

# **The 21st Century Jury: Contempt, Bias and the Impact of Jury Service**

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■ Bias; Contempt of court; Juries; Jurors; Jury service; Rape; Sexual offences

*Bushell's Case<sup>1</sup> is now remembered primarily as establishing the right of juries to acquit in the face of the evidence and against judicial directions. But the issues raised about the 17th century jury system*

has been the main focus of juror misconduct in recent years, it is not the sole means of juror contempt and illegal behaviour.

Previous research by the UCL Jury Project with real jurors at court established the extent to which jurors on a wide range of cases use the internet during the trial. Initial research was conducted in 2008–09,<sup>4</sup> which explored the impact of media coverage of jury trials for the first time in this country. It found that in high profile cases, 26 per cent of jurors said they had seen some information about their case during the trial and 12 per cent of these jurors admitted to looking for information. In “standard cases”,<sup>5</sup> 13 per cent of jurors on those cases said they had seen information about the case and 5 per cent admitted to looking for information. These research findings have sometimes been cited as evidence of widespread juror use of the internet to research their cases during trial. However, those findings need to be understood in the context of the time the research was conducted (over a decade ago), when trial judges were only beginning to develop their directions to juries about internet use and before social media use became widespread.

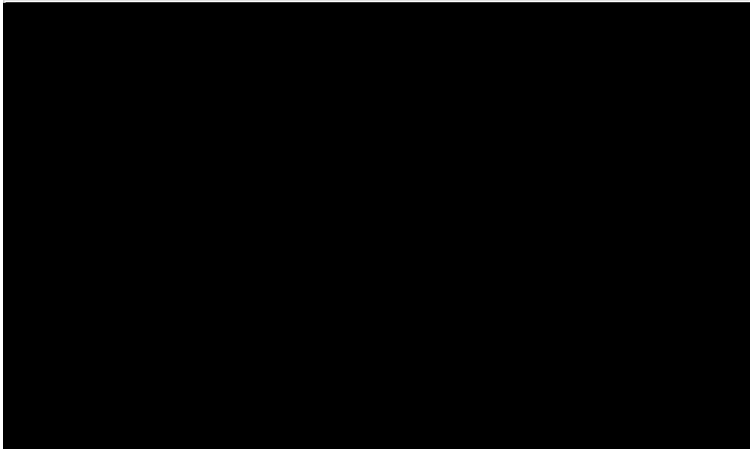
What that initial research could not determine was whether this potential juror contempt was a result of juror confusion over the rules of jury service or whether it was wilful disobedience of judicial directions. In *Bushell’s Case*, Chief Justice Vaughan



In stage 1, each jury at the Old Bailey was seen immediately post-verdict before they left court at the end of their jury service. All jurors were invited to complete an anonymous and voluntary questionnaire that explored their understanding of their legal responsibilities as a serving juror. The questionnaire asked jurors what activities they thought constituted a criminal offence for a juror to do while serving on a jury; what a juror could discuss about the case and with whom while the trial is going on; what a juror could discuss about the case and with whom after the



***Figure 2: Juror understanding of in-trial disclosure in 2017***



***Figure 3: Juror understanding of post-trial disclosure in 2017***

Overall, the research showed that there was enough lack of understanding amongst jurors about the rules of jury service and their legal responsibilities to indicate that better methods needed to be found to inform jurors of the rules on juror conduct. The fact that confusion about contempt and jurors' legal responsibilities still existed despite the information given to jurors suggested that the information may not have been provided to jurors in a way and at a time that was most likely to result in the greatest understanding. For instance, at that time almost all the

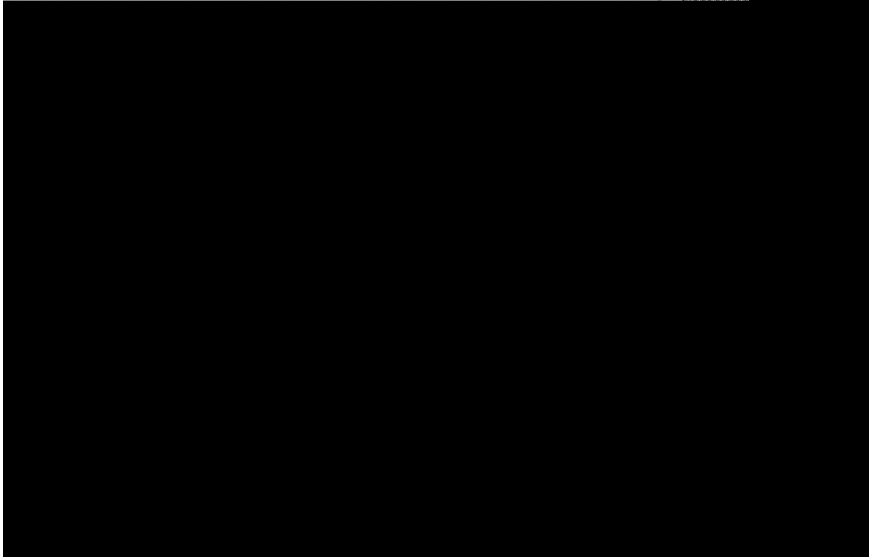
of being in a court building for the first time, and they are presented with a substantial amount of new information in a short period of time (covering a wide range of issues such as how to claim loss of earnings, travel and subsistence expenses, the court timetable, how empaneling and swearing a jury occurs, etc.). All of this created the prime conditions for information overload.<sup>18</sup>

Following the stage 1 findings, the Lord Chief Justice asked the UCL Jury Project to design and

do if a juror has any questions or needs any assistance; and what support is available to jurors at the end of the trial if they are affected by the case.

The juror notice was piloted with all newly sworn juries at the Old Bailey from April through July 2017. At the end of the judge's opening remarks to the jury and before the prosecution opening, each sworn juror<sup>22</sup> was given their own individual copy of the juror notice "Your Legal Responsibilities as a Juror" by the usher at the direction of the judge. Once the jurors were given the document, the judge explained to the jurors that the notice was a summary of what they had just been told their about their legal responsibilities as a juror; that they needed to take some time at the next break to read the document carefully and make sure they understood the rules it contained; that the notice explained what to do if they had any questions about their responsibilities as a juror; and that they should keep the notice with their summons at all times. A notation was also made into the trial record that the juror notice had been handed to each member of the jury. It is important to note that the notice was designed to reinforce, not replace, the judge's oral directions to the jury on their legal responsibilities. The notice did, however, replace any written information any judge may have previously provided to jurors on their legal responsibilities at the start of the trial.<sup>23</sup>

## **Pilot results**



***Figure 4: Impact of juror notice pilot at the Old Bailey (2017)***

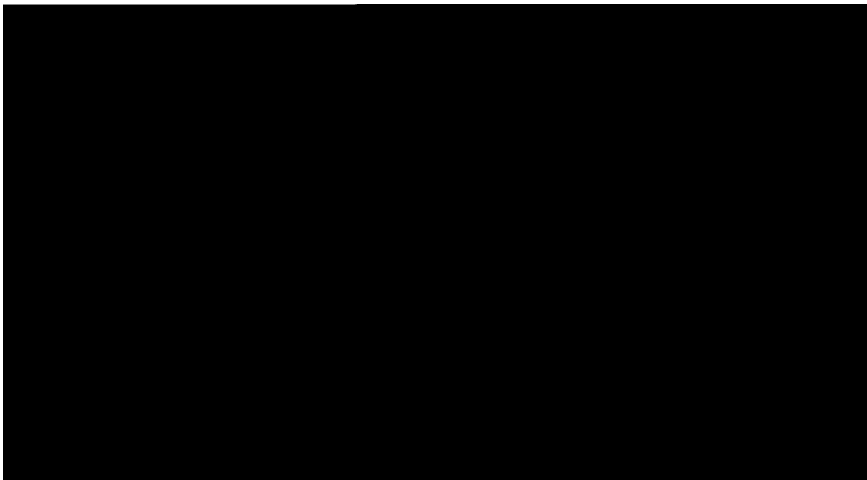
The findings were reported to the Lord Chief Justice, the senior judicial criminal team and the Criminal Procedure Rule Committee. As a result, on 31 July 2017, *CPD VI (Trial)* para.26G.5 was adopted requiring that each sworn juror in every jury trial in England and Wales be provided with the juror notice at the time of the judge’s opening remarks to the jury.<sup>24</sup> To implement the practice direction, it was agreed that there would be a phased roll-out of the juror notice in 2017–18, with “early adopter courts” selected in each court region.<sup>25</sup> A bilingual version was also introduced in all courts in Wales.<sup>26</sup> Following the successful roll-out of the juror notice in the early adopter courts, the juror notice became compulsory in all jury trials in all courts in England and Wales as of



(2017–18) continued and increased further once the juror notice became compulsory in all courts.

### **Juror understanding of statutory offences under the 2015 Act**

After over a year of full implementation in all Crown Court jury trials, the new juror notice had achieved almost 100 per cent understanding with jurors in the most critical categories of the statutory offences (see Figure 5 below). These include prohibitions on the use of social media (98 per cent); contact with parties to the case (98 per cent); researching the defendant (96 per cent); researching other parties to the case (95 per cent); visiting the crime scene, in person or virtually (98 per cent); and discussing the case with family and friends (98 per cent). Those jurors who were now able to correctly identify all the statutory contempt offences for jurors more than doubled from 34 per cent without the notice to 70 per cent with the notice following full implementation. There are three statutory offences where the notice has also achieved substantially increased levels of understanding amongst jurors but where overall levels of understanding that these are offences is somewhat lower. These include statutory prohibitions against researching the judge in the case (44 per cent without the notice; 83 per cent with the notice); researching the lawyers in the case (44 per cent without the notice; 79 per cent with the notice); and researching the law and legal terms in the case (49 per cent without the notice; 81 per cent with the notice).

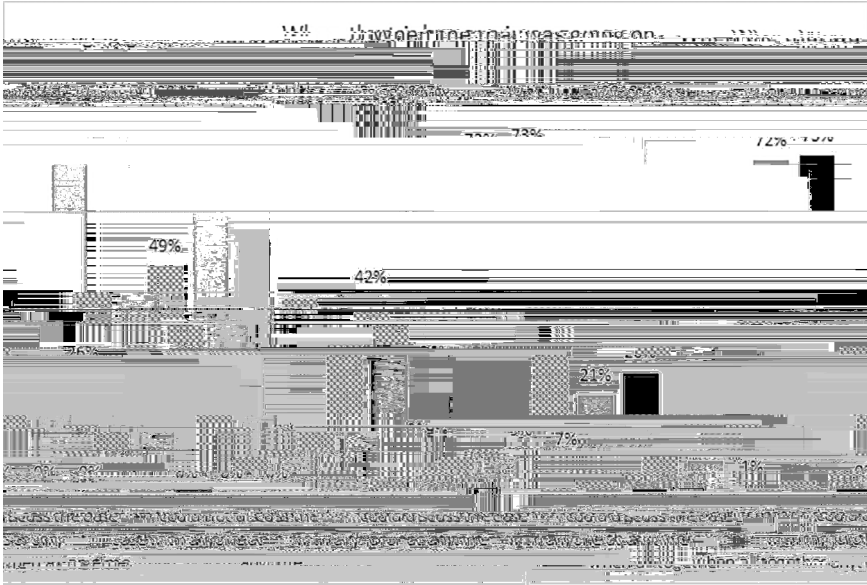


*Figure 5: Impact of the juror notice in the Crown Court 2017–19*

### **Juror understanding of the rules on discussing their case**

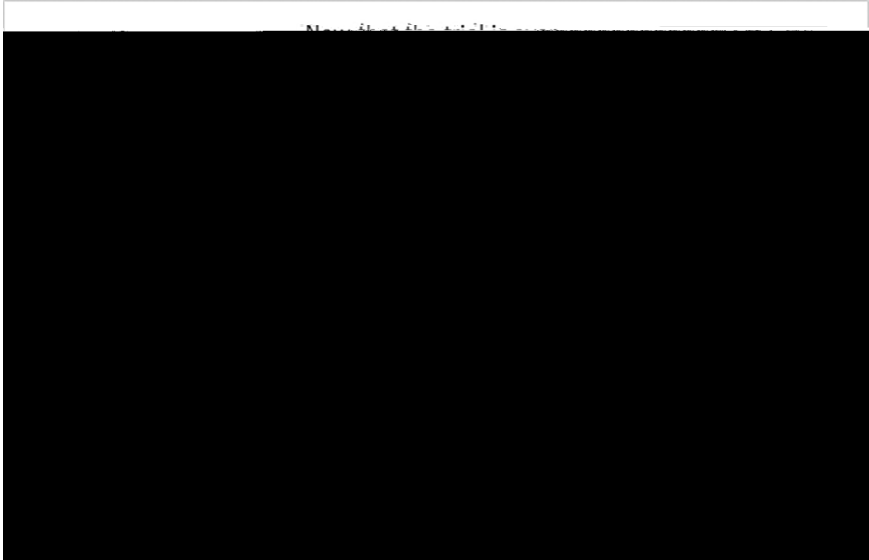
Since the notice has been used, there has also been a marked increase in juror understanding of the disclosure rules that relate to what they can discuss and with whom (1) during the trial and (2) when the trial is over. As Figure 6 below shows, the proportion of jurors that identified the correct rule on what they could discuss during the trial increased from 49 per cent to 73 per cent with the juror notice.

Almost all jurors who selected an incorrect answer (26 per cent) selected the answer that would not result in their committing contempt (i.e. “I could not discuss the case with anyone at anytime”).



**Figure 6: Juror understanding of in-trial disclosure 2017–19**

Juror understanding of the post-trial disclosure rule also substantially improved with the juror notice (see Figure 7 below). Prior to the introduction of the juror notice only just over half of jurors (53 per cent) correctly identified the post-trial disclosure rule, that they could discuss the case with anyone with the one exception that they must not discuss anything that occurred in the jury’s deliberations. With the juror notice this increased to almost three-quarters of all jurors (73 per cent). Again, almost all jurors who selected an incorrect answer about post-trial disclosure selected the answer that would not result in their committing contempt (i.e. “I cannot discuss the case with anyone except my jury”), although it is not helpful for juror wellbeing if some jurors do not realise that they can discuss some aspects of the case after the trial is over. And the notice halved the proportion of jurors who might commit contempt post-trial (reducing from 20 per cent to 10 per cent those jurors who said they could discuss any aspect of the case with anyone post-trial).



***Figure 7: Juror understanding of post-trial disclosure 2017–19***

In addition to the anonymous surveys, jurors also provided some qualitative feedback about the content, design and timing of the new juror notice.

## **Juror bias: from claims of 17th century religious dissent to 21st century rape myths**

In *Bushell's Case*, the four jurors who refused to be coerced

about a Scottish public information campaign about sexual violence.<sup>36</sup> None of these sources cited any of the statistics or claims made in the petition. At the time of the petition there had been no research in England and Wales with real jurors on the issue of whether they accepted commonly held rape myths or understood judges' directions on such myths. This meant that the petition's claim that research showed jurors accepted commonly held rape myths and did not understand judges' directions on these myths could not have been correct. It is unclear what the source could be of the statistic cited that the conviction rate in rape trials is

offences and to how an individual may react to a sexual assault by a partner. The Court of Appeal has subsequently endorsed judicial directions in sexual offences cases that caution juries “against applying stereotypical images of how an alleged victim or an alleged perpetrator of a sexual offence ought to have behaved at the time, or ought to appear while giving evidence”.<sup>41</sup> As the court stated in 2010 in *M*, judicial directions on myths and stereotypes in sexual offences cases that are properly tailored to the case do not offend the common law principle that judicial notice can be taken only of facts of particular notoriety or common knowledge.<sup>42</sup> What is not permitted is either the prosecution or defence using experts to provide evidence in court on what is known about reactions to non-consensual sexual offences.

In addition, all judges in the Crown Court are provided with specific guidance and example directions for directing juries on the issue of myths and stereotypes in rape and sexual offences cases. Since its inception in 2016, the *Crown Court Compendium* has included detailed information on directing juries about myths and stereotypes in rape and sexual offences cases. The most recent edition of the *Compendium* includes guidance and M dges

cases, although it does mean that there is variability on when and how judges direct juries on this issue.

### **Myths and stereotypes research with real juries: 2018–2019**

The UCL Jury Project undertook research in 2018–19 to address two key questions:

(1)





by someone known to the victim (87 per cent of rapes) not a stranger (13 per cent).<sup>51</sup> As Figure 10 below shows, while most jurors (64 per cent) correctly believe that a person is more likely to be raped by someone

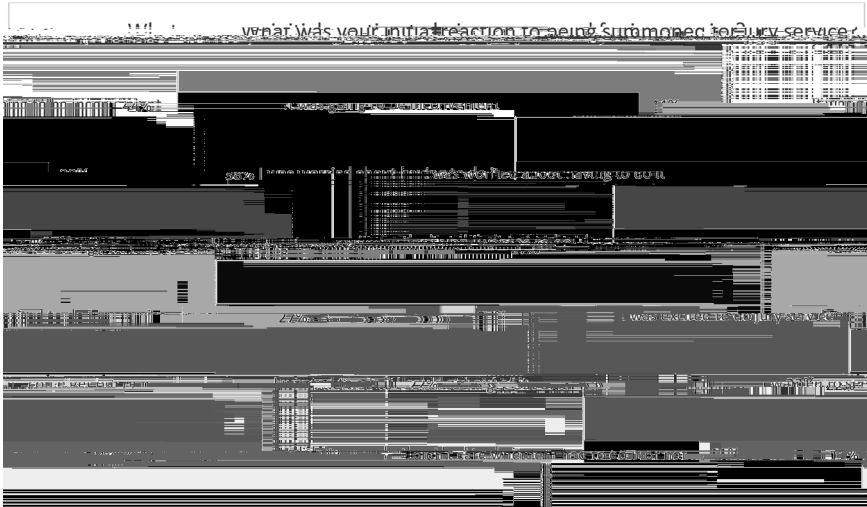


However, this research with real jurors does indicate that some jurors would benefit from additional guidance in two specific areas (stranger vs acquaintance rape and emotion when giving evidence) where some jurors are uncertain of the factual reality and a small number hold incorrect views. The UCL Jury Project is continuing its research with real juries at court to determine the most effective means of directing juries on these issues. What this further research is designed to answer (in a similar way to the juror notice pilot) is whether new tools can help reduce the proportion of jurors who are unsure about these factual issues and correct the very small proportions of jurors who currently hold some factually incorrect beliefs.

### **Why real jurors are fundamentally different from mock jurors or opinion poll takers**

The UCL Jury Project research in 2017–19 with real jurors at court also explored the impact jury service has on individuals. The findings of this research demonstrate clearly for the first time why the views and decisions of real jurors who actually serve on trials can never be replicated by volunteers in mock jury studies (who are not serving jurors) or by those who take part in public opinion polls. The research was conducted with 1175 jurors, who had served on 99 juries at 6 courts in 4 different court regions. These jurors all agreed to take part in an anonymous and voluntary post-verdict survey before leaving court (1175 jurors out of a possible 1177). The fact that almost every single juror on every trial agreed to take part in the study means that this research presents the most reliable source of information on the views and attitudes of those who actually serve on juries in England and Wales.

The survey asked those who had just completed trials what their initial reaction was to being summoned for jury service. The findings (see Figure 12 below) reveal that most serving jurors were not enthusiastic about the prospect of doing jury service. They felt it was going to be inconvenient (44 per cent), they were worried about having to do jury service (38 per cent), it was the last thing 27 per cent wanted to do and 22 per cent wanted to see if they could be excused. Only 27 per cent were excited to do jury service.



**Figure 12: Juror attitudes to being summoned**

The same jurors were also asked to respond to the following: “Jury service is not voluntary. But if jury service had been voluntary, when you were first summoned would you have opted out of jury service?” As Figure 13 below shows, if these real jurors who had served on a trial had been given the option of opting out of jury service when they were first summoned, the overwhelming majority of jurors (87 per cent) would have chosen not to do jury service.



**Figure 13: Jurors willing to serve if jury service was voluntary**

Previous mock jury studies have routinely asserted that there are no differences between “mock” and real jurors.<sup>56</sup> But this new empirical evidence from actual serving jurors who have just completed trials clearly demonstrates that there are fundamental differences between real jurors and those who volunteer to take part

<sup>56</sup> Most mock jury studies usually cite a 1999 study by

in mock jury research and public opinion polls. The one thing jurors are not is volunteers. Because mock jury research and public opinion polls only use volunteers, not real jurors, this means these sources of information have an inherent self-selection bias.<sup>57</sup> Regardless of how demographically representative a group of volunteer “mock” jurors are, the very fact that they have volunteered to take part in a mock jury study means they cannot be representative of the vast majority of those who actually serve on juries in England and Wales. The overwhelming majority of serving jurors are those who would never have volunteered to do jury service (87 per cent). What this in turn means is that the data from mock jury studies will be biased because those who choose to participate in these studies (and opinion polls) do not and cannot represent the overwhelming majority of actual serving jurors.<sup>58</sup>

### **The impact of jury service: personal and societal**

The personal impact of doing jury service for the jurors in *Bushell’s Case* was extremely negative at least in the short term; they were imprisoned, deprived of food, drink and heat and fined. We do not know what the long-term consequences may have been for any of these jurors. But in the 21st century there is a growing concern about what might be the emotional and psychological impact of jury service on members of the public. Individual cases have raised specific concerns about jurors finding it difficult to deal with extreme evidence,<sup>59</sup> and there have also been questions raised about the general impact on members of the public of serving on juries.<sup>60</sup> In 2017–18 the need for juror support was also the subject of a Canadian parliamentary inquiry.<sup>61</sup> One study in England and Wales on the personal consequences of jury service suggested that jury service resulted in “vicarious traumatisation” of members of the public.<sup>62</sup> However, that research was based on a nation-wide survey of only 64 self-selecting jurors from different cases who responded to advertisements to take a web-based survey. This clearly has a substantial self-selection bias, and given the limitations of that study, the authors cautioned against extrapolating too much from the study findings.

### **Experience of jury service and need for juror aftercare**

To





advice for those who have completed jury service about how jury service may affect them and where to seek support.<sup>64</sup>

## **Societal impact of jury service**

While the recent focus of policy makers and media reports has been on the possible detrimental effects of jury service on members of the public, the wider impacts and potential benefits of jury service on both a personal and societal level have received less attention. There is strong evidence from research elsewhere that jury service can have a positive impact on both members of the public and society. A long term study in the United States<sup>65</sup> has found that people who served on a jury and had never voted before were significantly more likely to vote at the next election. The study found that jury service also sparked long term changes in how people used the media and their involvement in community and civic groups. The UCL Jury Project research conducted in 2017–19 with real jurors at court in England and Wales has also revealed the transformational effect of jury service on members of the public in this jurisdiction.

As discussed above, in post-verdict surveys jurors were asked about their attitude to jury service both before they attended court and when they were leaving after returning a verdict. The first part of that research found that almost all jurors who had just completed a trial said that when they were first summoned if jury service had been voluntary they would not have done it. But having done jury service, most of these jurors said that the experience of being in court for the trial was interesting, informative and educational. And as a result, 81 per cent of these jurors said they would now 