ethnicity and language in determining whether a summoned juror served or did not serve. Those with the lowest household income (less than £10,000 per annum) were by far the least likely income group to serve. All other income groups were highly significantly more likely to serve. As Figure 4.12 below shows, except for those earning less than £10,000, the likelihood of serving increased as income increased up to and including the highest income group (more than £65,000 per annum).

Figure 4.12. Relationship between income and juror status



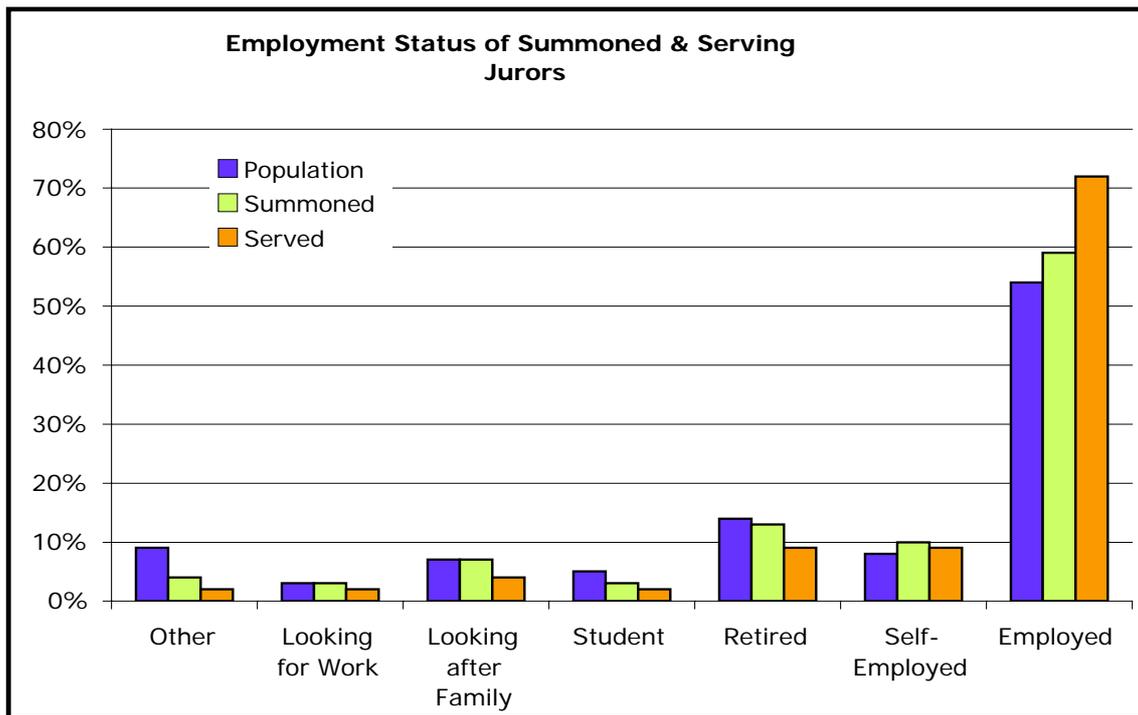
The final demographic factor influencing whether those summoned serve or do not serve is a juror’s employment status. **Whether summoned jurors are economically active or not is a significant factor in whether they serve or not.** As Figure 4.13 below shows, the vast majority (80%) of those summoned who are economically active (employed or self-employed) do jury service, while the majority (51%) of those summoned who are economically inactive do not serve.

Figure 4.13. Relationship between economic activity and juror status



The survey was able to look in more detail at different groups of the economically inactive, and Figure 4.14 below shows that almost all of the economically inactive groups are under-represented both among those summoned and among those serving. The only exception is among those looking after a family, who are slightly over-represented among those summoned, but they are nonetheless under-represented among those serving in relation to their representation in the population. This contrasts with the employed (full and part-time employees) who are progressively over-represented in the jury system, first among those summoned and then among those serving. Among summoned jurors that served, 81% were employed (either full-time, part-time or self-employed), and this almost exactly mirrors the results of the Crown Court Study of serving jurors in 1992, where 82% were employed²⁰⁹. The self-employed are slightly over-represented among those summoned, but they serve in proportion to their representation in the population. This demonstrates that, contrary to the view expressed in the Auld Review, the self-employed are not virtually exempt from jury service.

Figure 4.14. Employment status of jurors in relation to population



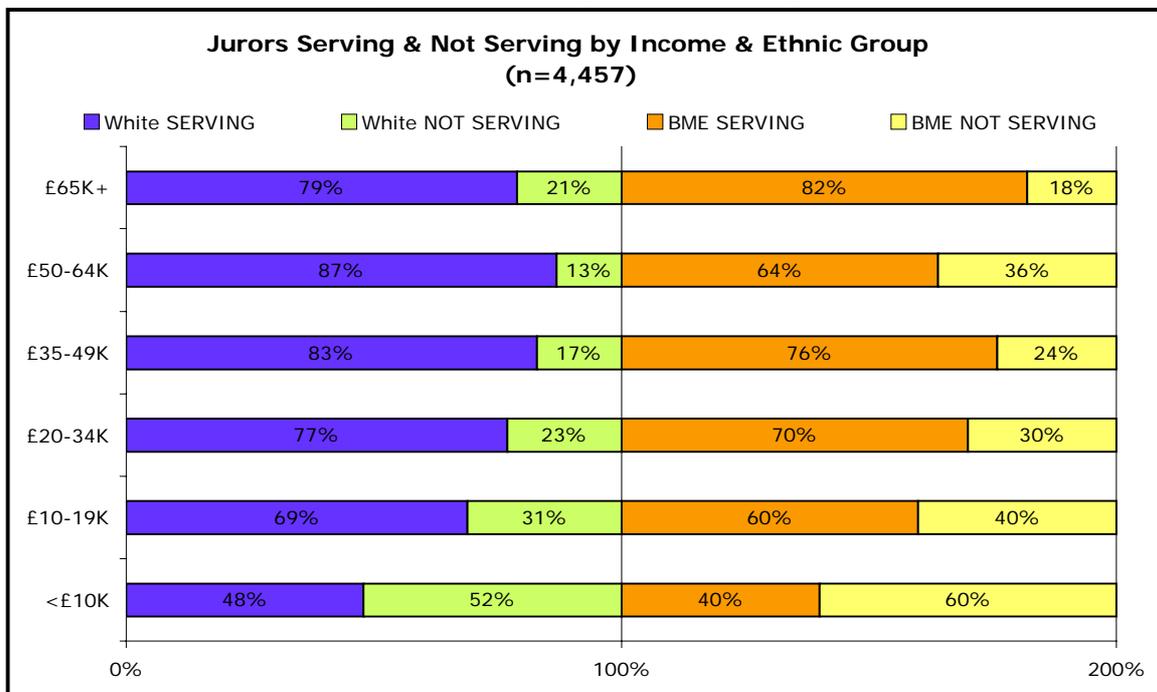
Compared to those in full-time employment, 86% percent of whom served, there were particularly low percentages of serving among those not employed (looking for work) and highly significant differences for those who were retired (only 49.5% served), those looking after families (only 45% served) and those in the 'other' category (only 27% served). The vast

²⁰⁹ Zander and Henderson supra note 12 p.237.

majority of those classified as “other” described themselves as long term sick or on incapacity benefit. These findings on employment status and economic activity of those serving also contradict previous claims that juries are mostly comprised of the unemployed and the retired, or those described in the Auld Review as “not important or clever enough to get out of jury service”²¹⁰. The reality is that the overwhelming majority of those doing jury service are the employed (including the self-employed), and that this economically active group is over-represented among those doing jury service.

For both White and BME jurors summoned, income is clearly related to serving and not serving, and this is illustrated in Figure 4.15 below. For both ethnic groups, more do not serve than serve from the lowest income bracket (annual household income under £10,000). The proportion of those serving increases for both ethnic groups as household income level rises. However, while White jurors in the second highest income bracket (£50-£64,000 per annum) had the highest percentage of serving jurors among all White jurors serving, BME jurors from the highest income group (£65,000 or more per annum) had the highest level of jury service of all serving BME jurors. This reflects a similar finding from research conducted in California on ethnic minority representation among jurors, where African Americans with higher incomes were significantly over-represented among African Americans doing jury service²¹¹.

Figure 4.15. Income and ethnicity of those serving and not serving

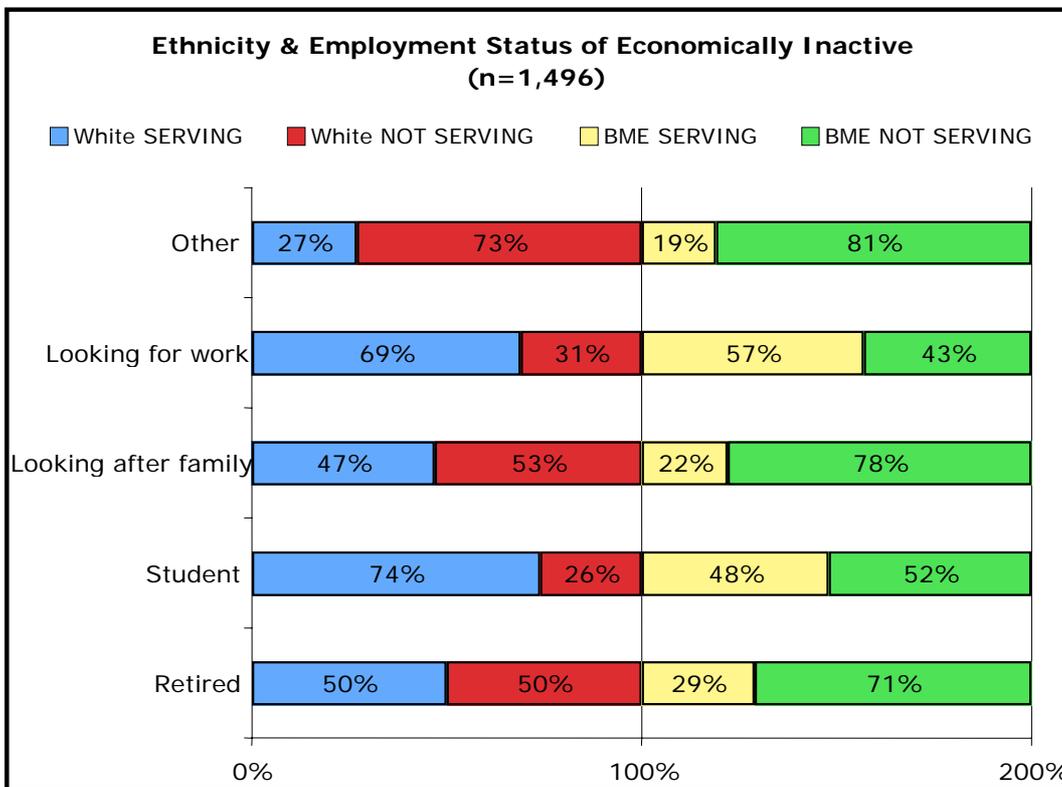


²¹⁰ Auld supra note 23.

²¹¹ See Fukurai supra note 43.

While there are very few differences in the rates of jury service between BME and White jurors who are economically active, there were ethnic differences in serving rates among the economically inactive. Figure 4.16 below examines the serving status of the economically inactive by ethnic group. For White summoned jurors who are economically inactive, more do not serve than serve among those looking after family and those with other reasons for being economically inactive (most often those who are long-term sick). This contrasts with those from a BME group who are economically inactive, where all do not serve more than serve except those looking for work.

Figure 4.16. Ethnicity and serving status among the economically inactive



Given the significance of both income and employment status in predicting whether those summoned for jury service actually serve or not, the impact of income and employment status was also examined specifically among Black jurors summoned for jury service, the one ethnic group where ethnicity was significant in predicting juror status. Figure 4.17 below shows that most Black jurors in the survey were in the two lowest income brackets (45% of those serving and 63% of those not serving), and as lower income households generally are less likely to serve this in part helps to explain the particular under-representation of Black jurors among those doing jury service. Figure 4.17 also shows that the highest rates of serving for Black summoned jurors are

among those in the middle income bracket (£20-35,000 per annum) and the highest income bracket (over £65,000).

Figure 4.17. Income and juror status of all Black jurors summoned

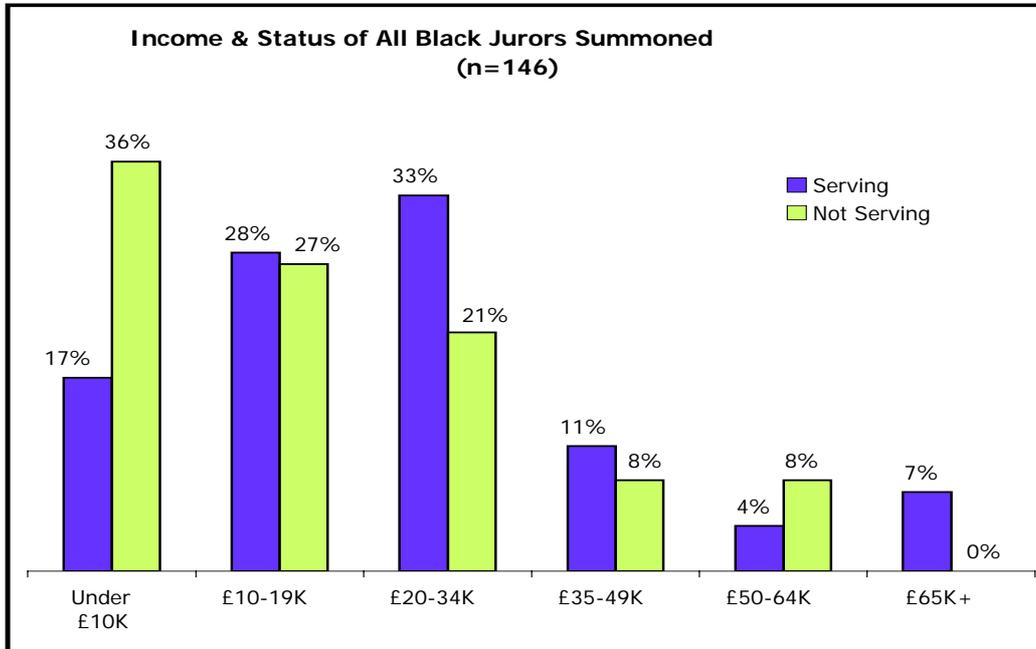
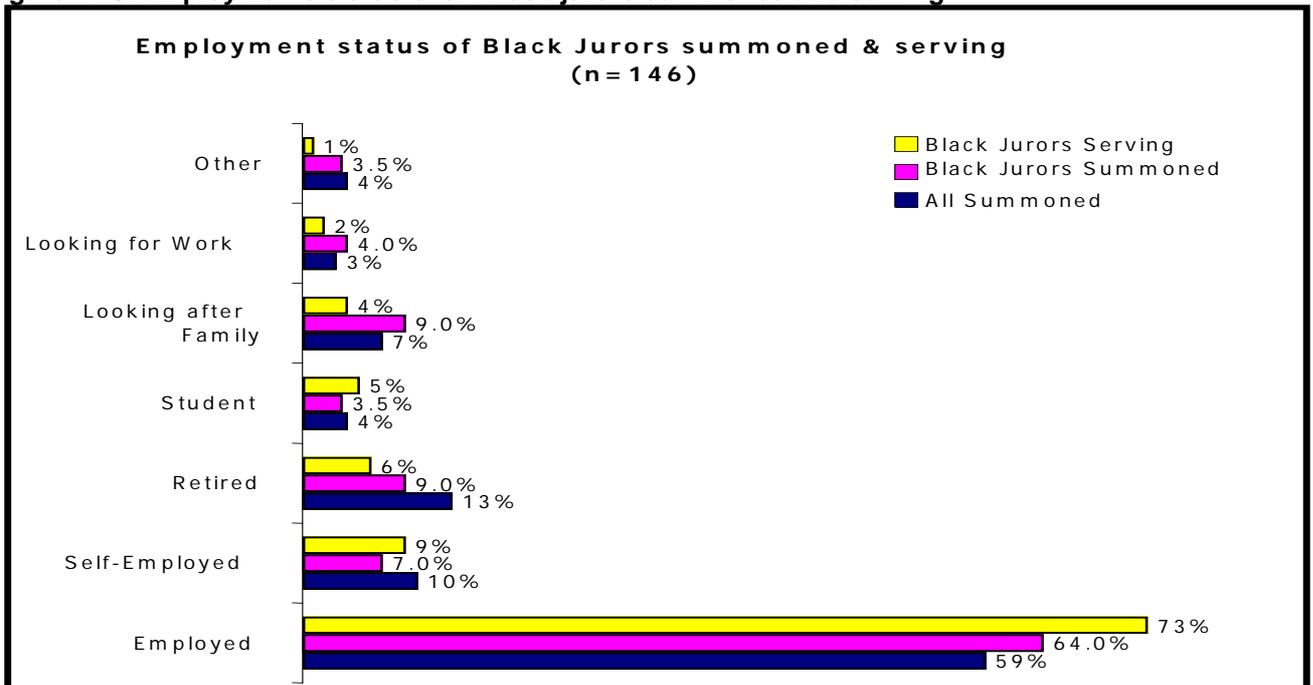


Figure 4.18 below also shows that Black summoned jurors were over-represented among those looking after family and looking for work, two groups which were less likely to serve.

Figure 4.18. Employments status of all Black jurors summoned and serving



Reasons for not serving

The survey was able to determine not just whether each summoned juror served or did not serve, but if they did not serve, it was also possible to determine the reason for not serving. The first part of this analysis looks specifically at how ethnicity affects a juror’s serving status. Figure 4.19 below shows that, for both White and BME jurors summoned, the overwhelming majority served either at the time summoned (“served”) or at a later date (“deferred”). There is no difference in the rate of excusal from jury service (28%) for BME and all jurors summoned. However, a greater proportion of those summoned from BME groups are disqualified from jury service (15%) compared to all those summoned who are disqualified (8%).

Figure 4.19. Jurors disqualified, deferred, excused and serving by ethnic group

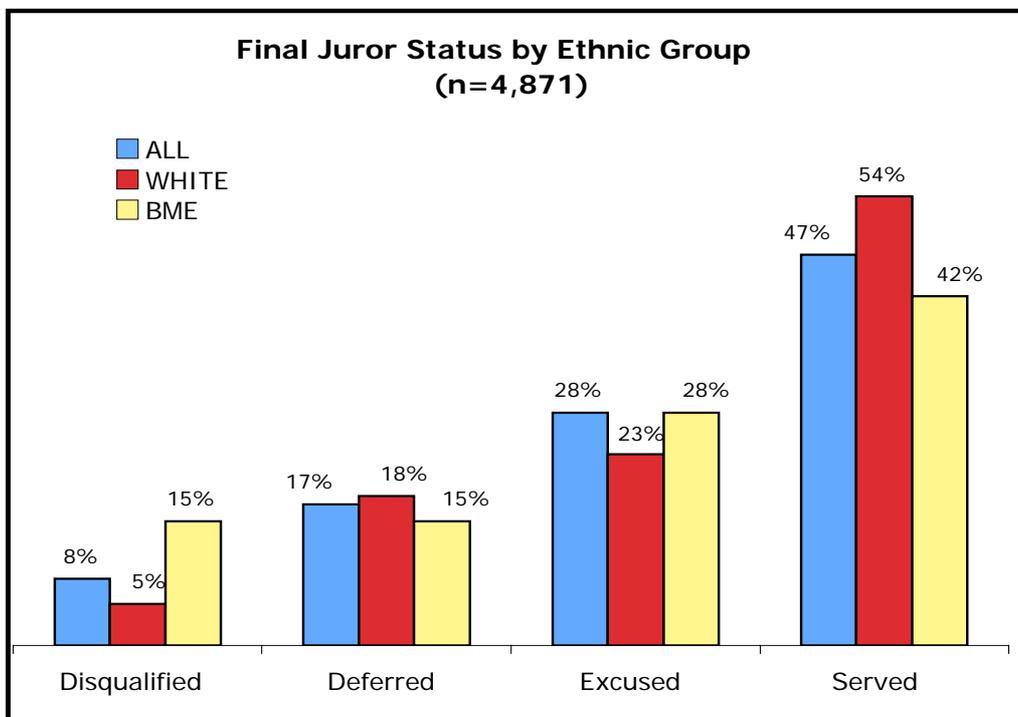
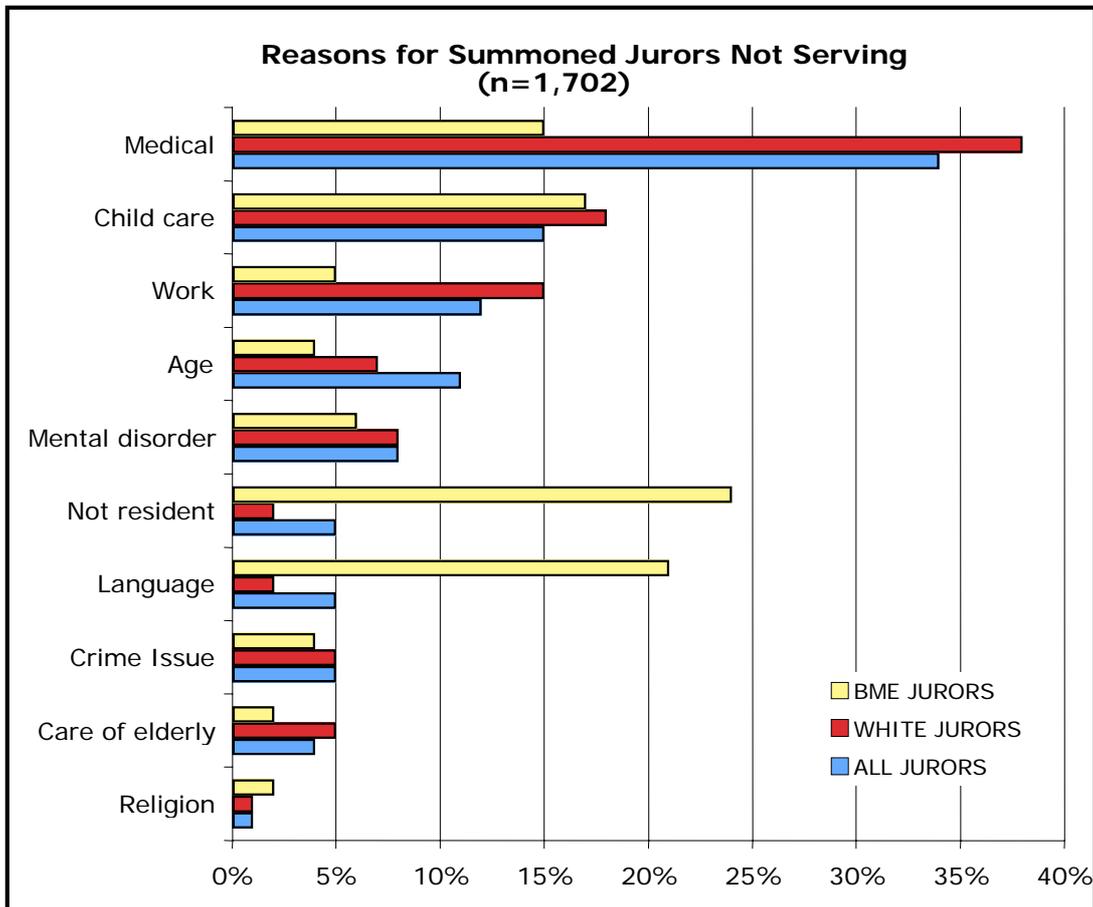


Figure 4.20 below shows that, for all those summoned who were either excused or disqualified, the largest proportion did not serve due to medical reasons (34%), child care (15%), work related reasons (12%) and age (11%). For BME jurors summoned who did not serve, the single highest proportion (24%) were disqualified because they were not resident for the required period. The next highest proportion (21%) were excused for language reasons. These are both basic qualifications for jury service, and this indicates that where BME jurors do not serve this is due to circumstances beyond their control and does not represent any unwillingness to do jury service. After this, the next highest proportion of BME jurors not serving were those with child

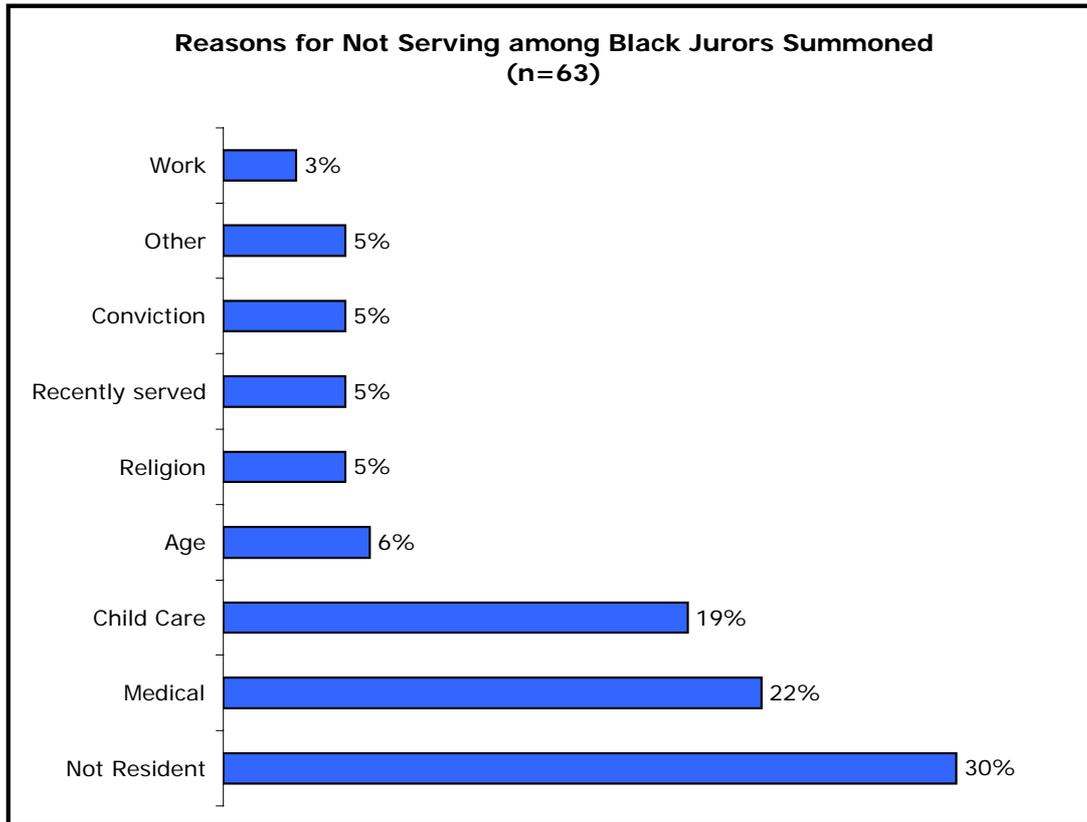
care issues (17%) and medical reasons (15%), which corresponds to the two main reasons for not serving among all those summoned regardless of ethnicity.

Figure 4.20. Reasons for not serving by ethnic group



Because Black summoned jurors were the one ethnic group where ethnicity was significant in predicting juror status, the reasons for not serving among this group of summoned jurors was examined in more detail. Figure 4.21 below shows that there are some differences between Black summoned jurors and the wider BME group in the reasons for not serving. The most prevalent reason for Black jurors not serving is disqualification from jury service as a result of not being resident for the required period. This is similar to all BME groups and, again, does not indicate any unwillingness to serve, but simply a lack of qualification to serve. However, one difference between Black jurors and other BME jurors summoned is that Black jurors do not have any substantial excusals from jury service on language grounds, unlike BME jurors more generally where this is the second most common reason for not serving.

Figure 4.21. Reasons for not serving among Black jurors summoned



In order to provide a clearer picture of why some summoned jurors served and others did not, a more detailed analysis was carried out examining the relative importance of a number juror characteristics in predicting whether summoned jurors: (1) served on the date for which they were summoned, (2) served but deferred their jury service to a later date, (3) did not serve because they were disqualified or (4) did not serve because they were excused²¹². In addition to controlling for clustering within courts, this type of analysis also takes into consideration how juror status varies on a court-by-court basis, for instance, by controlling for higher disqualification rates in certain courts that may be due to higher concentrations of people over 70 in particular court catchment areas. Because this analysis required complete socio-economic data on jurors, it encompassed a slightly smaller group of jurors than the previous analysis²¹³. The socio-economic factors were also simplified into the following groups: gender, prior jury service, ethnicity (white British vs. BME only), first language (English vs. other), economic activity (active vs. inactive only) and income (up to £19k, £20k-34k, £35k+ only).²¹⁴

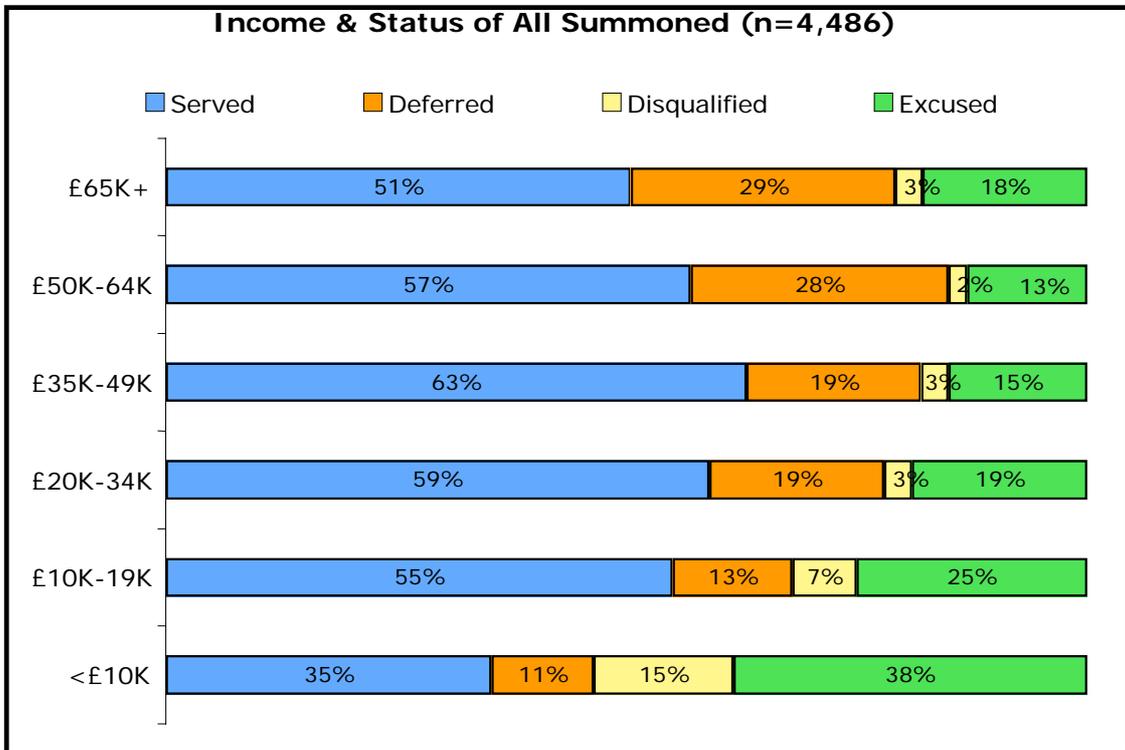
²¹² In order to look at differences between all four status groups, a multilevel multinomial logistic regression model was used. See Appendix 5 for full results.

²¹³ This meant that this analysis included 4,340 jurors, compared to the earlier multivariate analysis, which included 4,907 jurors.

²¹⁴ See Appendix 5 for the results of this regression analysis.

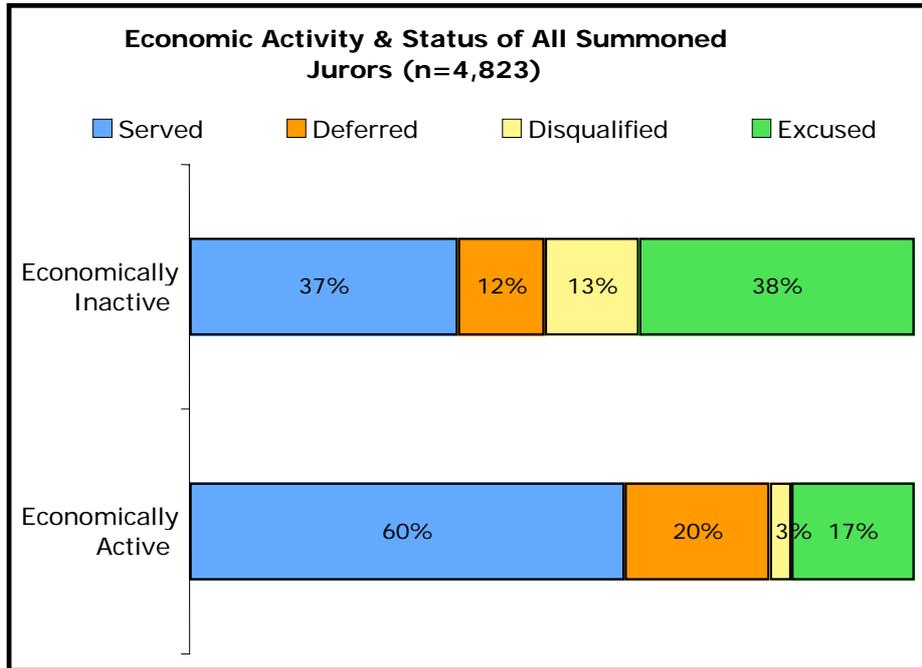
There were few socio-economic differences between those who served on the date they were summoned for and those who were deferred to another date. The one exception was income, where those with the highest household incomes (greater than £35,000) were more likely than other income groups to be deferred rather than serve (although they still served, just at a later date). Collapsing income into three groups may have diluted its impact somewhat, and Figure 4.22 below provides percentages in each status group using the original income categories. This shows that the proportion of deferred jurors rises with income, and those in the lowest income bracket (less than £10,000 per annum) were most likely to be disqualified and excused.

Figure 4.22. Income and final status of all jurors summoned



Of course, income is related to economic activity, and the analysis revealed that **economic activity is the most significant predictor of juror status**. As Figure 4.23 below shows, **the economically inactive show highly significant increases in the likelihood of being either disqualified or excused in comparison to those serving**.

Figure 4.23. Economic activity and final status of all summoned jurors



Breaking economic activity down into the individual employment categories showed particularly high percentages of disqualified among those who were retired (13%), looking for work (15%) or ‘other’ (22%). The highest percentages excused were among those looking after their families (49%) or in the ‘other’ category (49%), the majority of whom are long term sick.

Ethnicity and first language simultaneously had a significant impact upon status, though in slightly different ways. **Not having English as a first language led to far higher percentages of both disqualification (17%) and excusal (32%) compared to those serving. But ethnicity alone only had an impact on disqualification, not excusal.** Among summoned BME jurors, 13% were disqualified and 46% served compared to White jurors where 5% were disqualified and 55% served. This greater tendency for summoned BME jurors to be disqualified was statistically significant even when controlling for language. **What is clear here is that where summoned BME jurors are more likely not to serve than White jurors this is because they are more likely not to meet juror eligibility criteria (for instance by not being resident for the required period). This does not demonstrate any unwillingness to serve on the part of BME groups summoned for jury service, only an inability to meet the requirements for jury service.**

Finally, while the earlier multilevel analysis showed that gender was not a significant determinant of whether someone served or did not serve, this analysis showed that there were significant differences in the reasons why men and women do not serve. Men were significantly more likely than women to be disqualified, while women were significantly more likely than men to be excused from jury service. The earlier analysis showed that the second most common reason for granting excusals from jury service is child care, and it is therefore not surprising that women are more likely to be excused from jury service than men.

All of this illustrates that ethnicity is not the key factor in whether a summoned juror serves or not. Whether a summoned juror is economically active or not is the single most significant factor related to whether that juror will serve. Ethnicity on its own only had an impact on disqualification, not excusal, from jury service. This in turn does not demonstrate any unwillingness to serve on the part of BME jurors summoned for jury service, only an inability to meet the requirements for jury service.

Changes to juror eligibility

In 2004 new juror eligibility rules came into effect²¹⁵, and it was possible to analyse the impact of these changes on the representative nature of those doing jury service. In addition to the main summoning survey conducted in 2005 after the new rules came into effect, the project had conducted an identical summoning survey in 2003. The 2004 rule changes reduced the grounds for excusal (e.g., aged between 65 and 70, member of medical profession, MP or MEP) and disqualification (e.g., member of the clergy or involved in the administration of justice) from jury service, and the analysis was able to determine what impact, if any, this may have had on the proportion of those summoned who served and more specifically what impact it may have had on ethnic minority representation among serving jurors.

Figures 4.24 and 4.25 below show the proportion of all those serving, deferred, disqualified and excused from jury service in the 2003 summoning survey and in the 2005 summoning survey, respectively. The introduction of the new juror eligibility rules clearly resulted in a substantial overall increase in the proportion of those serving (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, it resulted in disqualifications being reduced by a third and excusals falling by a quarter. The percentage of deferred remained constant.

²¹⁵ See Criminal Justice Act 2003 Chapter 44, Section 321, Schedule 33, which amended the Juries Act.

Figure 4.24. Final status of all jurors summoned in 2003 survey

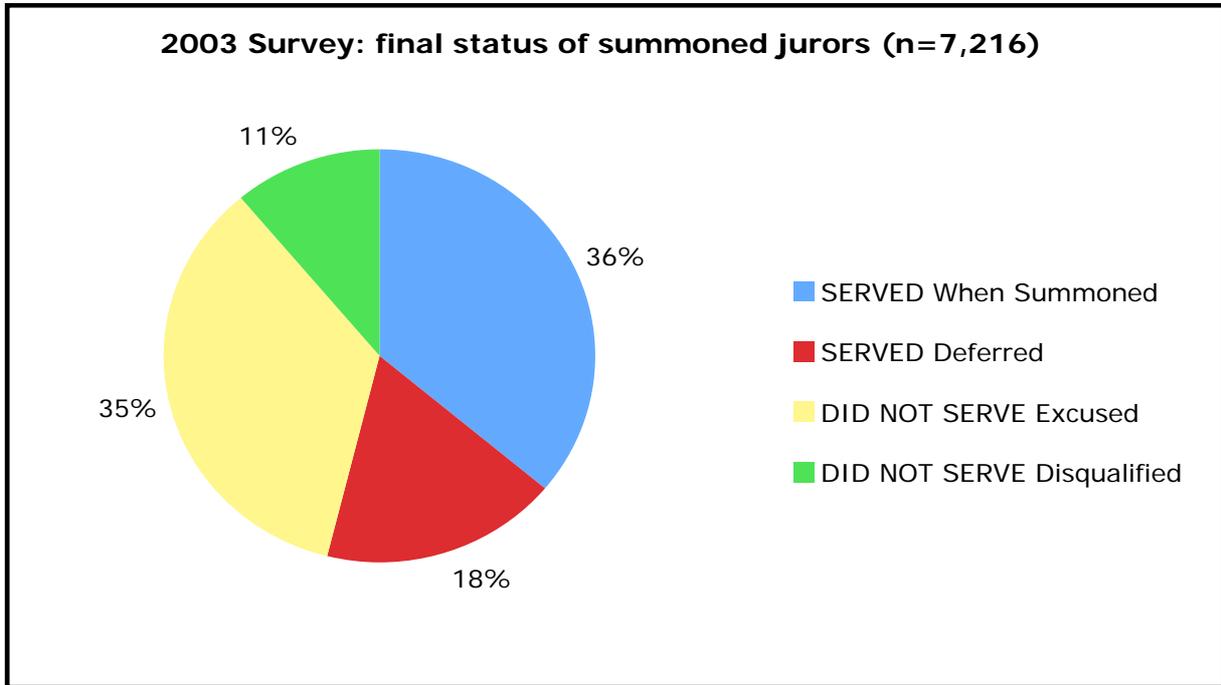
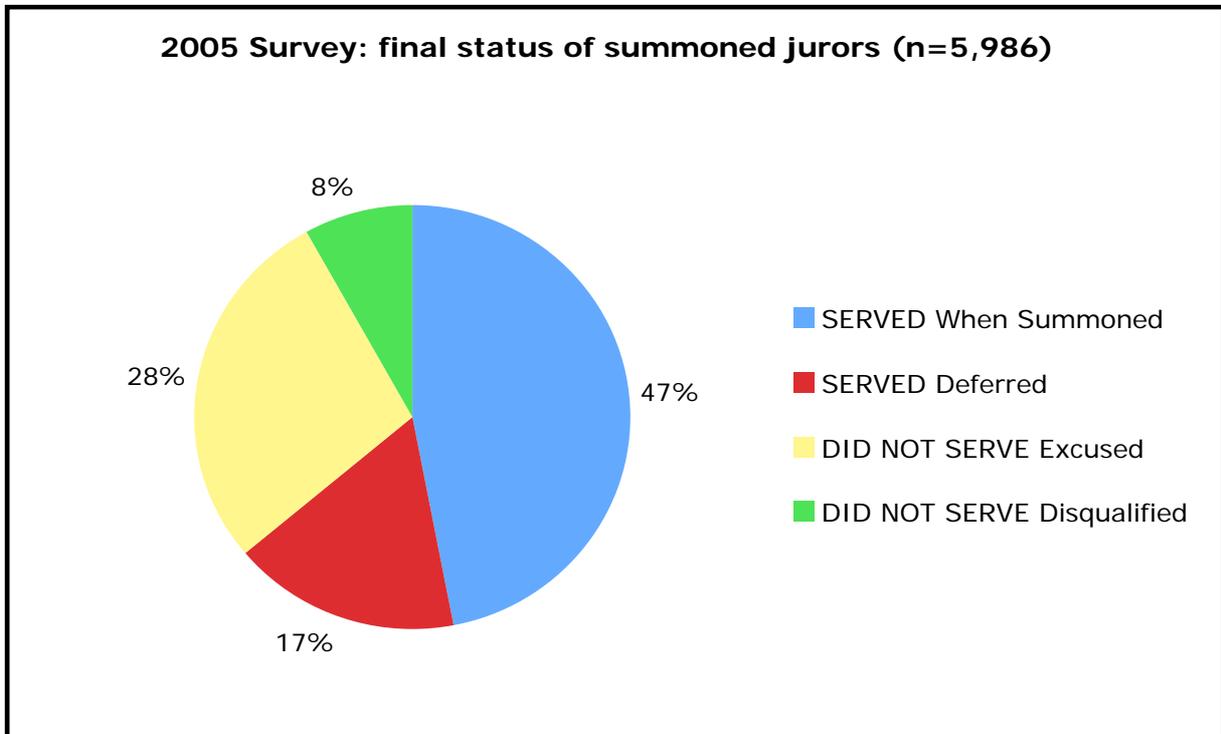
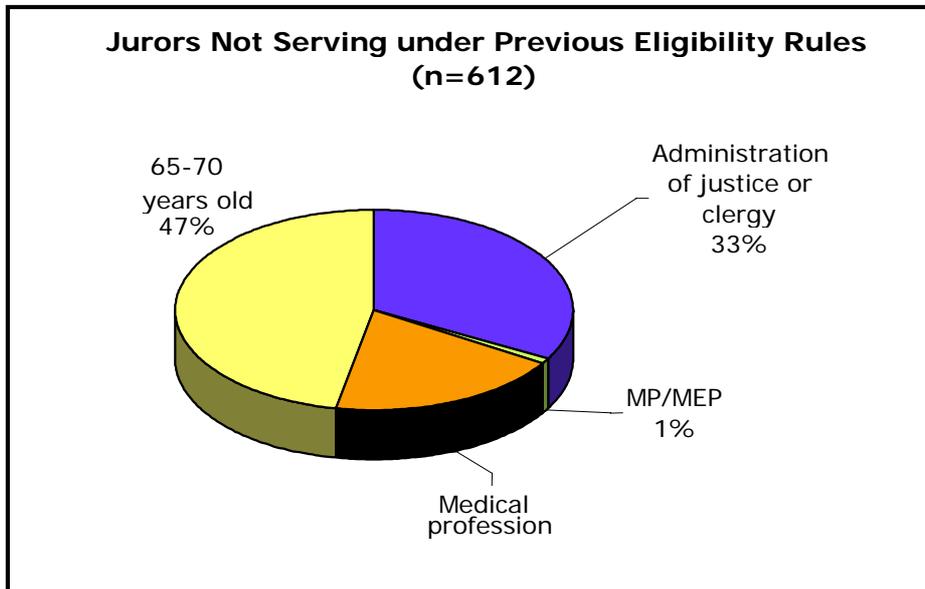


Figure 4.25. Final status of all jurors summoned in 2005 survey



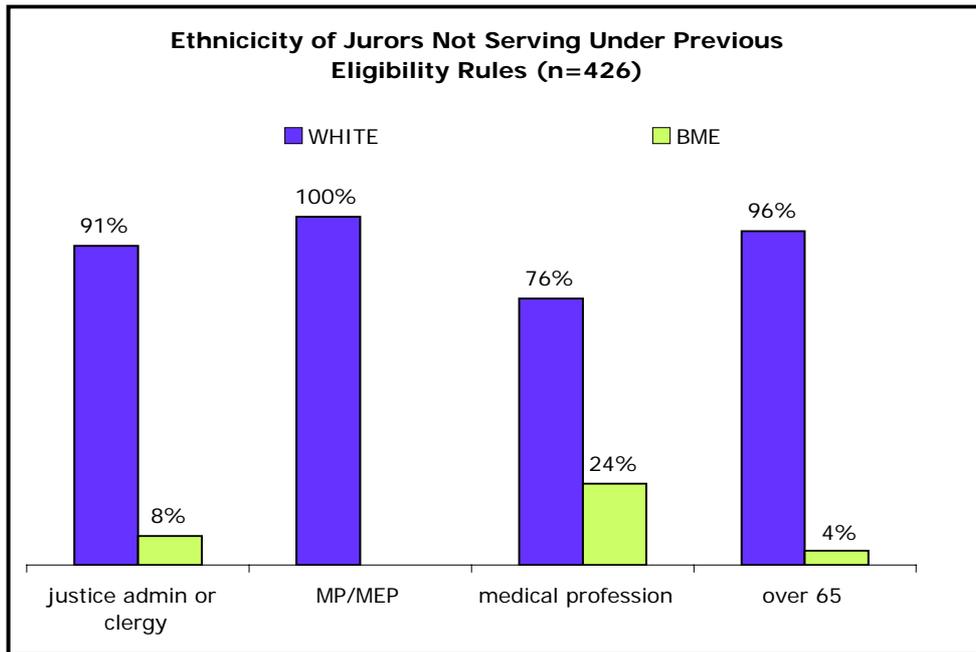
To examine whether the eligibility rule changes may have had any impact on the proportion of BME jurors summoned who served, the study examined the distribution of those who had previously been excused or disqualified from jury service in 2003 on grounds that have now been eliminated. Figure 4.26 below shows that almost half of these jurors were excused on age grounds (being between 65 and 70), and a third were those who were either involved in the administration of justice or a member of the clergy.

Figure 4.26. Proportion of jurors previously exempt from serving



As Figure 4.27 below shows, the elimination of these grounds for not serving as a juror are likely to have little impact on the proportion of BME jurors doing jury service under the new juror eligibility rules.

Figure 4.27. Ethnic background of those previously exempt from jury service



The only category where there was a substantial proportion (24%) of excusals among BME jurors under the previous eligibility rules was in the medical profession, and these make up only a small proportion (19%) of all those who would not now be excused from service but were excused in the 2003 survey. In actual numbers, this amounted to only 20 BME jurors summoned for all Crown Courts in the one week in 2003 who did not serve under the old eligibility rules. Therefore, while the introduction of the new juror eligibility rules has substantially increased the proportion of all those summoned who serve, the impact on ethnic minorities has been minimal.

Irish and Welsh representation

It is also important to consider differences in juror representation among those who classified themselves in the “White” ethnic group. Two specific groups falling within the White classification where issues of juror representation may be of particular importance are the Irish and the Welsh. In the context of the criminal justice system, it has been argued that the recent history of miscarriages of justice involving Irish defendants means that the Irish need to be considered as a separate ethnic (or national) group which may have particular concerns about the fairness of the legal process. The following provides a brief analysis of Irish representation in the summoning process and among serving jurors, and what this may suggest about their willingness to do jury service. The analysis of Welsh-speaking representation in the jury process has been carried out in light of the government’s recent consultation paper on the

introduction of bilingual jury trials in Wales. At present any witness can give evidence in Welsh in a Welsh Crown Court, but there is no right to a bilingual jury²¹⁶. The possibility of introducing the right to opt for a bilingual jury raises the question of whether sufficient numbers of Welsh-speaking jurors are summoned to sustain bilingual jury trials. The findings explore the extent of Welsh-speaking representation among those summoned and serving in the individual Welsh Crown Courts, and the implications this has for the introduction of bilingual juries.

Figure 4.28 below shows that Irish jurors are most likely to serve on juries in only two Crown Court regions: London and the South East. Three-quarters of all Irish jurors summoned were summoned for courts in these two regions: 53% were summoned for courts in the London region, and 22% for courts in the neighbouring South East region.

Figure 4.28. Regional distribution of Irish jurors summoned

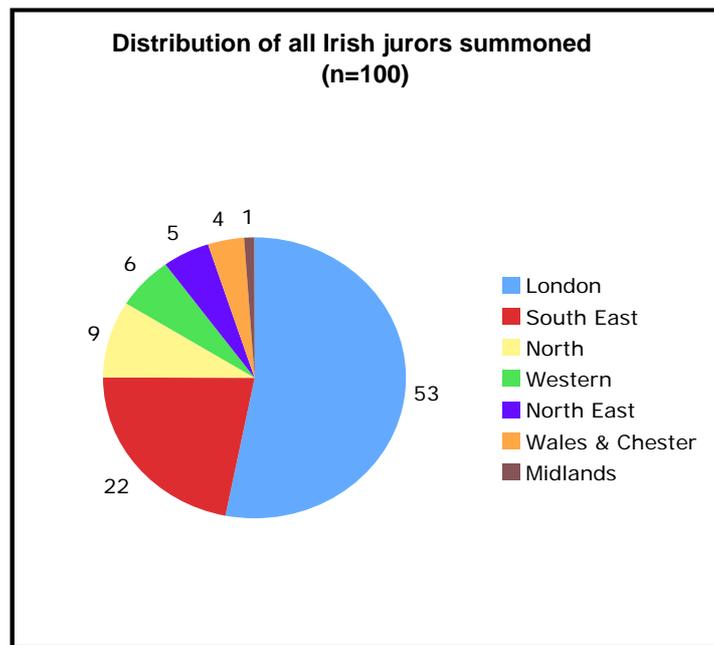
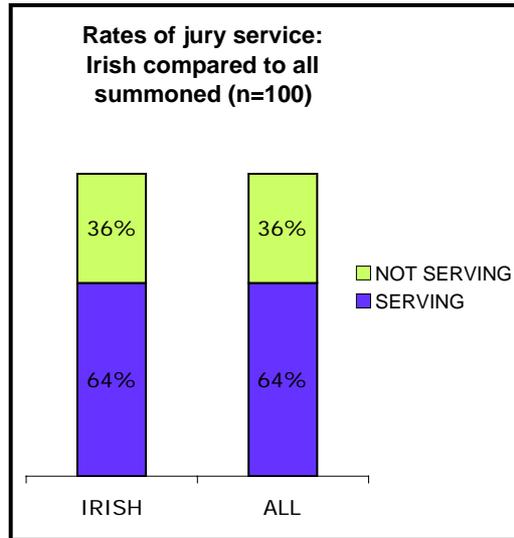


Figure 4.29 below also shows that there was no difference in the rate of jury service between all summoned jurors and those summoned who were Irish (64% of both served if summoned).

While there may remain concerns about Irish perceptions of the fairness of the criminal courts in England, the juror serving rate indicates no lack of willingness to serve among Irish jurors summoned for jury service.

²¹⁶ *Welsh Language Policy*, Court Service (2000). For a bilingual trial, all jurors would have to be fluent in both Welsh and English.

Figure 4.29. Rates of serving for Irish jurors compared to all summoned jurors



The survey results on Welsh fluency for jurors summoned for the Welsh courts suggest how feasible it may be to conduct bilingual jury trials in Wales. As Figure 4.30 and Table 4.3 below show, in one week of summoning jurors for the Welsh courts, only a small number of those summoned (31) and an even smaller number of those serving as jurors (17) in all the Welsh courts combined consider themselves fluent in Welsh. Such a low level of Welsh fluency among serving jurors indicates that conducting jury trials with a full bilingual jury would be extremely difficult to achieve, certainly on any regular basis.

Figure 4.30. Welsh fluency among all jurors summoned and serving in Wales

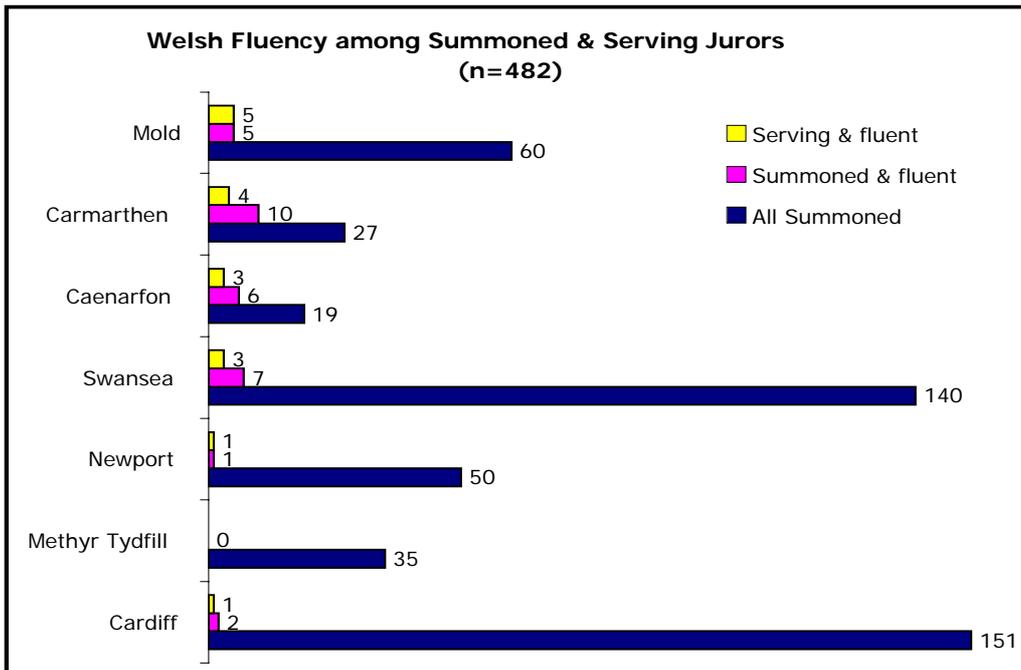
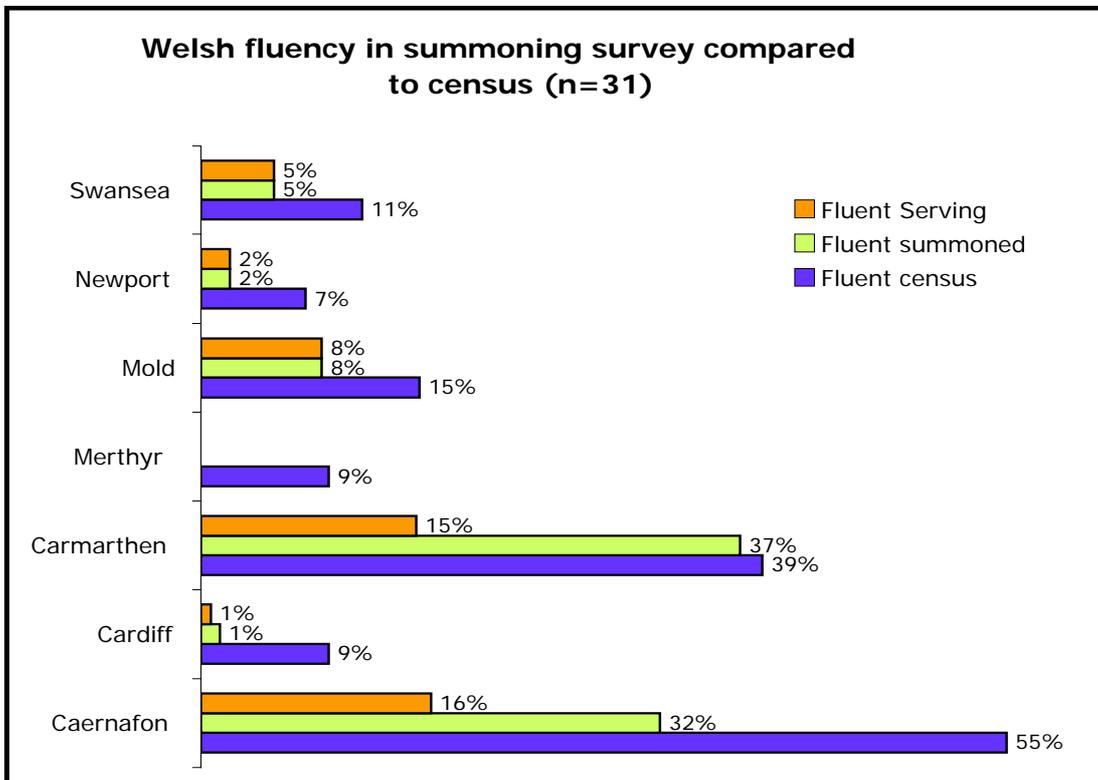


Table 4.3. Number and proportion of Welsh-speaking jurors in summoning survey for all Welsh Crown Courts combined

Total Jurors Summoned	Summoned & Fluent in Welsh	Serving & Fluent in Welsh
482	31 (6.4%)	17 (3.5%)

The findings from the summoning survey show some distinct differences in Welsh fluency levels in comparison to figures from the 2001 census. A far larger percentage of the Welsh population declared they were fluent in Welsh in the census than in the summoning survey. The census shows that 16.5% of the population in Wales speaks, reads and writes Welsh. However, as Figure 4.31 below shows, this is not reflected in the proportion of those summoned for jury service for Welsh courts who declared that they were fluent in Welsh (6.4%). It may well be that when asked to declare whether they were fluent when there may have been a possibility of having to perform an official function using the Welsh language (jury service), the respondents were less optimistic (or perhaps more realistic) about their level of proficiency in Welsh.

Figure 4.31. Welsh fluency among jurors compared to 2001 census



The government's recent consultation exercise recognised that bilingual juries would require a departure from normal summoning procedures. The results of the summoning survey confirm that it is highly likely in practice to be impossible to summon a fully bilingual jury using normal summoning procedures in any single Welsh Crown Court. Before bilingual juries can be instituted, an assessment would need to be made of the likely demand for bilingual juries, and this would need to be measured against the survey results showing the likely number of bilingual jurors available to meet this demand, along with the logistics of assembling such juries. In the survey week, summoning only produced a total of 17 serving jurors who were fluent in both Welsh and English.²¹⁷ This would be the bare minimum for a jury panel, but these jurors came from across all of Wales, and convening such a group as a jury panel would most likely be logistically and economically impractical.

Summary

For several decades it has been claimed 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 some 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 drawn²¹⁸. It 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 it²¹⁹. The systematic analysis of the representative nature of those doing jury service carried out by this study was able to determine whether any of these claims about the lack of representation among serving jurors are borne out in reality. Like the findings on summoned jurors in the previous chapter, the survey findings on who does and who does not do jury service at Crown Courts in England in Wales have revealed that most current thinking about the representative nature of jury service in this country is based on myth, not reality.

The previous chapter revealed that, contrary to popular belief, BME groups are not under-represented among those summoned for jury service in virtually all Crown Courts in England and Wales. However, not everyone who is summoned will serve. People may be ineligible, disqualified or excused from jury service, even after the government restricted the grounds for

²¹⁷ After English, the single largest linguistic group represented among serving jurors in the survey was Gujarati speakers: 44 were summoned and 21 served.

²¹⁸ Auld supra note 23, Chapter 5 paragraph 11.

²¹⁹ Ibid, paragraph 13.

ineligibility and excusal in the Criminal Justice Act 2003. There is a widespread belief that BME groups are under-represented among serving jurors, and the summoning survey was able to determine whether the proportion of ethnic minorities summoned who actually serve at each court reflects the proportion of ethnic minorities in each court's juror catchment area. It revealed that BME groups are not significantly under-represented among those doing jury service in virtually all Crown Courts in England and Wales. The only exceptions were among jurors at Manchester Crown Square, Leeds and Birmingham Crown Courts. This is a major finding, which dispels the myth that BME groups are under-represented among serving jurors.

This finding also clearly demonstrates that the process of excusal and disqualification from jury service does not significantly affect the representative nature of serving jurors. A further examination of all excusals and disqualifications from jury service also confirmed the lack of substance in a second widely held belief about jury service. Contrary to popular belief, there is no mass avoidance of jury service in England and Wales, either among all those summoned, 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 or ineligible. Among those excused, the single largest group is excused for medical reasons that prevent them from serving.

The claim that five-sixths of all Londoners avoid or evade jury service 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 to suggest that members of BME communities are unwilling to do 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, and the next largest group were excused for language reasons. Residency and language proficiency are both basic requirements for jury service, and these findings show that where BME jurors do not serve this is due in large part to circumstances beyond their control, not any unwillingness to do jury service.

In 2004, new juror eligibility rules came into effect, and summoning surveys were conducted both before (April 2003) and after (February 2005) the introduction of these new rules. Together these surveys show that the change in the eligibility rules had an immediate effect on juror participation. The new rules resulted in an overall increase in the proportion of those serving (from 54% to 64%), as well as an increase in those serving on the date for which they were summoned (from 35% to 47%). It also resulted in disqualifications being reduced by a third and excusals falling by a quarter. The only other specific effect was to double the proportion of

those serving between 65 and 69 years of age (from 3% to 6%), by removing the automatic right to be excused from jury service for this age group.

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 significant factors in whether those summoned did jury service. In doing so it exposed several more myths about jury service in this country. First, it is a myth that the middle classes and what Auld referred to as “the important & clever” manage to avoid jury service. The reality is that the vast majority of middle to higher income earners actually do jury service when summoned, and that higher income earners are in fact over-represented among serving jurors. Second, it is a myth that women, young people and the self-employed are under-represented among serving jurors. 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 self-employed were not under-represented, but in fact served in proportion to their representation in the population. This dispels the notion that the self-employed are virtually exempt from jury service. Third, it is a myth that juries are mostly made up of the retired and unemployed. The retired and unemployed are, in fact, under-represented among serving jurors, and in reality it is the employed that are over-represented among serving jurors.

The study was also able to determine whether other juror background characteristics were more significant than ethnicity in predicting whether summoned jurors would or would not serve. 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 factors²²⁰. Using the wide range of data collected from summoned jurors in the survey (on gender, income, employment status, ethnicity, religion and whether they had previously done jury service), different multi-level analyses were able to show which juror characteristics had the greatest impact on whether a summoned juror served or did not serve, and how important ethnicity is in relation to these other factors.

The gender, religion and prior jury service of those summoned had no significant impact on whether they served or not. However, there were four factors that did appear to influence whether those summoned did or did not serve: income, employment status, ethnicity and first

²²⁰ See discussion in Chapter 1 *supra* note 89.

language. Among these, income and employment status were by far the most significant. Those with the lowest household income and those who were economically inactive were the least likely to serve if summoned. Income was more likely to influence whether a juror did jury service than ethnicity among all serving BME jurors, those with the highest household incomes had the highest levels of jury service of all serving BME jurors.

In most cases, ethnicity was only relevant to whether a summoned juror served or not when ethnicity was combined with language. The only ethnic/language group where more did not serve than served was BME jurors who had a language other than English as their first language. This is not surprising, as those without a sufficient command of English are excused from jury service. There was also an increased likelihood of not serving among Black jurors summoned for jury service. However, when the socio-economic background of Black jurors was examined in more detail along with their reasons for not serving, it was clear this higher rate of not serving reflected either a lack of qualification to serve or economic difficulty in serving. The largest group of Black jurors summoned who did not serve were disqualified because they had not been resident for the required period. Most of the remaining Black jurors who did not serve were in the lowest income brackets and were economically inactive (looking after a family or looking for work), situations where all jurors (regardless of ethnicity) were less likely to serve.

Concerns about juror representation among two other specific groups, the Irish and the Welsh, were also explored. The survey found that, despite concerns about Irish perceptions of the fairness of the criminal courts in England, there was no evidence to indicate that the Irish are unwilling to do jury service. There was no difference in the proportion of Irish doing jury service compared to all others summoned. Concerns about the possible introduction of bilingual trials in Welsh courts prompted the study to also examine the level of Welsh fluency among serving jurors in these courts. The survey revealed that the normal summoning process did not produce sufficient numbers of bilingual jurors to enable trials to be conducted with fully bilingual juries in any of the Welsh Crown Courts. Summoning only produced a total of 17 serving jurors across all of Wales in one week who were fully bilingual in Welsh and English.

Chapter 5. Jurors at court: pools, panels and juries

The juror summoning survey examined in the two previous chapters was specifically designed to examine the impact of the initial stages of the juror selection process. It addressed how juror catchment areas, random selection from source lists and juror eligibility rules affect black and minority ethnic (BME) representation among those summoned for jury service. However, it was not designed to examine the representative nature of the next and final stages of the juror selection process: the creation of jury pools, jury panels and juries at court. To do so, a more in-depth study of serving jurors was conducted in a selected number of Crown Courts. This chapter presents the findings of the second main phase of the research project, which explored the extent to which those actually attending court as jurors and those selected to serve on juries were representative of the local population. The findings are based on surveys of all jurors attending court for jury service over a four-week period in three Crown Courts where there are substantial numbers of ethnic minorities in the local population.

Aims and objectives

The summoning survey revealed a number of false assumptions about who does and does not do jury service, for instance that ethnic minorities, women and younger people are under-represented among those doing jury service. The strength of the summoning survey lies in the fact that it covered all Crown Courts in England and Wales and captured all aspects of the summoning process. However, it did not provide detailed profiles of the specific groups of jurors attending each court for jury service on a weekly basis (jury pools). It encompassed a single week of juror summoning and therefore was not designed to determine whether summoning of jurors by random selection resulted in any significant fluctuations from week to week in the proportion of ethnic minorities serving at each court. It was also not designed to provide exact profiles in each Crown Court of the socio-economic background of jurors in the jury pool and on juries. Yet as the analysis of ethnic representation in the two previous chapters has demonstrated, the clearest picture of the representative nature of jury service only emerges from an individual court-based analysis. Therefore, in order to more fully understand the extent to which serving jurors are representative of the local population, a more detailed study was undertaken of those actually in jury pools and serving on juries in three Crown Courts. This jury service study specifically explored the representative nature of the last three stages of the juror selection process: the composition of jury pools, jury panels and juries.

Being in a jury pool does not necessarily mean that a juror will serve on a jury. First, the juror must be selected for a jury panel. The jury panel is the group of 13 or more jurors whose names are selected from the jury pool for a specific trial by the court's computerised random selection programme. However, being on the jury panel does not necessarily mean that a juror will serve on the actual jury. The names of each member of the jury panel are printed on cards, all jury panel members are brought into court where the court clerk shuffles the cards and reads out the first 12 names. These 12 jurors then form the jury²²¹. This final stage of jury selection (jury empanelling) is the only stage that does not involve computerised random selection of jurors. To examine the representative nature of those doing jury service and serving on juries, the study addressed three main questions:

1. How representative are jury pools in relation to the population in the juror catchment area for each court?
2. What proportion of BME jurors are selected for jury panels and serve on juries in each court?
3. Does final jury selection in open court indicate any bias against BME jurors?

The study

The final stages of juror selection were examined in detail at three separate Crown Courts: Blackfriars, Reading and Manchester Minshull Street. These three courts were selected because they are all High Ethnicity Courts²²²; that is, courts where BME groups comprise a substantial proportion of the population in the juror catchment area²²³. Blackfriars has the highest overall BME population (33%) of the three courts, while Reading and Manchester Minshull Street courts have very similar BME population levels (10% and 11% respectively). However, the ethnic population profile for each court's juror catchment area is different. Figures 5.1 – 5.3 below show the distribution of BME groups throughout each court's catchment area²²⁴.

Blackfriars Crown Court is a busy inner London court, with a highly mixed urban ethnic population throughout the court catchment area. The Black community comprises the single largest BME group in the catchment area (15%), and this is almost evenly split between Black

²²¹ Unless the judge excuses a juror from the case or there is any challenge to a juror, which is rare.

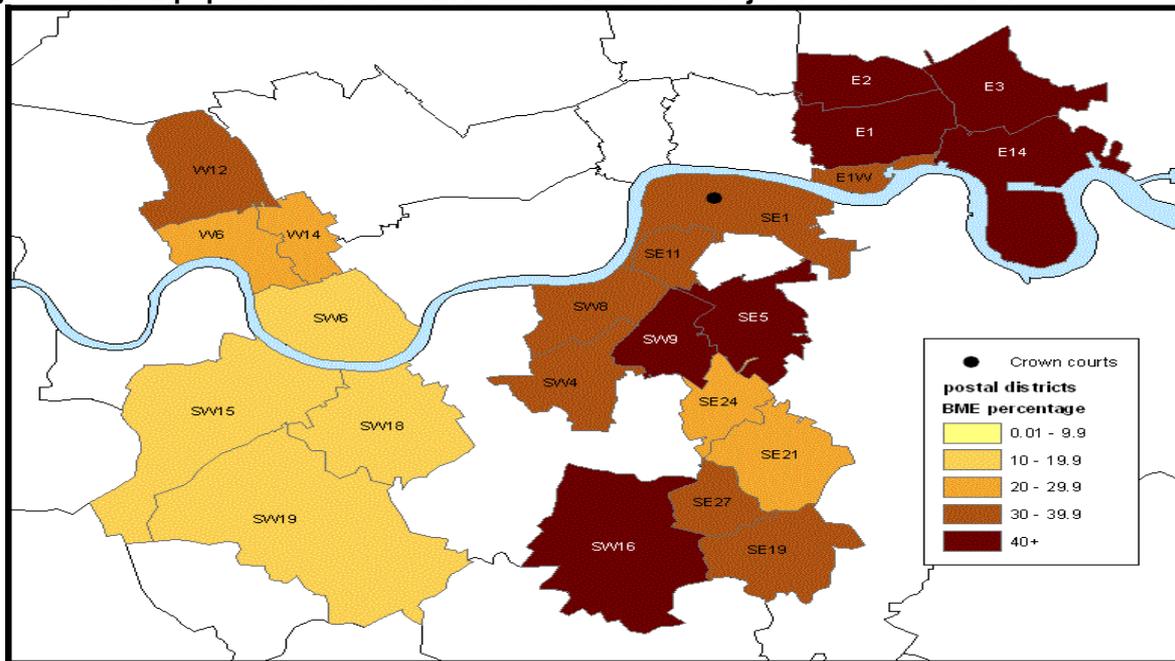
²²² See discussion of High Ethnicity Courts in Chapter 3.

²²³ There are some very minor differences in the juror catchment area populations for Reading and Manchester Minshull Street in this study compared to the 2005 summoning survey, due to the fact that some adjustments to the catchment area postcode districts for these two courts were made from 2003 to 2005. The 2003 BME population in the Manchester catchment area was 10.8% but 10.5% in 2005, and the 2003 BME population in Reading was 10.2% compared to 10% in 2005.

²²⁴ These figures show court catchment areas in 2003 when the study was conducted.

Africans (7%) and Black Caribbeans (6%). There is also a large Asian population (12%), which is predominantly Bangladeshi (8%). Reading Crown Court is a provincial court in the South East, with a juror catchment area encompassing several large Asian populations in Reading and Slough, but also a predominantly White suburban and rural population. The Asian community comprises the single largest BME group (6%), which is predominantly Indian (3%); the Black community comprises only 2% of the overall population. Manchester Minshull Street is a northern inner city court with a mixed urban, suburban and rural juror catchment area, including large pockets of BME populations in both Manchester and Oldham. While there is a similar mix of Asian and Black ethnic groups to Reading (6% Asian, 2% Black), in Manchester the Asian population is predominantly Pakistani (4%), with all other Asian groups comprising less than 2% of the population.

Figure 5.1. BME population levels in Blackfriars Crown Court juror catchment area



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The study was conducted over consecutive weeks at each of the three courts between January and November 2003²²⁵. Each week at each Crown Court in England and Wales a new pool of jurors begins jury service. Most jurors serve for two weeks, so in any one week two jury pools overlap with each other. Collecting juror background data over consecutive weeks meant that as complete a picture as possible could be developed of jurors in the jury pools, selected for jury panels and serving on juries. A juror survey collected socio-economic data from jurors in each new jury pool²²⁶. The juror profile form was almost identical to the questionnaire used in the summoning survey, and Table 5.1 below summarises all the demographic information requested from serving jurors.

Table 5.1. Information requested from serving jurors in jury service study

Juror number
Date of birth
Gender
Prior jury service
Employment status
Occupation
Household income
Ethnic group
Religion
First language

It was crucial that the surveys achieved as high a response rate as possible in each court in order to accurately assess how representative jury pools were in relation to the local population in the juror catchment area for each court, and to examine the composition of subsequent jury panels and juries. There was an extremely high response rate to the survey in all three courts, indicating a high level of reliability in the results. Almost all jurors attending court at Manchester Minshull Street (96%) and Reading (93%) Crown Courts completed a juror profile questionnaire. The response rate was slightly lower at Blackfriars Crown Court (86%), but even this rate is high for such surveys²²⁷ and for surveys conducted in London where response rates are often lower than the national average. For all three courts, the high response rates enabled the study to

²²⁵ The study was conducted over 6 weeks at Blackfriars, and 4 weeks at Reading and Manchester Minshull Street. The first 3 weeks at Blackfriars served as a pilot to determine the most effective way of achieving a high response rate to the survey. Therefore, all results presented in this chapter for Blackfriars cover the last 3 weeks of the study only, where the most complete information on the jury pools exists.

²²⁶ In most cases this was a Monday, but where courts were using split intakes of jurors over a Monday and Tuesday or Monday and Wednesday, data were collected on every day of the week that a new intake of jurors began jury service.

²²⁷ The response rate to the Court Service Users' Satisfaction Survey, for instance, averages around 30%.

construct a nearly complete picture of the ethnic and other socio-economic characteristics of the jury pools in each court.

All analysis was conducted on an individual court basis, and ONS 2001 census data were used to create individual population profiles for each court's juror catchment area for a range of factors including ethnicity, employment, occupation, income, religion, age and gender. The analysis examined whether there were any fluctuations in BME representation in jury pools on a weekly basis. Jury pools representation was then examined in more depth by comparing the religion, employment status, occupation, income, age and gender of the jury pool to the local population in each court area. This is the first time juror representation has been assessed in such precise detail in this country. In the Crown Court Study in the early 1990s, the restrictions imposed on the study prevented the researchers from carrying out such analysis (they were not allowed to identify the Crown Courts where jurors served), and they were therefore only able to make broad assessments about juror representation based on national totals. Examining the socio-economic background of jurors in such depth and on an individual court basis also meant that comparisons could be made with the summoning survey. If the trends in representation found in the summoning survey were consistently found over a number of weeks in these individual courts, this would reinforce the findings about the myths of jury service. Any distinct differences in representation in these courts compared to the survey would also highlight aspects of jury service that may be unique to individual courts.

BME representation on jury panels and on juries in these three courts was also assessed, and this analysis highlight the fact that by the time jury panels and juries are selected, a single BME juror can substantially affect the level of BME representation. Finally, the analysis explored the process of selecting individual jurors by ballot in open court. There was a suggestion that court clerks may sometimes inadvertently avoid cards where a juror's name is difficult to pronounce, and the analysis explored whether there was any evidence to support this concern and whether this was more likely to occur with BME jurors than with White jurors.

Ethnicity and jury pool representation

At Blackfriars BME groups comprise 33% of the local population from which jurors are summoned. In the summoning survey, 24% of serving jurors in the study week came from a BME background, but this was not a statistically significant difference. The jury service study showed that the proportion of ethnic minorities in the jury pool at Blackfriars fluctuated from week to week, to levels higher than the week of the summoning (27% in Week 1) and lower (17% and 22% in Weeks 2 and 3 respectively).

BME groups make up 10% of the juror catchment area population for Reading Crown Court, and the summoning survey found that those summoned who served from BME backgrounds were closely representative (9%). In three of the four weeks of the jury service study, BME representation in jury pools at Reading was lower than the BME population in the catchment area (6-7%), but in one week BME jurors were over-represented in the jury pool (12% in Week 2). This clearly illustrates that a small number of BME jurors can substantially affect percentages in the jury pools. In Week 2, where BME jurors were over-represented (12%), there were a total of 5 BME jurors in the jury pool, while in Week 3 which had the lowest percentage of BME jurors in the jury pool (6%) there were 3 BME jurors in the jury pool.

Similar large fluctuations in BME representation in the jury pool which reflected only small differences in actual numbers of BME jurors were also found at Manchester Minshull Street. BME groups comprise 11% of the juror catchment area for this court, and in the summoning survey jurors from a BME background were closely representative (12%). In the jury service study, however, BME jurors were under-represented in each of the four weeks, ranging from a high of 8% in Week 3 to a low of 0% in Week 4. Yet as Table 5.2 below shows, this reflects the fact that a small number of BME jurors can significantly affect BME representation levels in the jury pool. Clearly, BME representation in jury pools can fluctuate, sometimes quite substantially, from week to week. However, when juror numbers are this small, percentages can change substantially with only a very small number of jurors.

Figures 5.4 to 5.6 below illustrate the extent to which BME representation fluctuated on a weekly basis in each court.

Figure 5.4. Weekly BME representation in jury pools: Blackfriars (n=171)

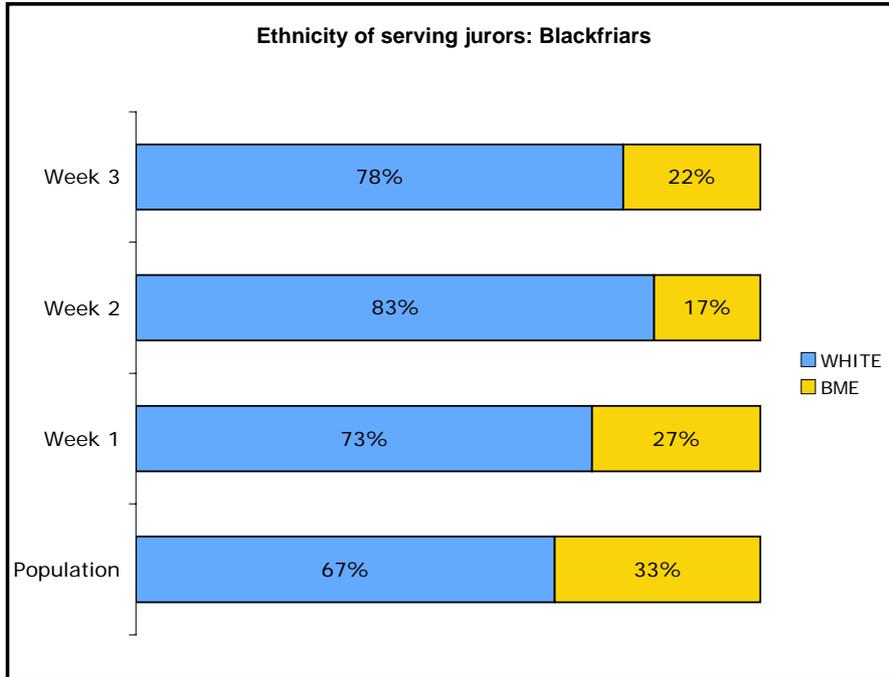


Figure 5.5. Weekly BME representation in jury pools: Reading (n=161)

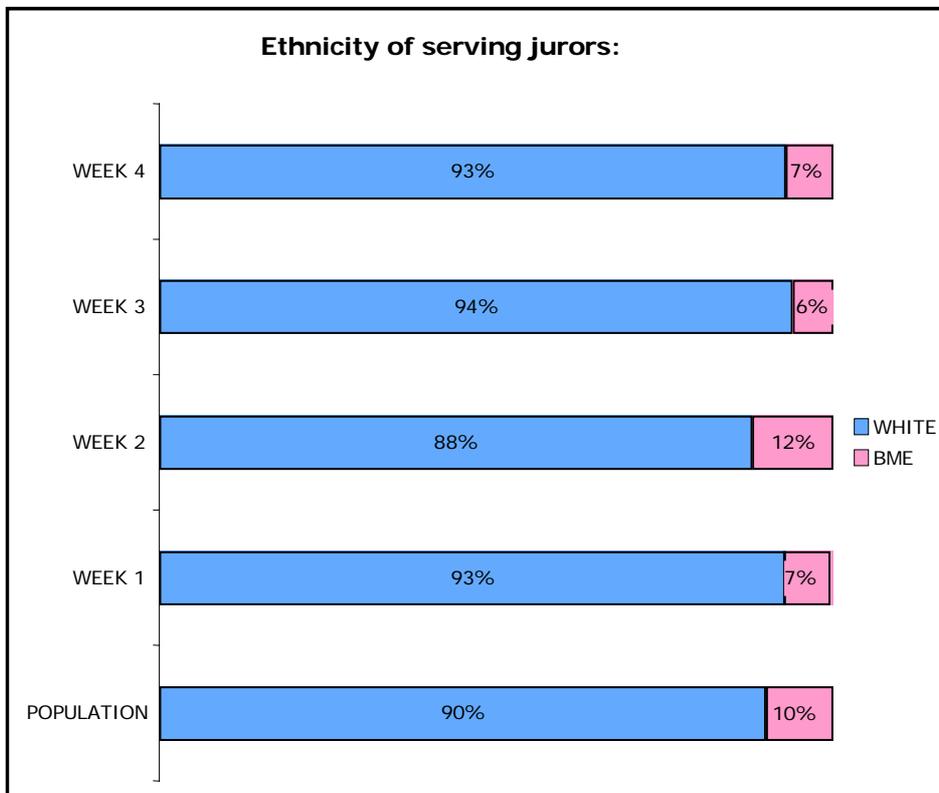
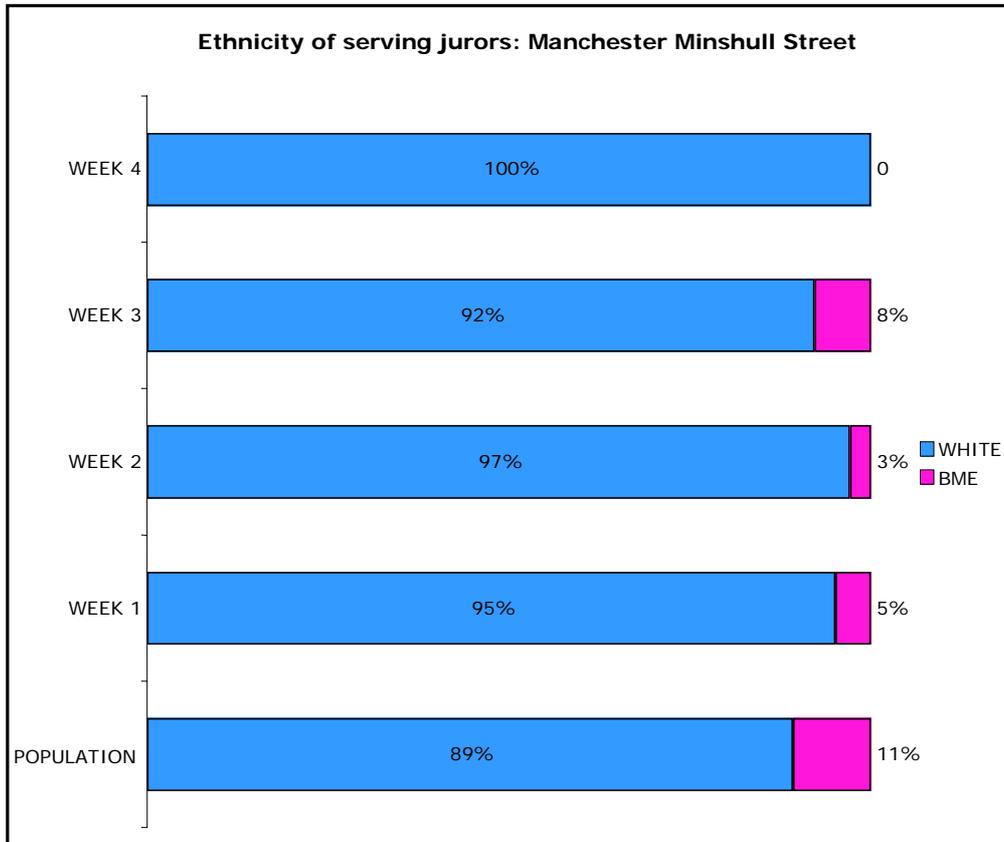


Figure 5.6. Weekly BME representation in jury pools: Manchester (n=256)



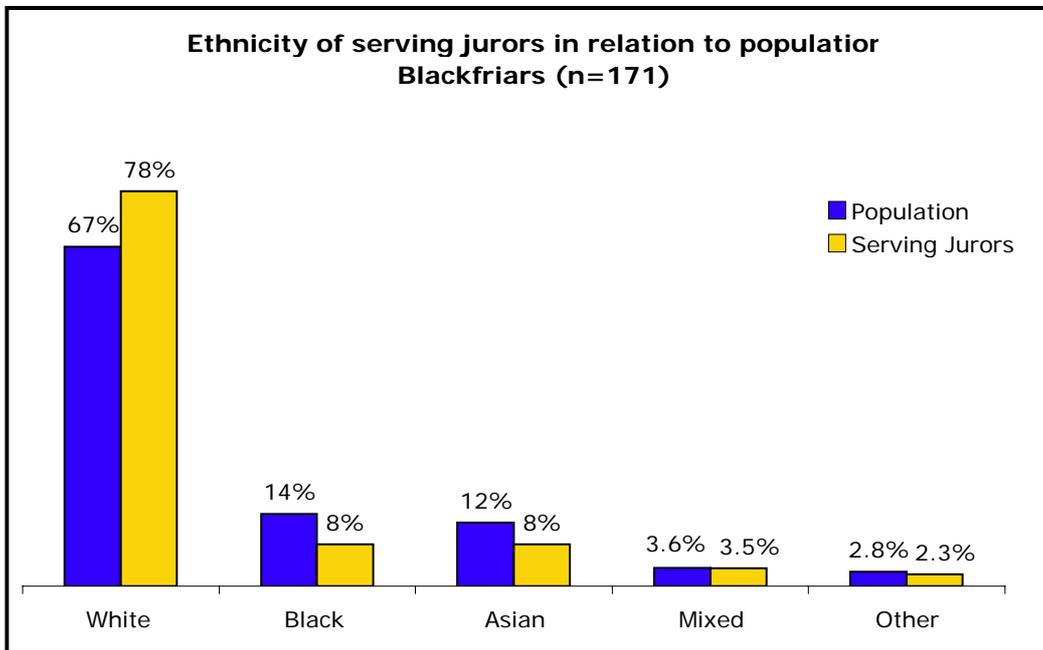
The table below shows the actual numbers of serving jurors and the number of BME jurors in each pool in each court in each week.

Table 5.2. Weekly fluctuations in BME representation in jury pools

	Blackfriars			Reading			Manchester MS		
	Jury pool	Ethnicity known	BME	Jury pool	Ethnicity known	BME	Jury pool	Ethnicity known	BME
Week 1	71	60	16	30	28	2	63	61	3
Week 2	63	53	9	42	41	5	75	68	2
Week 3	66	58	13	57	51	3	64	64	5
Week 4				45	41	3	64	63	0
total	200	171	38	174	161	13	266	256	10

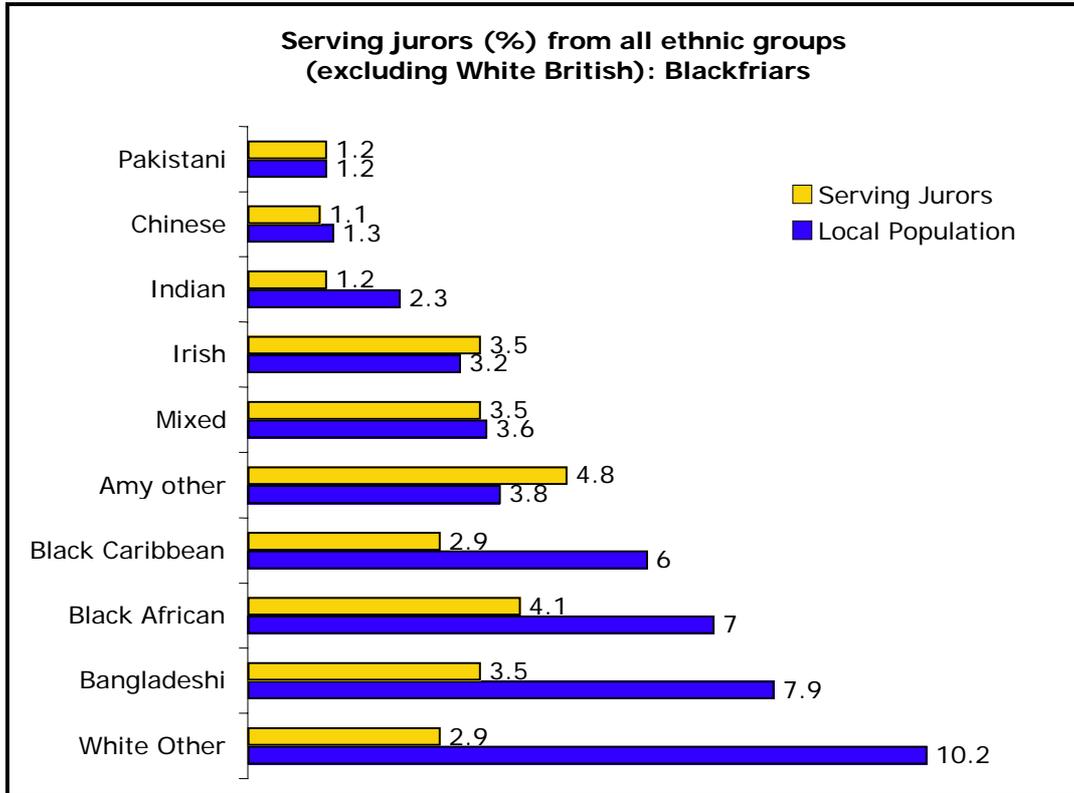
Another finding of the summoning survey and other studies of ethnicity both in the justice system and in other contexts is the need, wherever possible, to distinguish not just between White and BME groups, but between individual ethnic groups as well. Figure 5.7 below shows that, at Blackfriars, both Black and Asian jurors were under-represented among all serving jurors during the three weeks of the study, and this was made up by an over-representation of White jurors.

Figure 5.7. Ethnicity of serving jurors at Blackfriars in relation to local population



Within these five main ethnic groups, those jurors describing themselves as White British were over-represented (71%) in relation to their representation in the Blackfriars juror catchment area (53%). The four largest groups in the Blackfriars catchment area outside of the White British group (White Other, Bangladeshi, Black African, and Black Caribbean) were all under-represented, but the remaining ethnic groups were almost all represented in relation to their representation in the local population (see Figure 5.8 below). The highest margin of under-representation was among those classifying themselves in the White “other” category (under-represented by two-thirds). Both of the main Black ethnic groups were under-represented in the jury pools: Black African jurors were under-represented by a third, and Black Caribbeans by half. Among Asian jurors, Bangladeshis had the highest level of under-representation: they comprise 8% of the local population in the juror catchment area but only 3.5% of jurors during the study period. Indians and Pakistanis comprise much smaller proportions of the local population, and while there was some under-representation of Indian jurors, Pakistani jurors were exactly represented.

Figure 5.8. Proportion of serving jurors at Blackfriars from all ethnic groups (except White British)



At Reading Crown Court, Figure 5.9 below shows that serving closely reflected the five main ethnic groups in the local population. Asians comprise the largest BME group in the juror catchment area, and were closely represented among serving jurors.

Figure 5.9. Ethnicity of serving jurors at Reading in relation to local population

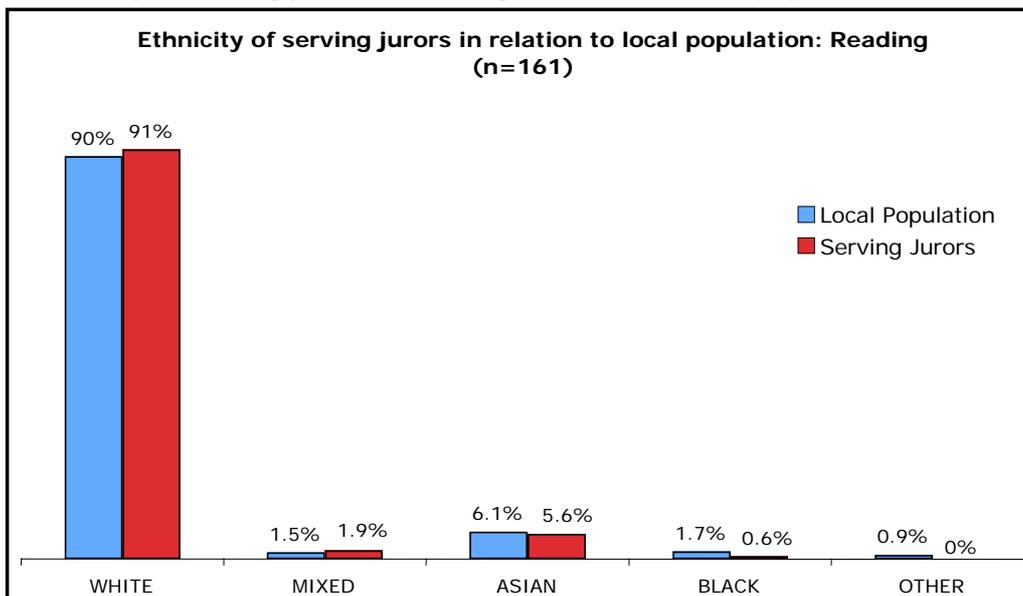
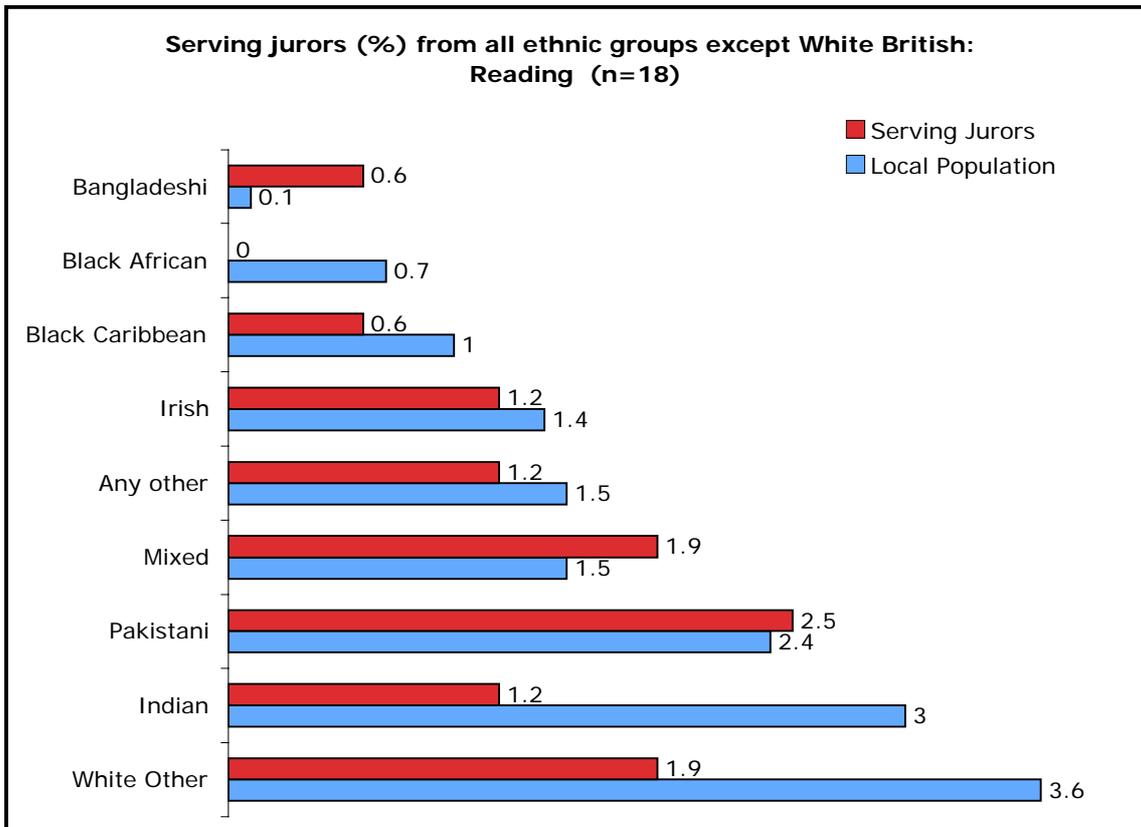


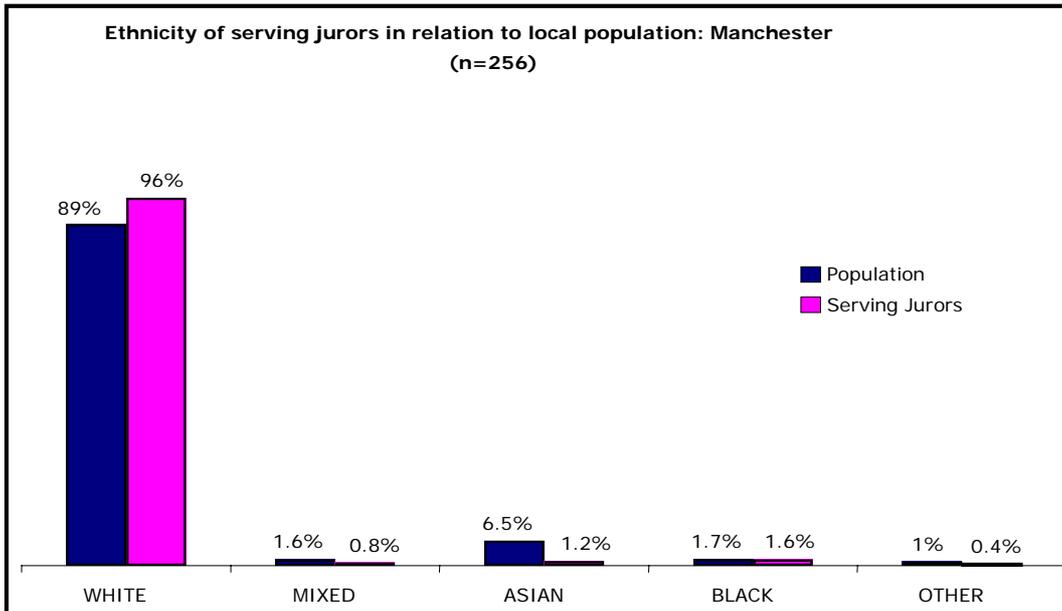
Figure 5.10 below illustrates that among the largest ethnic groups in the Reading catchment area outside of the White British group, the White Other group and Indians were under-represented but that Pakistani jurors were almost exactly represented in relation to the local Pakistani population. All other groups comprised only a very small proportion of the local population, and were generally representative, although this translated into only very small numbers of possible jurors.

Figure 5.10. Proportion of serving jurors at Reading from all ethnic groups (except White British)



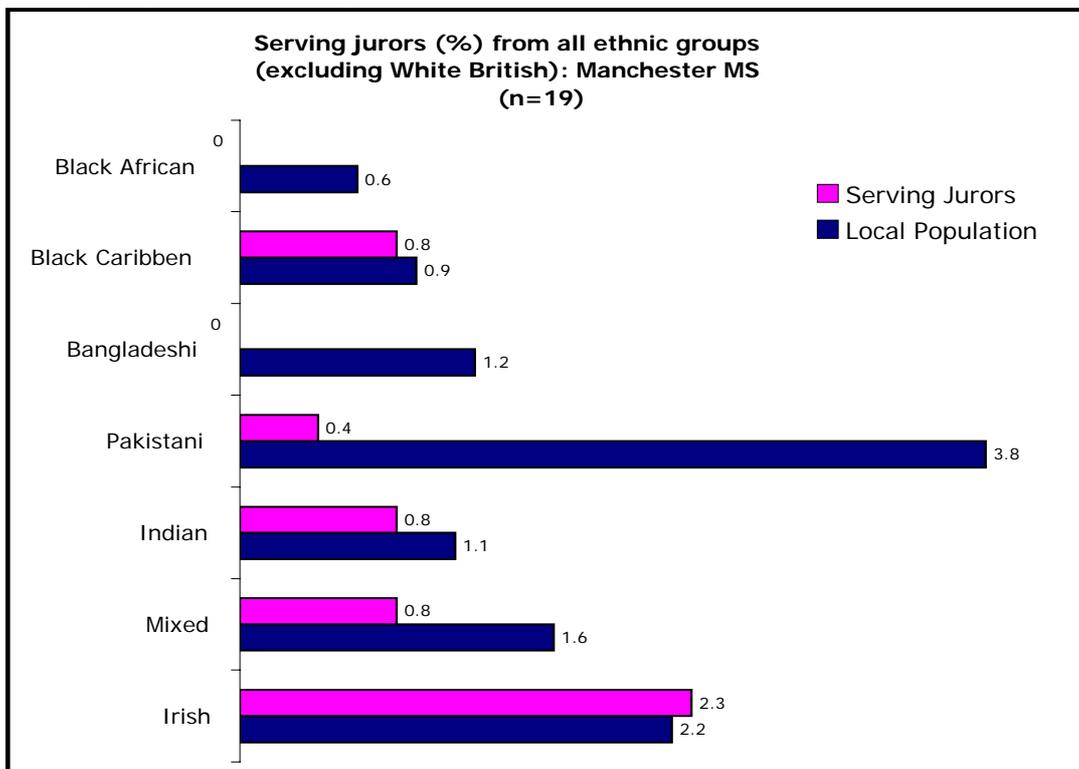
At Manchester Minshull Street (see Figure 5.11 below), it is clear that Asians, which make up the largest single BME group in the juror catchment area, are under-represented among serving jurors. In contrast, Black jurors served in the jury pool in close representation to their proportion of the local population.

Figure 5.11. Ethnicity of serving jurors at Manchester MS in relation to local population



As Figure 5.12 below shows, the Asian population in the Manchester Minshull Street catchment area is primarily Pakistani (3.8%), and this group is the one that is most substantially under-represented in the jury pool, with only 0.4% of all serving jurors in the four-week period.

Figure 5.12. Proportion of serving jurors at Manchester MS from all ethnic groups (except White British)



All the other ethnic minority groups comprise only a very small proportion of the local population, and in these cases only one or two jurors can substantially affect the percentages.

This under-representation of Pakistani jurors at Manchester Minshull Street reinforces the study's wider finding that the representative nature of jury service can only be understood on an individual court basis, and that the dynamics of ethnic group populations in individual court catchment areas must always be taken into consideration in assessing representation among serving jurors. The under-representation of this one ethnic group in Manchester mirrors the summoning survey finding for Birmingham Crown Court²²⁸, where Pakistanis make up the single largest BME group and are clearly under-represented among serving jurors. However, at Reading and Blackfriars Crown Courts, Pakistani jurors are either over-represented or equally represented in relation to their representation in the local population.

The summoning survey found that where BME groups are more likely not to serve than serve this is because they are more likely not to meet juror eligibility criteria (usually because they have not been resident for the required period or due to language difficulties). Even though precise statistics do not exist for the language skills of the Pakistani community in the three Crown Court juror catchment areas, there is some evidence that English literacy levels are relatively low in the Pakistani community in Oldham²²⁹, which makes up part of the juror catchment area for Manchester Minshull Street. There is also evidence to suggest that English language capabilities can differ significantly within South Asian ethnic groups, specifically that Gujarati speakers tend to have a higher command of English than Punjabi speakers²³⁰. This was reflected in the summoning survey, which found that a higher percentage of Gujarati speakers served when summoned (48%) compared to Punjabi and Urdu speakers (34% and 33% respectively). The variations in juror representation among the Pakistani communities in these three different courts are therefore likely to reflect differences in the language capabilities and residency status of the Pakistani communities in Manchester, Reading and Blackfriars.

²²⁸ See discussion in Chapter 4.

²²⁹ The Department for Education and Skills estimates that entry level English literacy skills are low in the five wards in the Oldham area (Alexandra, Coldhurst, St. Marys, St. Pauls and Werneth) with the highest ESOL populations (English for Speakers of Other Languages). See www.dfes.gov.uk/readwriteplus_skillsforlifesyurvey

²³⁰ *Improving Literacy and Numeracy: A Fresh Start*, Report of the Working Group Chaired by Sir Claus Moser, DfEE (1999) and R. Carr-Hill, S. Passingham, A. Wolf and N. Kent, *Lost Opportunities: The Language Skills of Linguistic Minorities in England and Wales*, Basic Skills Agency (1996).

Religion

In the summoning survey, Christians and Muslims were under-represented and those with no declared religion were over-represented among all those doing jury service. As Figures 5.13 to 5.15 below show, the only similar trend across all three courts in the jury service study is for those with no declared religion to be over-represented among serving jurors. Serving jurors at Manchester Minshull Street reflect the three general trends in religious representation from the summoning survey, but Reading and Blackfriars show some deviations. At Reading, Christians are under-represented but Muslims are equally represented in relation to their representation in the local population. At Blackfriars, Muslims are under-represented and Christians are over-represented.

At Manchester, where Muslim jurors were under-represented, Pakistanis were the main BME group under-represented among serving jurors, and account for most of the under-representation of Muslims among serving jurors. However, Pakistanis were not under-represented among serving jurors at Blackfriars, where Muslim jurors were also under-represented. This indicates that Muslim under-representation among serving jurors is not always related to a specific ethnic group, and it reinforces the summoning survey finding that religion on its own is not a significant factor in predicting whether someone who is summoned for jury service actually serves or not. In addition, while the proportion of Muslims under-represented at Manchester Minshull Street may seem large (0.4% serving compared to 6.5% in the population), the numbers are in fact small. If Muslims were represented each week at Manchester in direct proportion to their representation in the local population this would have amounted to 3 jurors.

Figure 5.13. Religion of population & serving jurors: Blackfriars (n=171)

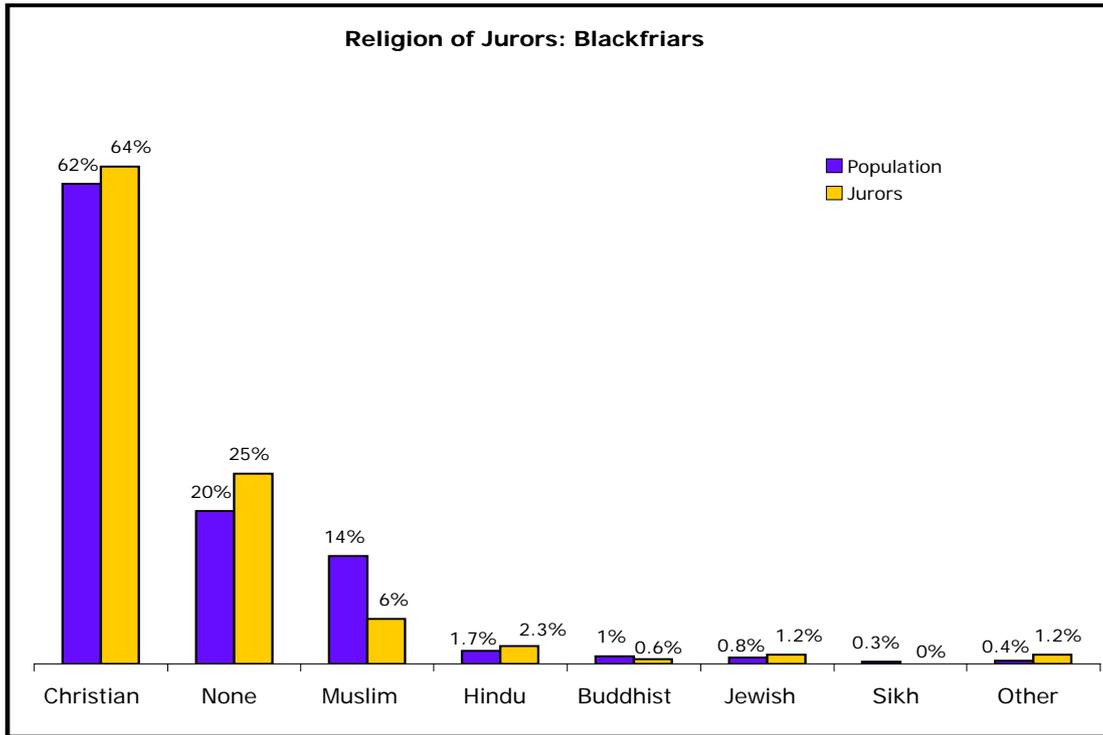


Figure 5.14. Religion of population & serving jurors: Reading (n=161)

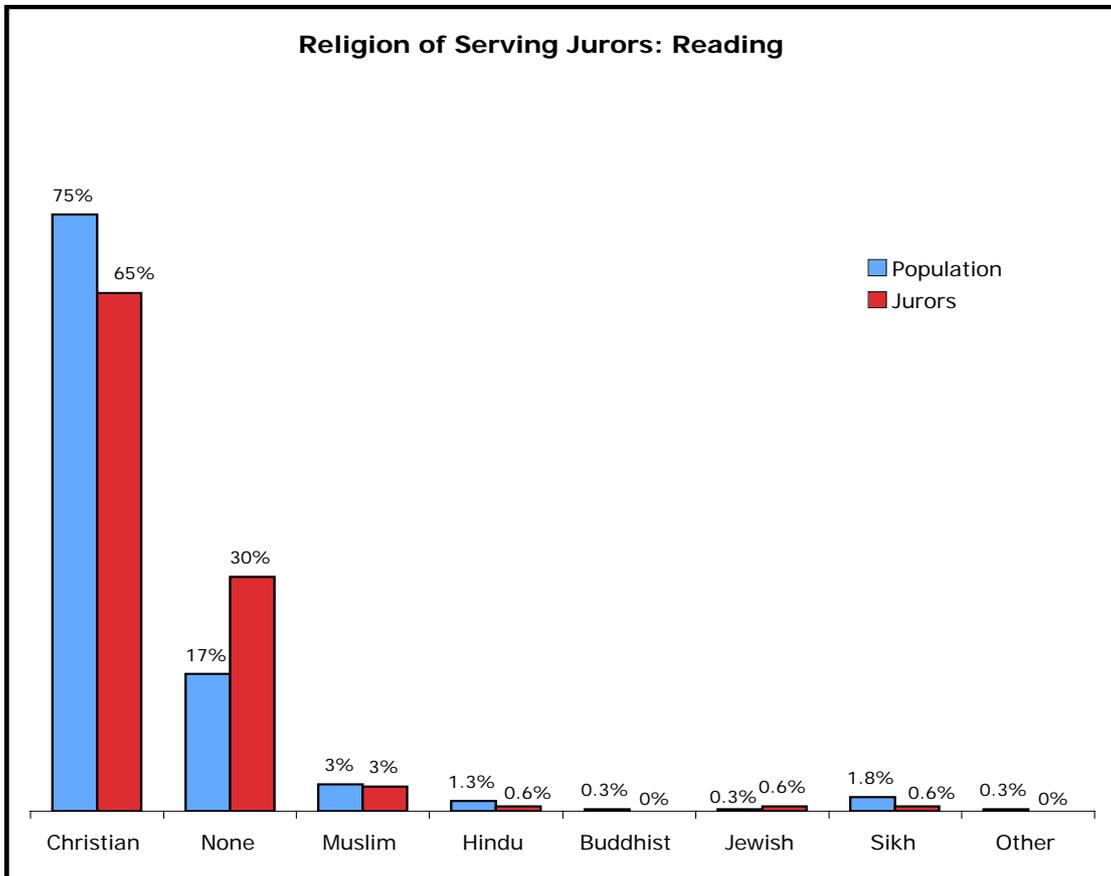
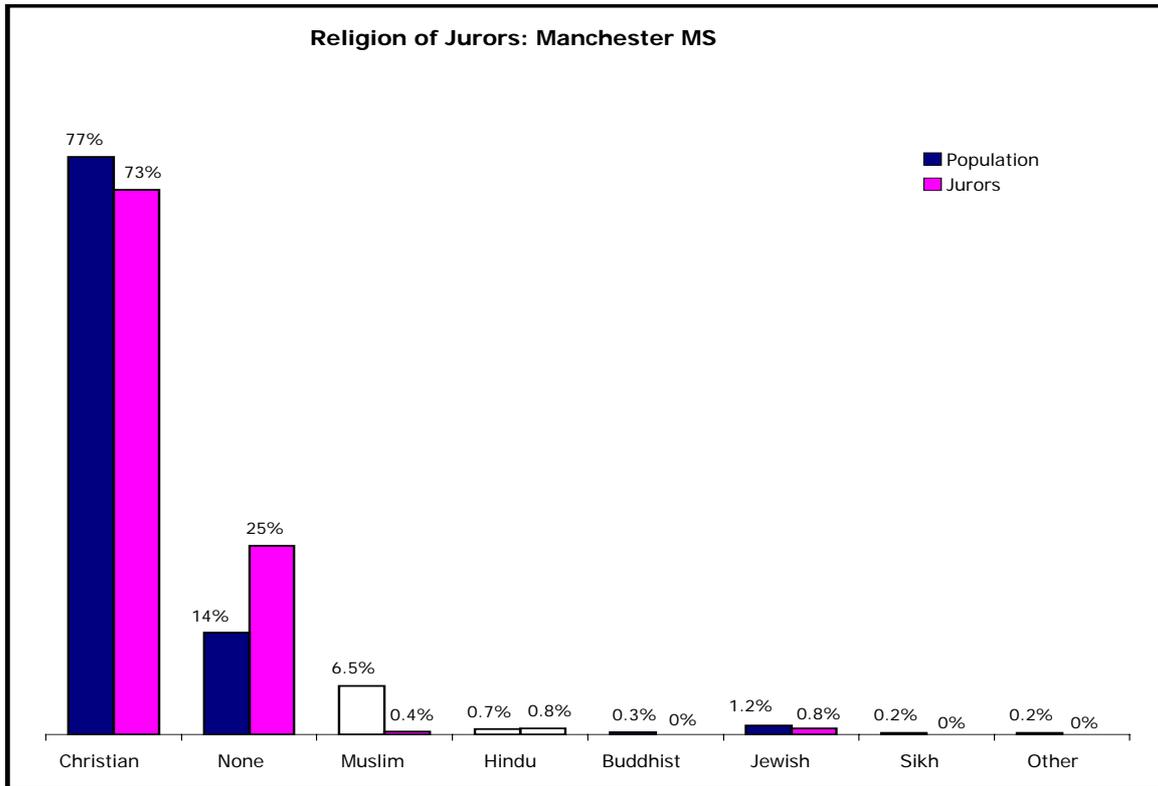


Figure 5.15. Religion of population & serving jurors: Manchester (n=254)



Employment status

It has been claimed in the past that juries are mostly made up of the unemployed and retired, and it was such sentiments which led the Auld Review to suggest that jury service was only for those not important and clever enough to get out of it. The Review also claimed that the self-employed were virtually exempt from jury service. However, the results of the summoning survey directly contradicted these claims. The survey found that the vast majority of all serving jurors (72%) in England and Wales were employed (either full-time or part-time), and that the employed were over-represented among serving jurors in relation to their representation in the population (54%). The self-employed were equally represented among serving jurors in relation to their representation in the population (9%), and all other groups (the economically inactive) were under-represented among serving jurors. Figures 5.16 to 5.18 below further dispel the myth that jury service is primarily for the unemployed and retired. The employed are by far the single largest group of serving jurors in each of the three courts and are over-represented among serving jurors in relation to their representation in each court's juror catchment area.

Serving jurors at Blackfriars mirror the overall trends found in the summoning survey for all the employment groups. But there are some individual differences in the employment status of serving jurors at Reading and Manchester, which demonstrate that employment representation in jury pools can vary from court to court. At Reading and Manchester (but not Blackfriars), the self-employed were under-represented (although not significantly). One other difference was that students were over-represented among serving jurors at Reading (7% serving but only 4% in the local population), but they were under-represented at Blackfriars and Manchester, which may reflect a lower level of residential mobility in the Reading area than in the larger metropolitan London and Manchester areas.

Figure 5.16. Employment status of population & serving jurors: Blackfriars (n=170)

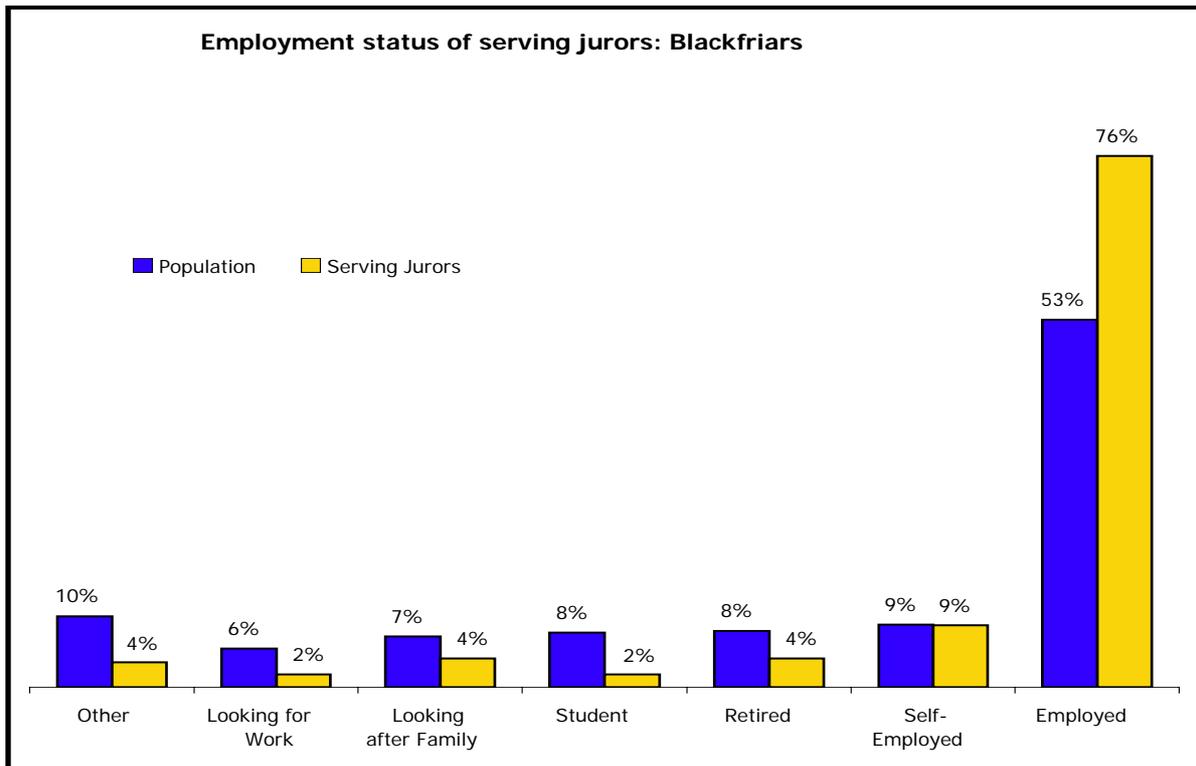


Figure 5.17. Employment status of population & serving jurors: Reading (n=161)

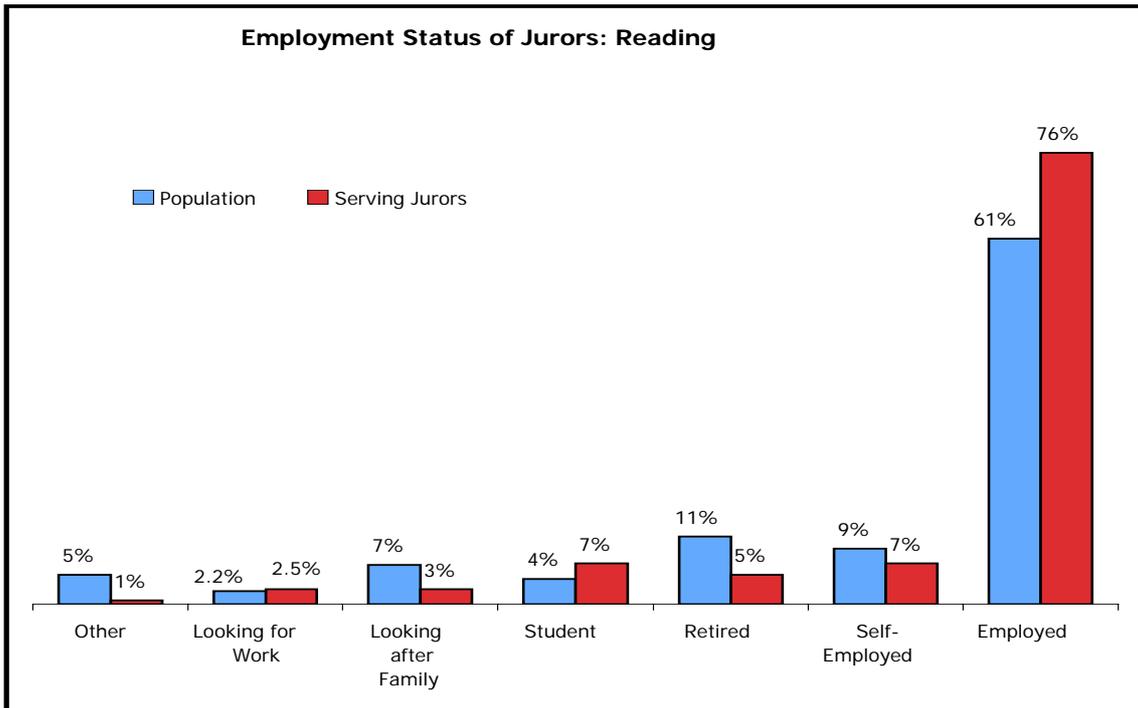
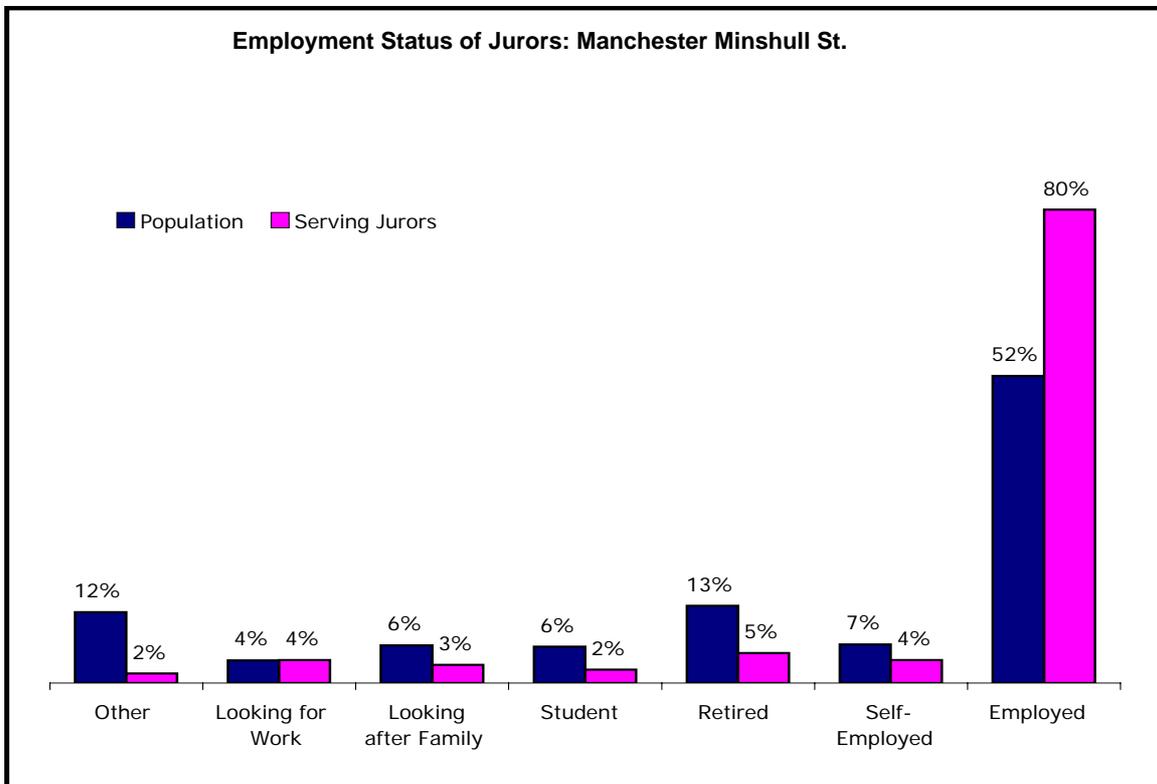


Figure 5.18. Employment status of population & serving jurors: Manchester (n=256)



Occupation

The Auld Review concluded that juries in England and Wales do not reflect the broad range of skills of the communities from which they are drawn²³¹. While the summoning survey did not cover the occupations of those summoned and serving, occupational information was requested from serving jurors at Blackfriars, Reading and Manchester Minshull Street. There are no generally agreed set of occupational categories used in population surveys in this country, but the categories used in this study closely reflect the occupational categories in published data from the 2001 census²³². Figures 5.19 to 5.21 below show that the single largest group of serving jurors at all three courts was professionals. This not only reflects the fact that professionals make up the single largest occupational group in the three local catchment areas, but further dispels the myth that “the important and the clever” manage to avoid jury service²³³. In addition, no occupational groups were significantly under-represented among serving jurors at any of the three courts, contradicting the assertion that jurors do not reflect the full range of skills in their community. One other trend in all three courts is an over-representation of jurors in the “other occupation” category, although this may simply reflect difficulties in categorising occupations into general groups, and this over-representation may account for under-representation in other groups.

The occupational profiles of the local population at Blackfriars and Reading are very similar. Professional and managerial workers comprise approximately half of all workers in the local population, and the proportion of workers in the local population decreased as occupational skill levels or status decreased. Serving jurors at both courts mirror this profile. The local population for Manchester Minshull Street has a different occupational profile, with fewer workers in the professional and managerial classes (37%), and most (41%) in the middle to lower status occupational groups. Juror representation at Manchester is also slightly more at variance with the occupational profile of the local population, with higher status workers somewhat under-represented and clerical and skilled workers over-represented.

²³¹ Auld supra note 23, Chapter 5, paragraph 11. In *Justice for All*, the government maintained that the 1992 Crown Court Study found significant under-representation on juries of those working in the service industry and skilled manual workers. *Justice for All* supra note 51, section 7.24. However, the Crown Court Study in fact concluded that the proportion of jurors in these occupations was “tolerably close” to their representation in the general population. Zander and Henderson supra note 12 p. 239.

²³² See ONS Key Statistics Table 12a Occupation Groups. The categories used on the Juror Profile Form included: Professional or Higher Technical Work, Manager or Administrator, Clerical, Sales or Services, Foreman or Supervisor of Other Workers, Skilled Manual Work, Semi-Skilled Manual Work, and Other. Examples were also given of occupations in each category.

²³³ Auld supra note 23.

Figure 5.19. Occupations of population & serving jurors: Blackfriars (n=167)

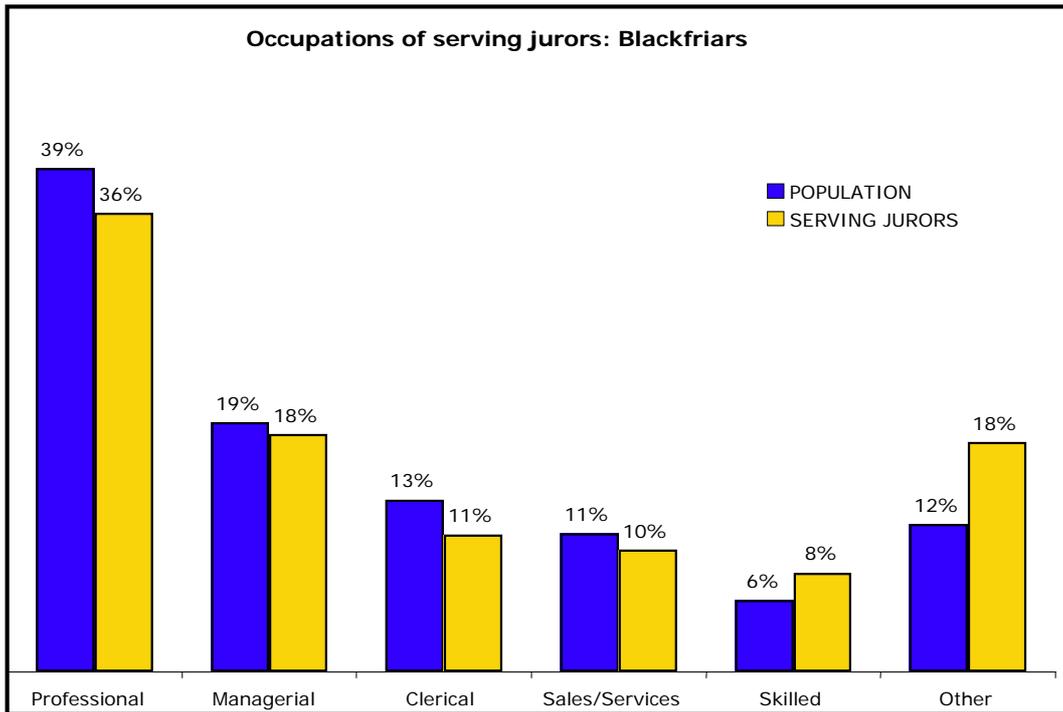


Figure 5.20. Occupations of population & serving jurors: Reading (n= 158)

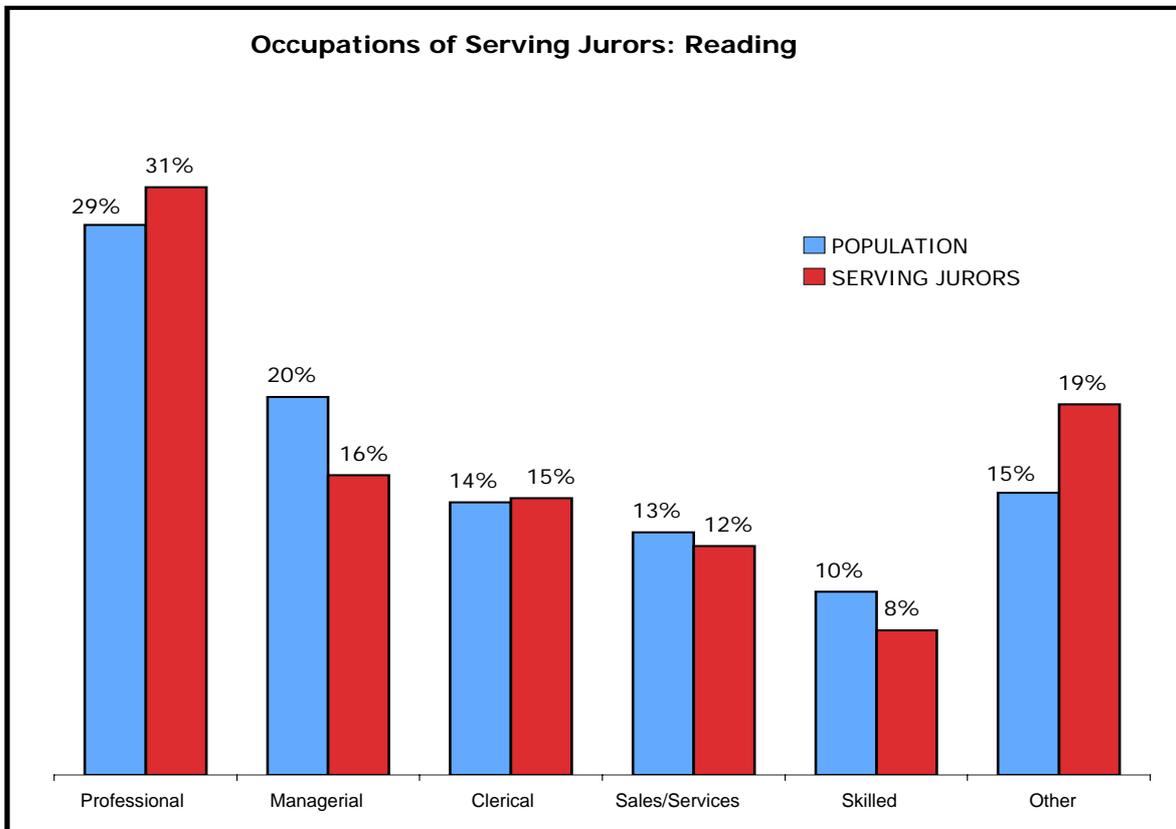
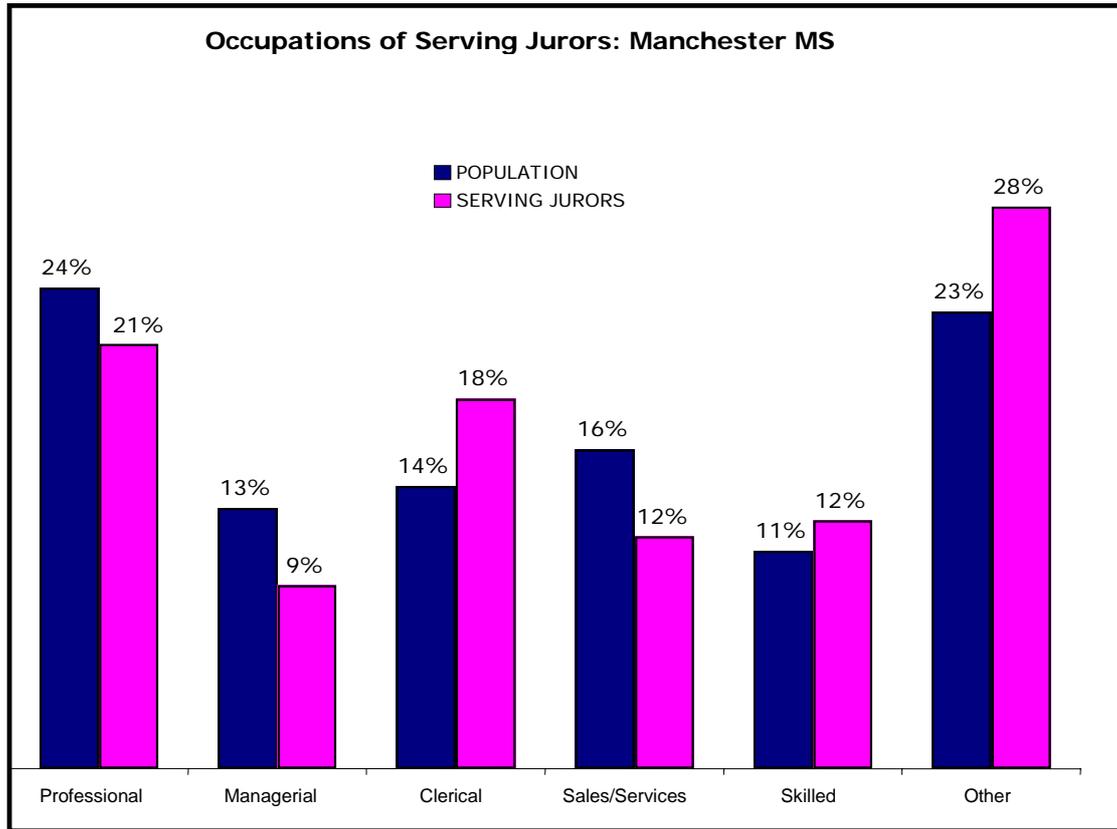


Figure 5.21. Occupations of population & serving jurors: Manchester (n=256)



Income

One consistent trend in both the summoning study and jury service study was for the single largest group of serving jurors to be from the £20,000-£34,999 household income group. This reflects the national average for household income of just under £30,000²³⁴. However, household income could not be matched precisely with income levels in each of the three court catchment areas because the 2001 census did not include income, and therefore household income data did not exist in postcode district form. The only comparative data available were regional average household incomes for 2004²³⁵, published on a per capita basis. The best fit for comparative purposes, therefore, was to double the average per capita incomes to reach an approximate household income average for each court catchment area.

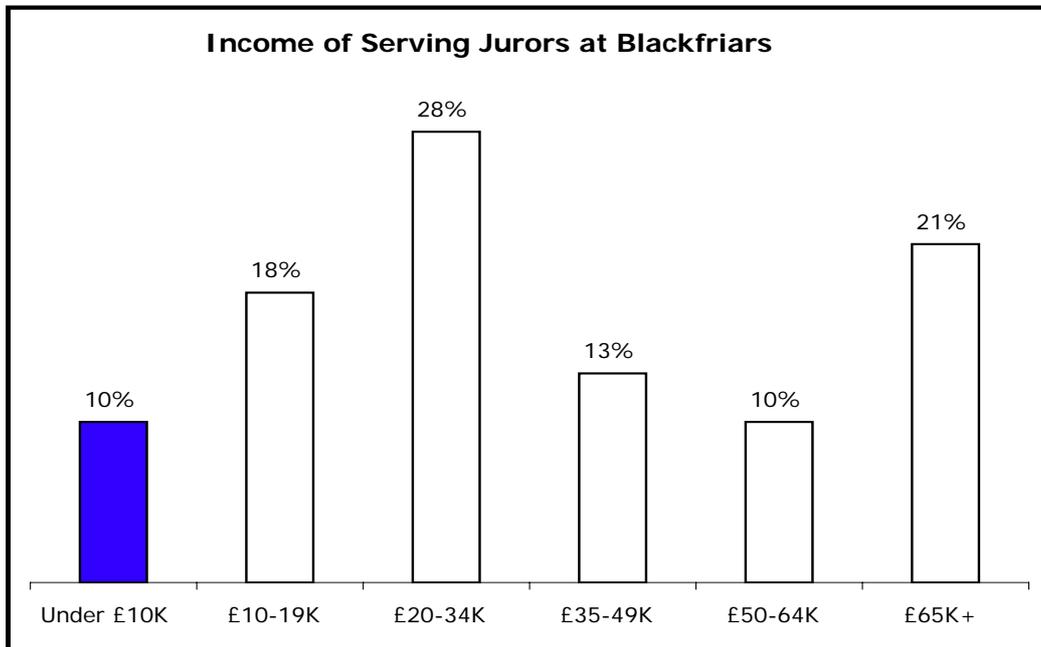
Income data used for Blackfriars were average household income per head for Inner London in 2004 (£16,500 or £33,000 for a two-person household), and the single largest group of jurors serving at Blackfriars (28%) were in the £20,000 - £34,999 household income bracket. Even

²³⁴ See National Statistics, "Household Income: Top fifth 4 times better of than bottom fifth" www.stastics.gov.uk.

²³⁵ See National Statistics "Regional Household Income: Highest per heard in Inner London" www.statistics.gov.uk

though Inner London has the highest disposable household income per head in the country (£24,505),²³⁶ the study suggests that the highest income earners (£65,000+ per annum) were over-represented among serving jurors (21%) in the study period. The highest income earners also appear to be over-represented among serving jurors at Reading, and the vast majority of serving jurors at Reading (80%) were in the middle to higher income groups. Average household income in the Reading region was approximately £30,000²³⁷, and this is reflected in the fact that single largest group of serving jurors at Reading were in the £20,000-34,999 household income bracket. Unlike jurors at Blackfriars and Reading, the vast majority (69%) of serving jurors at Manchester Minshull Street were in the lower half of the household income spectrum, and only a small proportion of higher income earners were represented among serving jurors there. In 2004, the average household income in the North West region was approximately £24,000 for a two-person household, and the largest group of serving jurors at Manchester (30%) were in the £20,000-34,999 household income bracket. These findings further illustrate the need to consider court-based differences in assessing the representative nature of serving jurors. In this case, higher income earners may be over-represented at Blackfriars and Reading, but in Manchester they are not.

Figure 5.22. Household income of population & serving jurors: Blackfriars (n=171)



²³⁶ See National Statistics Regional Trends "Regional Accounts: Highlights" www.stastics.gov.uk.

²³⁷ Or £15,000 per head for Berkshire, Buckinghamshire and Oxfordshire in 2004.

Figure 5.23. Household income of population & serving jurors: Reading (n=155)

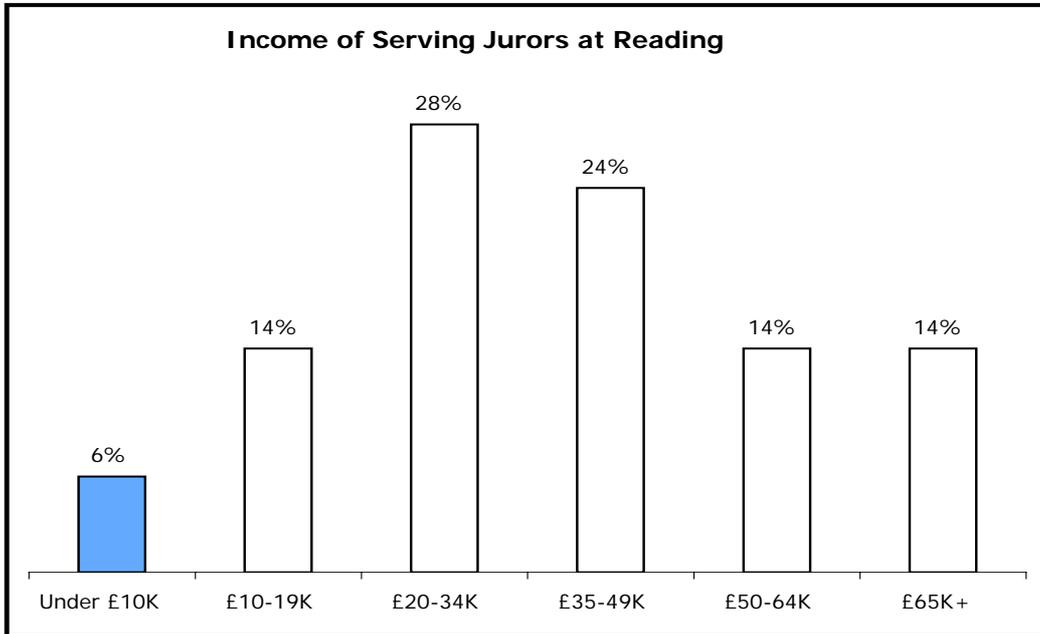
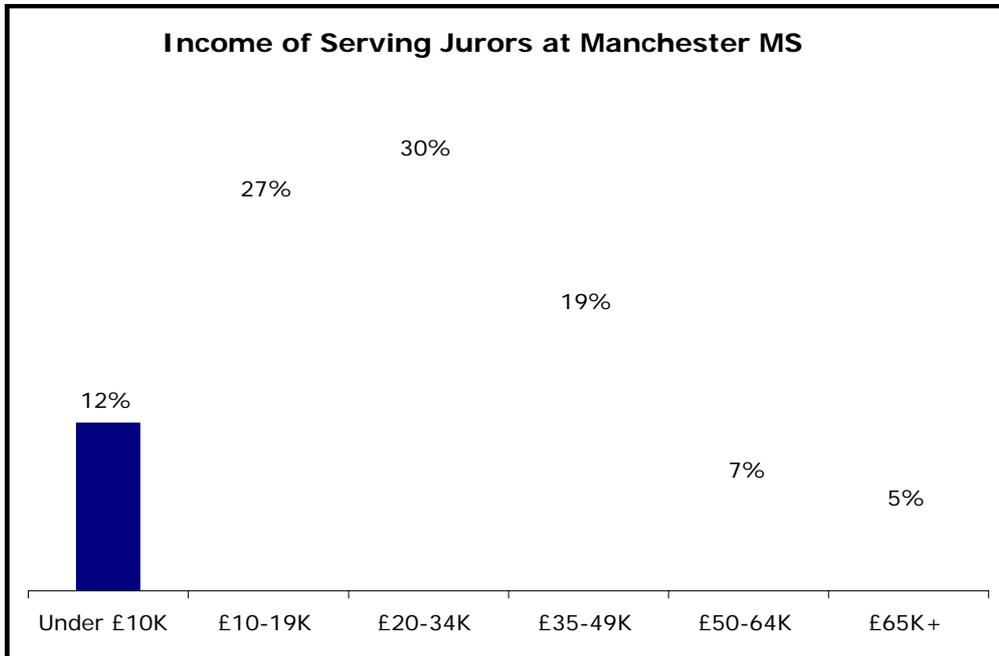


Figure 5.24. Household income of population & serving jurors: Manchester (n= 241)



Age

As Figures 5.25 to 5.27 below illustrate, jurors serving at all three courts mirror the general age trends found in the summoning survey: the single largest group of jurors were in the 25-44 year old age group, followed by those 45-59. Yet there are differences in the level of age group representation between the three courts, reflecting the different age profiles of the populations in each court catchment area and again indicating the need to consider juror representation in its individual Crown Court context.

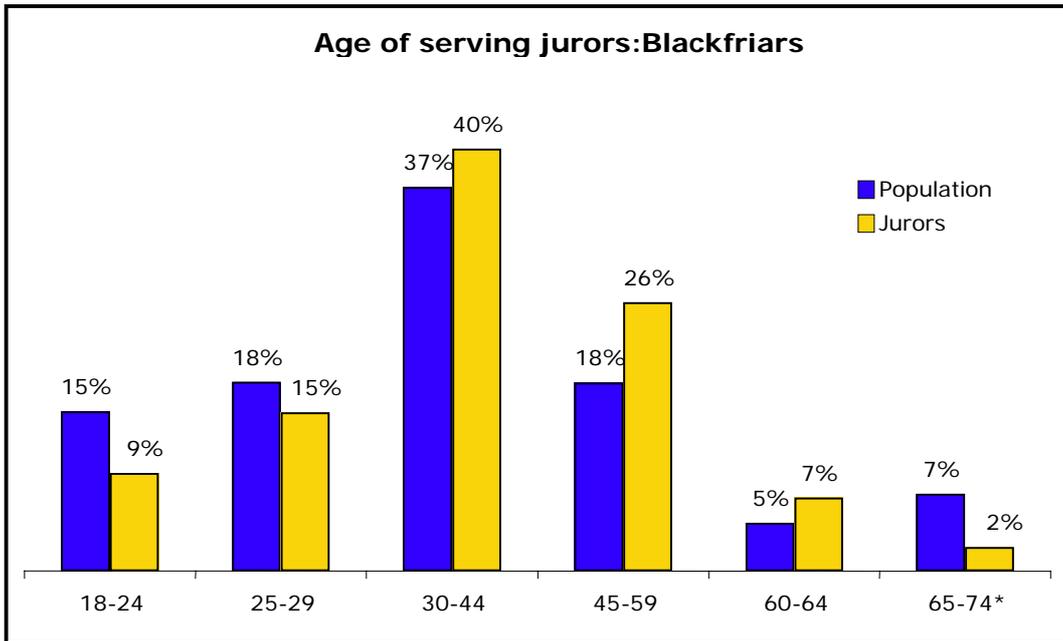
For several decades there have been claims that young persons are under-represented among serving jurors, however, the summoning survey showed that those between the ages of 18 and 24 were represented among serving jurors in all courts combined almost exactly in proportion to their representation in the national population. At Reading, jurors 18 to 24 and 25 to 29 were actually over-represented in relation to the local population, while at Blackfriars they were under-represented. However, at Manchester Minshull Street the picture was different again, with those 18-24 under-represented but those 25-29 represented precisely in proportion to their representation in the catchment area. The under-representation of the youngest age group in Blackfriars and Manchester appears to be due to the fact that both juror catchment areas are in highly urbanised areas, which have a high level of rental housing and a high mobility rate among this age group. The 2001 Census showed that young adults move more frequently than others, and that students contribute to the peak in migration in this age group²³⁸. As Chapter three showed, these factors are also directly related to high rates of non-return of summonses.

In *Justice for All*, the government also expressed concerns (based on the 1992 Crown Court Study) that those over 65 were under-represented among serving jurors. The summoning survey showed that removing the right to be excused from jury service for in this age group in 2004 resulted in an increased in representation nationally among jurors in this age group by 2005 (from 3% in 2003 to 6% in 2005). The studies at Blackfriars, Reading and Manchester were conducted in 2003, before the new eligibility rules came into effect, and the findings indicate that those jurors 65 to 69 were under-represented at each court before the rules changed²³⁹.

²³⁸ See National Statistics, People & Migration: "Moves within UK" www.statistics.gov.uk.

²³⁹ However, it was not possible to match jurors in this age group exactly to 2001 census data because census data in postcode district form only exists for the 65-74 age group, and half of this group (those from 70 to 74) are disqualified from jury service.

Figure 5.25. Age groups of population & serving jurors: Blackfriars (n=171)



* Percentage of jurors represents only those 65-70.

Figure 5.26. Age groups of population & serving jurors: Reading (n=160)

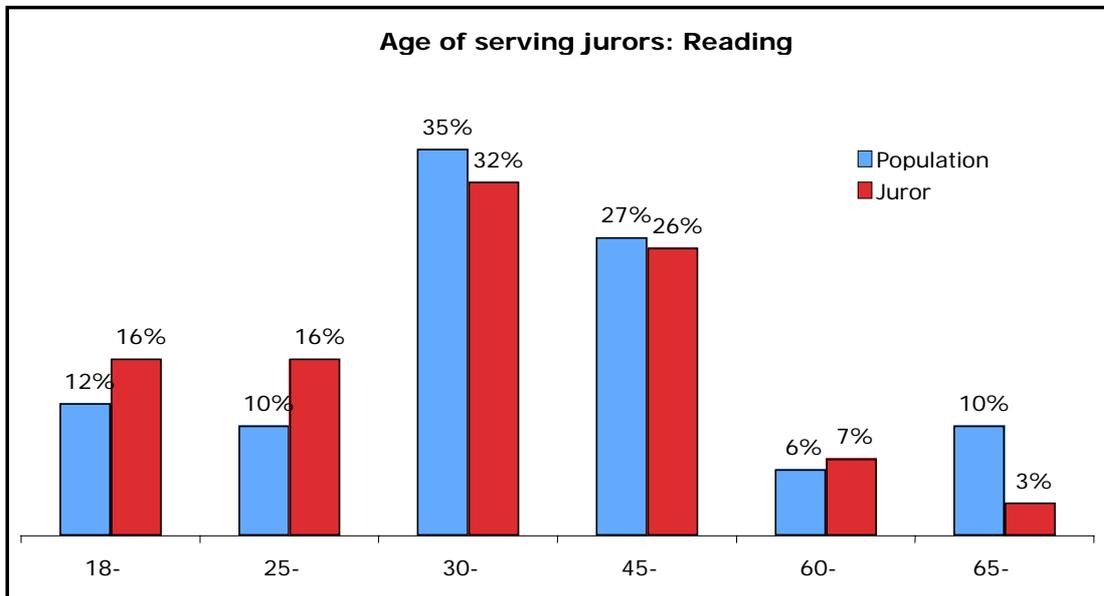
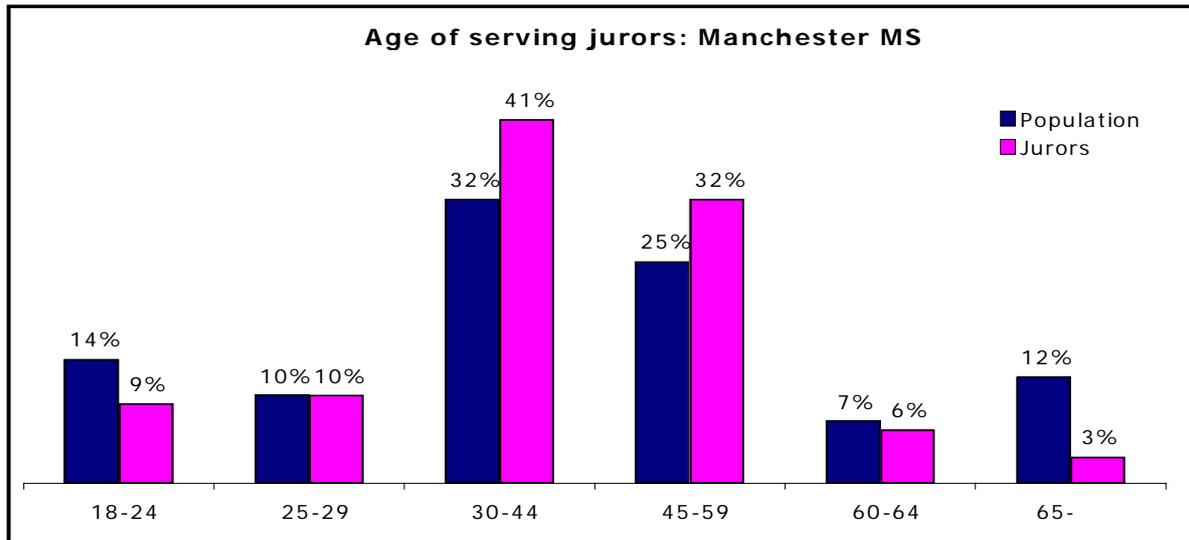


Figure 5.27. Age groups of population & serving jurors: Manchester (n=256)



Gender

In *Justice for All*, the Government also expressed concern, again based on the 1992 Crown Court Study, that women were under-represented among serving jurors, but no evidence of this was found in the summoning survey. Among all those summoned who did jury service in all the Crown Courts combined, the proportion of women to men was exactly the same (51% to 49% respectively), and this was also the ratio of women to men in the jury pools at Blackfriars, Reading and Manchester Minshull Street. In addition, on individual juries in these three courts during the study, there were no all-male or all-female juries or even any juries with only one male or one female juror; 88% of all the juries had either a 6:6, 7:5 or 8:4 gender split²⁴⁰. These findings strengthen the conclusion of the summoning survey that the under-representation of women among serving jurors is another myth of jury service.

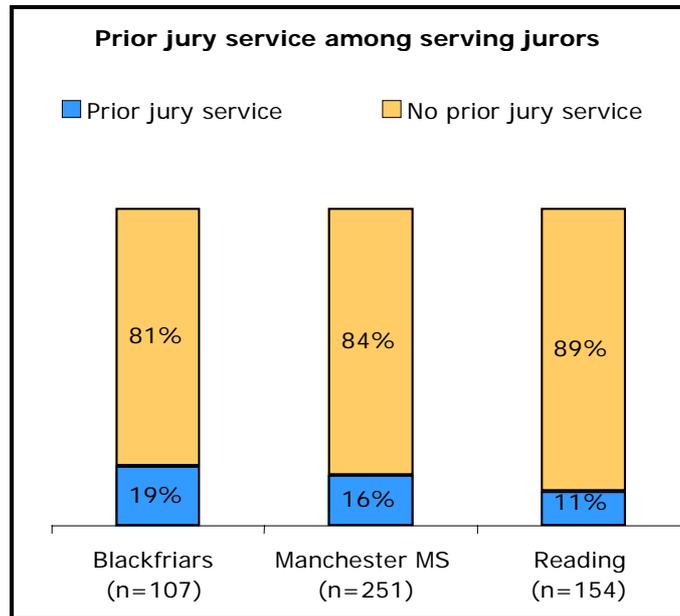
Prior Jury Service

In the summoning survey, 14% of those summoned that served had previously done jury service, and there were no major deviations from this overall trend among those in the jury pools at the three courts. The highest rate of prior jury service (19%) was among those doing jury service at Blackfriars in London, which casts further doubt on claims that the overwhelming majority of Londoners seek to avoid jury service²⁴¹.

²⁴⁰ The gender composition of individual juries in these three courts was almost identical to that reported by the Crown Court Study, which included a much larger number of juries and courts. That study found that 80% of juries had a ratio of men to women of 5:7, 6:6, 7:5 or 8:4, while the current study found that 81% of juries fell within these ratios. Zander and Henderson *supra* note 12 p.235.

²⁴¹ Darbyshire et al *supra* note 37 claimed that four-fifths of those summoned in London avoid or evade jury service; see discussion in Chapter 3.

Figure 5.28. Serving jurors with prior jury service at each court



Jury panels and juries

Being in the jury pool does not necessarily mean that a juror will be selected to serve on a jury, and the following section explores how BME representation in jury pools at the three Crown Courts translates into BME representation on jury panels and on juries. A particular issue arises in examining proportional representation of ethnic minorities on jury panels and juries. As juror selection progresses from jury pool to jury panel to jury, there are progressively fewer jurors involved at each stage, and in the final stages of selection for jury panels and juries a single BME juror can have a substantial effect on the representative nature of the panel or jury. For instance, the difference between one BME juror on a jury and two translates into 8% compared to 17% BME representation on a jury. The discussion of High and Low Ethnicity Courts in Chapter three showed that there are only a handful of Crown Courts in England and Wales (20 of 94) where BME groups comprise at least 10% of the population in the juror catchment area. These are the only courts where strict BME representation in the jury pool in relation to BME levels in the local population is likely to result in one or more BME jurors serving on a jury. Therefore, in order to provide as clear a picture as possible of BME representation on jury panels and juries, the following analysis provides actual numbers as well as proportions of BME jurors selected for jury panels and juries.

At each Crown Court when a jury is needed for a trial, the jury manager runs a computerised random selection programme to create a jury panel from among available jurors. The jury panel will always include more than 12 jurors to allow for any juror excusals or challenges in a particular trial (for instance when a juror knows a defendant). At any one time there are two separate pools of jurors at court: those in their first week of jury service and those in their second (and last) week. Jury panels may be selected from all jurors who are currently not serving on a trial (both pools), or it may be from only one jury pool. For instance, where a jury panel is created on a Wednesday for a trial expected to last 4-5 days, it is almost always the case that only jurors in their first week of jury service will be selected for the jury panel. The overlap of jury pools from different weeks means that, at either end of the study period, some jury panels and juries may have contained jurors who were not part of the study (having started jury service either before the study began or after the study finished). The following analysis is therefore based only on those jury panels where all jurors belonged to a jury pool covered by the study period (which meant that ethnic and other socio-economic characteristics were known).

As Figure 5.29 and Table 5.3 below show, there was a substantial difference in the proportion of jury panels at each court which included at least one BME juror. Virtually all of the jury panels created during the study period at Blackfriars Crown Court (95%) were racially mixed. At this court, BME groups comprise 33% of the juror catchment area population, and BME representation in the jury pools was between 17% and 27% during the study period. At Reading, just under half of the jury panels (48%) had one or more BME jurors; at this court BME groups comprise 10% of the juror catchment area population, and BME representation in the jury pools ranged from 6% to 12% in the study period. Manchester had the lowest proportion of racially mixed jury panels (29%) during the study period. Even though its catchment area has a similar BME population level (11%) to Reading, BME representation in the jury pool at Manchester was lower than at Reading, ranging from 0% to 8% during the study period.

Figure 5.29. BME representation on jury panels by court

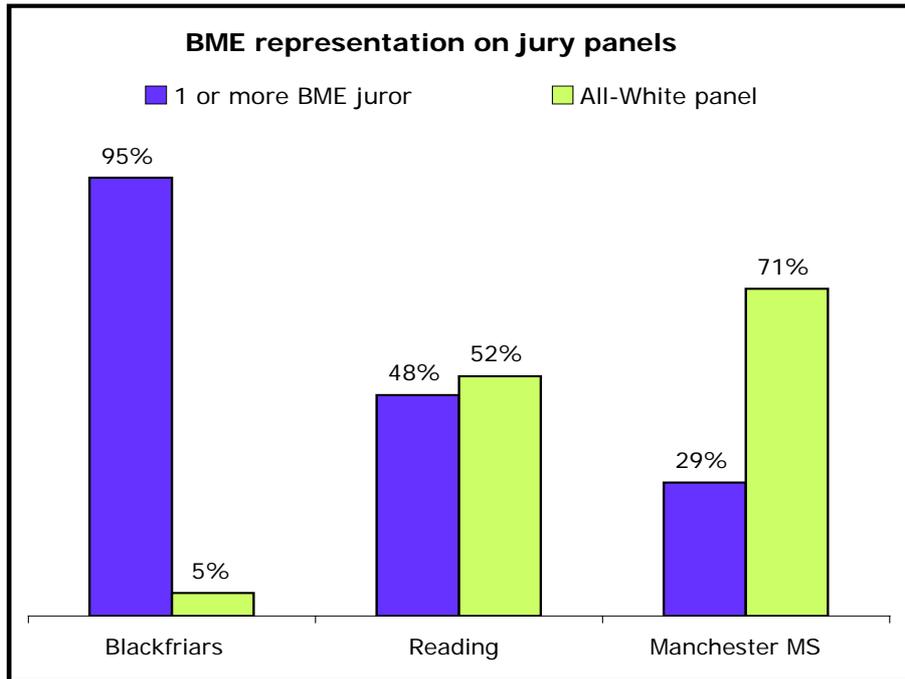


Table 5.3 Number of jury panels and racially mixed jury panels by court

Court	Jury Panels	Jury Panels with 1 or more BME jurors
Blackfriars	37	35
Reading	21	10
Manchester MS	34	10

Even though a jury panel has been created, it does not necessarily mean that a jury will be created from this panel. For instance, the defendant may change his or her plea from not guilty to guilty after a jury panel has been created, and in this instance no jury will be selected from the panel. Even when a jury is selected from the jury panel, not all members of the panel actually serve on that jury. After the panel has been randomly selected by the court’s computer programme, the name of each jury panel member is printed on a card; all members of the jury panel are then brought into court and the court clerk shuffles the cards and reads out the first 12 names. Provided there are no excusals or challenges, these 12 jurors are sworn as the jury. Table 5.4 below shows the number of trials in the study period at each court where juries were sworn from jury panels, and the number of these juries where at least one BME juror served on the final jury.

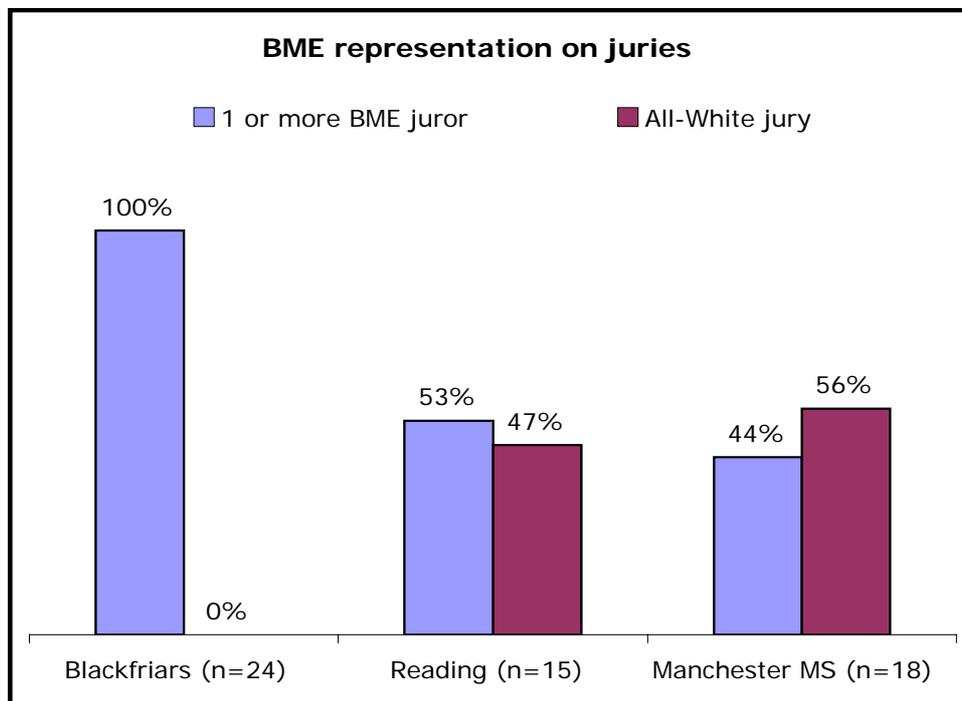
Table 5.4. Breakdown of trials in each court covered in jury service study

Court	Trials with Jury Panels	Jury Panels where no jury selected	Trials with juries	Juries where ethnicity known*	Juries with 1 or more BME jurors
Blackfriars	37	12	25	24	24
Reading	21	2	19	15	8
Manchester MS	34	9	25	18	8

* Either the ethnicity of all 12 jurors known or known that at least 1 juror was from a BME group

For each of the three courts, there was a slightly higher percentage of racially mixed juries during the study period than racially mixed jury panels (see Figure 5.30 below). All of the juries at Blackfriars contained at least one BME juror, compared to 95% of the jury panels. Just over half (53%) of the juries sworn at Reading were racially mixed, compared to just under half of the jury panels (48%). At Manchester, just under half (44%) of juries had at least one BME juror, while less than a third (29%) of the jury panels included at least one BME juror.

Figure 5.30. Levels of BME representation on juries in each court



This analysis shows how ethnically representative all juries *combined* are at a particular court. However, this does not address the question of how representative *individual* juries are in relation to the local population. Figures 5.31 to 5.33 below show the proportion of BME jurors on

juries at each court along with the actual number of juries in each category²⁴². At Blackfriars, most juries (13 of 24) contained more than one BME juror. But for a jury at Blackfriars to exactly reflect the BME population of the juror catchment area (33%), this would require four of the 12 jurors to be from a BME background. Two of the 24 juries contained exactly four BME jurors, and 2 more juries contained 5 BME jurors; the remaining 20 included less than 4 BME jurors. For a jury at Reading or Manchester to precisely reflect the BME population of the court catchment area (10% and 11% respectively), this would require one of the 12 jurors to be from a BME background. Just over half (6 of 15) of the juries at Reading contained one BME juror, and a third of juries (6 of 18) at Manchester contained one BME juror. Two more juries in each court contained more than 1 BME juror, and all the rest contained no BME jurors.

What this shows is that, in terms of ethnic representation on juries, distinctions need to be made between High Ethnicity Courts. At High Ethnicity Courts with the highest diversity levels in the local population (such as Blackfriars with a 33% BME population), almost all juries are racially mixed, although each jury is not necessarily proportionately representative of the local BME population. At High Ethnicity Courts with lower diversity levels in the local population (such as Reading and Manchester Minshull Street with 10-12% BME populations), only about a half of all juries are racially mixed, although almost all of these juries will be proportionately representative of the local BME population.

²⁴² These results represent the *minimum* BME representation on individual juries at the three courts during the study period. Because not every juror in every jury pool at each court completed the juror profile form, with some juries it was not possible to identify the ethnicity of all 12 jurors. For instance, in 4 juries at Manchester the ethnicity of 10 or 11 of the 12 jurors was known and one of these jurors was known to be from a BME background. While these 4 juries were clearly racially mixed juries, the exact *proportion* of BME representation on those juries was not known.

Figure 5.31. BME representation on juries at Blackfriars

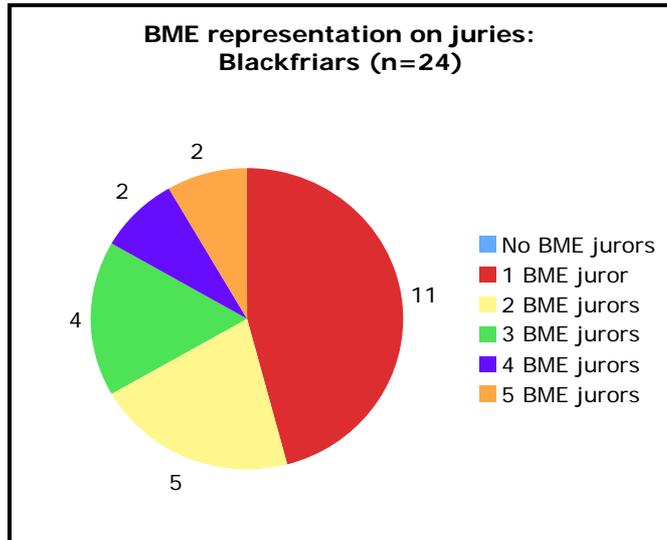


Figure 5.32. BME representation on juries at Reading

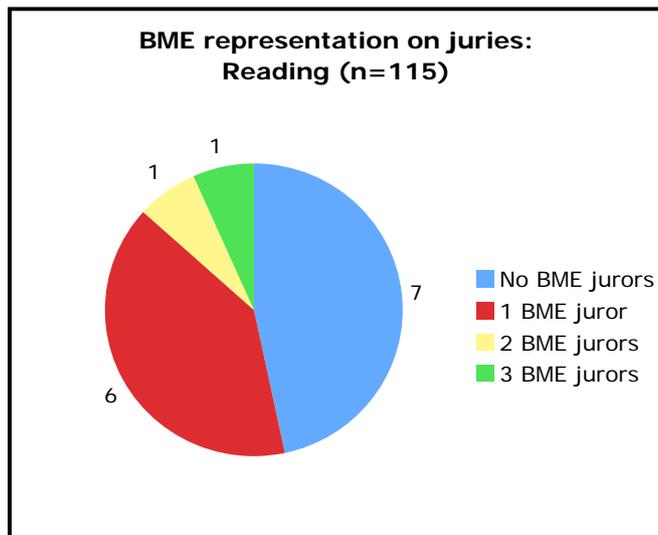
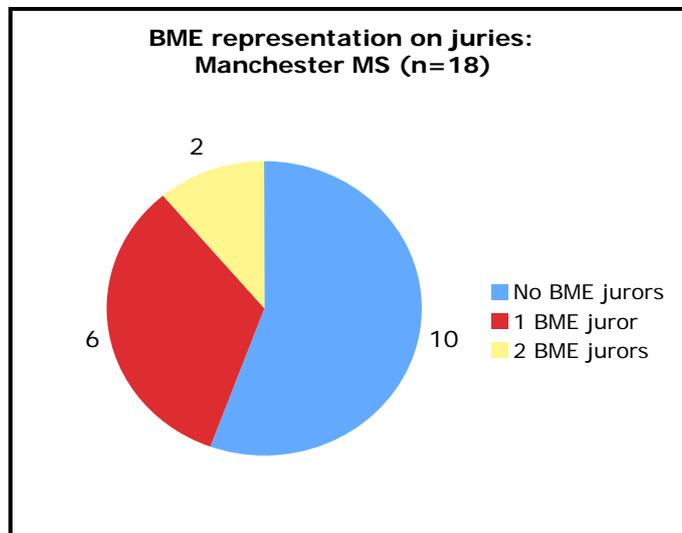


Figure 5.33. BME representation on juries at Manchester MS

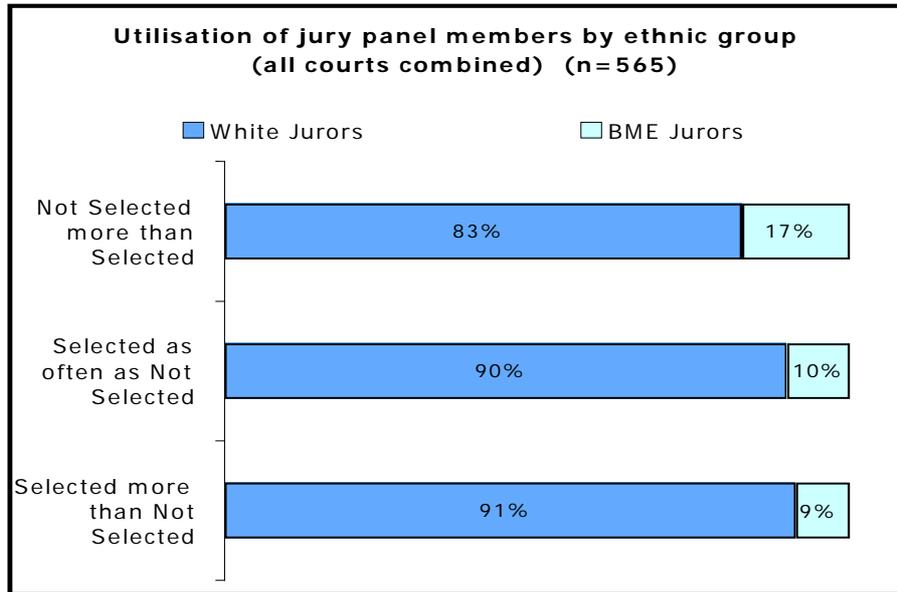


Juror selection in open court

The final stage of jury selection (jury empanelling) is the only stage that does not involve computerised random selection of jurors. Once the computer has selected 13 or more jurors for a jury panel, it also generates cards with each panel member's name on a separate card. The jury panel enters court, and the court clerk is supposed to first shuffle the cards and then read out the names on the first 12 cards in open court. Each juror called enters the jury box, and when 12 names have been read without challenges or excusals, the final jury of 12 is sworn. In the course of the research project it was suggested that, in some instances, court clerks may avoid cards where a juror's name is difficult to pronounce. This was of particular concern because avoidance of unusual juror names may be more likely to occur with BME jurors than with White jurors. There was no indication that, if this was occurring, it reflected any conscious intent on the part of court clerks to exclude BME jurors from juries. Instead, it may simply have been an understandable inclination to avoid embarrassment for the clerk or the juror. However, the effect could be significant in terms of jury representation. The previous analysis illustrated how a single BME juror on a jury can substantially affect the representative nature of that individual jury.

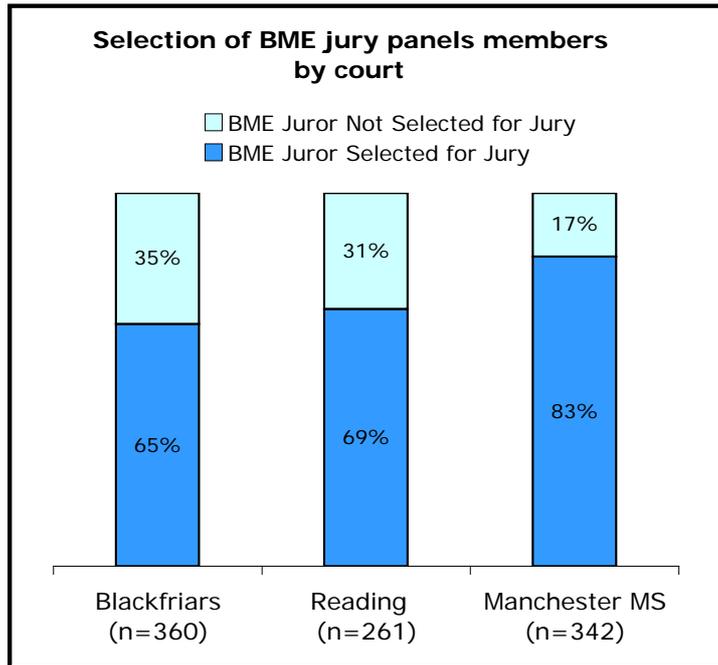
In order to determine whether there was any quantitative evidence of BME jurors being excluded at the final juror selection stage, the analysis examined first whether any differences existed in how often BME jurors were selected for juries compared to White jurors. Figure 5.34 below shows the utilisation of jurors on jury panels by ethnicity. BME jurors on jury panels were not selected for the jury more than they were selected 17% of the time, a higher rate than when they were selected as often as not selected (10%) and selected more often than not selected (9%).

Figure 5.34. Utilisation of jury panel members by ethnic group for all courts



Individual jurors may be selected for jury panels several times in the course of their jury service, and therefore the question of whether BME jurors on jury panels may be more likely not to be selected for the final jury repeatedly was also examined. If clerks are avoiding juror names that are difficult to pronounce then repeated non-selection would be more likely to occur. The analysis showed that only BME jurors had a higher rate of multiple non-selection (22%) than single non-selection (9%). While these results suggest some tendency not to select BME jurors at the final jury empanelling stage in open court, these are results for juries at all three courts combined. Figure 5.35 below shows that BME jurors who had been randomly selected by computer for a jury panel were selected to serve on the final jury less often in Blackfriars and Reading than Manchester. The highest rate of non-selection was at Blackfriars, and this court had the highest number of BME jurors serving during the study period (38 or 22% of all serving jurors at Blackfriars during the study). Blackfriars also has the highest proportion of jurors with a first language other than English (9% of all jurors at Blackfriars in the study period compared to 2.5% at Reading and 0.4% at Manchester), and this could have increased the likelihood of names being less familiar and therefore more difficult to pronounce.

Figure 5.35. Selection of BME jurors from jury panels by court



However, it is important to point out that none of these findings prove that court clerks at Blackfriars or the other two courts were avoiding BME juror names when empanelling juries. It was impossible in this study, for instance, to know whether there were more jurors with names a court clerk may have found difficult to pronounce at one court than another. It was also not possible to determine whether court clerks in one court were more hesitant than court clerks in other courts to read out such names. It does suggest, however, that this is an issue which court managers may want to raise with clerks in order to insure that no inadvertent discrimination occurs at the final juror selection stage.

Summary

The jury service study provides the most detailed look at representation among serving jurors that has been conducted to date for Crown Courts in England and Wales. The study was able to create detailed population profiles for three Crown Courts based on a precise match between the postcode parameters for each court's juror catchment area and 2001 census data based on these same postcode districts. Based on a wide range of socio-economic factors, the project carried out a survey of the background characteristics of the jurors who did jury service at each court over a number of weeks. By achieving an extremely high response rate in the survey, this allowed a detailed examination of the representative nature of jury pools, jury panels and juries in these courts. The study reinforced the project's overall finding that the representative nature of jury service needs to be understood on an individual court basis, and that the dynamics of ethnic group populations in individual court catchment areas need to be taken into consideration

in assessing representation in jury pools and on jury panels and juries. The study also reinforces the findings of the juror summoning survey, which revealed a number of widespread misconceptions about who does and does not do jury service in this country.

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, and the fluctuations included both under and over-representation of BME jurors in relation to the BME population levels in the local areas. However, it is only when the ethnicity of serving jurors is disaggregated for each court that a clearer picture emerges of how unique the demographics of ethnicity are among serving jurors at each court. In Blackfriars the largest margin of under-representation was among those classifying themselves as White Other²⁴³. In Reading while the local Indian population was under-represented among serving jurors, Pakistani jurors were slightly over-represented in proportion to the local Pakistani population. In contrast, in Manchester Minshull Street, Pakistani jurors were the most substantially under-represented group in the jury pool. In Blackfriars, Pakistani jurors were represented in the jury pool in exact proportion to their representation in the local population. These variations in juror representation among the Pakistani community in these three different courts illustrate how crucial it is to consider ethnic representation among serving jurors on a court-by-court basis. The previous analysis found that where BME groups are more likely not to serve than serve this is most often due to individuals not being resident for the required period or due to language difficulties. In the Greater Manchester area, where Pakistanis are under-represented among serving jurors, there is a lower level of English literacy in comparison to the Pakistani community in Reading and Blackfriars (where they are not under-represented).

In the summoning survey, Christians and Muslims were under-represented and those with no declared religion were over-represented among all those doing jury service in England and Wales combined. But the three-court study demonstrated that court-based differences can exist in the levels of religious representation among serving jurors at court, just as they do with ethnic group representation. The only consistent trend across all three courts was the over-representation of those with no declared religion. Comparisons between serving jurors at the three courts also showed that Muslims were not under-represented among serving jurors in all three courts, and that where there is any under-representation this is not always related to a specific ethnic group. This reinforces the finding from the summoning survey that religion on its own is not a significant factor in predicting whether someone who is summoned for jury service actually serves or not.

²⁴³ As opposed to White British or White Irish.

The one clear consistent trend across all the courts in the study was for the overwhelming majority of serving jurors to be employed. The employed were by far the single largest group of serving jurors in each of the three courts and were over-represented among serving jurors in relation to their representation in each court's juror catchment area. A more detailed analysis of employment status revealed some court-based differences. For instance, students were under-represented among jurors at Blackfriars and Manchester, but not in Reading, reflecting perhaps the greater level of residential mobility among students in larger urban areas such as London and Manchester. The single largest occupational group among serving jurors at all three courts were professionals. This reflects the fact that professionals make up the single largest occupational group in the three local catchment areas, and further dispels the myth that "the important and the clever" manage to avoid jury service²⁴⁴. In addition, no occupational groups were significantly under-represented among serving jurors at any of the three courts. This provides further evidence that jurors do in fact reflect the full range of skills in their community, contrary to the concerns expressed in the Auld Review.

Jurors serving at all three courts mirrored the general trends found in the summoning survey in terms of both age and gender. The largest group of jurors serving in all three courts was in the 25-44 year old age group, followed by those 45-59. Yet there were differences in the level of age group representation between the three courts, reflecting the different age profiles of the populations in each court catchment area and again indicating the need to consider juror representation in its individual Crown Court context. In *Justice for All*, the Government expressed concerns that women were under-represented among serving jurors. However, in the jury pools in the three courts, there was virtually no difference in any of the courts in the proportion of women and men doing jury service. In addition, 88% of all the juries had either a 6:6, 7:5 or 8:4 gender split, and there were no all-male or all-female juries in any of the courts. These findings strengthen the conclusion of the summoning survey that the under-representation of women among serving jurors is yet another myth of jury service.

The jury service study was conducted in the three Crown Courts during 2003, prior to the introduction of new juror eligibility rules in 2004. This indicates that these widespread misconceptions about jury service were not valid even before the government introduced new rules restricting the grounds for ineligibility and excusal from jury service. However, jurors 65 to 69 years of age were under-represented in the three courts prior to the eligibility rule changes, which specifically removed the right of those in this age group to be excused from jury service.

²⁴⁴ Auld supra note 23.

The study also examined the nature of ethnic representation on jury panels and on juries. Despite the fact that all three courts are High Ethnicity Courts, there was a substantial difference in the proportion of racially mixed jury panels and juries at each court. This reflected the different levels of BME population in the Blackfriars' juror catchment area (33%) compared to Reading and Manchester Minshull Street (10% and 11% respectively). Almost all jury panels and juries are racially mixed (they contain at least one BME juror) at High Ethnicity Courts such as Blackfriars, where the BME population level in the juror catchment area is very high. But this does not necessarily translate into every jury being strictly representative of the ethnic minority 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).

In High Ethnicity Courts where the local BME population level is near the cut-off point between High Ethnicity and Low Ethnicity Courts (10%), such as Reading and Manchester Minshull Street, this resulted in approximately half of all jury panels and juries being racially mixed. This simply confirms the finding of the summoning survey that, even though ethnic minorities are proportionately represented among those summoned and serving at a court, this will not necessarily result in large numbers of ethnic minorities in jury pools, on jury panels and on juries as the actual number of BME jurors is small even in high ethnicity areas. 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.

Finally, there was some evidence that BME jurors on jury panels appeared to be chosen to serve on final juries less often than White jurors on jury panels. This final stage of jury selection is the only stage that does not involve computerised random selection of jurors, but in theory the procedure should not treat jurors differently. 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 were concerns that clerks may avoid reading out names that are difficult to pronounce, and the study did find some disparity in the level of final jury selection between White and BME jurors. But there was not absolute evidence that this was due to the actions of court clerks, and even if it was, this should be a straight forward issue to address by reminding court clerks of the importance of strictly following juror selection procedures in court.

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-making²⁴⁵. 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 results²⁴⁶.

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

²⁴⁵ 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.

²⁴⁶ 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 cases²⁴⁷. 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 cases²⁴⁸, 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.

²⁴⁷ See Sommers and Ellsworth (2003) *supra* note 75.

²⁴⁸ 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 ABH²⁴⁹, 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.²⁵⁰ 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 jury²⁵¹. 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 dressed²⁵².

The case was piloted in three Crown Courts²⁵³, 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

²⁴⁹ 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.

²⁵⁰ 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.

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

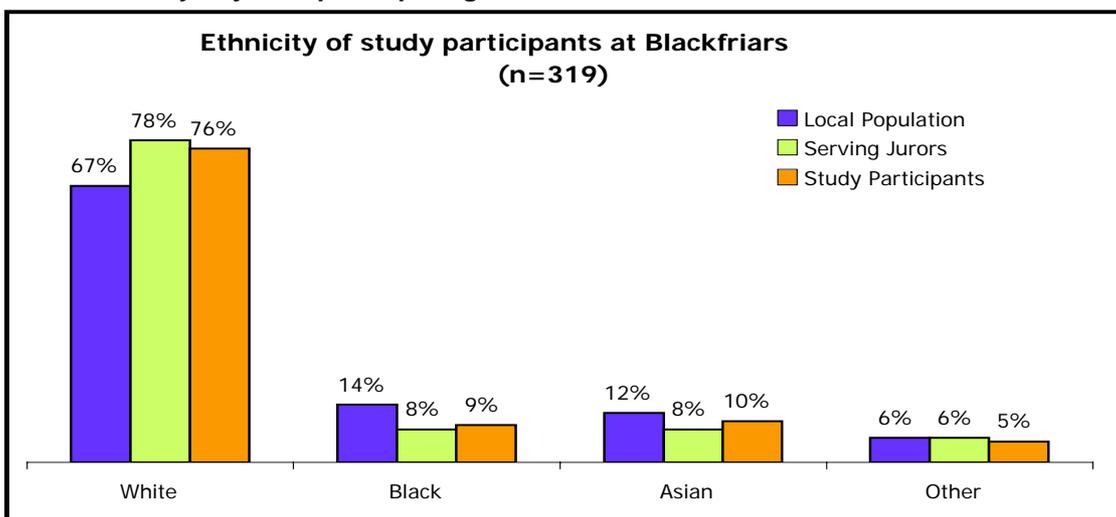
²⁵² The same approach was also taken with the three different victims.

²⁵³ Southwark, Manchester Minshull Street and Blackfriars

were then left to deliberate as a jury and try to reach a verdict²⁵⁴. 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 trial²⁵⁵, 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.²⁵⁶

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



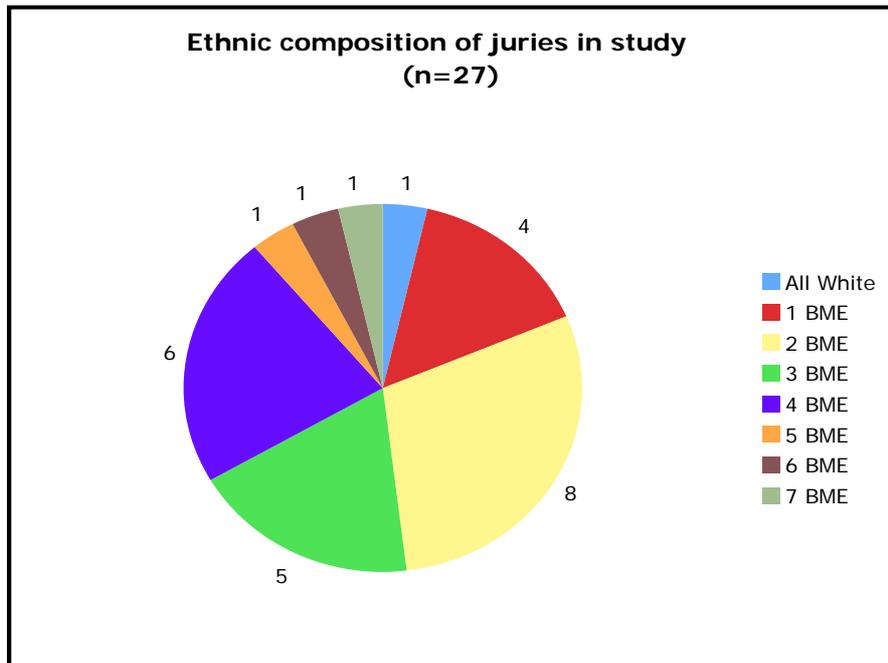
²⁵⁴ The deliberation time (20 minutes) corresponded proportionally to the time the jury spent deliberating in the original trial in relation to the length of the actual trial and the length of the film version of the case. The deliberating time also reflects jury deliberating times in real trials on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

²⁵⁵ 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.

²⁵⁶ 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

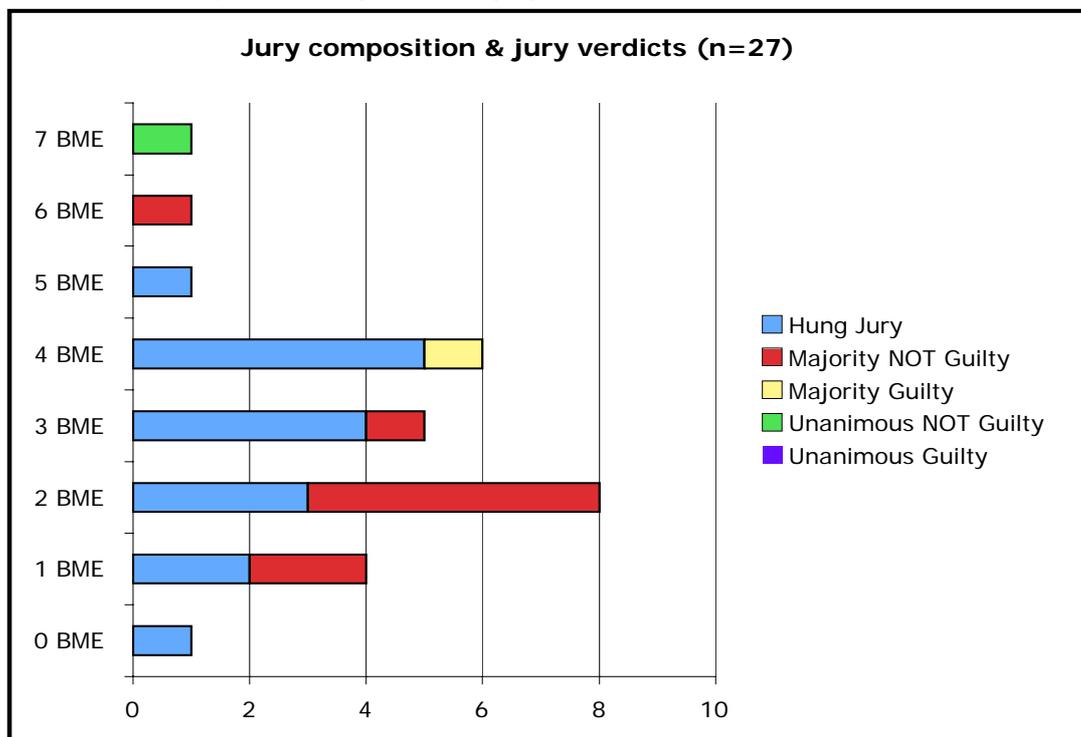
Each of the 319 jurors who participated in this study did so as part of a jury, and the study was therefore able to determine whether the ethnicity of the defendant affected the verdicts of juries. The impact of the racial composition of a jury has rarely been tested empirically, even in the United States, 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 jury²⁵⁷.**

Table 6.1. Pre-deliberation and final verdicts of juries in case simulation							
		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
Total		0	1	1	15	37	54

²⁵⁷ 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.²⁵⁸ The large number of hung juries in the case simulation is therefore likely to reflect the divisive nature of the case²⁵⁹. 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 defendant²⁶⁰. 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.

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

²⁵⁹ 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.

²⁶⁰ See Appendix 6 for results of the regression analysis.

Figure 6.4. Juror guilty votes by defendant and juror ethnicity

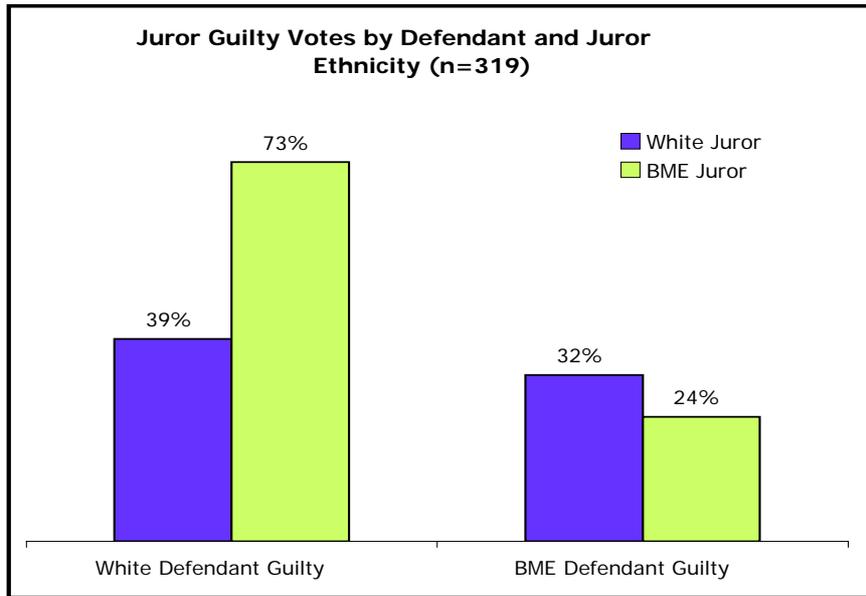


Table 6.2. Votes (no.) by juror and defendant ethnicity

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

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' judgements²⁶¹, 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 defendant²⁶². However, as the following analysis reveals, this same race leniency among jurors in the Blackfriars study only occurred in one specific type of case.

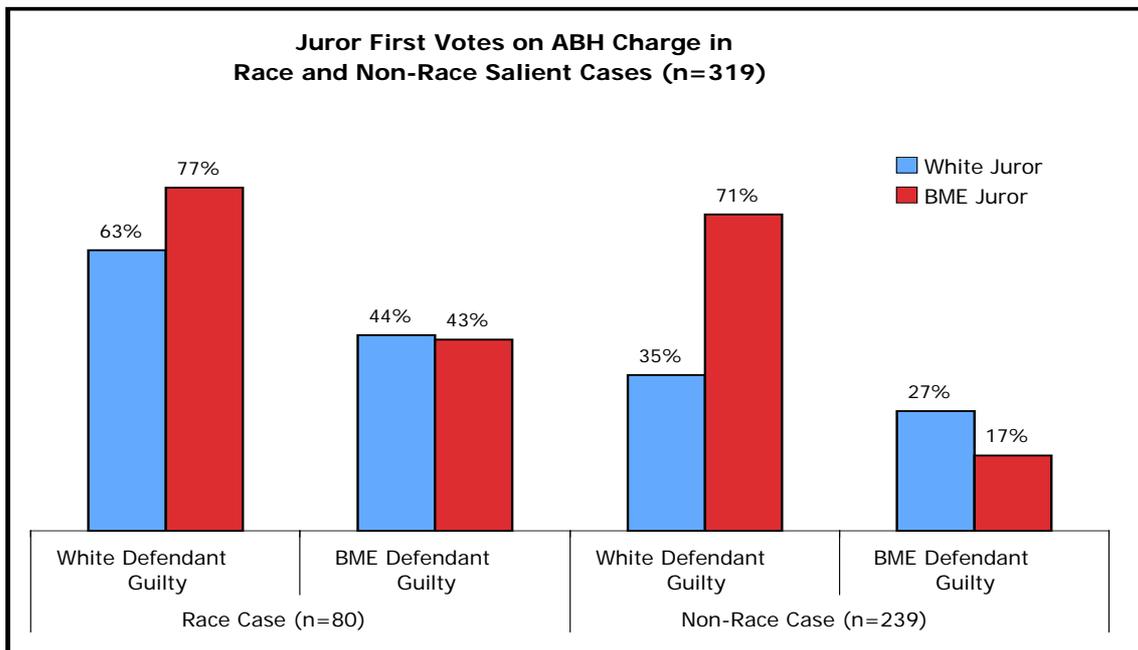
²⁶¹ P. Skolnick and J. Shaw "The O.J. Simpson Criminal Trial Verdict: Racism or Status Shield?" 53 *Journal of Social Issues* 503 (1997); D. Abwender and K. Hough "Interactive Effects of Characteristics of Defendant and Mock Juror on US Participants' Judgements and Sentencing Recommendations 141 *Journal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

²⁶² 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-making²⁶³. 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 him²⁶⁴. 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 charge²⁶⁵. 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 cases²⁶⁶



²⁶³ Sommers and Ellsworth (2000) supra note 76.

²⁶⁴ See details of the charge supra note 133.

²⁶⁵ 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.

²⁶⁶ 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 jurors²⁶⁷, 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

²⁶⁷ 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 States²⁶⁸.

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

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

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 deliberation²⁶⁹. 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.

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

²⁶⁹ 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

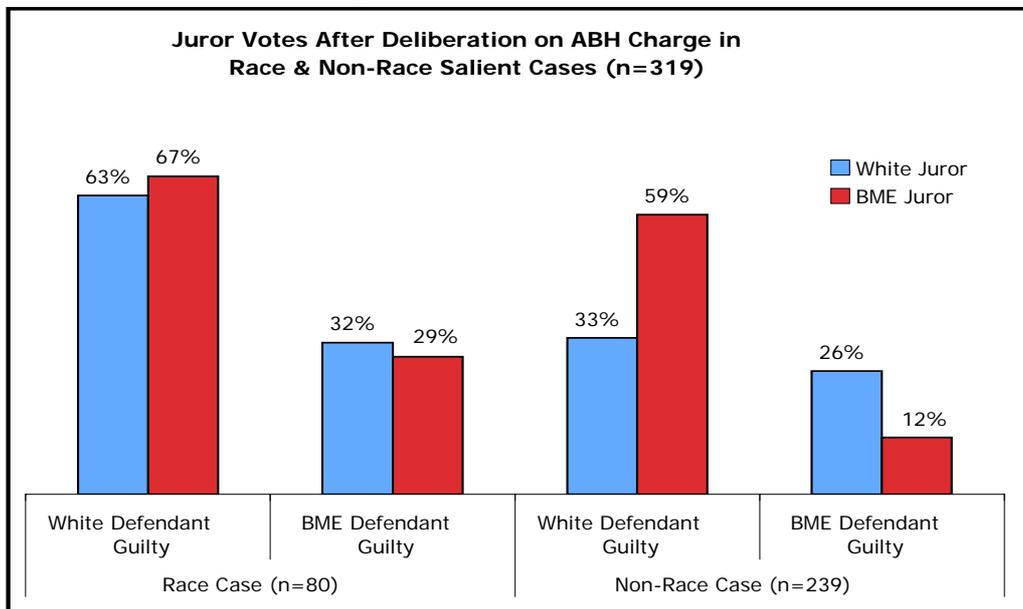
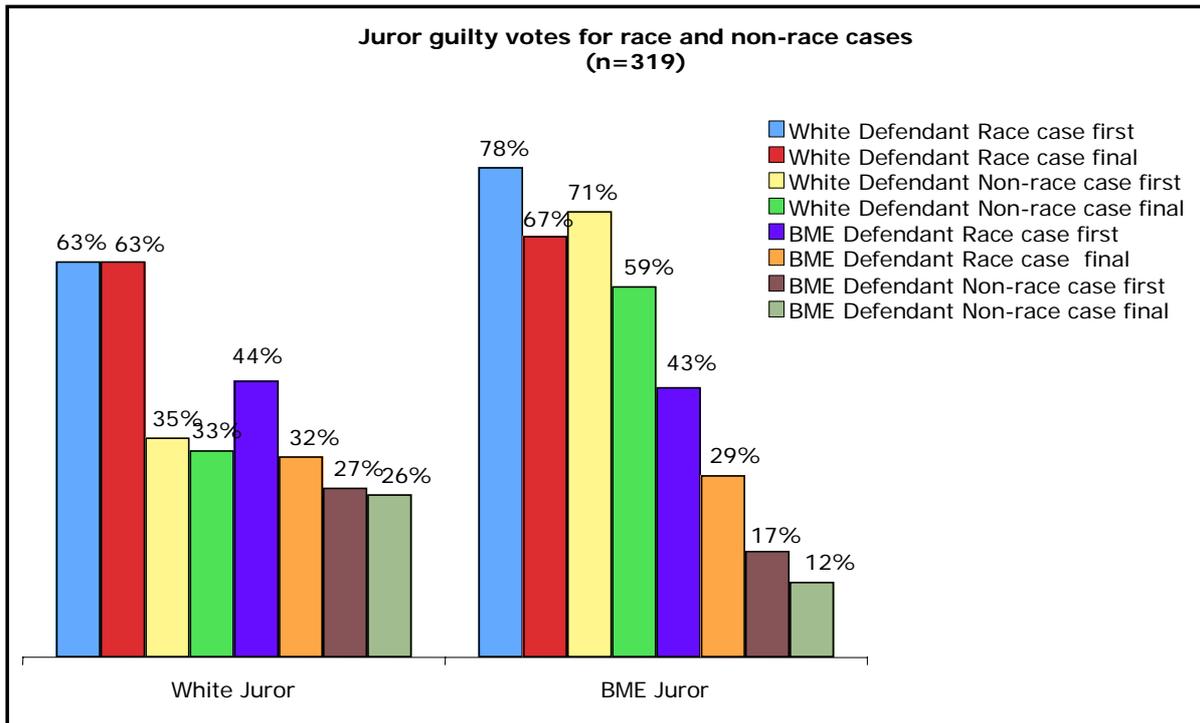


Figure 6.7 below shows that White juror conviction rates were virtually unaffected by deliberation, with one exception. The White juror conviction rate for the BME defendant fell after deliberation in cases where race was an explicit issue in the case. The story is very different for BME jurors. BME 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



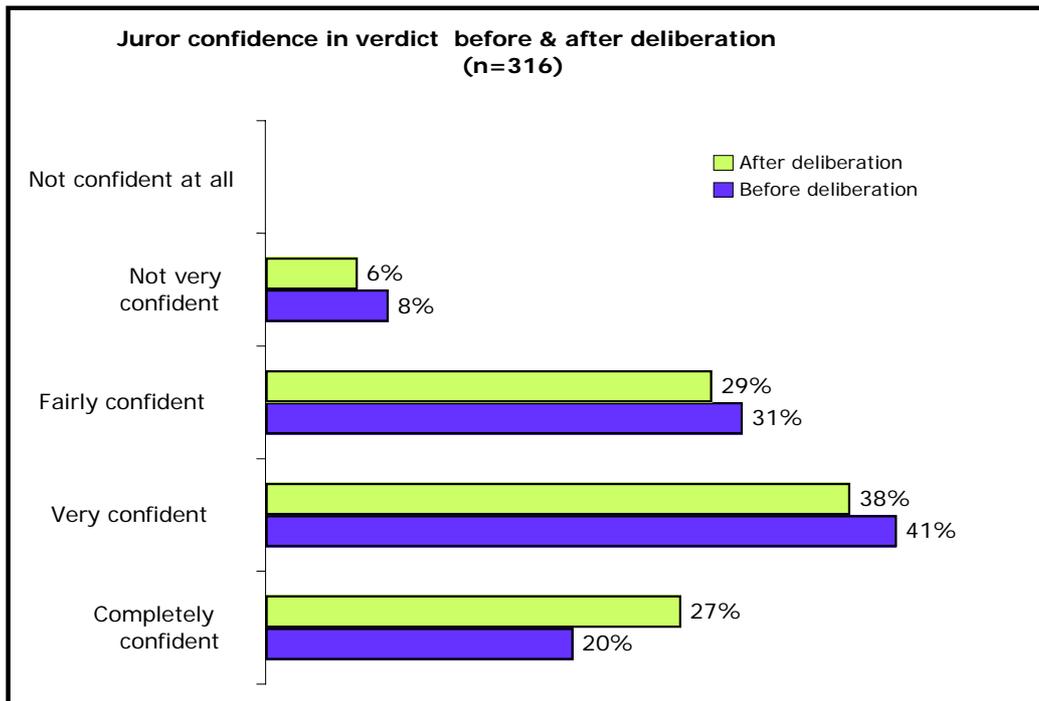
There is some similarity between this finding and the results of recent research on race and jury deliberations in the United States. One study of actual cases found that African American jurors in a particular jurisdiction (Washington DC) showed same race leniency in their first votes, but this leniency did not exist after jury deliberations²⁷⁰. 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 jury²⁷¹. **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.**

²⁷⁰ See Garvey et al (2004) supra note 118.

²⁷¹ 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 general²⁷². 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-making²⁷³, 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

²⁷² J. Gastil et al supra note 17.

²⁷³ 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 system²⁷⁴. 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 field²⁷⁵, or they may simply interpret the evidence presented to them differently when the defendant is from an ethnic minority group²⁷⁶. 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 jurors²⁷⁷. 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**²⁷⁸.

²⁷⁴ 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)

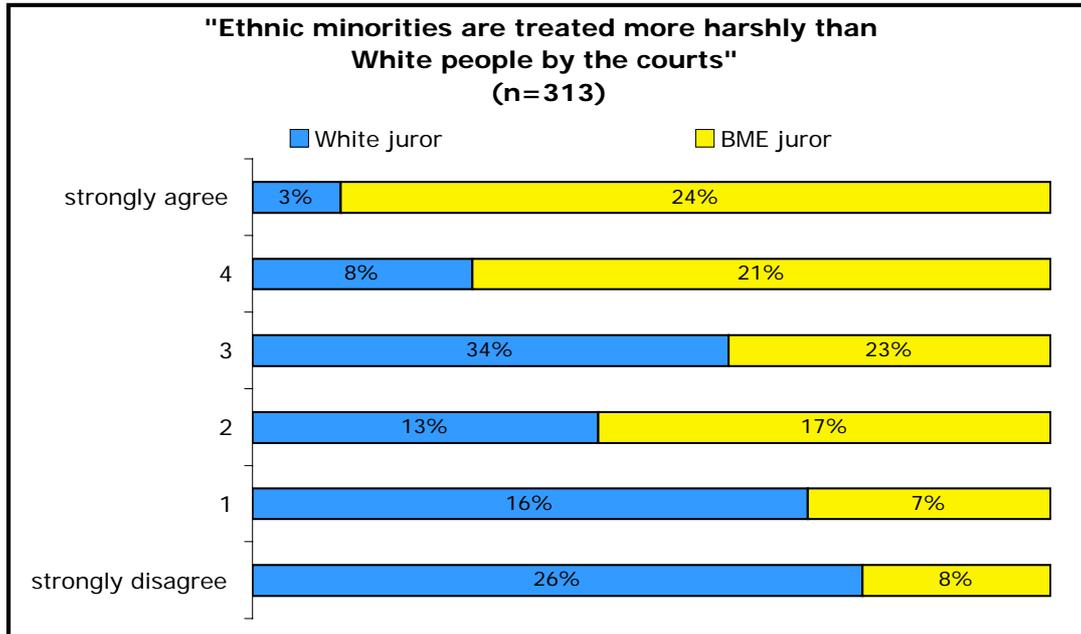
²⁷⁵ See J. Jones "Whites are from Mars, O.J. is from Planet Hollywood" in *Off White: Readings on Race, Power, and Society* (1997)

²⁷⁶ 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).

²⁷⁷ 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.

²⁷⁸ 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 bias²⁷⁹.

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.

²⁷⁹ 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	
Attitude to defendant				
Believed defendant's evidence	2.82	3.30	2.56	3.36
Defendant dislikes violence	1.99	2.36	1.80	2.48
Defendant is kind to others	2.61	2.75	2.69	2.74
Defendant is likely to inflict ABH	3.36	3.05	3.12	2.88
Defendant often tells lies	3.46	2.81	4.04	2.74
Defendant often gets drunk	3.99	3.34	3.72	2.80
Defendant likely to be aggressive	3.40	3.11	3.40	2.86
Defendant often starts fights	2.23	1.63	2.84	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
BME Jurors	High	High (76%)	Low	Low (27%)
White Jurors	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 way²⁸⁰. 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.

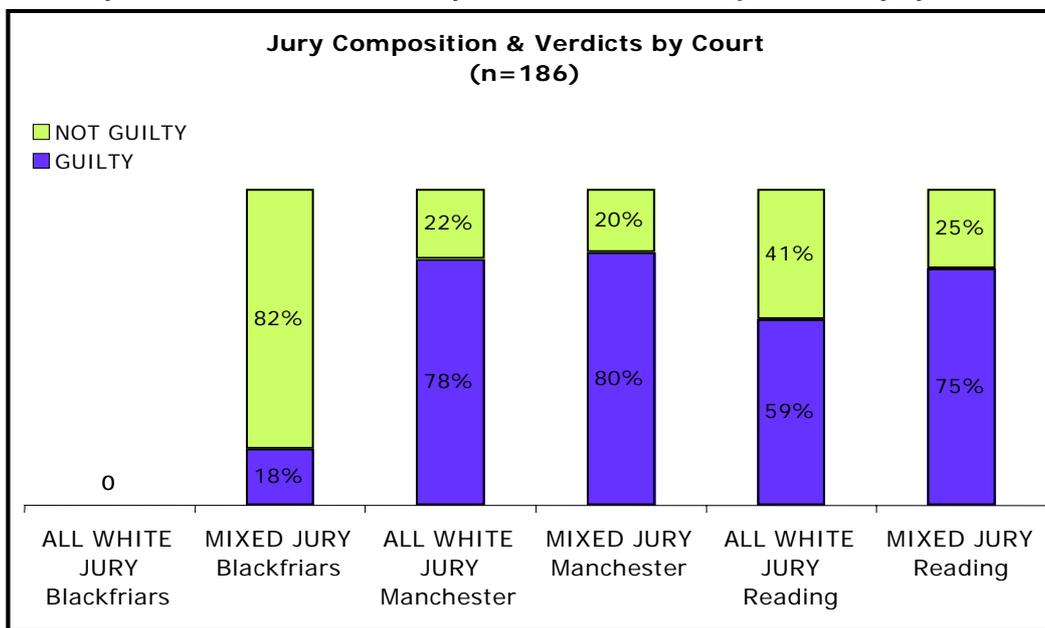
²⁸⁰ See S. Gaertner and J. Dovidio “The Aversive Form of Racism” in Dovidio and Gaertner (eds) *Prejudice, Discrimination, and Racism* (1986); Jones (1997) *supra* note 275.

Court-based differences

Consideration of the racial norms of the community from which jurors are drawn is essential to understanding juror decision-making²⁸¹, 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



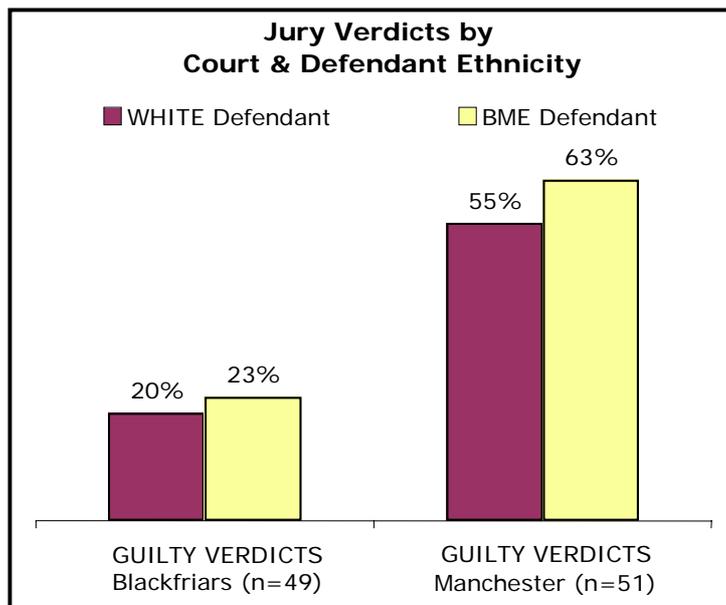
All the juries at Blackfriars were racially mixed, and there was an overall conviction rate of only 18%. In contrast, juries at Manchester and Reading included both racially mixed and all-White juries, and both types of juries had high conviction rates (75% and 80% for racially mixed juries respectively,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

²⁸¹ 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 combined²⁸², 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

²⁸² 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 rates²⁸³.

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

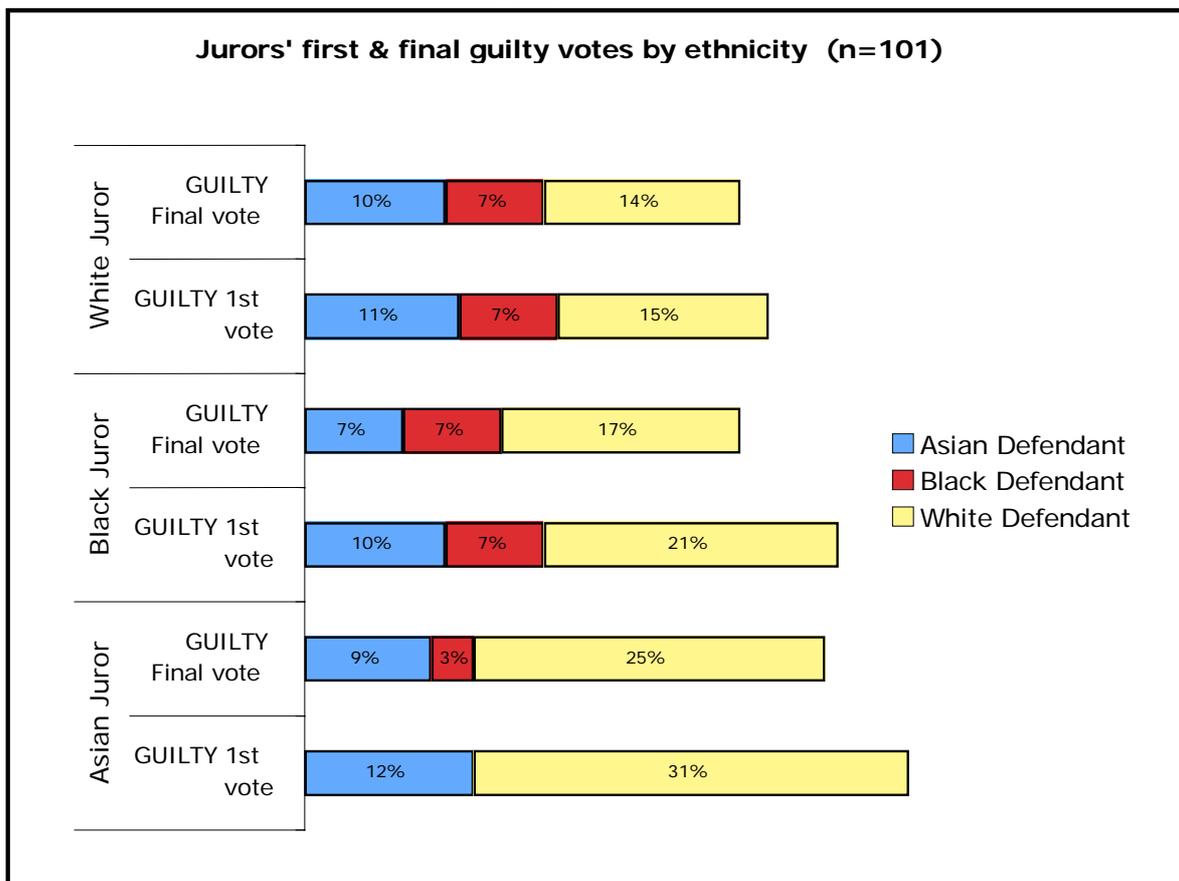
The previous analysis only examined individual juror decision-making for two broad ethnic groups: White and BME jurors. However, one of the unique aspects of the case simulation study at Blackfriars is that, unlike virtually all American research, it was able to examine ethnicity beyond a simple White and Non-White dimension, by including both Black and Asian defendants as well as Black and Asian jurors²⁸⁴. Figure 6.12 below shows the distribution of

²⁸³ 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.

²⁸⁴ 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

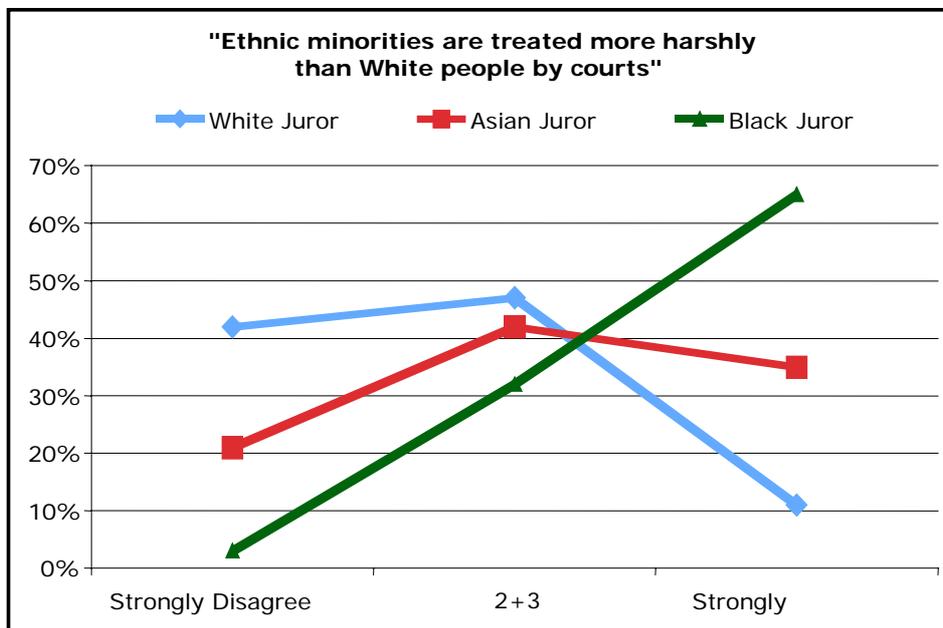


While Asian jurors had no guilty votes for the Black defendant on first votes, Asian jurors interestingly did not demonstrate same-race leniency for the Asian defendant on first votes, finding the Asian defendant guilty 12% of the time. Black jurors showed some limited same-race leniency for the Black 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” group²⁸⁵.

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
Total		27

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 defendant²⁸⁶. 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.

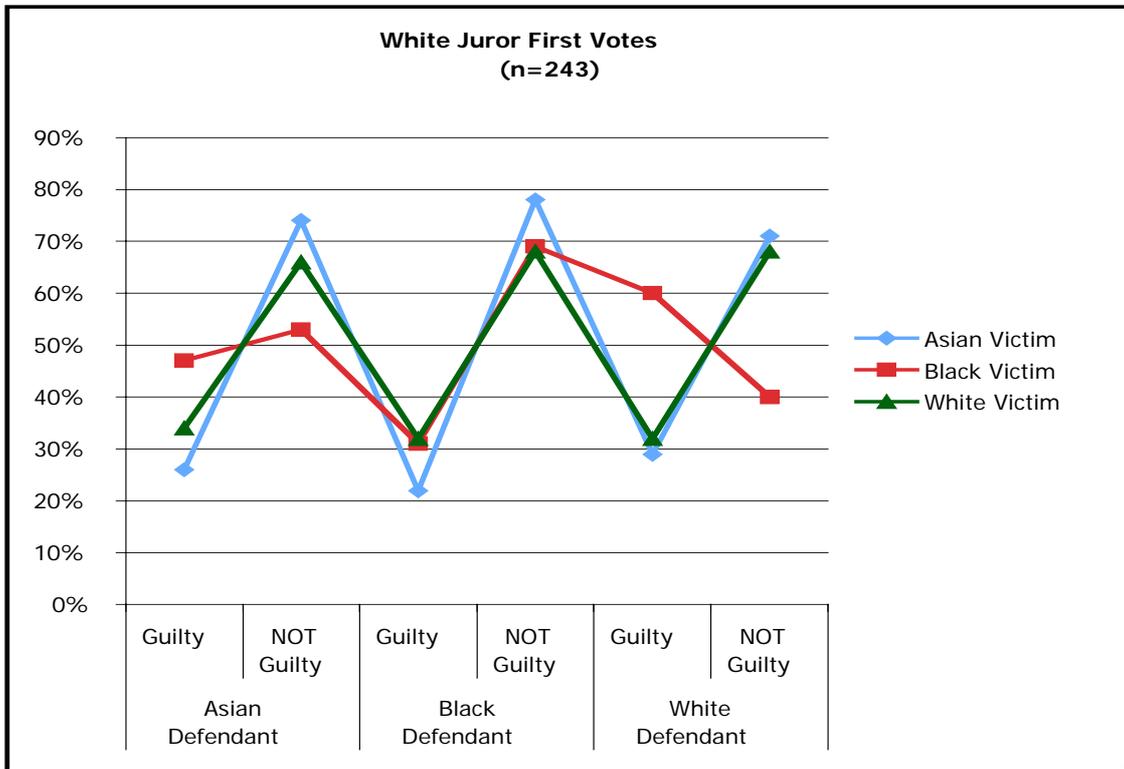
As Figure 6.14 below indicates, White jurors showed a consistent pattern of decision making in all cases involving Asian and White victims, but not in cases involving Black victims. Where the victim was Black and the defendant was White, White jurors at Blackfriars were more likely to find the White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

²⁸⁵ See discussion in Chapter 1 supra notes 96-98.

²⁸⁶ See Appendix 6 for full results.

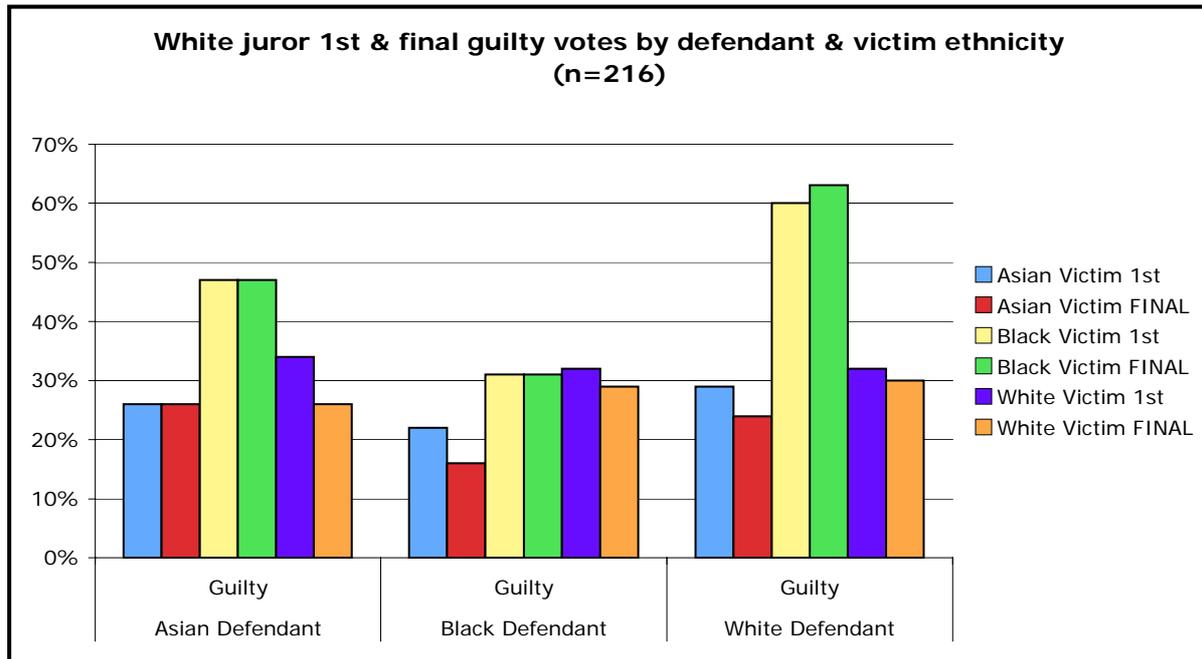
was Black, there was also some increase in the conviction rate, but the majority of White jurors still found the defendant not guilty. There were no differences in White juror decision-making where both the victim and the defendant were Black.

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 charge²⁸⁷**. 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 charge²⁸⁸.

²⁸⁷ See Appendix 6 for results of statistical analysis

²⁸⁸ 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

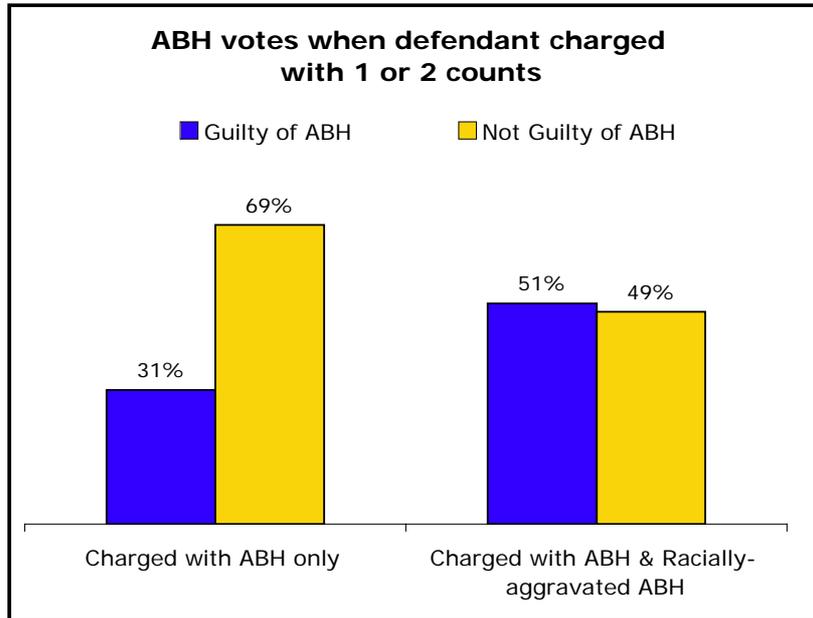


Table 6.7. Juror votes according to number of charges against defendant

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

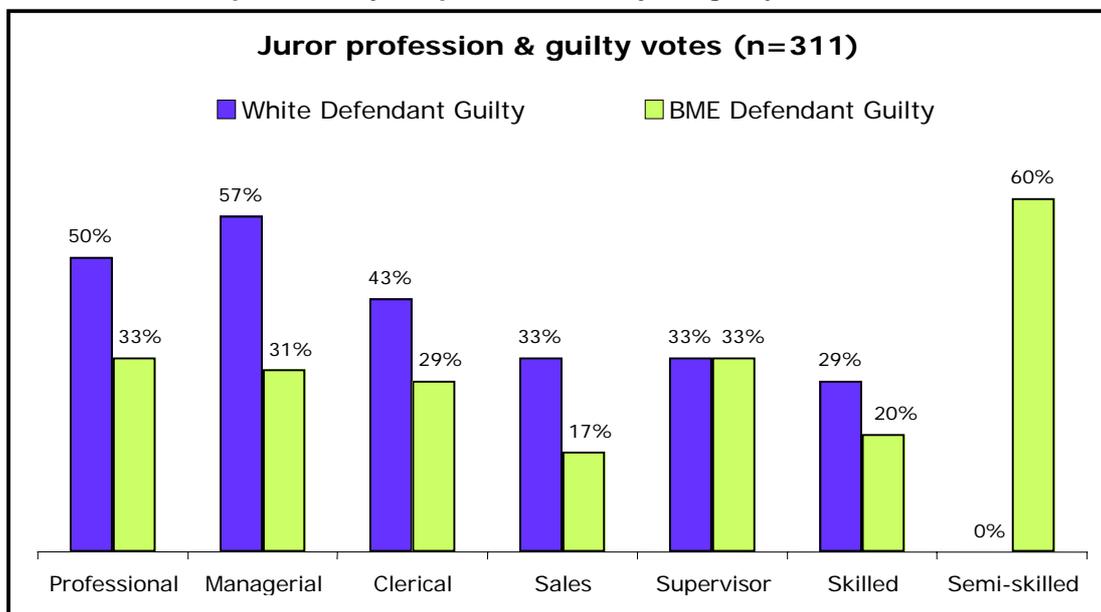
Other juror characteristics

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%).²⁸⁹ 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



²⁸⁹ 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 States²⁹⁰. 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 elections²⁹¹.

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

²⁹⁰ See Garvey et al (2004) supra note 118.

²⁹¹ 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?

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.

Appendix 1

BME population, BME summoned and serving jurors in each court

The three courts where BME jurors were significantly under-represented and the one court where they were significantly over-represented are highlighted in red with an asterisk (*).

Table A1.1. BME population, summoned and serving jurors in London Region

Crown Court	% BME in population	% BME summoned	% BME serving
Harrow	37.4	38.2	27.9
Southwark	33.5	33.8	29.4
Blackfriars	33.2	29.2	24.4
Isleworth	32.5	28.4	25
Snaresbrook	30.4	26.4	26.1
Wood Green	29.5	33.1	30.6
Middlesex	28.9	35.0	29.7
Central Criminal Court	27.0	27.2	23.1
Inner London	23.4	20.2	21.1
Croydon	17.7	24.6	23.9
Woolwich	15.6	13.6	14.3
Kingston on Thames	12.5	12.5	10

Table A1.2. BME population, summoned and serving jurors in South Eastern Region

Crown Court	% BME in population	% BME summoned	% BME serving
Luton	12.0	14.5	11.3
Reading	10.0	10.7	9.4
Aylesbury	9.3	7.7	0.0
St Albans	6.4	3.9	12.5
Peterborough	5.1	3.7	0.0
Oxford	5.0	0.0	0.0
Guilford	4.7	7.8	8.6
Cambridge	4.4	1.9	0.0
Hove	4.2	3.2	4.5
Maidstone	4.1	1.6	2.0
Basildon	3.7	4.4	4.3
Southend-on-Sea	3.0	0.0	0.0
Chelmsford	2.8	2.4	0.0
Canterbury	2.5	3.7	2.6
Lewes	2.4	0.0	0.0
Chichester	2.0	0.0	0.0
Norwich	1.6	0.0	0.0
King's Lynn	1.3	0.0	0.0

Table A.1.3. BME population, summoned and serving jurors in Midlands Region

Crown Court	% BME in population	% BME summoned	% BME serving
Birmingham	22.3	22.0	14.7 *
Leicester	14.8	20.2	18.6
Wolverhampton	13.7	10.9	10.8
Coventry	13.2	15.0	17.7
Nottingham	6.5	0.0	0.0
Derby	5.8	0.0	0.0
Warwick	4.8	5.4	0.0
Stoke	3.3	1.8	2.2
Shrewsbury	3.0	0.0	0.0
Worcester	2.0	1.1	1.4
Stafford	1.9	0.0	0.0
Lincoln	1.5	3.1	2.2
Hereford	0.9	0.0	0.0

Table A1.4. BME population, summoned and serving jurors in North East Region

Crown Court	% BME in population	% BME summoned	% BME serving
Bradford	14.2	16.1	7.3
Leeds	6.3	3.6	0.0 *
Sheffield	6.3	0.0	0.0
Newcastle	2.9	0.7	1.0
Teeside	2.5	3.5	0.0
Kingston upon Hull	1.9	3.0	0.0
Doncaster	1.8	0.0	0.0
Great Grimsby	1.8	7.1 *	5.0
Durham	1.4	0.0	0.0
York	1.4	0.0	0.0

Table A1.5. BME population, summoned and serving jurors in Northern Region

Crown Court	% BME in population	% BME summoned	% BME serving
Manchester Minshull Street	10.6	11.6	11.9
Burnley	9.8	0.0	0.0
Manchester Crown Square	9.3	1.8 *	1.2 *
Bolton	6.2	3.4	2.6
Preston	6.0	7.4	5.4
Liverpool	2.9	6.1	4.3
Barrow	0.7	0.0	0.0
Carlisle	0.7	0.0	0.0

Table A1.6. BME population, summoned and serving jurors in Wales & Chester Region

Crown Court	% BME in population	% BME summoned	% BME serving
Cardiff	4.7	4.0	2.9
Newport (South Wales)	2.2	0.0	0.0
Warrington	1.8	0.0	0.0
Swansea	1.7	1.0	1.6
Chester	1.6	0.0	0.0
Knutsford	1.6	4.6	3.9
Merthyr Tydfil	1.1	0.0	0.0
Caernafon	1.1	0.0	0.0
Carmarthen	1.0	0.0	0.0
Mold	1.0	0.0	0.0

Table A1.6. BME population, summoned and serving jurors in Western Region

Crown Court	% BME in population	% BME summoned	% BME serving
Southampton	4.8	2.0	2.6
Bristol	4.5	2.5	0.0
Portsmouth	2.9	1.7	2.4
Swindon	2.9	0.0	0.0
Gloucester	2.8	0.0	0.0
Winchester	2.8	0.0	0.0
Bournemouth	2.4	3.9	3,4
Plymouth	1.4	0.0	0.0
Newport IOW	1.3	0.0	0.0
Exeter	1.2	0.0	0.0
Taunton	1.2	0.0	0.0
Truro	1.0	0.0	0.0

Appendix 2

Probability of BME juror being on jury panels in each Crown Court

Probability was calculated of 1 or more BME jurors being selected in a random selection of a jury panel of 15, based on BME population in each catchment area. The equation for 1 or more is: $1 - p(\text{White British})$. Asterisks(*) indicate satellite courts.

Table A2.1. Probability of BME jurors being on jury panels in London Region

Crown Court	Average no. of jurors serving per week	% BME in court catchment area	No. of BME jurors expected per week	Probability of 1 or more BME jurors selected for jury panel
Blackfriars	69	33.1	22	1.00
Central Criminal Court	116	26.9	31	0.99
Croydon	59	17.6	10	0.95
Harrow	54	37.4	20	1.00
Inner London	81	23.3	18	0.98
Isleworth	64	32.5	20	1.00
Kingston on Thames	78	12.4	9	0.86
Middlesex	49	28.9	14	0.99
Snaresbrook	118	30.4	35	1.00
Southwark	93	33.4	31	1.00
Wood Green	86	29.5	25	0.99
Woolwich	52	15.6	8	0.92

Table A2.2. Probability of BME jurors being on jury panels in South East Region

				panel	
Aylesbury	29	9.3	2		0.77
Basildon	45	3.7	1		0.43
Bury St Edmunds*	1	2.5	0		0.32
Cambridge	24	4.4	1		0.49
Canterbury	53	2.5	1		0.32
Chelmsford	59	2.7	1		0.34
Chichester	21	1.9	0		0.25
Guildford	39	4.6	1		0.51
Hove	39	4.1	1		0.47
Ipswich	32	3.1	0		0.38
Kings Lynn*	6	1.2	0		0.17
Lewes	36	2.3	0		0.29
Luton	45	12	5		0.85
Maidstone	61	4.1	2		0.47
Norwich	39	1.5	0		0.20
Oxford	34	4.9	1		0.53
Peterborough	21	5.1	1		0.54
Reading	49	10	4		0.79
Southend*	15	2.9	0		0.36
St Albans	47	6.4	3		0.63

Table A2.3. Probability of BME jurors being on jury panels in Midlands Region

Crown Court	Average no. of jurors serving per week	% BME in court catchment area	No. of BME jurors expected per week	Probability of 1 or more BME jurors selected for jury panel
Birmingham	96	22.2	21	0.98
Coventry	22	13.1	2	0.88
Derby	30	5.8	1	0.59
Wolverhampton	56	13.7	7	0.89
Leicester	45	14.8	6	0.91
Lincoln	28	1.4	0	0.19
Northampton	30	4.9	1	0.53
Nottingham	55	6.5	3	0.64
Shrewsbury	23	2.9	0	0.36
Stafford	36	1.9	0	0.25
Stoke on Trent	18	3.2	0	0.39
Warwick	27	4.7	1	0.51
Worcester	32	1.9	0	0.25
Hereford*	22	0.8	0	0.11
Redditch*	1	4.5	0	0.50

Table A2.4. Probability of BME jurors being on jury panels in Western Region

Crown Court	Average no. of jurors serving per week	% BME in court catchment area	No. of BME jurors expected per week	Probability of 1 or more BME jurors selected for jury panel
Barnstaple*	5	0.9	0	0.13
Bournemouth	37	2.3	0	0.29
Bristol	62	4.5	2	0.50
Dorchester	9	1.3	0	0.18
Exeter	33	1.2	0	0.17
Gloucester	20	2.8	0	0.35
Newport IOW	19	1.3	0	0.18
Plymouth	22	1.3	0	0.18
Portsmouth	53	2.9	1	0.36
Salisbury	9	1.4	0	0.19
Southampton	34	4.7	1	0.51
Swindon	23	2.8	0	0.35
Taunton	20	1.2	0	0.17
Truro	17	1	0	0.14
Winchester	53	2.8	1	0.35

Table A2.5. Probability of BME jurors being on jury panels in North East Region

Crown Court	Average no. of jurors serving per week	% BME in court catchment area	No. of BME jurors expected per week	Probability of 1 or more BME jurors selected for jury panel
Bradford	45	14.2	6	0.90
Doncaster	14	1.8	0	0.24
Durham	17	1.4	0	0.19
Grimsby	19	1.8	0	0.24
Kingston on Hull	31	1.9	0	0.25
Leeds	61	6.3	3	0.62
Newcastle	51	2.8	1	0.35
Sheffield	51	6.3	3	0.62
Teesside	46	2.5	1	0.32
York	20	1.4	0	0.19

Table A.2.6. Probability of BME jurors being on jury panels in Northern Region

Crown Court	Average no. of jurors serving per week	% BME in court catchment area	No. of BME jurors expected per week	Probability of 1 or more BME jurors selected for jury panel
Barrow*	2	0.7	0	0.10
Bolton	36	6.2	2	0.62
Burnley	28	9.8	2	0.79
Carlisle	32	0.7	0	0.10
Lancaster*	10	1.8	0	0.24
Liverpool	104	2.8	2	0.35
Manchester CS	65	9.2	5	0.76
Manchester MS	85	10.5	8	0.81
Preston	64	6	3	0.60

Table A2.7. Probability of BME jurors being on jury panels in Wales & Chester Region

Crown Court	Average no. of jurors serving per week	% BME in court catchment area	No. of BME jurors expected per week	Probability of 1 or more BME jurors selected for jury panel
Cardiff	60	4.7	2	0.51
Chester	29	1.6	0	0.21
Merthyr Tydfil	26	1	0	0.14
Newport S Wales	27	2.2	0	0.28
Swansea	62	1.7	1	0.23
Warrington	23	1.7	0	0.23
Caernarfon*	14	1	0	0.14
Carmarthen*	8	0.9	0	0.13
Dolgellau*	1	0.6	0	0.09
Haverfordwest*	0	0.8	0	0.11
Knutsford*	15	1.5	0	0.20
Mold*	21	1	0	0.14
Welshpool*	0	0.9	0	0.13

Appendix 3

Analysis output of interaction between BME population, rental housing and summons response

The proportion of non-returns was modelled as a binary response variable with a probability of a non-return calculated for each court. A fixed effects model was assumed, where probabilities were independent for each court. All models were implemented using WinBUGS. This allowed examination of whether certain courts had significantly higher levels of non-return, by assessing whether the 95% credible interval for each court was higher than the population mean (around 15.1%).

Table A3.1. Logit model of summonses returned on the basis of proportion BME, proportion renting and their interaction

Parameter	Estimate	Std. Error	Z	Sig.	95% Confidence Interval	
					Lower Bound	Upper Bound
Prop. Renting	3.516	.429	8.192	.000	2.674	4.357
Prop. BME	3.083	.478	6.455	.000	2.147	4.019
Interaction	-4.466	1.107	-4.033	.000	-6.636	-2.296
Constant	-3.160	.140	-22.500	.000	-3.300	-3.020

Appendix 4

BME population levels in Ethnicity Concentration Courts

Table A4.1. BME Population Levels in Ethnicity Concentration Courts		
Ethnicity Concentration Courts	Overall %BME population in juror catchment area	BME population concentrations in postcode districts in catchment area
Burnley	9.8	27% (BB9)
Aylesbury	9.3	29% (HP12) 25% (HP11) 20% (HP13)
Manchester Crown Square	9.2	40% (M8) 39% (M12) 52% (M13) 30% (M14) 49% (M16) 22% (M18) 18% (OL1) 18% (OL4) 25% (OL8)
Nottingham	6.5	28% (NG7) 21% (NG1) 13% (NG2)
Bolton	6.2	24% (B3) 17% (B1)
Sheffield	6.3	37% (S3) 43% (S4) 22% (S7) 26% (S8)
Leeds	6.3	33% (WF13) 29% (WF17) 13% (LS17) 22% (LS12)
Preston	6.0	36% (BB1) 22% (PR1)
Derby	5.8	38.5% (DE23)
Oxford	4.9	14% (OX4) 11% (OX3) 11% (OX1)
Cardiff	4.7	22% (CF11) 29% (CF10)
Bristol	4.5	20% (BS5)
Liverpool	2.8	18% (L7) 22% (L8)

Appendix 5

Logit regression outputs for serving and non-serving jurors

Table A5.1. Multilevel binary logistic regression output: likelihood of serving having been summoned, based on a range of predictor variables

Covariate	Level	Model 1		Model 2		Model 3		Model 4	
		Estimate	SE	Estimate	SE	Estimate	SE	Estimate	SE
Constant		1.31	0.14	1.21	0.13	1.22	0.14	1.21	0.13
Gender	Male	0.00	-	0.00	-	0.00	-	0.00	-
	Female	-0.05	0.08	-0.06	0.08	-0.06	0.08	-0.05	0.08
Prior jury service	No	0.00	-	0.00	-	0.00	-	0.00	-
	Yes	-0.10	0.11	-0.08	0.11	-0.08	0.11	-0.11	0.11
Income	<10k	0.00	-	0.00	-	0.00	-	0.00	-
	10k-19k	0.48	0.11	0.50	0.11	0.51	0.11	0.49	0.11
	20k-34k	0.72	0.12	0.75	0.12	0.78	0.12	0.74	0.12
	35k-49k	0.85	0.15	0.88	0.14	0.91	0.14	0.87	0.14
	50k-64k	1.08	0.20	1.13	0.20	1.17	0.20	1.10	0.20
	65k+	0.81	0.17	0.83	0.17	0.89	0.17	0.83	0.17
Employment	Full time	0.00	-	0.00	-	0.00	-	0.00	-
	Part time	-0.59	0.12	-0.57	0.12	-0.54	0.12	-0.57	0.12
	Self	-1.42	0.12	-1.41	0.12	-1.39	0.12	-1.41	0.12
	Retired	-1.52	0.12	-1.52	0.12	-1.46	0.12	-1.50	0.12
	Student	-0.54	0.23	-0.48	0.23	-0.46	0.23	-0.51	0.23
	Caring	-1.76	0.15	-1.74	0.15	-1.72	0.15	-1.74	0.15
	Seeking	-0.36	0.24	-0.36	0.24	-0.34	0.24	-0.34	0.24
	Other	-2.38	0.20	-2.35	0.19	-2.29	0.19	-2.35	0.19
Ethnicity	White	0.00	-	0.00	-				
	Mixed	-0.21	0.43	-0.30	0.43				
	Asian	-0.33	0.36	-0.48	0.16				
	Black	-0.69	0.21	-0.79	0.21				
	Other	-0.25	0.39	-0.61	0.36				
Religion	None	0.00	-			0.00	-		
	Christian	-0.07	0.09			-0.10	0.09		
	Buddhist	-0.64	0.58			-0.89	0.58		
	Hindu	0.46	0.47			-0.33	0.30		
	Jewish	-0.54	0.48			-0.52	0.48		
	Muslim	0.08	0.37			-0.61	0.22		
	Sikh	0.32	0.58			-0.27	0.46		
	Other	-0.16	0.67			-0.38	0.63		
First language	English	0.00	-					0.00	-
	Other	-0.86	0.18					-0.92	0.16
Court level variance		0.032	0.022	0.036	0.022	0.050	0.025	0.040	0.023

Table A5.2. Multilevel multinomial logistic regression output: likelihood of serving on date summoned vs. deferred, disqualified and excused on the basis of a range of predictor variables

Covariate	Levels	Deferred vs. Served at time summoned		Disqualified vs. Served at time summoned		Excused vs. Served at time summoned	
		Est.	SE	Est.	SE	Est.	SE
Constant		-1.27	0.10	-2.87	0.16	-1.55	0.09
Gender	Male	0.00	-	0.00	-	0.00	-
	Female	0.05	0.08	-0.71	0.14	0.36	0.08
Prior appointment	No	0.00	-	0.00	-	0.00	-
	Yes	0.04	0.12	0.05	0.20	0.11	0.12
Ethnicity	White British	0.00	-	0.00	-	0.00	-
	BME	-0.07	0.16	0.93	0.21	0.12	0.14
First language	English	0.00	-	0.00	-	0.00	-
	Other	0.29	0.25	0.95	0.28	0.70	0.21
Economically active	No	0.00	-	0.00	-	0.00	-
	Yes	0.07	0.11	2.02	0.15	1.28	0.09
Income	<19k	0.00	-	0.00	-	0.00	-
	20k-34k	0.04	0.11	-0.34	0.18	-0.08	0.10
	35k+	0.23	0.10	-0.19	0.17	0.04	0.10

The following present Mlwin equations for multilevel multinomial logistic regression model of status. The model was fitted by Bayesian estimation using Markov Chain Monte Carlo. Vague priors were used, with a burn-in of 5000 iterations and chain of 50,000 iterations.

$$\text{resp}_{ijk} \sim \text{Multinomial}(x_{\text{cons}} s_{ijk}, \pi_{ijk})$$

$$\log(\pi_{1jk} / \pi_{4jk}) = \beta_{0k} x_{\text{cons}} \text{Deferred}4_{ijk} + 0.049(0.084) \text{female} \text{Deferred}4_{ijk} + 0.036(0.121) \text{prior} \text{Deferred}4_{ijk} + \\ -0.071(0.156) \text{BME} \text{Deferred}4_{ijk} + 0.292(0.249) \text{Otherlang} \text{Deferred}4_{ijk} + 0.073(0.108) \text{inactive} \text{Deferred}4_{ijk} + \\ 0.040(0.107) \text{20k35k} \text{Deferred}4_{ijk} + 0.230(0.102) \text{35k+} \text{Deferred}4_{ijk}$$

$$\beta_{0k} = -1.268(0.096) + v_{0k}$$

$$\log(\pi_{2jk} / \pi_{4jk}) = \beta_{1k} x_{\text{cons}} \text{Disqualified}4_{ijk} + -0.715(0.144) \text{female} \text{Disqualified}4_{ijk} + 0.048(0.201) \text{prior} \text{Disqualified}4_{ijk} + \\ 0.929(0.205) \text{BME} \text{Disqualified}4_{ijk} + 0.950(0.276) \text{Otherlang} \text{Disqualified}4_{ijk} + \\ 2.024(0.151) \text{inactive} \text{Disqualified}4_{ijk} + -0.344(0.177) \text{20k35k} \text{Disqualified}4_{ijk} + \\ -0.188(0.172) \text{35k+} \text{Disqualified}4_{ijk}$$

$$\beta_{1k} = -2.866(0.156) + v_{1k}$$

$$\log(\pi_{3jk} / \pi_{4jk}) = \beta_{2k} x_{\text{cons}} \text{Excused}4_{ijk} + 0.363(0.083) \text{female} \text{Excused}4_{ijk} + 0.108(0.116) \text{prior} \text{Excused}4_{ijk} + \\ 0.115(0.143) \text{BME} \text{Excused}4_{ijk} + 0.704(0.209) \text{Otherlang} \text{Excused}4_{ijk} + 1.282(0.087) \text{inactive} \text{Excused}4_{ijk} + \\ -0.076(0.098) \text{20k35k} \text{Excused}4_{ijk} + 0.036(0.098) \text{35k+} \text{Excused}4_{ijk}$$

$$\beta_{2k} = -1.553(0.093) + v_{2k}$$

$$\begin{bmatrix} v_{0k} \\ v_{1k} \\ v_{2k} \end{bmatrix} \sim N(0, \Omega_v) : \Omega_v = \begin{bmatrix} 0.070(0.030) & & \\ 0.018(0.028) & 0.087(0.044) & \\ 0.012(0.020) & 0.010(0.024) & 0.047(0.024) \end{bmatrix}$$

$$\text{cov}(y_{sjk}, y_{ijk}) = -\pi_{sjk} \pi_{ijk} / x_{\text{cons}} s_{ijk} : s \neq i; \quad \pi_{sjk} (1 - \pi_{ijk}) / x_{\text{cons}} s_{ijk} : s = i;$$

$$\text{Deviance}(MCMC) = 9282.806(12993 \text{ of } 12993 \text{ cases in use})$$

Appendix 6

Regression and probability outputs for juror decision-making

Juror and Defendant Ethnicity Effect

A binary logistic regression model was fitted with juror initial vote (not guilty vs. guilty) as a response variable. Two binary predictors, binary ethnicity of juror (White vs. BME), binary ethnicity of defendant (White vs. Black/Asian) and their interaction were fitted as predictors.

Table A6.1. Binary logistic regression output, modelling likelihood of finding defendants not guilty as opposed to guilty based on of juror ethnicity, defendant ethnicity and their interaction.

Predictor	B	S.E.	Wald	df	p	Exp(B)
BME juror	-1.422	.491	8.379	1	.004	.241
Black/Asian defendant	.349	.276	1.598	1	.206	1.418
BME juror X Black/Asian defendant	1.802	.618	8.509	1	.004	6.061
Constant	.424	.214	3.908	1	.048	1.528

Table A6.2. Probability (derived from model) of finding defendants guilty on the basis of juror and defendant ethnicity.

	p(guilty)
White Juror/White Defendant	0.40
White Juror/BME Defendant	0.32
BME Juror/BME Defendant	0.24
BME Juror/White Defendant	0.73

Deliberation effect

A binary multilevel logit model was fitted to look at the impact of juror ethnicity and defendant ethnicity on juror votes after deliberation (output in Table A9.1). A multilevel model was used to account for the fact that, following deliberation, jurors were nested within juries. The multilevel model accounts for this hierarchical structure by fitting a jury level random effect.

Table A6.3. Multilevel binary logistic regression output: likelihood of a not guilty vote following deliberation based on of juror ethnicity, defendant ethnicity and their interaction.

Predictor	Estimate	S.E.
BME juror	-0.76	0.46
Black/Asian defendant	0.52	0.39
Non-White juror X Black/Asian defendant	1.46	0.63
Constant	0.43	0.30
Jury level variance	0.44	0.23

Table A6.4. Probability (derived by simulation from model) of juror finding defendant guilty on the basis of juror and defendant ethnicity.

	p(guilty)
White Juror/White Defendant	0.39
White Juror/BME Defendant	0.28
BME Juror/BME Defendant	0.16
BME/White Defendant	0.59

Victim effect

A multilevel model was fitted to examine the impact of juror ethnicity and both defendant and victim ethnicity on juror votes after deliberation. The multilevel model accounts for the fact that jurors were nested within juries by fitting a jury level random effect. Four models were fitted in total, with increasing complexity.

Table A6.5. Multilevel binary logit model output regression output: likelihood of a not guilty vote following deliberation based on juror, defendant and victim ethnicity.

	Model 1		Model 2		Model 3		Model 4	
Predictor	Est.	S.E.	Est.	S.E.	Est.	S.E.	Est.	S.E.
BME juror	-0.76	0.46	0.38	0.56	-0.50	0.66	-0.87	0.74
Black/Asian defendant	0.52	0.39	-	-	0.59	0.40	0.18	0.55
Black/Asian victim	-	-	-0.32	0.44	-0.38	0.40	-0.74	0.58
BME juror X Black/Asian defendant	1.46	0.63	-	-	1.69	0.68	2.67	1.29
BME juror X Black/Asian victim	-	-	-0.44	0.68	-0.55	0.73	0.22	0.95
Black/Asian defendant X Black/Asian victim	-	-	-	-	-	-	0.68	0.75
BME juror X Black/Asian defendant X Black/Asian victim	-	-	-	-	-	-	-1.66	1.51
Constant	0.43	0.30	1.04	0.33	0.67	0.37	0.82	0.42
Jury level variance	0.44	0.23	0.70	0.32	0.46	0.25	0.37	0.22

Obtaining probability of a guilty vote from model 2 in Table A10.1 by simulation gives the estimates in Table A10.2.

Table A6.6. Probability (derived by simulation from model 2) of finding defendants guilty on the basis of juror and victim ethnicity.

	p(guilty)
White Juror/White Victim	0.29
White Juror/BME Victim	0.35
BME Juror/BME Victim	0.36
BME Juror/White Victim	0.23

Appendix 7 Juror summoning survey questionnaire

ADDITIONAL INFORMATION

Please read the reverse of this page

For all the questions below, please tick the appropriate box

A Are you: Male Female

B Have you ever done jury service before? Yes No

C Are you employed? If **YES**, please tick one below:

Employee (full-time)

Employee (part-time)

Self-Employed

If **NO**, please tick one below:

Retired

Student

Looking after family

Looking for work

Other _____
(please specify)

D What is your HOUSEHOLD'S total income per year? (i.e., before deductions such as tax)

Under £10,000 £20,000 - £34,999 £50,000 - £64,999

£10,000 - £19,999 £35,000 - £49,999 Over £65,000

E What is your ethnic group? (please tick one box only)

White	Mixed	Asian or Asian British	Black or Black British	Other Ethnic Groups
British <input type="checkbox"/>	White and Black Caribbean <input type="checkbox"/>	Indian <input type="checkbox"/>	Caribbean <input type="checkbox"/>	Chinese <input type="checkbox"/>
Irish <input type="checkbox"/>	White and Black African <input type="checkbox"/>	Pakistani <input type="checkbox"/>	African <input type="checkbox"/>	Any other <input type="checkbox"/>
Any other <input type="checkbox"/> (please specify)	White and Asian <input type="checkbox"/>	Bangladeshi <input type="checkbox"/>	Any other Black background <input type="checkbox"/> (please specify)	(please specify)
	Any other mixed background <input type="checkbox"/> (please specify)	Any other Asian background <input type="checkbox"/> (please specify)		

F What is your religious affiliation? (please tick one box only)

None Christian Buddhist Hindu

Jewish Muslim Sikh Any other _____
(please specify)

G What is your first language? English Other _____
(please specify)

Please return this form with pages 3 and 4 of the summons in the pre-paid envelope provided.

REQUEST FOR ADDITIONAL INFORMATION

We are grateful for your co-operation in completing this additional form.

Your assistance is voluntary, and the information you provide will in no way affect your jury service.

This form is part of a project about jury service being conducted by the University of Birmingham. Any information you provide on this form will be treated by the project in the strictest confidence, and will not be shared with any other organisation or individual.

Thank you for completing this form. Your assistance is invaluable to us.

Please return this form with pages 3 and 4 of the summons in the pre-paid envelope provided.

Ministry of Justice Research Series No.2/07

Diversity and Fairness in the Jury System

This study examines whether the juror summoning process discriminates against Black and Minority Ethnic (BME) groups, and whether juries discriminate against defendants based on ethnicity. It establishes whether a representative group of BME jurors are summoned for and serve at each Crown Court in England and Wales, and whether jurors are representative in terms of age, gender, employment, income and religion. It then examines whether a defendant's ethnicity affects verdicts of racially mixed juries, and whether juror decisions to convict or acquit are affected by a charge of racial aggravation, a victim's ethnicity or jury deliberations.

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