# DOUBT DISMISSED

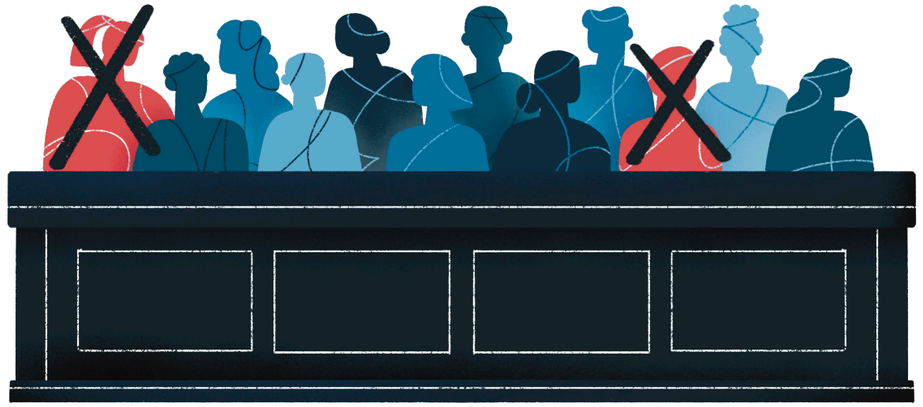
## Race, Juries and Wrongful Conviction

Authored by Naïma Sakande & Nisha Waller

###APPEAL

“We may be trying to let a guilty man go free, I don’t know. Nobody really can. But we have a reasonable doubt, and that’s something that’s very valuable in our system. No jury can declare a man guilty unless it’s sure.”

—Juror 8, 12 Angry Men



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# ####APPEAL

APPEAL is a charity and law practice dedicated to fighting miscarriages of justice and demanding reform. We fight the cases of individual victims of unsafe convictions and unfair sentences who cannot afford to pay for a lawyer themselves. We are leaders in integrating quality legal representation and holistic care for those we represent in parallel with advocacy for system reform.

## About the Researchers and Authors

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The Baring Foundation

## I. Evangelisto Ramos

On the night before Thanksgiving in 2014, Trinece Fedison, a 43-year-old mother, was found dead inside a garbage can in Central City, New Orleans. Her body partially clothed, she had been brutally murdered. The tragedy led to the arrest of Evangelisto Ramos, a Honduran oil rig worker who had lived in the same block where Trinece's body had been found. Evangelisto was convicted in 2016 of second-degree murder based on a largely circumstantial prosecution case that featured no eyewitness or physical evidence directly linking him to the killing. The jury in Evangelisto's trial could not agree on a verdict, and with a division of 10 votes to 2, Evangelisto was convicted and sentenced to life in prison.

31 years earlier, another man, Calvin Duncan, was convicted of a first-degree murder in Louisiana. Despite maintaining his innocence, Calvin was sentenced to spend the rest of his life in the Louisiana State Penitentiary, known as Angola. In Angola, Calvin applied for a job as inmate counsel. While trying to clear his name, he spent the next 23 years supporting fellow inmates with legal issues - even managing to overturn some wrongful convictions. And something about these cases kept bothering him.

Some of Calvin's jailhouse peers had been convicted even though their juries had not reached unanimous decisions. It seemed to him that there was a link between split decisions and incorrect verdicts. Calvin did some research and discovered that felony convictions by non-unanimous juries were allowed in just two states: Louisiana and Oregon. Calvin felt instinctively that this was a problem that needed fixing, and he worked on about two dozen failed attempts to persuade the Supreme Court to address the issue. Calvin was released in 2011, thanks to assistance from the Innocence Project New Orleans and his own determination to prove his innocence. After his release, Calvin, now a paralegal assigned to a litigation team, continued his attempts to convince the Supreme Court that non-unanimous verdicts were unjust. Finally, Evangelisto's case arrived in Calvin's in-tray and cracked the deadlock.

In 2020, the ground-breaking US Supreme Court case, *Ramos v. Louisiana*[1], overturned Evangelisto's conviction and ruled that split verdicts could no longer be used to convict people of serious crimes. What made the difference this time? Amongst other factors[2], Calvin and his colleagues introduced evidence to the proceedings which revealed that majority verdicts disproportionately impacted Black defendants and were sown into the state's constitution by white supremacists seeking to suppress Black jurors' votes. Majority verdicts were introduced during Louisiana's 1898 constitutional convention where 134 white delegates declared that their **"mission was...to establish the supremacy of the white race."**[3]

Evangelisto awaited a fresh trial. On 9th March 2023, the New Orleans jury's verdict that exonerated Evangelisto Ramos was unanimous.

**He is now a free man.**

## II. Introduction

While the jury system is not without flaws, there is great value in being assessed by members of the public as opposed to judges or magistrates. Juries are one of few safeguards against an overreaching state.

Juries are meant to be fair. In England and Wales, twelve strangers, plucked at random from the eligible public, are given the weighty responsibility of deciding the fates of defendants in the most serious cases. We require jurors to listen to and consider evidence, follow the judge's instructions, deliberate fairly, and reach a collective decision. For more than 700 years in England and Wales, that collective decision required unanimous agreement. But in 1967, this centuries-old tradition was erased and replaced with a system allowing majority (non-unanimous) verdicts, permitting a verdict when up to two jurors disagree. We set out to uncover why this sudden change occurred.

## What are majority verdicts?

Majority verdicts were introduced in England and Wales through the Criminal Justice Act 1967, later consolidated in the Juries Act 1974. Where there are twelve jurors, a majority verdict of ten to two or eleven to one is permitted. Where there are eleven jurors, a majority of ten to one is allowed, and where there are ten jurors, a majority of nine to one suffices. Where there are just nine jurors, a verdict must be unanimous.

Majority verdicts apply to both acquittals and convictions, with the judge only giving the direction to allow for a majority verdict if the jury cannot reach a unanimous verdict after at least two hours of deliberation, or such longer period as the court thinks reasonable having regard to the nature and complexity of the case. Case outcomes are the same whether the defendant was convicted unanimously or by a majority. As such, majority verdicts are not a mitigating factor in sentencing, nor do they provide a ground for appeal. If a jury cannot agree following the majority direction they would be considered 'hung', possibly resulting in a re-trial.

### Majority verdicts in Louisiana: a vestige of white supremacy

Professor Angela Allen-Bell, speaking at the St. Tammany Parish Indivisible Chapter Meeting, Abita Springs, Louisiana ("Louisiana's Non-Unanimous Jury Law"), Oct 18th 2018. Photo provided by Angela Allen-Bell

While the origins of majority verdicts in England and Wales have not previously been subject to academic study, their origins in the USA have been scrupulously researched. Behind the movement that successfully ended Louisiana's use of non-unanimous jury verdicts was ground-breaking research undertaken by Professor Angela Allen-Bell of Southern University. Professor Allen-Bell was supported by Calvin Duncan, who spent more than 28 years wrongfully imprisoned and helped draft the submission for the 2020 *Ramos v Louisiana* case, which abolished majority verdicts in serious cases.

Majority verdicts were introduced during Louisiana's 1898 constitutional convention, whose purpose was to consider voting rights.[4] Archival research which explored commentary from the convention demonstrated how the adoption of majority verdicts in Louisiana was racially motivated.[5] First, majority verdicts meant that Black jurors could not use their new voting powers to attempt to prevent the conviction of Black defendants.[6] Second, majority verdicts allowed for quicker convictions, facilitating a production line of free prison labour - a replacement for slave labour.[7]

The 1898 convention had an overt mission to maintain white supremacy in Louisiana following the abolition of slavery. Recently emancipated Black people were freed from slavery and given new rights, including joining the jury pool. Many white Southerners therefore agreed that 'the jury system must be radically changed if the negroes are to continue as jurymen'.[8] Black people were depicted by the media as 'ignorant of the responsibilities of jurors, unable to discriminate between truth and falsehood in testimony' and easily 'corrupted by bribes'.[9] They were perceived to 'dilute' jury pools, help Black defendants avoid punishment,[10] and show defendants undue leniency. Fears about 'negro domination' and 'white disenfranchisement' were widespread, as Louisianans were concerned that white people would not receive a fair trial if 'Negro jurors were impanelled'.[11] Majority verdicts in Oregon, introduced in 1934, have similarly been traced to the rise of the Ku Klux Klan and efforts to 'dilute the influence of racial and ethnic and religious minorities on Oregon juries' [12]. Allowing convictions based on split verdicts was a form of Jim Crow-era law-making that allowed states to side line the voices of minority jurors.

Various Southern laws were devised to criminalise Black life after slavery, including by capitalising on prison labour through convict leasing, a system of forced penal labour. In this period, the proportion of Black prisoners increased from less than 1% to 90% in some states, creating a racial caste system resembling slavery for a predominantly Black prison population.[13] Abolishing unanimity was therefore seen as a way of preventing Black people from blocking convictions, ensuring a burgeoning and ready supply of free prison labour.



These archival findings were submitted as evidence in the *Ramos v Louisiana* case. While the context in which majority verdicts were introduced in England and Wales differs significantly from that of Louisiana, the practice was similarly introduced during a time of anti-racist struggle, and where the rights of negatively racialised people consumed public and political debate.

## Our Aim

Inspired by Evangelisto, Calvin and Angela's research and campaigning, and concerned by the startling discovery of the racist origins of majority verdicts in the USA, this project set out to uncover why such a radical change in juror decision making was made in England and Wales, to examine if racism played a role and to unearth any possible links to miscarriages of justice.

**A note on terminology:** Throughout this paper we use the term 'negatively racialised' or 'racialised minority'. 'Racialisation' describes the process through which 'race' is constructed and mediated. It is a process of ascribing ethnic or racial identities to a person, group of people or social phenomenon. We use the term 'negatively racialised' or 'racialised minority' to refer to people who are subject to negative processes of racialisation and therefore experience racism and discrimination.

# III. Methodology

To explore our research questions, we took a qualitative mixed methods approach.

## Literature Review

Despite limited research on juries in England and Wales, we conducted an in-depth review of the available literature on majority verdicts and juries in this jurisdiction. Race and juries are the subject of a significant body of empirical study in the US and so this literature was also reviewed. To contextualise the introduction of majority verdicts in England and Wales within the socio-political climate of the 1960s, marked by public anxieties about immigration, Black Power and white disenfranchisement, literature reflecting on these trends was also reviewed.

## Freedom of Information Act Requests

Little research in England and Wales has explicitly looked at majority verdicts and there is no systematic collection and publishing of data to reveal this picture in our criminal courts and prisons today. To that end, we supplemented our desk analysis with Freedom of Information Act requests made to the Criminal Cases Review Commission (CCRC), the Court of Appeal Criminal Division (CACD) and the Ministry of Justice (MOJ). Our aim was to understand the numbers of people that majority verdicts affect today.

## Archival Analysis

We have examined the origins of majority verdicts through accessing archival materials illustrating contemporaneous political debates held at the time of the changes in law. Through the National Archives and the Institute of Race Relations archives, we examined primary sources such as Home Office documentation, letters, memoranda, meeting minutes and notes, speeches, newspaper articles, court reports, posters, and organising materials.

We acknowledge that the 'politics of the archives' limits the extent to which we can uncover true intent, as documents are themselves already 'collections of editorial decisions and possible exclusions',[14] particularly in the case of official government documents. However, in situating our findings within the broader socio-political context of anti-racist struggle in Britain, and by conducting interviews, we triangulated our findings.

## Interviews

We further supplemented our research by conducting semi-structured interviews. We conducted one expert interview with a legal commentator active at the time of the change in the law:

- **Michael Zander KC**: then a lecturer at the London School of Economics and *The Guardian*'s Legal Correspondent (1963-1988) who authored comment pieces on jury reform at the time.

We also interviewed four people convicted and imprisoned on majority verdicts in England and Wales since 1967 who have either had those convictions quashed (3) or continue to challenge their convictions (1). They were:

- **Winston Trew**: wrongfully convicted of attempting to steal and assault on a constable in 1972 on a 10/2 majority verdict, conviction quashed in 2019 - a Black British male of Caribbean descent.
- **Kevin Lane**: convicted of murder in 1996 on a 10/2 majority verdict, conviction upheld in 2015 despite fresh evidence of police corruption found - a white British male.
- **Andrew Malkinson**: wrongfully convicted of rape in 2004 on a 10/2 majority verdict, conviction quashed in 2023 - a white British male.
- **Dr. David Sellu**: wrongfully convicted of gross negligence manslaughter in 2013 on a 10/2 majority verdict, conviction quashed in 2016 - a Black British male of African descent.

## Case Law Review

Lastly, we conducted an audit of CACD judgments that explored the integrity of jury decision making from 1967 on. With the support of law students from City University, we reviewed cases where the focus of legal challenge was based on the number of jurors (for example, a jury composed of a number other than 12), juries where the use of alternates was under discussion, where jurors were challenged with or without cause, where the demographic makeup of jurors was discussed (for example race, class, ethnicity/ nationality, propertied status or gender), or where jury prejudice or bias was discussed.

## A Phased Approach

We split this research project into two phases. The first aimed to understand the history and origins of majority verdicts in England and Wales. These findings, driven by the archival research and literature review, were published in January 2024 in the journal Race & Class.[15] The second phase, resulting in this report, draws together our attempts to make sense of the implications of the change in the law on defendants and to examine its consequences.

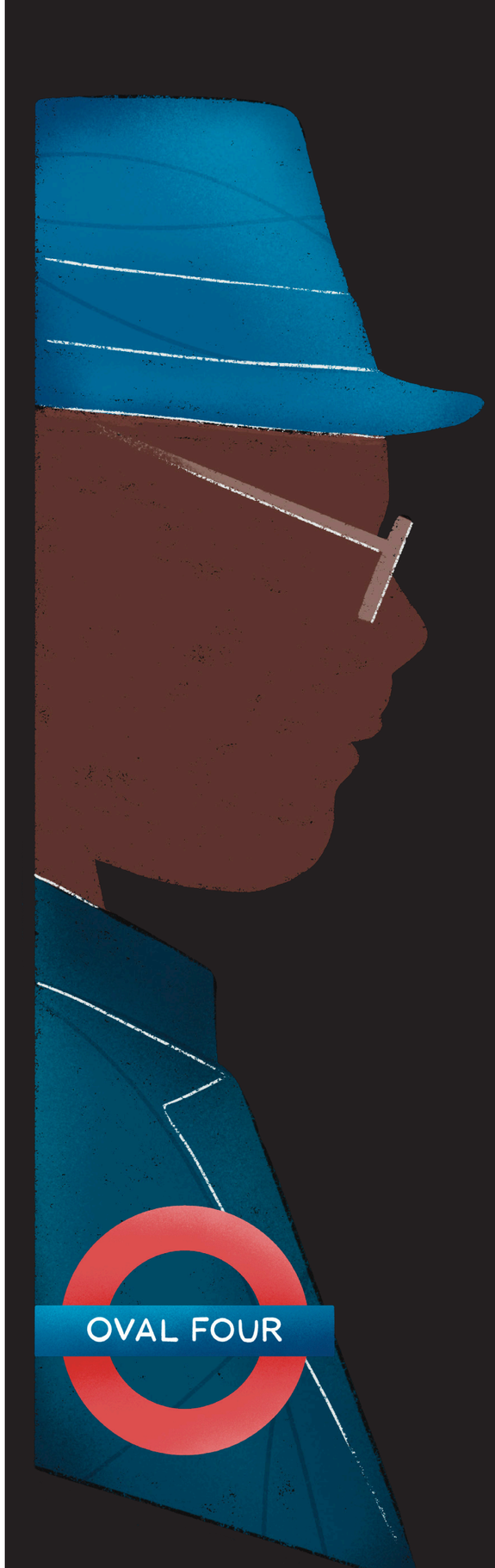
## Ongoing Data Collection

At the time of writing this report, we were actively engaged in procuring data on majority verdicts from Innocence organisations in England and Wales, while also reviewing APPEAL's cases for verdict information. Our objective was to establish whether majority verdicts are more prevalent in cases where the safety of the conviction has been brought into doubt. Through this process, it has become evident that accessing verdict information is challenging due a lack of systematic recording. Should this task produce valuable data, it will be made available at a later date.

## A Note on Subjectivity

Subjectivity is always present in the research process, and we have attempted to maintain a reflexive approach to our qualitative analyses. As negatively racialised women who have lived experience of racism and discrimination, we have benefitted from our positionality by being primed to observe and sense the racial undertones of writings where others may see none. Attempting to identify racism's 'invisible touch' is complex, especially when 'post-race sensibilities present us with slippages in which 'race' no longer matters [and] racism does not exist'.[16] Black Critical Race Theory 'urges that we disengage from colour blind racism and denial of the salience of race and racism in our lives.[17] To that end, we have actively engaged with our identities in the conduct of this research. We have attempted to counteract the influence of confirmation bias however, by remaining in constant conversation with each other, challenging the basis of our findings, and through the constructive critique of our Expert Advisory Panel[18] who have provided a sounding board for our observations.






## IV. Winston Trew and the Oval Four

Winston came to England from Jamaica in 1956 when he was 6 years old. When he was 19 years old, he joined the Black Power movement. Shortly after, on 16th March 1972, Winston, along with Sterling Christie, George Griffiths and Constantine "Omar" Boucher, was violently confronted and later arrested by a team of plainclothes officers under suspicion of stealing passengers' handbags at Oval station. Winston and his friends were arrested under the "sus" ("suspected person") laws, which allowed the police to arrest people solely on suspicion of impending criminal activity.

At the police station, the young men, who came to be known as the Oval Four, were charged with conspiracy to steal, theft and assaults on the police. At three o'clock that morning, after being subjected to physical violence and intense pressure, Winston signed a self-incriminating statement written by officer Detective Sergeant Derek Ridgewell. Thinking on his feet, Winston falsely confessed to committing other crimes at a time for which he knew he had a sound alibi, in order to cast doubt over the police's integrity and the prosecution's case.

During the five-week trial at the Old Bailey, the defence argued that the Oval Four were entirely innocent. They presented evidence of other cases where Ridgewell and his team had targeted groups of young Black men on the railway and accused the officers of telling racist lies. At the height of the so-called "mugging crisis", Winston's case followed a pattern of young Black men being targeted and "fitted-up" by the police for theft-related crimes.

Winston was found not guilty on the theft charges which relied entirely on his confession evidence. Nevertheless, in November 1972 the jury found Winston guilty by a 10-2 majority verdict on the other charges relating to events at Oval station. Although Winston's ingenuity successfully cast doubt over the theft charges, it fell short of preventing 10 jurors from being swayed by the police's deceptive narrative about the events at Oval station. Winston was sentenced to 2 years in custody.

Eight years later, Ridgewell was exposed as a corrupt police officer. He was convicted in 1980 for conspiracy to steal goods from the Royal Mail and sentenced to seven years' imprisonment. He died in prison in 1982. Winston had always been suspicious of his arresting officer, and for decades after his release conducted exhaustive research into Ridgewell's dishonesty.[19] This proved critical when another victim of Ridgewell's corrupt policing, Stephen Simmons, applied to the CCRC after being told by a lawyer on a radio programme to Google his arresting officer in 2013. The CCRC referred Simmons' case to the CACD, which quashed his conviction in January 2018.

Following Simmons' success, Winston applied to the CCRC for a review of his case. On 5th December 2019, the CACD quashed Winston's convictions.

In his near half century  campaign to clear his name, Winston never gave up the fight for racial justice, and he has spent his career pursuing his passion for anti-racist education and social justice.

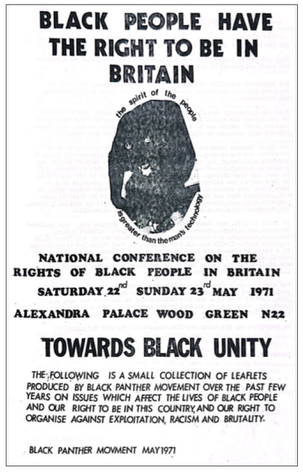
# V. Where Did Majority Verdicts Originate?[1]

## Race Relations in 1960s Britain

When 6-year-old Winston arrived in England in 1956, he was the only Black boy in his infant school. He received a less-than-warm welcome – including a punch in the eye from one of his fellow students on his very first day. This early incident marked the beginning of Winston's evolving understanding of what it meant to be Black in Britain. Years later, when he was a teenager, the police falsely accused Winston and his friends of stealing a handbag, leaving him with a conditional discharge. His school was informed. His headmaster referred to Winston as 'a disgrace', leading him to walk out of school. Aged just 16, Winston had already developed a deep mistrust of the police and a clear sense of his secondary place in society as a young Black man.

Like 1890s Louisiana, 1960s Britain was a period of reconstruction where a shortage of labour after the Second World War saw Britain recruit thousands of West Indian and South Asian workers escaping the devastation of Britain's imperial rule.[20] Promised prosperity, they were met with a population who saw them as inferior and uncivilised.[21] Police brutality and racist attacks from factions of the white population were commonplace, with the 1958 so-called 'race riots' not blamed on white racism, but on the presence of non-white people in Britain. A new narrative of social dissatisfaction presented itself - the 'immigration problem'. A virtually homogeneously white nation was perceived to be under threat from 'alien' culture,[22] leading to the introduction of successive legislation specifically designed to restrict non-white immigration. The Universal Coloured People's Association noted the continuous repressive laws designed to affect Black people and limit 'coloured' immigration:

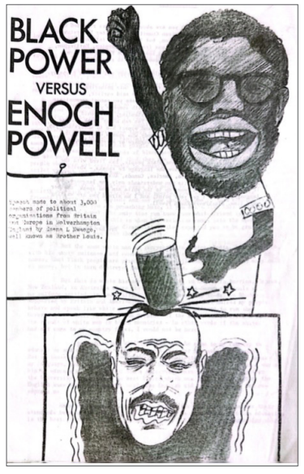
> 'The facts reveal the British Government's hypocritical and vile nature; when we look at the repressive laws which the British have passed specifically aimed at Black people, there could be no doubt of its criminal intentions.'[23]




Left and Right: Images from the Institute of Race Relations Black History Archive

The growing racial discontent in the country resulted in focused and structured resistance movements and strengthened liaisons between Asian and West Indian organisations.[24] Winston married at age 19 and joined the Black Power movement through an organisation called The Fasimba, named after a regiment of Shaka Zulu, the great African warrior's army. He credits this with transforming his understanding of the histories of the Black diaspora, the successes of his ancestors, and altering his perception of what it truly meant to be Black in Britain. Anti-racist radicals began strategically organising against racism and police violence[25] and by 1967, 'Black Power' was part of the British vocabulary.[26]

The British state took Black Power as a serious threat, dedicating significant resources to placing Black populations under surveillance.[27] The 'Black Power Desk' – a unit run out of Scotland Yard – was set up in 1967 by the then Home Secretary, Roy Jenkins. It was designed to infiltrate, collect and share intelligence on Black Power.[28] The state's explicit aim was to 'break radical Black self-organisation in its entirety'.[29] Even




1 As referenced in the methodology, this report is the second phase of this project, where the first explored the history and origins of majority verdicts in England and Wales. The full citation for the report detailing phase one: "N. Waller and N.Sakande, 'Majority Verdicts in England and Wales: a vestige of white supremacy?' *Race and Class*, (2024) available at: https://journals.sagepub.com/doi/full/10.1177/03063968231212992. The findings of phase one are summarised here.




the 1965 Race Relations Act – passed under the guise that it would protect Commonwealth immigrants from racism – was used to prosecute Black Power activists for inciting racial hatred, a form of legalised racism. Fears of 'black criminality' were perpetuated by news media, with Black Power activists depicted as 'folk-devils'.[30] Enoch Powell's infamous 1968 'rivers of blood' speech evoked the horror that Britain's future would be marred by the same pattern of racial conflict as in the US if Commonwealth immigration was not limited.[31]

Majority verdicts, which disenfranchised up to two members of a jury, were introduced in both Louisiana and England and Wales during periods of racial tension and economic instability, coinciding with fears of Black Power and white disenfranchisement. These changes occurred when Black people were viewed as inferior yet crucial for labour, and when silencing minority voices was deemed necessary to maintain white power.

## The Departmental Committee on Juries

Against this backdrop of racism and anti-racist resistance, the Departmental Committee on Jury Service was established in 1963, nicknamed the Morris Committee after its chair. The Committee was tasked with looking into the qualification for, exceptions from and conditions of jury service.

### Nationwide property revaluations had radically increased the jury pool

When the committee was launched, juror eligibility depended on householder status. Renewed national property revaluations had recently brought more people into qualified householder status, increasing the jury pool by 4.7 times in some areas - radically diversifying jury panels.

### The burgeoning jury pool led to a decrease in the perceived 'calibre' of juries

While many argued that the jury list should be modernised to mirror the electoral roll, others, such as the Society of Clerks of the Peace of Counties and of Clerks of County Councils noted,

> **'the question arises whether the new jurors, coming as they do from properties of lower value, will reduce the quality of juries'.[32]**

Much of the written evidence highlighted concerns that an expanded juror pool, which included the 'labouring classes', immigrants and 'coloureds', would taint the 'calibre' of decision-making and educational aptitude necessary for jury duty. The Society of Town Clerks lamented that in Newcastle on Tyne, property revaluations had:

> **'brought into the jury category almost every council house . . . includ[ing] a considerable proportion of the labouring classes who because of their lower standard of education, do not make the best type of juror'.[33]**

R. H. McCall, a town clerk and Morris Committee member, suggested that a certain standard of education therefore ought to be a "pre-requisite for jury service" to prevent the summoner from having to choose "between the sheep and the goats".[34]

# Significant events affecting race relations in the United Kingdom between 1948–1979


**1948**

**British Nationality Act**: The British Nationality Act provided all Commonwealth citizens with entry into Britain along with full citizen rights. In the 1950s, a huge recruitment drive in the former colonies was undertaken to fill the significant gaps in the British workforce that existed after the Second World War. As a result, a large number of migrants from the Caribbean, as well as people from Africa and Asia, moved to Britain for work.

**SS Empire Windrush** arrives at Tilbury.

**1958**

**Uprisings:** Racial tensions escalate, leading to violent clashes between white and Black communities in London, particularly in Notting Hill and in Nottingham.

**1962**

**Commonwealth Immigrants Act**: The UK government introduces stricter controls on immigration, affecting citizens of the Commonwealth.

**1963**

**Bristol Bus Boycott**: Activists protest against the Bristol Omnibus Company's refusal to employ Black or Asian drivers.

**Departmental Committee on Jury Service** ('the Morris Committee') established.

**1965**

**Race Relations Act**: The first Race Relations Act is enacted, making it illegal to discriminate on the grounds of race in public places.

**1967**

**British Black Panther Party** established.

**Criminal Justice Bill**: This bill implemented changes to unanimous juries, for the first time allowing majority verdicts in criminal courts in England and Wales.

**Scotland Yard Black Power Desk** established.

**Roy Sawh and Michael X**, Black Power activists, are prosecuted under the Race Relations Act for inciting racial hatred.

**1968**

**Race Relations Act**: This expanded the 1965 Act by making it illegal to discriminate on the grounds of race, colour, or ethnicity in public places and in employment.

**1970**

**Immigration Act**: The UK government introduces further restrictions on immigration, including the imposition of quotas.

**1971**

**Immigration Control Act**: The Act allows authorities to impose controls on Commonwealth citizens entering the UK.

**Trial of the Mangrove Nine**: A landmark case in the UK, where nine Black activists were tried for incitement to riot after protesting police harassment, leading to a significant trial that exposed racial injustice.

**1972**

**The Oval Four:** Winston Trew and the Oval Four are arrested and wrongfully convicted

**1976**

**Commission on Racial Equality established**: Tasked with promoting racial equality and investigating complaints of racial discrimination.

**Race Relations Act**: the third iteration of the Act bans racial discrimination in employment, education, training, housing, and the provision of goods, facilities and services.

**1979**

**Royal Commission on Criminal Procedure established**: The sus ("suspected person") law was a stop and search law created in the 1824 Vagrancy Act, giving officers powers to arrest anyone they suspected of loitering with the intent to commit an arrestable offence. From the 1960's it was used strategically against young Black men, with evidence showing a disproportionate number of young Black men being stopped compared to their white counterparts. The recommendations of the Commission led to its repeal.

### Fears over juror 'calibre' were linked to race, class and immigration status

The increase in non-white migrants from the Commonwealth was overtly addressed at the Committee, and concerns about class and intelligence were directly linked to discussions about race and immigration status. High Court Judge, Mr Justice Thesiger, contended:

> 'I do not think a juror on rape or robbery need be able to read... But on the long fraud cases **a young housewife or some West Indian bus conductor may be wasting their time.'**[35]

The Coroners' Society of England and Wales provided a troubling anecdote:

> **'I have had the occasional coloured person on the jury . . . I have no objection to them merely because of their colour. However, the difficulty lies in their standard of intelligence and education.'**[36]

Resistance to 'coloured' jurors was also articulated under the guise of concerns about a lack of familiarity with 'the English way of life' and culture, reflecting a fear that white, English defendants would be misunderstood. Ignorant of the fact that many West Indian and South Asian Commonwealth migrants spoke English as a result of Britain's colonial rule, the Superintendents' Association of the Police Forces of England and Wales argued that:

> 'Every member of a jury should not only be a British subject but should have been born in this country' to ensure 'a reasonable understanding of the language and . . . an appreciation of the customs and habits of the people'.[37]

The Morris Committee proactively sought input from a variety of organising groups, yet there were no submissions from organisations advocating for racial equality or representing Commonwealth migrants' interests. Ultimately, the Committee recommended a five-year residency requirement. One justification for this, detailed in the report, was that:

> **'Until they have become familiar with and assimilated to the English way of life, immigrants would be bad jurors.** An immigrant may experience more than the ordinary amount of difficulty in deciding whether an English witness is lying, or in considering whether certain conduct conforms to a particular standard.'[38]

### 'Necessary' exclusions recommended by the Committee

Concluding in 1965, the Morris Committee accepted that 'trial by one's peers' required a representative cross-section of the community and recommended that the jury pool should reflect the electoral register, with no property qualifications. The Committee acknowledged that its recommendations would make 'eligible for jury service large numbers of people' who were not yet eligible.[39] Nevertheless, the Committee warned that the requirement of unanimity 'highlights the importance of those of our recommendations which are designed to exclude from juries . . . ill-disposed or incompetent persons' who might 'improperly' cause a disagreement'.[40] This made clear that the success of the unanimity principle was contingent upon the ability to exclude 'incompetent' persons – described throughout Committee evidence as the 'labouring classes' and Commonwealth immigrants – from jury service. A minimum residency requirement was later introduced in the 1974 Juries Act.

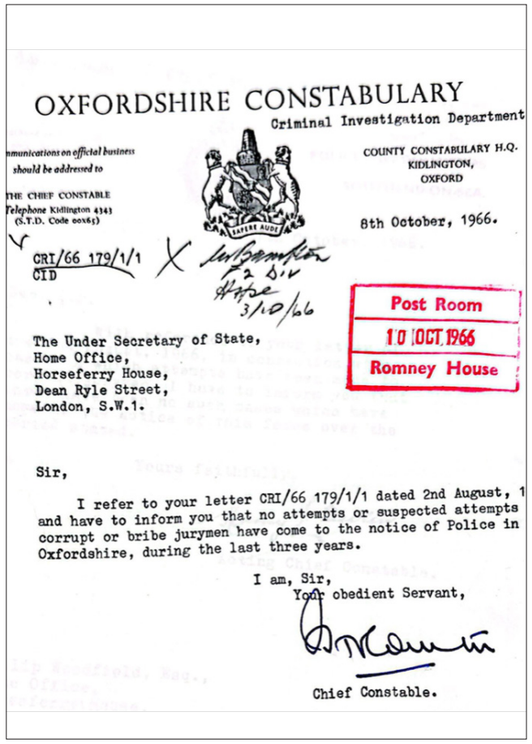
## The Criminal Justice Bill 1967

The 1967 Criminal Justice Bill proposed several changes related to the proceedings of criminal courts, including majority verdicts and juror qualification, directly linking it to the Morris Committee recommendations. The Labour Party was in government during this period, and Roy Jenkins served as Home Secretary from December 1965 until November 1967, which was the year of his 'major reforms'.[41]

Jenkins is credited with being a progressive figure, known for attempting to outlaw discrimination and promoting positive 'race relations', encouraging integration rather than assimilation.[42] Nonetheless, behind the scenes, his establishment of the 'Black Power Desk' makes Jenkins directly responsible for the systematic surveillance and infiltration of Black Power organising. In November 1965, Roy Jenkin's predecessor, Frank Soskice, had concluded that:

> **'Any majority verdicts system... would be bound to introduce an element of doubt.'**

Soon after, in December 1965, Jenkins began pitching for majority verdicts following his appointment as Home Secretary. Jenkins was the most significant figure in promoting majority verdicts, which he successfully implemented in 1967 following more than a year of debate.



OXFORDSHIRE CONSTABULARY

Criminal Investigation Department

nmunications on official business should be addressed to THE CHIEF CONSTABLE Telephone Kidlington 4343 (S.T.D. Code 0086)

COUNTY CONSTABULARY H.Q. KIDLINGTON, OXFORD

8th October, 1966.

CRI/66 179/1/1
CID

Post Room
10 OCT 1966
Romney House

The Under Secretary of State,
Home Office,
Horseferry House,
Dean Ryle Street,
London, S.W.1.

Sir,

I refer to your letter CRI/66 179/1/1 dated 2nd August, 1 and have to inform you that no attempts or suspected attempts corrupt or bribe jurymen have come to the notice of Police in Oxfordshire, during the last three years.

I am, Sir,
Your obedient Servant,

Chief Constable.

Letter from Oxfordshire Police to the Home Office, 1966.
Image from the National Archives

### Preventing jury 'nobbling'

Mirroring the allegations of juror corruption made by advocates for majority verdicts in Oregon, Jenkins's primary justification for majority verdicts in England and Wales was to prevent 'nobbling' – attempts to bribe and intimidate jurors into acquittal. He claimed that there was a 'growing number of cases, involving serious crimes in which there have been attempts to bribe or intimidate jurors'.[43] In ongoing consultation with Jenkins, the Metropolitan police stated:

> 'Majority verdicts would go far towards the prevention of the degeneration of law and order... If gangs of the Richardson order are to be controlled and the Jury system is to continue in this country, there can be little doubt that majority verdicts must now be introduced.' [44]

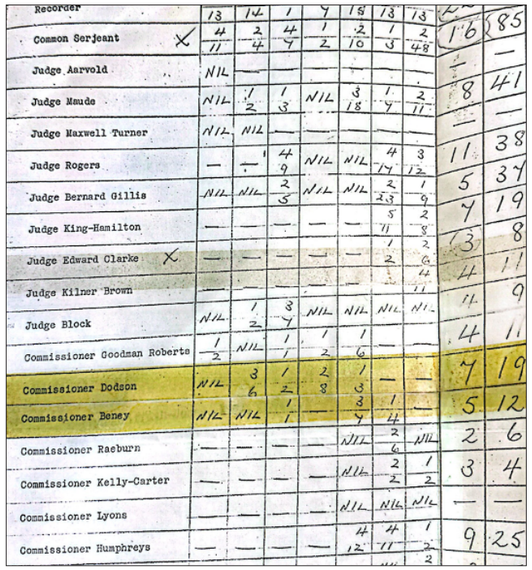
Yet there was little evidence that 'nobbling' was widespread – a finding reinforced by the Home Secretary's correspondence with the police. Between December 1966 and January 1967, letters were exchanged between Home Office staff and Scotland Yard. Acknowledging that parliamentary resistance

to majority verdicts came from a deficit of evidence of 'nobbling', in August 1966, Jenkins also made enquiries of the police throughout the country as to the extent of 'nobbling', sending dozens of letters, with most eliciting a response similar to Oxfordshire Constabulary's: 'No attempts or suspected attempts to corrupt or bribe jurymen have come to the notice of Police in Oxfordshire, during the last three years.'[45]

Michael Zander KC, *The Guardian's* Legal Correspondent at the time recalled:

> 'There were four or five or six cases [of jury nobbling] in London, two or three cases outside of London. There was a very very thin base for making the change, and it caused a lot of upset at the time, or criticism, which I joined... I don't remember anybody who had been asking for it, except [Jenkins] came forward with it...He jumped on an idea which wasn't going to solve the problem, there actually was no problem, **jury nobbling was a non-problem.**[46]

In a later House of Commons debate in April 1967, Mr William Deedes, Conservative MP, argued that Jenkins was making a 'serious decision with undue haste on insufficient grounds', alleging that 'against comparable changes which have been made in our law in recent years. . . this has undoubtedly been the least considered and the most hastily reached'.[47] Yet Jenkins requested immediate legislation, with no official inquiry into 'nobbling' or majority verdicts.



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|---|---|---|---|---|---|---|---|---|---|
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| Judge Aarvold | NIL | — | — | — | — | — | — | — | — |
| Judge Maude | NIL | 1 / 2 | 1 / 3 | NIL | 3 / 18 | 1 / 4 | 2 / 11 | 8 | 41 |
| Judge Maxwell Turner | NIL | NIL | — | — | — | — | — | — | — |
| Judge Rogers | — | — | 4 / 9 | NIL | NIL | 4 / 14 | 3 / 12 | 11 | 38 |
| Judge Bernard Gillis | NIL | NIL | 2 / 5 | NIL | NIL | 2 / 23 | 1 / 9 | 5 | 34 |
| Judge King-Hamilton | — | — | — | — | — | 5 / 11 | 2 / 8 | 7 | 19 |
| Judge Edward Clarke | — | — | — | — | — | 1 / 2 | 2 / 6 | 3 | 8 |
| Judge Kilner Brown | — | — | — | — | — | 3 | 4 / 11 | 4 | 11 |
| Judge Block | NIL | 1 / 2 | 3 / 4 | NIL | NIL | NIL | NIL | 11 | 9 |
| Commissioner Goodman Roberts | 1 / 2 | NIL | 1 / 1 | 1 / 2 | 1 / 6 | — | — | 4 | 11 |
| Commissioner Dodson | NIL | 3 / 6 | 1 / 2 | 2 / 8 | 1 / 6 | — | — | 7 | 19 |
| Commissioner Beney | NIL | NIL | 1 / 1 | — | 3 / 9 | 1 / 4 | — | 5 | 12 |
| Commissioner Raeburn | — | — | — | — | NIL | 2 / 6 | NIL | 2 | 6 |
| Commissioner Kelly-Carter | — | — | — | — | NIL | 2 / 2 | 1 / 2 | 3 | 4 |
| Commissioner Lyons | — | — | — | — | NIL | NIL | NIL | — | — |
| Commissioner Humphreys | — | — | — | — | 4 / 12 | 4 / 11 | 1 / 2 | 9 | 25 |

Handwritten table indicating disagreements in the Central Criminal Court between 1959–1965. Image from the National Archives

### Excess costs caused by hung juries and retrials

Jenkins, alongside some ministers and members of the judiciary, was concerned that juror disagreements were leading to excess costs that majority verdicts could mitigate. Attempts were made to collate data on the scale of hung juries to substantiate this claim, with a handwritten table indicating 126 disagreements in the Central Criminal Court between January 1959 and June 1965.[48] While this justification was better received, many commentators and MPs were similarly unconvinced that the prevalence of disagreements warranted majority verdicts. Legal scholar Michael Zander, commentating for the Guardian in 1966 wrote:

'The statistics show that the number of jury disagreements is insignificant. . . no higher than what was to be expected in any system requiring unanimity. Moreover, retrials after jury disagreements not infrequently result in acquittals.'[49]

Noting that half of retrials caused by disagreements resulted in acquittals at the Old Bailey, Sir George Goldstream, pointed out that allowing majority verdicts in these cases could 'have resulted in the conviction of an appreciable number of persons who were later acquitted on the unanimous [verdict] of another jury'.[50] It was therefore argued that majority verdicts would weaken safeguards against wrongful conviction.

### The 'crank' juror

Jenkins's final justification for majority verdicts was the 'crank juror'. Reflecting discourse from the Morris Committee around the aptitude of 'coloured' migrant and working-class jurors, the 'crank' juror was described as a recalcitrant, stupid and dishonest person of poor education, who may not properly consider the evidence and who is willing to acquit based on their personal disdain of law enforcement and sympathy for defendants. In his memorandum, Judge Griffith Jones contended that allowing convictions when a jury was split would exclude 'cranks' with no risk of injustice:

> With the existing pressure on our criminal courts, the waste of public time and money which is caused by the odd crank or dishonest juror cannot be justified...and... with juries of the education and standard which we now get, so long as a substantial majority is insisted on, there can be no risk of injustice being done by accepting a majority verdict.[51]

Jenkins and the Lord Chancellor agreed that the 'crank juror' was responsible for incorrect acquittals, with Jenkins suggesting that 'because of a general dislike of the police or some similar prejudice', a 'crank' may simply not convict under any circumstance.[52]

### The Death of Unanimity: An Antidote to Increased Juror Diversity?

The Morris Committee appears to be the first time an inquiry on juries raised the possibility of revisiting unanimous verdicts in criminal trials. Homogeneously white, male, middle-class juries were viewed by some commentators as necessary for unanimity and ensuring 'safe judgement'. Lord Devlin, a High Court Justice, who described juries at the time as 'predominantly male, middle-aged, middle-minded, and middle-class', captured the concern about juror diversity in his 1956 book, *Trial by Jury*, cited during the Committee:

> 'But it might be dangerous so long as the unanimity rule is retained, to equate the jury franchise with the right to vote . . . The approach to unanimity is helped to some extent by a system which draws its juries from a central bloc of the population, and it is difficult to estimate what the effect might be on the inclusion of more diversified elements. If unanimity is insisted upon and the narrow franchise is preferred, it is no doubt right that juries should be taken out of the middle of the community where safe judgement is more likely to repose.'[53]

Some MPs in the House of Commons while debating the change in the law, expressly rejected Jenkin's 'nobbling' justifications, but echoed Lord Devlin's concern about diversity. In a debate on 26 April 1967, Conservative MP Charles Fletcher Cooke expressed concern about the idea that an English 'nobleman' would now be judged by 'common clay' rather than a 'jury of their peers', contending that:

> One is enormously widening the approach of new jury men . . . not only in matters of class, but also in matters of race. . . **once one gets away from this middle class, middle brain jury, one will not get, in practice, the degree of unanimity, common thought, common philosophy and common direction** ... Because we must recognise the march of time and realise that if this enormous extension of the jury qualification is imposed, the jury will no longer be anything like what it has been in its 600 years' history, **sadly and regrettably we have to desert the unanimity principle.**[54]

Fletcher Cooke was not alone in explicitly disclosing that he would vote in favour of majority verdicts because of the diversification of juries, which he argued would lead to more incorrect acquittals.[55] The arguments posed in this debate were alarmingly similar to those put forth in Oregon, whereby it was contended that 'vast immigration into America' had made 'the jury of twelve increasingly unwieldy'.[56] The unanimity principle was never tested alongside the expansion of juror qualification in England and Wales, so we do not know whether greater heterogeneity would have made unanimity more difficult to achieve. However, fears expressed by MPs about jury diversification about race and class went a long way towards explaining the passing of the proposal that the unanimity requirement be abandoned.

## VI. The Picture Today – Majority Verdicts in England and Wales

In England and Wales today, accepting a verdict as guilty with which one or two jurors disagree is common practice where a jury cannot decide unanimously, constituting around 15 per cent of all convictions in the Crown Court every year.[57] Through a series of Freedom of Information Act requests, we acquired data from 2014–2021, with cases missing from 2020–2021 due to a data recording platform transition. Of all Crown Court convictions following a guilty verdict on at least one count between 2014–2019, between 12 and 16 per cent were by majority verdict each year. This amounts to 9,516 convictions for this six-year period, and between 1,180 and 1,887 each year.

We also requested data on defendant ethnicity in cases concluded through majority verdict. The defendant's ethnicity was not stated in 24 per cent of convictions. Of the cases where ethnicity is known, 17 per cent of all convictions involving Black defendants were by majority verdict for this six-year period, compared to 14 per cent for the white and Asian groups and 15 per cent for the mixed group. Although the Black group consistently displayed a higher percentage of convictions by majority verdict compared to the white group (between 3 and 5 per cent), the disparity is minimal, and the data indicates a relatively uniform distribution of convictions by majority verdict across all groups. However, with the defendant's ethnicity unknown in nearly a quarter of all recorded convictions, these gaps must be filled before conclusions can be drawn about the racial or ethnic distribution of non-unanimous convictions.

Despite recommendations to do so more than a decade ago[58], acquittals resulting from majority verdicts are not recorded. Zander and Henderson's 1993 'Crown Court study',[59] encompassing surveys completed by approximately 8,000 real jurors, is the only research in England and Wales that has demonstrated the prevalence of majority acquittals. The study found near parity between convictions and acquittals by majority verdict. Whether this holds true today is uncertain, but the consistent prevalence of convictions by majority verdict emphasises the need to understand their origins and impact on juror decision-making and case outcomes.

## VII. The Verdict Vault: The Black Box of Jury Deliberations

Shabbir Ali Mirza, who subsequently appealed to the House of Lords in *R. v. Connor et al*[60], was convicted by a majority verdict of 10 to 2 of indecent assault, upon a retrial after an earlier jury failed to agree.

Shabbir came to the UK from Pakistan in 1988 and was provided with an interpreter for trial. During trial, the jury sent various notes to the judge asking: "The jury would like to know. What year did the defendant come to this country." After Shabbir had given evidence the jury sent another note: "Questions for the interpreter—In your experience as a Court interpreter would it be typical for a man of the defendant's background to require your services, despite living in this country as long as he has?"[61] The Judge, prosecuting counsel and the defence agreed that in complex and serious cases it was usual for people who are not fluent in English to ask for an interpreter and made clear to the jury that no adverse inferences should be drawn from the defendant's linguistic capabilities.


Nevertheless, six days after his conviction, Shabbir's barrister received a letter from a juror which was summarised in these terms:

> "From the beginning of the trial, there was a theory, among some of the jury, that the use of an interpreter was in some way a devious ploy. The writer of the letter was not able to convince anyone that she knew from her experience that there was nothing suspicious about the use of an interpreter. The writer of the letter claimed to be the only juror with any insight into the defendant's culture which others on the jury regarded with undue suspicion. The question of the interpreter was raised early during the jury's deliberations and the letter writer claimed that she was shouted down when she objected to this and sought to remind the other members of the jury that there was an admission to the effect that the interpreter was not a matter which should count adversely against the defendant".[62]

In the combined appeals, the House of Lords was asked to ascertain whether evidence which revealed a lack of impartiality about the deliberations of a jury was always inadmissible under the common law secrecy rule, however compelling the evidence may be and however grave the circumstances. Despite agreeing that the jury "were influenced by racial prejudice" and "reached their verdict on perverse grounds which included a pronounced racial element"[63], the House of Lords dismissed the appeals.

The House of Lords held that after the verdict had been delivered, things said by jurors which were intrinsic to their deliberations were inadmissible. They found that such privacy permitted full and frank debate and protected the jury from reprisal and harassment. They concluded that "in the interests of maintaining the efficiency of the jury system the risk of occasional miscarriages of justice may acceptably be tolerated. In other words, one must accept some dubious verdicts, even in cases of the utmost gravity, as the cost to be paid for protecting the jury system."[64]



**The following people were wrongfully convicted by a majority jury verdict and have since had their convictions quashed.[2]**

**They are not the only ones.**

Michael O'brien
Stefan Kiszko
Sally Clark
Richard Roy Allen
Michael Shirley
Alexander Peppernell
Aaron Bacchus
Adekunle Akanbi-Akinlade
Ali Reza Tahery
Anthony Steel
Anver Daud Sheikh
Barry George
**Andrew Malkinson**
Billy Allison
Brian Kelly
Christopher Drury
Constantine Boucher
Danny Steven Kay
Darren Cash
Darren Hall
David Luxford
Derek Treadaway
Desmond Dinnell
Ellis Sherwood
George Griffiths
George Mcphee
Ghulam Rasool
Ian Lawless
Jack Allan
Jacqueline Fletcher
James Dunn
John Cummiskey
John Jenkins
John Porch
**Winston Trew**
Jonathan Jones
Keith Twitchell
Kenneth Fulton
Kimberley Hainey
Leslie Warren
Mark Chamberlain-Davidson
Michael O'brien
Michael Ray Thomas
Michael Shirley
Patryk Pachecka
Peter Fell
Raymond Gilmour
Ricardo Prince
**Dr David Sellu**
Richard Karling
Robert Clarke
Robert Doubtfire
Sterling Christie
Steven Johnston
Stuart Gair
Warren Blackwell

2 Despite no systematic data collection on applicant's verdict type by the CACD or CCRC, we have been able to identify these majority verdict cases through court judgements and online media reporting, cross checked with the University of Exeter's miscarriages of justice registry.

# VIII. The Implications of Majority Verdicts

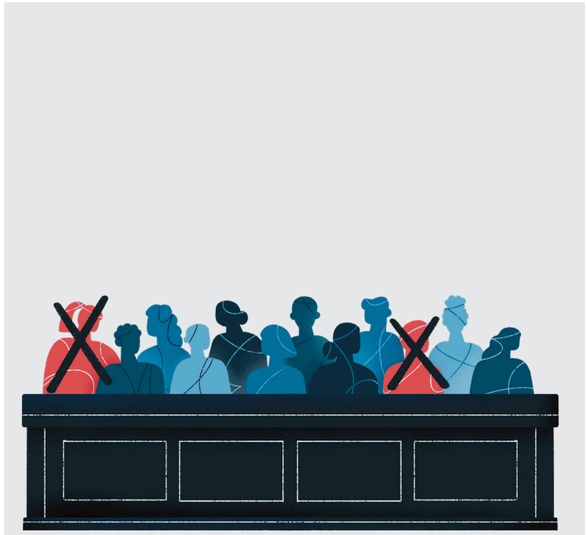
There has been no examination of the impact of the change to the unanimous jury requirement on the safety of convictions or on the integrity of juror deliberations since 1967. In England and Wales, Section 8 of the Contempt of Court Act 1981 expressly criminalises obtaining, disclosing, or soliciting any statements made, opinions expressed, arguments advanced or votes cast by members of a jury during their deliberations in any legal proceedings. This is an enormous impediment to the study of the impacts of majority verdicts in real cases. We have attempted to investigate the picture through Freedom of Information Act requests, case law reviews and interviews with defendants wrongfully convicted on majority verdicts. However, the secrecy of jury deliberations, protected against even academic scrutiny, makes our task challenging.

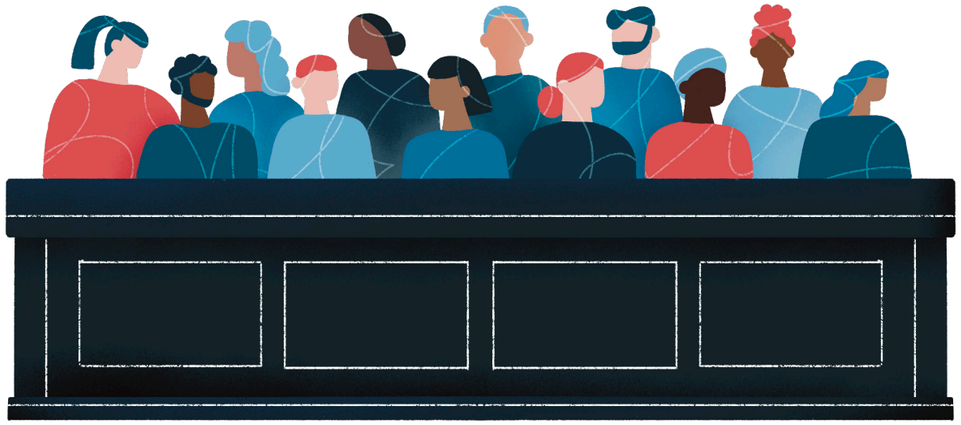
Prohibitions on the disclosure of juror votes and deliberation in England and Wales means there is limited transparency in the jury decision-making process – a barrier to exploring the influence of race on jury verdicts in real cases. Case law further prohibits the exposure of jury deliberations, even if concerns about juror impartiality come to light after conviction. The House of Lords' upholding of Shabbir Ali Mirza's conviction in *R. v. Connor et al* is a stark illustration of this. Other troubling cases of jury racism have come to light, but non-intervention and avoiding investigation remains the preferred course of the Courts.

In the case of *R v Khan*,[65] a trial for rape in Birmingham Crown Court was overshadowed by the dismissal of juror 12, who expressed concerns to the judge about racial bias within the jury. Juror 12 raised issues about the fairness of the trial, alleging that the jury had racially profiled the defendant, Mr Abdul Khan, without considering the evidence. The judge decided to ask each jury member, through a series of questions, whether they could try the defendant on the evidence without any bias. All the jurors answered the questions in the affirmative. However, juror 12 requested to be retired from the jury, citing mental discomfort. Upon the discharge of juror 12, the remaining 11 jurors swiftly reached a unanimous guilty verdict against Abdul. However, juror 12 later sent a letter to Birmingham Crown Court alleging to have overheard racist remarks made by other jurors during deliberations and suggesting bias in their decision-making process. Juror 12 alleged that they recalled hearing other jurors saying, "they should all be deported, it would be easier", and openly stating that they were going to convict Abdul, even before deliberations began.[66]

Abdul appealed his conviction in December 2023, raising concerns about the alleged jury misconduct. The CACD refused to order an investigation into the matter, citing the longstanding principle of preserving the secrecy of jury deliberations except in exceptional circumstances. Upholding Abdul's conviction, the court stated that it could not be sure whether the comments juror 12 alleged to have overheard, were directed at the defendant or merely "generally derogatory".[67] Of course, without an investigation that would be impossible to conclude, but the comments were clearly racist in any event.

This decision highlighted a prioritisation of jury secrecy over addressing potential issues of racial bias within the jury, which, according to the court, do not constitute 'exceptional circumstances'. The courts have consistently upheld the principle that the protection of jury secrecy takes precedence over efforts to prevent racism or prejudice against defendants by the jury.





Unlike England and Wales, in the US race and juries are the subject of a significant body of empirical study. This literature provides compelling evidence that race influences jury decision-making and trial outcomes, whether this be influenced by a defendant's race,[68] or the jury's racial composition.[69] In England and Wales, the largest and frequently cited empirical studies on juries argue the contrary, describing jury verdicts as the 'one stage in the criminal justice system where Black and minority ethnic groups do not face persistent disproportionality'.[70] However, there remains limited transparency in how real juries deliberate outside of experimental conditions.

Some legal experts have cautioned against real jury research, due to concerns that it might lead to a decline in public confidence as a result of "unrealistically high expectations" of juries.[71] Maintaining public confidence in the jury system is crucial. But in the wake of recent challenges to the jury system, there have been growing calls to allow research on real jury deliberations. Although juries are hailed as the fairest component of the legal system, drawing inferences about real juries from experimental studies is not reliable. Restrictions on doing real jury research prevents a definitive assessment of their fairness and thus, informed policymaking[72] and improvements to and confidence in the jury system.

The historical context of the introduction of majority verdicts we have revealed paints a troubling picture of the ways negatively racialised communities and those from working class backgrounds were seen as threats to safe judgement and considered deliberation. This assumption was never questioned ahead of the introduction of majority verdicts in 1967 and has remained unexamined since. *Mirza* and *Khan* similarly raise concerns about jury decision-making in a system which prioritises privacy over the prevention of prejudice. These findings should prompt us to open the black box, and look more closely at juror deliberations, especially in majority verdicts, to ensure racism and classism are not tainting case outcomes.

## Decoding Dissent: Excluding the Minority?

In England and Wales, it has been argued that majority verdicts could safeguard against juror bias by preventing one or two racially (or otherwise) prejudiced jurors from dictating jury decision-making.[73] However, it is acknowledged that majority verdicts may also silence 'a minority who opposed a racist majority'.[74] The examples of Mirza and Khan are cases in point.

Yet, the term "majority" verdict implies a democratic decision. Notably, the legislation did not use language such as "non-unanimous" or "split" verdicts - terms which emphasise the exclusion of some jurors' votes. Without direct access to jurors, it is difficult to second guess dissent, however the very presence of dissenting views on a verdict raises questions about the role of race, class, ethnicity and jury composition on the verdict. Quotes below were given in interview to the authors by wrongfully convicted defendants convicted by majority verdict.

### Diversity within the jury and its impact on perceptions of fairness

When questioning individuals who have experienced miscarriages of justice about the makeup of their juries, a desire for representation emerged. When the jury lacked individuals who might have shared comparable life experiences with the defendant, it

resulted in a feeling of detachment and perceived unfairness in the judgment. Apparent class differences between defendant and jury were significant. Andrew Malkinson, wrongfully convicted of rape in 2004 on a 10/2 majority verdict, felt that all his jurors were middle class. Reflecting on the potential impact of this on his trial, he found that the class difference meant that:

**'Maybe they saw me as a bit of a loser. Somebody who doesn't hold a regular job...this guy looks like an oik, a working class oik who is out of control.'**

Kevin Lane, convicted of murder in 1994 on a 10/2 majority verdict, also recalled his impression that all his jurors were upper middle class. Reflecting on the body language of the jurors during his trial, he stated:

' You can tell if people have, not compassion for you, but a little bit of understanding because they will engage with you via a look, or they will at least look over at you... some of them you can quite clearly see from their aura and their approach and their viewpoint of me from where they were sitting, didn't look friendly.'

The racial composition of the jury was especially significant to Dr David Sellu, who was wrongfully convicted of gross negligence manslaughter in 2013 on a 10/2 majority verdict. He remembered there being roughly three racialised minority jurors on his panel, though none he felt would understand the particularities of his own background:

'I was hoping that there would be people of my own background, i.e. to represent the communities that we live in. Because I've heard this debate many times, if you are Black and appearing in front of a jury then you are doomed from the beginning and I felt that people who were not of my ethnicity might be less understanding really of my position...I didn't want for there to be all Black people just so they could clear me of the charges, but I wanted for there to be an adequate representation of me and my background.'

There is not yet evidence in England and Wales to support the assertion that a more racially diverse jury returns a different verdict from a more homogenous one. Professor Cheryl Thomas's 2010 study 'Are juries fair?',[75] which adopted a case simulation method, found no evidence of discrimination against 'Black and minority ethnic' defendants when examining voting splits amongst all-white hung juries. Thomas's 2007 study 'Diversity and fairness in the jury system',[76] included racially mixed juries, finding that race did not influence overall verdicts. Yet, no research explores whether a racially mixed jury is more likely to be 'hung' or reach a non-unanimous decision, nor has there been examination of the relationship between a juror's race or class and dissenting votes. We cannot therefore be sure that race has no influence on trial outcomes where there has been a majority decision. These reflections on diversity from wrongfully convicted people, while perhaps not in actuality linked to the outcome of their trial, are nonetheless relevant to uncovering an erosion of the sense of legitimacy and procedural justice in criminal trials with homogenous juries.

### The effects of jury diversity on deliberation and dissent

All three wrongfully convicted interviewees who remembered having a racially mixed jury felt it likely that the dissenting jurors were the members who were of a racialised minority. Of course, it is impossible to prove this assertion, but the sentiment does betray a view that diversity encourages a more critical view of a case presented by the state. Winston Trew, who was tried by a jury with just two black jury members and was convicted by 10/2 majority verdict, reflected that Black people's collective experience of racist policing led to a sense of solidarity among the Black community:

'We were Black activists then. We were saying, Black people vote for Black people to be found not guilty of a crime that seems so incredible. Because we were Black activists, we wanted to believe that.'

Others interviewed expressed the feeling that more diversity on the jury panel, especially with regards to race and class, would have led to more critical debate of the cases made against them. Kevin Lane reflected:

'I'd liked to have had a few ethnicities in there. I might have stood a bit more of a chance because they've got a greater understanding of what goes on...they've got more of an understanding of the real world.'

Andrew Malkinson, when asked what he would have changed about the makeup of his all-white jury, stated:

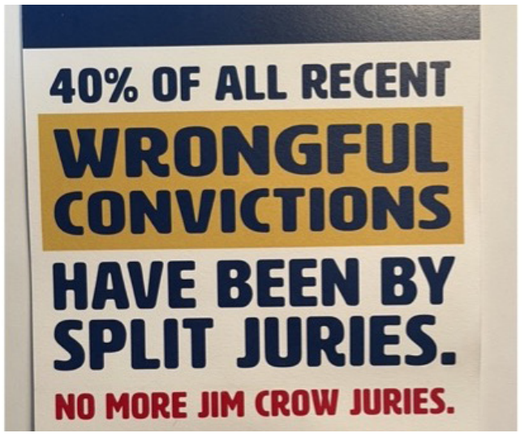

Andrew Malkinson photographed by Ben Broomfield.

**'More people from a working class, poor background. More spread of the national demographic. You know, more Black people, who understand police oppression, probably. People who don't place such implicit trust in the police. Yes, so a broader sample.'**

Thomas's 2007 case simulation study, 'Diversity and fairness in the jury system', found that ethnicity did influence the individual votes of some jurors in some cases. In such cases, 'Black or minority ethnic' jurors were less likely to convict 'Black or minority ethnic' defendants when compared to white defendants. The study also identified 'same-race leniency' from individual jurors of all ethnicities in particular cases,[77] reflecting the findings of several US studies.[78] Findings of individual juror bias do not, however, tell us whether race influences overall verdicts. While a defendant's ethnicity did not impact case outcomes in Thomas's study, differential voting between jurors of different ethnicities raises questions about whether negatively racialised jurors' votes are more likely to be side-lined when the majority direction applies.

Despite only being implemented in Louisiana and Oregon, majority verdicts have raised concerns among legal scholars and campaigners in the US. US empirical research has demonstrated that juries required to achieve unanimity deliberate more thoroughly, and 'non-participation' during the deliberation process decreases.[79] More specifically, small factions are less likely to speak during deliberations under majority rules.[80] Likewise, research has found that racially mixed juries deliberate for longer and exchange a wider range of information.[81] Cognitive behavioural scientists from the UK similarly argue that juror heterogeneity limits the effects of bias.[82] US research has also demonstrated that Black jurors are overrepresented amongst those casting ballots for 'not guilty', while white jurors are underrepresented.[83] Most non-unanimous verdicts in the US were convictions rather than acquittals, meaning Black jurors are more likely to have cast the 'empty' votes where defendants were convicted.[84] It is therefore argued that majority verdicts can diminish effective decision-making by circumventing the voices of jurors from minority groups, which can have calamitous consequences in cases of wrongful conviction, or where a jury has only one or two minority members.[85]

## Divided Deliberations: Convicting the Innocent?




Plaque used in the campaign to abolish split juries in Louisiana. Photo provided by Angela Allen-Bell

The above concerns are accompanied by fears that majority verdicts lead to more wrongful convictions. Advocates for majority verdicts argue that they eliminate the irrational juror from preventing a correct conviction, while those opposed argue that majority verdicts circumvent a rational juror from preventing a wrongful conviction.[86] Extensive research by US media outlet, *The Advocate*, found that 56 percent of convictions in Louisiana whereby the defendant was later proven innocent were the result of a majority verdict,[87] while other research demonstrates that unanimous verdicts minimise the probability of trial

error.[88] Arguably, the risks of wrongful conviction are recognised in the fact that majority verdicts were not accepted in death penalty cases in the US, and an unwillingness to accept majority verdicts in serious cases in other jurisdictions.[89]

Unfortunately, Freedom of Information Act requests to the Ministry of Justice and the Criminal Cases Review Commission, the body that investigates potential miscarriages of justice, yielded no data about the numbers of successful appeals of convictions derived by majority verdict. This has made it difficult to paint a picture of the numbers of people wrongfully convicted by majority verdict and to analyse any potential disproportionality that may be present.

## Eroding reasonable doubt

Majority verdicts arguably dilute the principle of reasonable doubt. A split verdict intrinsically implies the presence of reasonable doubt in at least one juror and the ability to exclude this voice has far reaching implications. Michael Zander KC summarised the point eloquently:

> 'It seemed to me obvious that **if you introduce majority verdicts, you by definition reduce the concept, you narrow the concept of proof beyond reasonable doubt, because you have to assume that the dissenter, or dissenters are not reasonable.** If they're not reasonable, if they're nutcases, mavericks or something, in some cases, in some sense just of the board as it were, then okay. But if they're reasonable, then by definition you haven't got proof beyond reasonable doubt if the other ten agree on the conviction.'[90]

For our wrongfully convicted interviewees, concern about the dilution of the beyond reasonable doubt principle was evident. Winston Trew stated:

**'I think [majority verdicts] reflect wrongful convictions, they reflect doubt the jury had about whether or not the person did this...unless you all agree he's really really guilty, then 10-2 is not really really guilty.'**

The survivors of miscarriages of justice felt strongly that the majority verdict direction by judges was a prosecution-oriented measure, intended to increase conviction rates. Andrew Malkinson, when asked what he made of the judge's majority direction to the jury during their deliberations, stated:

> 'I thought, well this is only increasing the probability of getting convicted, because they're shortening the odds by doing that you know, how low can you go?... in a way, the very act of a judge going, I'll accept a majority I think is saying to the jury have another go, you're not reaching the right decision, have another go, which is sort of implicitly saying, this guy's guilty, we want you to find him guilty.'

He added that it seemed to be an attempt to "keep tweaking [the system] to get the result you want, it's just wrong". Kevin Lane echoed this sentiment, saying of the Judge's majority direction:

> 'When he said that, I knew I was done...I thought, how many chances do you want to give the jury?...it's like they're just having another bite at the cherry.'

The interviews evidenced a deep sense of injustice, and the belief that the trial system was rigged against them when the majority direction was offered to their juries.

The concern that a majority decision leads to a lowered standard of guilt required to find someone guilty has been supported by some recent statistical analysis. In his draft paper, "Mathematically Unacceptably High Miscarriage of Justice Risk in Criminal Case Retrials and Majority Verdicts", Dr Rupert Macey-Dare, constructs a mathematical model to examine the risk of miscarriage of justice in criminal trials, particularly in relation to majority verdicts and retrials. He finds that "specifically a majority, as opposed to unanimous, guilty verdict can produce a very high biased over-estimate of the jury or judicial panel's average view of the probability of guilt of a defendant.". Alarmingly, he concludes that "This in turn must lead and have led to an excess number of miscarriage of justice convictions, incarcerations and penalties, even death penalty convictions in relevant states, that apply the "Beyond Reasonable Doubt" threshold of guilt test, and which also allow explicit or implicit majority voting by jurors or appeal judges to determine the verdict."[91]

The view that 'reasonable doubt' is inherent in a split jury decision was acknowledged by those in favour of introducing majority verdicts in 1967. The historical archives revealed discussions among ministers who supported majority verdicts but expressed concern that majority acquittals might be seen as inferior or less valid than unanimous ones. Interestingly, they did not express the same worry about majority convictions - a clear inconsistency. Nevertheless, this historical concern about the perceived doubt in split jury acquittals led to a proposed amendment to the 1967 Criminal Justice Bill which, if implemented, would have prohibited the disclosure of majority acquittals.

## Further unbalancing equality of arms

In a criminal trial, there is an expectation of equality of arms - a fair balance between the opportunities given to both the prosecution and defence. However, miscarriage of justice survivors quite understandably felt this principle is a farce, describing a system in which the prosecution has more resources, better access to information, and is more likely to be afforded the benefit of doubt due to its perceived moral standing. Within this framework, they perceived the majority verdict directive as further tipping the scales against them.

Central to the wrongful conviction of Andrew Malkinson was the failure of the police and prosecution to disclose key exonerating evidence. In Winston Trew's case it was police corruption, racism, and deceit. Andrew, Winston, David and Kevin all felt that the odds were stacked against them from the moment they were charged. Winston articulated this sentiment clearly:

> The prosecution has more arms than the defence... wrongful convictions happen for a whole variety of reasons. Through deliberate police corruption, but also through the defence not having access to all the information and [the prosecution] failing to disclose this information to the defence.

Andrew was clear in that the police and Crown Prosecution Service, not his jury, were responsible for his wrongful conviction. However, his reflections highlight how the majority direction increases the risk of convicting an innocent person in a system which is already seen as favouring the prosecution:

**'Two members of my jury were not convinced I was guilty. They were right - in fact I was wholly innocent... The two "hold out" jurors in my case were not "cranks". They were human beings who were uncertain, and their uncertainty should have been heeded, not just by the trial process, in the jury room, but in the appeal process as well. But the other 10 jurors are not to blame for my wrongful conviction. Evidence that pointed to my innocence was hidden from them by the police and prosecution.'**

Numerous institutional shortcomings contributed to Andrew's wrongful conviction, yet he wouldn't have endured over 17 years of wrongful imprisonment but for the majority verdict rule. It is important to acknowledge that the defence can also benefit from majority verdicts in that defendants can be acquitted by a majority. However, in a system where the power distribution between the prosecution and defence feels so unbalanced, miscarriage of justice survivors are right to question the legitimacy of majority verdicts for convictions.

Winston Trew. Photo provided by Winston Trew

# IX. Conclusion

This study has unveiled the roots of the shift in the law from requiring juror unanimity to permitting split decisions in criminal trials in England and Wales. Against the backdrop of tumultuous race relations in 1960s Britain as well as the swift expansion of juror eligibility to include more working-class and negatively racialised people, doubts arose about the ability of these newly diverse juries to render just decisions. These concerns were classist and racist, typified by fears that this group of freshly eligible jurors would lack the educational ability, moral integrity, or shared sense of right and wrong to come to correct and united decisions.

While the government cited cost-saving and jury corruption as justifications for the legal change, these rationales lacked convincing evidence and failed to persuade many commentators and MPs. Some voted for the change in the law expressly rejecting the overt reasoning and confessed to fearing the impact of juror diversity on collective decision making. Thus, a 700-year-old system of juror decision-making was cast aside, at least in some part based on racist and classist desires, and has remained unexamined since.

The historical context of majority verdicts underscores how racism, classism, and Britain's colonial history manifest within the contemporary legal system. However, the Contempt of Court Act 1981, case law and the lack of comprehensive data and transparency surrounding majority verdicts in England and Wales inhibits a thorough understanding of their impact on case outcomes and juror decision-making processes. The racist and classist origins of the law make it imperative that research on juror deliberation is allowed, to assure the public that discrimination is not tainting jury verdicts.

Tension between allowing juror dissent and upholding the principle of reasonable doubt remains unresolved. What is clear is that high profile miscarriages of justice survived by Andrew Malkinson, Winston Trew, Michael O'Brien, Stefan Kiszko, Sally Clark, Barry George, Richard Roy Allen, Michael Shirley, Dr David Sellu, and others would not have occurred had the dissenting jurors in their trials voided the verdict. Survivors of miscarriages of justice view majority directions to the jury given by judges as a mechanism that further tilts trial outcomes against the accused, and this claim has been substantiated and rectified in the US. This study has highlighted the risk that continuing to allow majority convictions may contribute to further miscarriages of justice in England and Wales.

Moving forward, it is imperative to conduct further research and gather comprehensive data to assess the true implications of majority verdicts. The sheer number of criminal convictions reached by a split jury in England and Wales, coupled with the US empirical research demonstrating that unanimity can safeguard against wrongful conviction and avoid side-lining minority viewpoints, should encourage us to reflect on the appropriateness of this mechanism for jury decision-making that has life-altering effects on defendants and victims. The US example in the case of *Ramos* provides a clarion call to be vigilant to the potential effects of racism and classism in the operation of juries. It should encourage us to feel braver in peeking inside the verdict vault of juror deliberations to enhance the transparency and accountability of the jury.

We hope this study is a first step towards better data gathering and analysis on majority verdicts in England and Wales, and further critical inquiry into the relationship between Britain's colonial history, racism, classism, and the jury system.

**Justice need not silence or side line.**



# X. Recommendations

## A

### Reinstate the Principle of Jury Unanimity for Criminal Convictions

The principle of trial by jury is an essential safeguard against injustice which needs to be fortified when vulnerabilities or weaknesses become apparent. We have illustrated reasonable concerns that majority verdicts are likely to lead to miscarriages of justice and were introduced for no good reason. For this reason, we recommend the reinstatement of the principle of jury unanimity for criminal convictions in England and Wales. This reinstatement will restore the principle of reasonable doubt and uphold the integrity of the jury system. We recommend Section 17 of the Juries Act 1974 be amended accordingly. The full text of the legislation can be found in Annex A.

## B

### Amend Section 8 of the Contempt of Court Act

We propose the addition of a subsection to Section 8 of the Contempt of Court Act that explicitly allows for official research to be conducted in jury deliberations by authorised entities such as academic institutions or government agencies, with the aim of improving the operation of juries, improving transparency in the courts, and increasing understanding of juror behaviour. Our proposals largely follow the proposals made by the Law Commission in their December 2013 report 'Contempt of Court: Juror Misconduct and Internet Publication'.[92] Our full draft amendment can be found in Annex B.

## C

### Improve Crown Court Data Collection on Majority Verdicts and Juries

Data is the only way of unearthing new insights into the fair and efficient operation of the criminal justice system. To provide a holistic view of the prevalence and impact of majority verdicts on trial outcomes, it is essential that the Crown Court case management system CREST, be amended to gather data on cases where an acquittal resulted from a majority verdict. Currently, data is only collected on convictions. Further, to understand and identify any patterns of bias in majority decisions, we recommend that data be gathered on the ethnicity of dissenting minority jurors and assenting majority jurors, but that this should not be declared in open court.[93] An anonymous juror survey should be routinely collected at the conclusion of each case to capture and record this data.

## D

### Implement CCRC and CACD Routine Capture of Verdict Type

To better understand the links between wrongful conviction and majority verdicts, the CACD and CCRC must collect data capturing the nature of the jury verdict in each case under review.

# XI. Annex

## Annex A
## Repealing s17 of the Juries Act 1974

We recommend the following section be repealed.

**17 Majority verdicts.**

(1) Subject to subsections (3) and (4) below, the verdict of a jury in proceedings in the Crown Court or the High Court need not be unanimous if—

(a) in a case where there are not less than eleven jurors, ten of them agree on the verdict; and

(b) in a case where there are ten jurors, nine of them agree on the verdict.

(2) Subject to subsection (4) below, the verdict of a jury (that is to say a complete jury of eight) in proceedings in court need not be unanimous if seven of them agree on the verdict.

(3) The Crown Court shall not accept a verdict of guilty by virtue of subsection (1) above unless the foreman of the jury has stated in open court the number of jurors who respectively agreed to and dissented from the verdict.

(4) No court shall accept a verdict by virtue of subsection (1) or (2) above unless it appears to the court that the jury have had such period of time for deliberation as the court thinks reasonable having regard to the nature and complexity of the case; and the Crown Court shall in any event not accept such a verdict unless it appears to the court that the jury have had at least two hours for deliberation.

(5) This section is without prejudice to any practice in civil proceedings by which a court may accept a majority verdict with the consent of the parties, or by which the parties may agree to proceed in any case with an incomplete jury.

## Annex B
## Amending s8 of the Contempt of Court Act

### Draft amendment

*Section 8 of the Contempt of Court Act 1981 currently reads as follows:*

*8. Confidentiality of jury's deliberations*

*(1) Subject to subsection (2) below, it is a contempt of court 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 in any legal proceedings.*

*(2) This section does not apply to any disclosure of any particulars—*

*(a) in the proceedings in question for the purpose of enabling the jury to arrive at their verdict, or in connection with the delivery of that verdict, or*

*(b) in evidence in any subsequent proceedings for an offence alleged to have been committed in relation to the jury in the first mentioned proceedings,*

*or to the publication of any particulars so disclosed.*

*We suggest that an additional subsection (8)(2)(c) could be introduced which would provide that the section does not apply to the disclosure of any particulars to a person who has the leave of the authorising body.*

*(c) in the proceedings for the purpose of academic research for which leave has been granted by [the authorising body]*

### The authorising body

At present, any researchers wishing to undertake research using participants in the court system are required to obtain authorisation. All requests for existing HMCTS data, including research involving interviews or questionnaires with HMCTS court staff or court/tribunal users must be considered and approved by the HMCTS Data Access Panel (DAP).[91] Permission involves a scrupulous process of review, involving a panel composed of Data and Analytical Services staff, who evaluate requests and make a recommendation to the Data Access Governance Board (DAGB) which is chaired by the MOJ's Chief Statistician. This board has the final decision on whether permission will be granted. We recommend that juror research be brought in under the rigorous scope of the HMCTS DAP.

### Safeguards

We accept that the amendment proposed should be supported by strict ethical and confidentiality guidelines to ensure the integrity of the research and to protect the privacy and rights of jurors. Again, the proposals given by the Law Commission are prurient, and we would suggest the following:

1. That research only be undertaken after the case has concluded and the jury has finished deliberating (i.e. that there should be no access to the jury room)
2. That the consent of the jurors be required to participate in the research
3. That a code of conduct for researchers be devised, or to insist upon the use of normal academic ethical controls on empirical research.
4. That only anonymised results be published so that the case and the jurors cannot be identified.
5. That research be limited to bona fide academics in academic posts through a recognised academic institution, charity, government agency, or other authorised entity.

It is worth noting that the HMCTS DAP already incorporates many of these safeguards in evaluating permission for other forms of research involving court users.

# XII. Endnotes

[1] *Ramos v Louisiana*, 140, S, Ct, 1390 (2020)

[2] The success in Ramos could only have happened with the roadmaps provided by two previous cases, *State v Lee* and *State v Maxie*. In the negative *Lee* decision, the court explained an inability to rule in favour of the appellant without direct evidence spelling out the racial intent of the law. In *Maxie*, data gathered by *The Advocate* magazine revealed that African-Americans were 30 percent more likely to be convicted by split juries than white defendants. The team behind *Ramos* were able to use these cases as roadmaps to identify the further evidence and strategy needed for success in *Ramos*.

[3] Allen-Bell, 'How the Narrative About Louisiana's Non-Unanimous Criminal Jury System Became a Person of Interest in the Case Against the Deep South', *Mercer Law Review*, 67, no. 3 (2017), pp. 596.

[4] Majority verdicts were originally introduced in Louisiana in 1880, whereby a majority of 9 out of 12 jurors was required. Majority verdicts made their way to the Constitution of 1889 by way of Article 116, amended to a majority of 10 out of 12 jurors.

[5] T. Frampton, 'The Jim Crow jury', *Vanderbilt Law Review 71*, no. 5 (2018): pp. 1593–1654

[6] A. Allen-Bell, 'These jury systems are vestiges of white supremacy', *The Washington Post*, 22 September 2017, available at: https://www.washingtonpost.com/opinions/these-jury-systems-are-vestiges-of-white-supremacy/2017/09/22/d7f1897a-9f13-11e7-9c8d-cf053ff30921_story.html

[7] Ibid

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[9] New Orleans Daily Picayune 1870, cited in Allen-Bell, 'How the narrative about Louisiana's non-unanimous criminal jury system became a person of interest', p. 597.

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[16] S. A Tate, 'I can't quite put my finger on it': Racism's touch. *Ethnicities*, 16(1), (2016) p 70 available at: https://doi.org/10.1177/1468796814564626,

[17] Tate, p84

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[21] Fryer, 1984

[22] P. Gilroy, *There Ain't No Black in the Union Jack: the cultural politics of race and nation* (London, Routledge, 1987)

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[24] A. Sivanandan, 'From Resistance to Rebellion: Asian and Afro-Caribbean struggles in Britain', *Race and Class*, 23, no. 2-3 (1981) p.116

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[27] Blankson, 'The British state's secret war on Black Power'.

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[37] Written Evidence to the Department Committee on Jury Service, London National Archives, document no. HO291/784

[38] Lord Morris, 'Report of the Departmental Committee on Jury Service', *Home Office* (1965) p. 27

[39] Lord Morris, 'Report of the Departmental Committee on Jury Service', p. 22

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