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Juror Decision-Making: A Look Inside the Jury Room

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Abstract

Although there exists a large body of research literature on the jury system, only a small amount of research has been able to tap the attitudes and behaviour of actual jurors, and this has principally been confined to the United States. The research that is the subject of this paper was designed to address this gap in the literature, by conducting empirical research on jury decision-making which could be used to inform a consideration of the jury system and the need for reform. The research was wide-ranging, covering issues relevant to the entire process of jury service, from informing and preparing jurors for their role through to jury verdicts and the ongoing stress after jury service had ended. This paper concentrates on findings relating to the presentation of evidence, providing a framework for jurors to work with, the decision-making process, and the ability of jurors to understand and apply the law and the judge's directions.

Introduction

The jury is still regarded by many as the cornerstone of the criminal justice system, although it is now used in only a small minority of all criminal cases (less than 1 per cent in New Zealand). It is an institution which has prompted strong and polarised views. However, because of traditional notions of secrecy (enshrined in England in the Contempt of Court Act), there has been limited effort to find out how juries actually work.

There is a considerable body of research literature about the jury, but this has largely been confined to an exploration of the views of other participants involved in the trial (Baldwin and McConville, 1979); the observation of "simulated" or "mock" juries (Kramer, et al, 1990; Heuer and Penrod, 1994; Otto et al, 1994; Rosenhan et al, 1994); or the administration of self-completion questionnaires to actual jurors after the trial in order to assess their own perceptions of the comprehension and competence of themselves and their fellow jurors (Zander and Henderson, 1993; Findlay, 1994; Jackson, 1996). There is a small amount of research that has been able to tap the attitudes and behaviour of actual jurors in the jury room (Brill, 1989; Heuer and Penrod, 1994), but it has principally been confined to the United States. The applicability of such research to the United Kingdom is open to question, because the legal culture and procedural rules of the two jurisdictions differ significantly. This paper will draw on the findings from empirical research on jury decision-making in New Zealand, a jurisdiction that shares many of the characteristics of the English system. The objectives of the research were:

- To examine the extent to which and the way in which jurors individually and collectively assimilate and interpret the evidence and identify the issues in the case.

- To identify the problems which jurors experience during the trial process.
- To assess the extent to which jurors individually and collectively understand and apply the law, and to investigate how their perception of the "law" modifies and influences their own approach to the "facts".
- To explore the processes used by the jury to reach a decision, including their strategies for resolving disagreement and uncertainty.
- To identify the impact and effects of pre-trial and trial publicity on the attitudes and responses of each individual juror to the case he or she is dealing with.

This paper concentrates on findings regarding the presentation of evidence, the decision-making process and jurors' understanding of the legal issues in their case.

Methodology

The research took a sample of 48 trials over a period of nine months during 1998, from a range of urban and provincial courts. It comprised trials ranging from half a day to five weeks and three days in length, and included offences ranging from murder to attempted burglary. The sample was not entirely random, because complex and high profile cases were incorporated where possible.

Data were collected by four methods:

- written questionnaires were provided to all potential jurors upon their arrival at court, asking them about pre-trial publicity issues in respect of two or three of the cases scheduled for the week (including the case selected for the sample).
- in order to identify the legal and factual issues in the trial, the researchers observed the initial stages of the trial, obtained a copy of the transcript of evidence, observed the closing addresses of counsel, and observed and tape-recorded the judge's summing up.
- after a jury retired to consider its verdict, the judge was interviewed about his or her view of the case, the performance of counsel, and what his or her own verdict would have been.
- subject to their consent, jurors in each trial were interviewed as soon as possible after its conclusion. The interviews were semi-structured and addressed a wide variety of issues, ranging from the adequacy and clarity of pre-trial information and jurors' reactions to the trial process through to their understanding of the law, their decision-making process, the nature of and basis for their verdict, and the impact of pre-trial and trial publicity.

From a potential interview sample of 575 jurors, 312 jurors were interviewed, or an average of 6.5 jurors (54.3%) per trial. Our experience suggests that five or six interviews per trial were sufficient to provide an accurate and consistent picture of the deliberation process. Overall, therefore, the information obtained can confidently be said to provide a fairly reliable picture of the decision-making processes employed in most trials, although there are inevitably limitations to research of this nature.[1]

The Verdicts

On the whole, jury members approached their task conscientiously, and the verdicts they delivered reflected this, with few questionable verdicts. The judge was asked what his or her verdict would have been before the jury's verdict had been returned, enabling the researchers to compare the jury's verdict with the judge's assessment of the evidence.[2] Where there was disagreement between judge and jury on some or all counts, one of the researchers considered the evidence, the reasons for the jury's verdict and the reasons for the judge's view, and made an attempt to determine whether the verdict could be regarded as questionable. Where the research team concluded that the verdict did fall into this category, a counsel experienced as both a prosecutor and defence counsel, who was not associated with the research or involved in any of the trials in the sample, was consulted.[3] A verdict was

classified as questionable only when both the researchers and the independent counsel reached the same conclusion.

On the basis of this, it was determined that the judge and jury were essentially agreed on the appropriate verdict in 24 out of the 48 trials. This is, on the face of it, lower than the rate in the study by Kalven and Zeisel (1966), which found a 75% agreement rate between judge and jury. Unlike that study, we did not rely on the judge's opinion alone, but looked to the evidence and the opinion of the independent counsel in determining the source of the disagreement, as well as asking the judge why he or she disagreed with the jury's verdict. It is perhaps this different approach which accounts for our finding little evidence of the exercise of jury equity or of verdicts being influenced by sympathy for the defendant, compared to the judges' view in the Kalven and Zeisel (1966) study that these issues accounted for almost half of the cases where there was disagreement between judge and jury.

Although Stephenson raises doubts about low levels of agreement between judge and jury, such criticisms imply that the judge's view is "right" or that the judge will invariably have the "best" approach to the evidence. As we found that the jury's view was often supportable on the evidence, this is patently not the case. Indeed, judges are arguably often pro-conviction (Sanders and Young, 2000), and undoubtedly have access to information that the jury do not. Such information has usually been deemed to be potentially biasing (such as knowledge of previous convictions), and although we expect judges to be able to resist partiality, it is a difficult and often unrealistic aim to achieve Griffith, 1997). Therefore, it is rather simplistic to assert that a jury verdict is flawed just because it does not accord with the view of the trial judge (see also, Mungham and Banowski, 1976). Indeed, having a different approach to trial evidence than would legal professionals is one of the reasons for the jury's existence. For this reason, we delved a little deeper into why the jury reached the verdict that it did in each case.

In the New Zealand study, there were five compromise verdicts, which resulted from horse trading in the jury room in multiple count cases, so that the jury convicted on some counts but acquitted on other counts when the researchers and the judge would have convicted on all counts. In 11 trials there was disagreement between judge and jury as to the appropriate verdict on one or more counts, but the jury's view was supportable on the evidence.

In New Zealand there is no provision for majority verdicts, and the research sample contained five fully hung juries. Two of these were directly attributable to the actions of a single juror who refused to consider a "guilty" verdict, but made little attempt to participate in deliberations or to provide any rational argument in favour of an alternative view. In the other three trials, the jurors who ended up in the minority provided a clear and reasoned basis for their concerns. Moreover, in the latter group of cases, it was by no means clear that the minority jurors adopted an erroneous view of the evidence. In one case, the researchers thought that the view of the majority would have resulted in a questionable verdict; and in another the case was finely balanced and the judge shared the view of the minority.

Three trials were categorised as resulting in questionable verdicts. Two of these resulted in acquittals where the judge would have convicted, and one resulted in a conviction where the judge would have acquitted. This appears to be a rather low rate of questionable verdicts when compared with studies such as that by Baldwin and McConville (1979), where it was found that 36% of all acquittals and 6% of all convictions were questionable. However, as discussed above, our study aimed to avoid a prosecution bias (which may explain the vastly higher rate of questionable acquittals to questionable convictions in the Baldwin and McConville study). We also only categorised a verdict as questionable only when the jury's verdict differed from the verdict which we, the judge and the independent assessor would have reached. This is a substantially higher standard than that used by Baldwin and McConville, who required only that the judge and one other party (police, defence or prosecution) would have reached a different verdict. In addition, our rate of questionable verdicts accords with the findings of shadow jury researchers such as McCabe and Purves (1974), who conclude, as we did, that overall juries were conscientious in approaching their task and were not usually swayed, as a unit, from making a decision based on the evidence and the law. The McCabe and Purves study found that from 30 cases, only one acquittal was questionable on the basis of sympathy for the accused.[4]

In our study, the three questionable verdicts were categorised as such by the researchers and by the independent assessor. This does not mean, of course, that the jury's verdict would have been open to challenge; ultimately the jury is the finder of fact. The decision to categorise a verdict as questionable was made on the basis not only that the jury's verdict differed from the verdict which we, the judge and the independent assessor would have

reached, but also that the rationale which jurors gave for their decision in interview was, in our view, legally or factually dubious.
In the first case, which involved multiple counts of fraud, the jury concluded that the evidence provided by the complainant lacked credibility. The judge took the same view. However, the jury was equally suspicious of the accused's testimony, and convicted on most counts because of what the accused had admitted to doing, without adequately focusing on the crucial issue of dishonest intent. This verdict has to be regarded as questionable, and based on a dubious rationale.
The accused in the second case was charged with fraud. There were a large number of counts in the indictment, and the jury acquitted on all but one count, on the basis that they did not believe the complainant's evidence. While it is clear that the complainant contradicted himself under cross-examination, there was little evidential foundation for the accused's defence that he had an understanding with the complainant that he was entitled to the money. Once the jury had rejected part of the complainant's evidence as lacking credibility, they failed to evaluate the rest of the evidence properly. The fact that the jury convicted on one count was also an oddity, since the nature of the transactions suggested that the accused would be found "guilt" or "not guilty" on all counts and that it would not be possible to distinguish between them. In fact, the "guilty" verdict on one count was the result of a compromise, because two jurors had reached the view, on apparently poorly articulated grounds, that he was guilty on two of the counts. The rest of the jury eventually agreed to bring in a "guilty" verdict on one count for the sake of reaching agreement.
In the third case, the accused was charged with firearms-related offences. The jury reached their verdict in this case on the basis of a fundamental misunderstanding about the law. Ultimately, the jury decided that, unless the accused intended to use the firearm, he had to be regarded as not guilty of the offence, even though intent was not an ingredient of the offence. The majority seem to have interpreted the law incorrectly so as to fit with the verdict they wished to reach, and then persuaded the minority to that view.

Providing a Framework

A significant number of jurors in the sample were critical of the fact that they failed to receive an adequate factual and legal framework at the start of the trial. They did not always absorb the outline of the law provided by the Crown prosecutor in his or her opening address, and as a result they heard the evidence without an understanding of the nature and meaning of the key legal elements of the offence. This meant that they failed to interpret the evidence with those elements in mind. Some jurors complained that either the opening statements between them failed to set up the issues clearly, or that the lack of a defence opening at the commencement of the case left them without an adequate grasp of the issues in dispute in the case. As a result, they sometimes listened to the prosecution evidence without knowing the basis upon which they should be weighing it up, and they also listened to cross-examination without knowing the purpose of the questions being asked, failing to attach appropriate weight to it.
Jurors do not piece together information and make sense of it at the conclusion of the trial. Rather, the New Zealand research confirms the "story model" of jury decision-making (Hastie, et al, 1983; Pennington and Hastie, 1990). Jurors actively process the evidence as it emerges, evaluating it and attempting to fit it into a story that makes sense to them. This suggests that the initial frame which jurors adopt in order to construct their "story" is important, because it is this frame that enables jurors to sift and interpret the evidence as it begins to emerge. Although jurors are willing to change the story as new elements are introduced, this is inevitably based on their understanding of the earlier evidence, which in turn is the result of the process of filtering and interpretation that has already taken place. Jurors who fail to construct a coherent story that relates to the emerging evidence risk confusion and misdirection. At best they have difficulty identifying and focusing on the relevant issues; at worst they reach decisions based on theories and interpretations of the evidence which bear little relationship to the disputed issues in the case.
All of this suggests that more needs to be done to provide jurors with a coherent factual framework in the early stages of the trial and with a clear outline of the legal structure into which the facts must be fitted. At the least, this should include a written summary by the judge

of the legal ingredients of the offence, the meaning of key legal terms and the standard opening directions on such matters as the burden and standard of proof. It should also include the provision by the Crown of lists of witnesses and exhibits and the charges to which they relate; flowcharts, diagrams and other visual material to put the case in context; and a written chronology of alleged events.

A more controversial conclusion reached as a result of this study is that more effort should be made to provide the jury with an agreed factual framework and an outline of the issues in dispute at the commencement of the trial. In many of the trials in the sample, it would have been possible not only to identify these issues in a non-partisan way in advance, but also to provide a general indication of what the basic factual arguments were to be. It is true that in some cases in the sample it would have been difficult or unwise to disclose the details of the defence in advance of the prosecution case, but in most cases the basic outline of the defence would not have been problematic. In fact an early indication of that outline may well have enhanced the impact of the defence case. By contrast, the failure to provide a meaningful factual framework to the jury at the commencement of the trial is liable to cause jurors to assess the prosecution evidence in the wrong way and to misunderstand the defence case.

The Presentation of Evidence

A major criticism of the jury system is that jurors frequently lack the capacity or competence to understand all aspects of the evidence, particularly in longer and more complex trials (see, for example, Hans and Vidmar, 1986). The New Zealand research was not able to determine precise levels of comprehension of evidence, because we were primarily reliant on self-reports by jurors on their own levels of comprehension. However, it was possible to compare individual responses with jurors' reports of the deliberations of the jury and the types of issues discussed, and also with the behaviour of the jury as a whole. This enabled the researchers to identify the problems that were common to a substantial number of individual jurors in the sample, and to assess the impact of those problems upon both the collective decision-making processes of the jury and the outcome.

The problems which jurors confronted in comprehending and absorbing evidence during the trial were generally caused not so much by any personal incapacity as by the way in which evidence was presented to them. There were few examples where lack of juror competence seemed to influence the eventual outcome. By contrast, four particular difficulties which many jurors experienced as a consequence of the manner in which evidence was presented to them were profound, and had a significant impact upon their ability to fulfil their functions effectively and efficiently. First, jurors' understanding of the evidence they received, and their ability to apply the law to that evidence, was affected by the fact that evidence was generally given in oral form with few written or visual aids. In 11 of the 48 trials at least one juror, and sometimes up to a half of those interviewed for a particular trial, volunteered that they or other jurors experienced difficulty in concentrating; and in 21 trials jurors reported difficulty in recalling the details of evidence during deliberations. While the notes taken by jurors reduced problems of concentration or recall, the amount of notes taken by jurors varied enormously, resulting in discrepancies in their notes and disagreement about what particular witnesses had said.

Secondly, most jurors criticised the slow speed at which evidence was given. They reported that it made the process cumbersome and inefficient, and that it affected their ability to weigh up the credibility of witnesses. Thirdly, a substantial number of jurors reported that they experienced difficulty in making sense of the evidence because of either the nature of the evidence itself or the confusing way in which it was presented to them. Some cases were difficult to comprehend simply because the evidence itself was muddled and vague, and in a number of cases jurors found that the evidence was given in an apparently illogical sequence. Some of the questioning by counsel was described as poor and difficult to follow, and in 11 multiple-charge trials, jurors had difficulty in identifying what evidence related to which charges. Fourthly, in 6 of the 19 trials in which technical or specialised evidence was introduced, jurors had difficulty in comprehending it, a situation which was often caused or exacerbated by the unduly uncomplicated or ponderous way in which the evidence was delivered.

The Decision-making Process of the Jury

Research on jury decision-making has postulated two basic forms of deliberations: "evidence-driven" and "poll-driven" or "verdict-driven". Evidence-driven deliberations begin by identifying and discussing the evidence in the case before any vote is taken, while poll-driven deliberations begin by taking a poll and then focus on eliminating the differences of opinion emerging from that poll. It has been suggested by Ellsworth (1989) and Adler (1994) that evidence-driven deliberations promote more effective decision-making, because they are likely to be less divisive, facilitate working together and produce more thoughtful discussion. However, it is clear from the New Zealand data that this description of "poll-driven" and "evidence-driven" juries is based on a false dichotomy.

With the exception of one trial where it was impossible to determine the sequence of events, jurors' deliberations fell into three broad categories:

- In 13 trials, the jury began their deliberations by taking an immediate formal or informal poll.
- In a further 13 trials, the jury began with a brief discussion of the issues in the case or the applicable law, followed rapidly by a poll.
- In the remaining 21 cases, the jury had a relatively full discussion of the evidence before taking a poll.

The most important factor in determining the effectiveness of jury decision-making was not whether they took a poll or discussed the evidence first, but rather the extent to which they adopted a systematic structure for assessing the evidence and applying the law. At least 14 juries can be regarded as highly successful in these terms. At the other extreme, there were a number of trials where deliberations were unstructured, disorganised and inadequately facilitated. As a result, the jury neither focused on the legal elements of the offence in a systematic fashion nor methodically worked through the evidential issues in dispute.

In the deliberation process, the role of the foreperson was crucial. Success rested on the extent to which the foreperson was able to bring some coherent structure to the discussion: some kept the discussion focused and orderly; others, while making an attempt to "chair" the meeting, did not have the skills to direct the deliberations and saw themselves as simply "one of the group". In the latter cases, other jurors often took over the role of the foreperson, but unless that happened the deliberations were sometimes prolonged because the jury went off on tangents or around in circles. This suggests that there is a need for greater guidance on the role of the foreperson and that the jury as a whole should be given more advice about how to structure their decision-making.

There were inevitably different levels of juror participation during deliberations. Generally this could be attributed simply to the natural blend of different personalities and did not involve undue dominance. In a few cases, however, jurors did dominate to the point where others felt that the eventual verdict was affected. Juror dominance could result in pressure to decide and in intimidation. Jurors in six cases reported feeling intimidated. Dominant jurors who significantly affected the deliberation process were evident in 20 cases in all.

This kind of juror dominance generally arose when the foreperson did not properly structure deliberations. The vacuum created by an ineffective foreperson could easily be filled by strong personalities who took control of and dominated rather than facilitated the deliberation process. In four cases, it appears that deliberately intimidatory jurors were given a fairly free rein, refusing to discuss things rationally, making adverse comments about people's opinions, insulting them personally and monopolising the process. This caused other jurors to feel intimidated, uncomfortable about expressing their views, and under considerable pressure to reach a decision consistent with the view of the dominant jurors, who were usually in the majority. In other cases, intimidation was not specifically mentioned by jurors but was implied through their responses to some of our other questions. The skills required to control a determined and vocal juror were simply not possessed by most forepersons, and they were given no advice from the court on strategies for dealing with such situations.

Jury Disagreement and Uncertainty

Many of the jurors in the study felt considerable pressure to reach a unanimous decision. In general, jurors felt a sense of responsibility to achieve an agreed verdict. They described themselves as having a responsibility to the court and the parties, and commented on the waste of time, money and effort if they failed to agree. Juries generally try hard to avoid a hung jury and minority jurors sometimes compromise their principles or vote contrary to their own beliefs in order to achieve unanimity. In nine cases where the jury had encountered difficulty in reaching an agreement and the judge gave a direction that the jury should try again, many jurors felt that the judge was reprimanding them, which meant that there was considerable pressure to go back to the jury room and get a result. As a consequence, in four of these nine cases minority jurors compromised in order to reach a verdict.

In 22 of the 48 cases, one or more jurors mentioned that pressure to reach a verdict came from other members of the jury; and in six of the trials, jurors mentioned that pressure to reach a verdict arose from time constraints, poor facilities and the fact that deliberations were running on late into the evening.

Juries adopted a number of strategies in order to reach agreement on specific issues and on their eventual verdict, one of the most common of which was simply to carry on discussing the issues in a general way until some consensus emerged or dissenting jurors capitulated. Another common approach was to move from general discussion to a focus on the minority jurors, asking them to articulate why they did not agree with the majority.

Occasionally jurors attempted to resolve disagreement by looking at the evidence from a new angle, using a different structure for their discussions, taking a break, or leaving a contentious issue until people had calmed down enough to revisit it. In five trials, juries compromised to produce 'guilty' verdicts on some charges and 'not guilty' verdicts on other charges because they were determined to get a result. In a further six cases, where disagreement resulted from the introduction of irrelevant considerations into deliberations, other jurors attempted to bring the discussion back to relevant evidence. In 31 of the 48 cases, the jury approached the judge to ask a question, replay a video or have evidence read back to them, in order to clarify issues and dispel or confirm doubt.

Seventy jurors (22 per cent) in 26 (54 per cent) of the cases changed their mind during deliberations from their initial view, and a further 33 (10.5 per cent) in 16 (33 per cent) of the cases reached a decision after being undecided. For most other jurors, confidence was gained in the decision they had already arrived at through confirmation of their view by other members of the jury. In most cases, therefore, deliberations were a highly significant part of the process; only a small number of jurors found them unhelpful. This highlights the importance of providing juries with appropriate guidance on strategies for good decision-making.

Understanding and Applying the Law and the Judge's Directions

Despite the fact that jurors generally found the judge's instructions on the law clear and helpful and conscientiously attempted to apply them, there were widespread misunderstandings about aspects of the law which persisted through to, and significantly influenced, jury deliberations. Indeed, there were only 13 of the 48 trials in which fairly fundamental misunderstandings of the law did not emerge. For example, in 19 trials one or more jurors misunderstood significant aspects of the ingredients of the offence; in three cases the jury was uncertain about, or misunderstood the significance of, the wording of the indictment they received; and there were five trials in which juries struggled with the meaning of "intent". Many jurors said that they, and the jury as a whole, were uncertain what "beyond reasonable doubt" meant.[5] Jurors also had difficulties with a number of the standard instructions from the judge about the way in which they should approach the evidence.[6] For example, they often did not understand the directions on drawing inferences or on the weight to be attached to the fact that the accused had told lies.

However, these errors were usually addressed by the collective deliberations of the jury and did not influence the verdict in the majority of cases. Legal errors resulted in either hung juries or questionable verdicts in only four of the 48 trials, and in two of these the questionable verdicts were acquittals in respect of only a proportion of a large number of counts.

Nevertheless, jurors' misunderstandings or uncertainties about the law produced frequent disagreements within the jury room significantly reduced the efficiency of the decision-making process.

- Some noted that, while they tried to concentrate upon what the judge was saying when he or she was talking about the law, it was difficult to absorb it all, and it would have been good to be able to digest the key elements of it in a more relaxed atmosphere back in the jury room.
- Several jurors noted that, while they thought that they understood the summing up on the law perfectly, they found that different jurors had slightly different interpretations of what the judge had meant.
- Some jurors noted that, in the absence of a written summary from the judge, jurors had taken their own notes, but the extent to which notes were taken varied from one juror to another.
- Finally, a couple of jurors pointed out that, if they had had a written summary of the law, deliberation time would have been reduced

There is thus a strong case for arguing that written summaries of the law ought to be provided.

Another option is to provide jurors with written instructions on the law in the form of a flowchart or sequential list of questions. These instructions should be derived from the elements of the offence and should apply the law to the facts of the case, assisting juries in using a clear structure for their decision-making. In two cases in our sample, the judge provided such a flowchart, and jurors found it helpful, working through it systematically during their deliberations.

In New Zealand, as in England and Wales, the judge sums up not only on the law but also on the facts. There has been some concern that juries may seek to bring in the verdict that they perceive the judge wants (see, for example Mungham and Bankowski, 1976; Jackson 1993), and this may be fuelled by comments made by the judge during his or her summary of the evidence. On the other hand, an argument in favour of the summary of facts is that it may prevent the jury from being unduly swayed by the unbalanced advocacy of one or other counsel.[7] In fact, jurors in the New Zealand study rarely mentioned the judge's summary of the evidence. Two jurors specifically complained that it repeated what they had already heard and was unnecessary, and a few others suggested that it was boring and that they did not listen to it. When jurors indicated how the jury had taken the judge's directions into account during deliberations, they referred to the law and the standard directions, but rarely mentioned the evidence itself. While it is not possible to conclude with confidence that juries were unaffected by the content of the judge's summing up on the facts, this does nevertheless that juries are unlikely to be affected by fine nuances or minor omissions in those comments.

Of the 312 jurors interviewed, 92 (30 per cent) thought that the judge communicated his or her view of the appropriate verdict. Indeed, many more were expecting the judge to do that and were disappointed when no signal was given. To the extent that judges were thought to have expressed opinions on the facts, their perceived opinions appeared to have little or no impact on jurors' views of guilt or innocence. In only four of the 48 trials did a majority of those interviewed agree that the judge favoured a particular verdict, and in only two of these trials was the judge's perceived preference overtly referred to or taken into account during deliberations. In one of these cases, there was unanimous psychiatric evidence that the accused was insane at the time of the offence. The Judge instructed the jury that they would have to have a very good reason not to accept the experts' opinions, and that the accused would be detained as a special patient if found "not guilty by reason of insanity". The jurors all thought that the Judge favoured such a verdict (and he acknowledged himself that his summation could have been perceived as favouring the defence), and used that as a tool to persuade a dissenting juror to their view. In the other case, six out of the seven jurors interviewed perceived the Judge to be in favour of a guilty verdict, as indeed he was. This clearly had an impact on deliberations.

With the exception of the four cases mentioned above, there was a strong correlation between jurors' perception of the judge's view and their own initial view, but no correlation at all between their perception and the judge's actual view. In other words, jurors looked for support for their own position in the judge's comment, and sometimes found that support by reading into the judge's remarks interpretations that were not necessarily intended. For example, one juror thought that the judge favoured a guilty verdict because he had said at the

outset of the trial that it was a straightforward case and would be over in a day. He interpreted the judge's summing up as providing confirmation of this.
According to the New Zealand findings, the judge's summary of the evidence therefore assumes less significance than is often imagined, and it is certainly arguable that lengthy or detailed summaries of the evidence relied upon by the prosecution and defence should be avoided. There appear to be two dangers with such summaries in terms of the deliberation process. The first is that jurors often search for signs of the judge's view and as a result misinterpret innocuous or routine comments as lending support for their own assessment of the case. The second is that, where a majority of the jury share the same perception of the judge's preference, they are likely to use this as a lever to persuade dissenting jurors, thus significantly increasing the pressure for them to agree on a verdict which is contrary to their personal view.

Conclusion

In general, jurors felt that serving on a jury was a worthwhile experience for them, and one from which they benefited - even if it was simply by learning about what happens during a criminal trial. There was also some pride that they were performing a necessary and important civic duty. However, jurors often appeared as outsiders in a system where even the architecture appeared to be focused on the needs and routines of the official players. For many the very nature of the job made it tiring and stressful, let alone the conditions under which they were expected to perform it. Despite this, the majority of jurors approached their task conscientiously.
Although much debate has surrounded the adequacy of the jury to make decisions in high profile and complex cases, it was the conclusion of the research in New Zealand that it is not necessarily jurors who should receive the brunt of dissatisfaction with their verdicts. Rather, the present system serves jurors poorly and in many cases they are not given the tools to enable them to do an effective and efficient job. Provision of such tools would substantially enhance the ability of jurors to perform the difficult task we assign them.

Notes

[1] See the complete summary of findings, note 1 above, for a discussion of the limitations of the research.
[2] In other studies, judges have been asked to complete questionnaires in order to compare their assessment of the evidence with the jury's verdict: see, for example, Kalven and Zeisel (1966) and Baldwin and McConville (1979).
[3] In using a counsel experienced as both a prosecutor and defence counsel, the research aimed to avoid the prosecution bias that Baldwin and McConville (1979) have been criticied for: Sanders and Young (2000).
[4] Stephenson (1992) raises concerns about the lack of consistency between the verdicts of the real and shadow juries in the McCabe and Purves study. However, it is impossible to conclude that there is therefore a low level of jury competence, as jurors could simply have taken a different, but supportable view of the evidence in many of those cases. Without analysing the transcripts of evidence and without knowledge of the discussions during deliberations of the real juries, it is difficult to surmise the reasons for the differences in the verdicts.
[5] This is a common finding of jury research, and many jurors, as in other studies, attempted to put a percentage value on beyond reasonable doubt: see, for example, Hastie (1993) Montgomery (1998).
[6] This is also a common finding of jury researchers; for example Hans and Vidmar (1986); Steeleand and Thornburg (1988).
[7] This argument presupposes that juries may be hoodwinked by specious or distorted arguments of the more powerful advocate. It also assumes that, if this occurs, the judge's summary is capable of restoring the balance: see D Wolchover (1989).

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