

Applied Criminological Research

Planning a quantitative pilot study

Write up a report on the planning of a quantitative study on a contemporary issue of your choice, representing something of interest from a criminological point of view, highlighting:

- your research question and why did you selected that specific aspect of the topic (what advancement will it take to the knowledge in the specific field?)
- the sample you propose to use (explaining the reason of [sic] your choice)
- the methods you will use and the analysis you plan to do on the collected data
- the ethical problems that these choices will entail (and how you propose of [sic] solving these problems).

Do Juries understand expert or complex evidence?

Introduction

Trial by jury has been subject to ongoing attack or challenge in modern times. The question is constantly asked whether juries should still be used in the trial process or whether they should be replaced with judge only trials. The jury has almost completely disappeared from the civil trial in England and Wales; it remains in criminal trials, but for how long?

There are many who defend passionately the right to be tried by one's peers in a jury trial. Then there are those who believe it to be 'a costly, sometimes incompetent anachronism that merely creates opportunities for exploitation by "professional" criminals at great public expense' (Lloyd-Bostock and Thomas, 1999:7). The jury has been found in studies to be very much supported by the general public (Bar Council, 2002; ICM, 2007; Thomas, 2007). The attacks are driven by the media and policy-makers. In a discussion of pros and cons of the jury in "Criminology", Tim Newburn states (in the pro column) that 'Juries are a barrier to the enforcement of unpopular laws' (2017:686). This, an acknowledgment, surely, of jury nullification (where juries, despite the evidence clearly showing legislation has been breached, acquit and, thereby, annul the legislation, at least as it applies to the case at hand). This enormous power which the jury has may well be the reason for the constant attack and proliferation of untruths by the policy-makers (cheered on by the media) surrounding the ability of juries.

There have been various criticisms levelled at juries in a bid to chip away at their validity. This study proposes to investigate whether one such allegation is true or not. That is, whether juries are able to understand expert or complex evidence. If they are not, then the question will be asked whether trials involving such evidence would be best dealt with by a Judge. Obviously, such a person, whose salary is paid by the state may not be such a check on unpopular laws as a jury. Therefore, a better question to ask would be: How can we better present the information in a way the jury can easily understand? (The study results may well be able to assist with this). If juries are perfectly able to understand such evidence, then this criticism can be put to bed.

Literature Review

Juries decide less than 1 percent of all criminal cases in England and Wales (Thomas, 2010:1). However, since these are the most serious cases, in terms of the consequences for victims and potential loss of liberty for a convicted defendant, it is of vital importance that juries are fair and can understand the evidence presented.

Prior to the work of Cheryl Thomas, QC and the UCL Jury Project, there was little useful research into the Jury in England and Wales. Often s 8 of Contempt of Court Act 1981 was given as the reason (or excuse!) for this. This 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'. (See also the Juries Act 1974). Thomas proved roundly, with very focused studies and questioning, that this does not prevent almost all research with and about juries (Thomas, 2008 and 2020).

With few UK studies having been done up until the work by Thomas, a number of myths had grown up around juries. For instance, it was felt that juries at certain courts were much more likely to acquit than in other courts (Hansard, 1982). This was said of Snaresbrook Crown Court and subsequently shown in Thomas's 2010 study to be untrue. Many myths around the jury came from anecdotal evidence from the legal profession. Some of the ideas came from mock juries (used to circumvent the contempt of court issue) and studies from other countries, notably the USA.

Here are the main issues dealt with in the 2010 Thomas study:

- Do all-White juries discriminate against BME defendants?
- Do jurors racially stereotype defendants?
- Is there consistency in jury verdicts: do juries rarely convict at certain courts or on certain offences?
- Do jurors understand legal directions?
- Do jurors know what to do about improper jury conduct?
- Are jurors aware of media coverage of their cases?
- How is the internet affecting jury trials?

The extensive study, involving case simulation using 41 real juries, (478 actual jurors), analysis of the outcomes of 551,669 charges in Crown Courts in England and Wales from 1 October 2006 to 31 March 2008; and post-trial survey of 668 jurors in 62 cases (Thomas, 2010: 7) found no racial discrimination or stereotyping. There was no statistically significant difference in conviction rates at different courts. There were some issues shown in respect of jurors understanding legal directions and researching their cases on the internet, despite Judges directions forbidding this. The research team worked with the courts and judiciary following the study and produced pamphlets and advice on judges verbal and written directions which were shown in a subsequent study, (Thomas, 2020) to have largely rectified these issues.

Thomas also proved that jurors do not believe many rape myths (such as women out after dark make themselves a target for rape) which had been put forward as reasons for low conviction rates

in these cases. Statistics often used to support the fact that conviction rates are low in this type of case (6 percent had been cited) were taking figures that encompassed the period from reporting to the police to the end of the case, and so did not include only those cases which came before a jury. In fact, juries are more likely to convict than acquit in this type of case (Thomas, 2011).

In “The 21st Century Jury: Contempt, Bias and the Impact of Jury Service” Thomas also dealt with the issue of whether jury service has a detrimental impact on jurors. Although 87 percent of jurors said that if jury service had been voluntary, then they would have declined, when asked after serving, 81 percent said they would be happy to serve again. So, the study proved a transformative effect in undertaking jury service. This supported other studies from America indicating increased political engagement by jurors following jury service, notably (Gastil et al, 2010).

Juries remain under threat. The recent coronavirus measures meant that, because of social distancing and issues of isolation and so forth, there developed a backlog of jury trials. Once again, it was suggested that judges, sitting alone, deal with this backlog. Thankfully, extra Courts were convened to deal with this problem instead. But we must be vigilant if we are to ensure the Jury trial remains.

One area which gives rise to criticism of juries is whether or not they are able to follow expert or complex evidence. Some fraud trials are said to be incredibly complex and lengthy, and, some argue that these should be dealt with by a judge alone.

Studies from the USA have shown, largely, that juries deal appropriately with expert evidence. See ‘Expert evidence, the Adversary System and the Jury’ (Vidmar, 2005) for a useful summary of many such studies. His analysis of the studies showed:

that, regardless of difficulties and complexity of evidence, jurors as a group take their tasks seriously. They clearly understand the nature of the adversary system and recognize the potential bias in testimony that may result from it. Most of the evidence suggests that jurors attempt to evaluate the testimony on its merits rather than deferring to an expert’s credentials, likeability, or other peripheral factors. Furthermore, jurors’ responses to experts appear to be complex and nuanced (140).

There is, however, a lack of research on this question here in England and Wales. Although Cheryl Thomas has dealt with many issues affecting juries, she identified in a UCL lunchtime lecture (Thomas, 2011), that this area (and a few others) still needs attention. It is vital to ascertain the following:

1. Can juries understand expert/ complex evidence?
2. Do juries place too much weight on expert evidence?
3. Can juries follow lengthy and complex trials? Or do they lose concentration?

4. Do some seek to be excluded from lengthier trials, leaving a particular type/ demographic of juror to deal with these?

Methodology

The study will look at actual jurors immediately following their jury service, in a similar way to the Thomas studies. Thomas showed that one cannot obtain meaningful results using mock juries because people making up mock juries will be volunteers, and as has been shown above, most actual jurors would not volunteer themselves. Therefore, mock juries are not representative of actual jurors (Thomas, 2010).

1. Conduct a study of Crown Court (England and Wales) cases during the period 2016 to 2019 to ascertain the demographic of those who actually sit on lengthy, complex trials. Jury service is normally expected to be for 10 days. Therefore, in trials expected to take longer than this, the jurors will usually be asked whether it would be a problem for them to remain. One of the reasons for not remaining would be work commitments. Someone running a small business may be able to do his or her 10-day stint, but an 8-week trial may pose a problem. Might this mean that higher earners/entrepreneurs may be unable to remain for these types of trials? What effect, if any, might this have on the ability of a jury to understand the type of evidence likely to be heard in these types of cases? Is there a particular age group likely to be sitting on the jury in these cases? Ethnicity is another factor which should be measured as well as gender balance.

If the demographic information retained by HMCTS is not sufficient for this exercise, then adjust the study to cover the future period from now for two years and devise appropriate questionnaire to go to jurors serving on the lengthy trials (after their jury service).

2. Ask actual juries to take part in a simulation exercise immediately after their jury service. The simulation trial to involve expert and / or complex evidence - with the jury deliberating afterwards. Prior to their deliberations provide a questionnaire testing their understanding of the material they have seen - questions which elicit true/ false answers and can be checked. Measure how many understand and how many do not. Repeat the exercise after the deliberations - has anything changed? Is there something in the team exercise which assists some or all of the jurors to gain a better understanding? (Use the quantitative analysis in conjunction with more qualitative questioning to consider how to improve jurors' understanding). The questionnaires for this should also include personal demographic information - gender, occupation/ trade, education level, age etc., in order to check whether particular types of people understand the information better than others (and provide cross-check for item 1 above). The jurors will be guaranteed anonymity. The simulation exercise

is necessary because it would not be possible to ask the jurors these questions in relation to the deliberations in the real cases they have tried, since this would amount to a criminal offence.

3. Conduct the study at item (2) above with jurors from average length trials as well as those who have sat on the jury on lengthier, complex trials. Is there any difference in the results?
4. It may be possible to design a simulation where the facts are straightforward and point to an acquittal, but for some specious expert evidence - see whether they convict or acquit. In other words, is the jury fooled by the specious expert evidence? Test the understanding and whether they would convict or not, prior to and following deliberations. One would expect the advocates in a trial to challenge any such specious evidence, but it may still have an undue effect on a jury which needs to be tested.
5. Ask them how much the expert evidence affected their decision-making process - on a scale of 1 to 10. (Again, to be asked before and after deliberations). How does this correlate with their age, gender, occupation etc.?
6. Ask the jurors the reasons they believed or did not believe the expert - check for "white coat syndrome" - are they influenced by the content, the fact that the person is a qualified doctor, the attractiveness, friendliness and so on?
7. Consider studying Judges in the same way as the jurors, above. Do they actually fare any better in understanding complex scientific or mathematical evidence? Are they, too, susceptible to "white coat syndrome?" (Or more so, perhaps?).

Analysis of the data

1. Methodology Item 1 above - Prepare descriptive data based on the results. Prepare frequency tables and graphs to show the totals of each category of person serving (and/ or pie charts if appropriate to illustrate the percentages of each category of person serving). Are there any patterns here? Are any particular categories of person under-represented?
2. Results of Analysis 1 above can be cross-referenced with items 2 and 3 in the methodology section above (juries in the simulation exercises). Check the understanding of certain jurors against their demographic - profession, gender, age etc. Can we see whether a particular type of person struggles to understand the complex evidence? Is this type of person prevalent in the juries serving in longer/ complex cases? Prepare contingency tables/ cross tabs, if appropriate from the data.

3. Prepare tables or bar charts to show any difference in level of understanding before and after deliberations in the simulations.
4. Tabulate the reasons jurors believed an expert (methodology item 6 above) - pie chart the percentages in different reason categories (I.e., friendliness, attractiveness etc.), if appropriate. Do the same for methodology item 7 above.
5. Review presentation methods depending on the data collected.

Ethical and other issues

This may be asking a lot of the jurors who have already done their duty by their jury service. They may be tired and either not wish to participate or feel obliged to. This may cause more stress and be tiring following what can be a stressful and often an emotionally draining experience. However, it can be seen from the Thomas studies that the willingness of jurors to participate in these types of studies after having done their service is very high. In one study, only two jurors out of 1177 declined (Thomas, 2010).

The simulations will take some work to plan - they need to be as realistic as possible.

It will be difficult to gauge the effect of length of trial on the jurors, since they cannot be expected to participate in very lengthy simulations following on from their actual jury service. Although, if a suitable number were prepared to do this, this could be reviewed. We can ask them how they felt the length of trial affected their concentration levels.

It will obviously not be possible to probe further with questionnaires. It would be useful to conduct qualitative interviews in addition to the quantitative study proposed in order to ascertain how, if there are problems identified with understanding complex evidence, these can be minimized - i.e., how best can the jurors be helped to understand?

Conclusion

There is no reason why jurors should not be able to understand expert or complex material. After all, experts giving evidence in criminal jury trials are well aware of their target audience and take care to explain in appropriate terminology. Experts who are not clear will not be chosen by legal teams. The advocates and the judge will be able to assist with the breakdown of complex issues for the jury. However, there is a need for a study to prove this is not a reason for further reducing the number of cases in which a jury may sit. If a problem is identified from the study, then this must be addressed swiftly in order that juries can remain on lengthy and complex cases. We need to be vigilant and fend off any and every attack on the jury before they gain too much traction:

Something repeated anecdotally, many times, or stated in print with no supporting evidence can have an enormous and detrimental effect. Hence the need for strong and clear evidence to disprove any such theories.

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