

A Response to “The Jury is Still Out”

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I thank the authors for the time they have devoted to thinking about my research, and I am grateful to the Crim L R for the chance to correct some of their fundamental misunderstandings about the work.

First, I was not “exceptionally” granted access to jurors to do my research with real juries¹. Over 20 years of conducting research with real juries, I have never been granted any exemption from any research protocols or legal rules to do this research. There is a risk that those reading “The Jury is Still Out” will be misled into thinking that research cannot otherwise be conducted with real juries at court². The truth is that research with real jurors is not easy. It is sensitive, time consuming and needs to respect the confidentiality of the jury process and the demands on jurors, court staff and judges. It is much easier to use volunteers to “act” as juries, as these authors do. But we now know this is fundamentally problematic because most real jurors would never have volunteered to do jury service³.

Second, far from my research “closing the door on debates about juror misunderstanding and misconception in rape cases”,⁴ in my article I explain how these are initial findings and my rape myths research with juries is ongoing⁵. The initial findings have been known for two years⁶. In that time, I have had many helpful discussions with other academics, legal professionals and policy makers about the research, shaping the ongoing study. It is a shame these authors chose not to engage with these discussions about the research in this period.

Third, the research methodology, which the authors question, has been used here for over three decades to explore a wide range of juror experiences and views⁷. In recent years, anonymous post-

¹ The authors falsely state “she was – exceptionally – able to secure access to participants who had taken part in jury deliberations” Chalmers, Leverick, Munro, p.X.. This is something I have sought to clarify before following a similar misconception in the 2016 article J. Chalmers and F. Leverick, “How Should We Go About Jury Research in Scotland” [2016] Crim. L.R. 607, 708, which claimed that my jury decision-making research used summoned jurors who had not sat on trials. I corrected that misconception in my response see C. Thomas “How Should We Go About Jury Research in Scotland: A Response” [2016] Crim. L.R. 915, 918. The error nevertheless appears in 2018 in J. Chalmers and F. Leverick, *Methods of Conveying Information to Jurors: An Evidence Review*, Scottish Government (2018) p.33

² See C. Thomas “Exposing the Myth” *Counsel* 31 March 2013. It is unfortunate for the authors that the Scottish Government did not allow them to conduct their research with any real juries in Scotland, but that doesn’t mean research with real juries is prohibited.

³ C. Thomas, “The 21st Century Jury” p.1006

⁴ Chalmers, Leverick, Munro, p.X

⁵ C. Thomas, “The 21st Century Jury” p.1005

⁶ The research was announced in April 2018 in the Government response to a Petition to Parliament, see <https://petition.parliament.uk/archived/petitions/209573>. The initial findings were announced first by Sir Brian Leveson in his June 2019 valedictory lecture, see <https://www.ucl.ac.uk/judicial-institute/files/sir-brian-leveson-ucl-vaedictory-lecturepdf-2> and then on in July 2019 on BBC’s Law in Action programme <https://www.bbc.co.uk/programmes/m000671m>

⁷ See for instance, M. Zander and P. Henderson, *Crown Court Study*, HMSO (1993); R. Matthews, L. Hannock, D. Briggs, *Jurors’ Perceptions, Understanding, Confidence and Satisfaction in the Jury System: A Study in Six Courts* Home Office (2004); C. Thomas, *Are Juries Fair?* (2010); C. Thomas, “Avoiding the Perfect Storm of Juror Contempt” [2013] CLR xxx; C. Thomas, “The 21st Century Jury” [2020] CLR XXX

verdict jury surveys have given us a better understanding of important issues such as jurors' use of written directions⁸; awareness of media coverage of cases⁹; internet use during trial¹⁰; need for deliberation guidance¹¹; and need for post-trial support¹². Directly alongside the findings on juries and rape myths, my article explains (at length) how this identical methodology was used at the same time to better understand and deal with juror contempt¹³, producing a new Criminal Practice Direction requiring a Juror Notice in all trials¹⁴. The authors' failure to address any of this suggests that what they really object to is not the methodology used in the research but the specific findings that most real jurors serving on real juries do not believe most rape myths.

⁸ C. Thomas, "Avoiding the Perfect Storm", p.496-498

⁹ C. Thomas, *Are Juries Fair?* p.40-42.

¹⁰ C. Thomas, *Are Juries Fair?* p.40-44; C. Thomas, "Avoiding Perfect Storm" p.488-491.

¹¹ C. Thomas, *Are Juries Fair?* p.30-31; C. Thomas, "Avoiding the Perfect Storm" p.496-497; Judicial College, *Crown Court Compendium* (Judicial College, 2020), section 1-9.

¹² C. Thomas "The 21st Century Jury" p.1007-1010.

¹³ C. Thomas "The 21st Century Jury" p.987-1001.

¹⁴ CPD VI (Trial) para.26G.5, see <https://www.justice.gov.uk/courts/procedure-rules/criminal/docs/criminal-practice-directions-amendments-july-2017-summary-of-changes.pdf>