

JURY TRIALS IN THE INTERNET ERA: A SYSTEM UNDER SIEGE?

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Abstract

This paper explores the role of the jury in the UK as a vital guardian of justice and liberty, particularly through the lens of jury nullification. While this principle empowers jurors to set aside rigid legal rules in favour of moral judgement, concerns arise when such discretion undermines judicial directions, potentially introducing inconsistency and bias. The rise of the Internet has further complicated this balance by influencing how jurors access and interpret information, challenging the integrity of fair trials.

Jurors in the UK are strictly instructed to base their verdicts solely on evidence presented in court without considering any external sources. This principle ensures that both parties are fully aware of the evidence relied upon and are given a fair opportunity to address them during proceedings. However, with the increasing accessibility of online information and widespread Internet use, jurors can access unauthorized or irrelevant information easily, leading to biased perceptions and unfair verdicts. Despite explicit instructions prohibiting such conduct and ongoing efforts to educate jurors about the rules, some may engage in online research out of curiosity, misunderstanding of the rules or believing that vital information is purposely being withheld from them. Jurors may even unintentionally encounter such information, and research has indicated that jurors struggle to disregard it, while the principle of jury secrecy further prevents its detection and limits the court's ability to intervene.

Therefore, if the jury system is to survive as the system of a fair trial, reforms are required immediately. While statutory penalties and judicial directions aim to deter

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online misconduct, their effectiveness remains limited. Approaches like structured 'route to verdict' guidance, and the use of void dire to screen for bias have also been proposed, though each presents drawbacks. Ultimately, fostering ethical online behaviour appears crucial to preserving trial integrity in this digital age.

1. Introduction

'Trial by jury is part of the bright constellation which leads to peace, liberty and safety.'¹ This profound statement by Thomas Jefferson, one of America's Founding Fathers, emphasizes the jury system as a cornerstone of justice and freedom,² thus solidifying its place in the United States' (hereinafter referred to as 'US') legal system, where the right to a jury trial remains enshrined in the Sixth and Seventh Amendments of the Bill of Rights.³ Nevertheless, the jury system in the US did not arise in isolation, as it is significantly influenced by the United Kingdom's (hereinafter referred to as 'UK') legal traditions, with roots tracing back to the 13th century.⁴

In the UK, the right to a jury trial was first codified in the Magna Carta of 1215, which established that no man should be punished except by the lawful judgement of his peers.⁵ Since then, this principle has become an integral part of British Law.⁶

Nevertheless, the jury system has long been a topic of debate. While figures like Lady Justice Hallett regard the jury as a bulwark of the rule of law and liberty, viewing them as an impartial tribunal which is capable of determining guilt without bias,⁷ others, such as Penny Darbyshire, criticize the jury's susceptibility to bias and lack of transparency in reaching verdicts, arguing that these flaws threaten the rule of law and the integrity of the justice system.⁸

¹ Thomas Jefferson, 'First Inaugural Address' *American Battlefield Trust* (4 March 1801) <<https://www.battlefields.org/learn/primary-sources/1801-jeffersons-first-inaugural-address>> accessed 5 February 2025.

² Lesley Kennedy, 'Why Americans Have a Right to Trial by Jury', (*HISTORY*, June 5 2024) <<https://www.history.com/news/trial-by-jury-origins-founding-fathers>> accessed 5 February 2025.

³ *Ibid.*

⁴ *Ibid.*

⁵ Emily Allbon and Sanmeet Kaur-Dua, *Elliott & Quinn's English Legal System* (22nd edn, Pearson 2024) 286.

⁶ Taylor Jacquis, 'Trial by Social Media: how do you find the jury, guilty or not guilty?' (2019) 1(2) *International Journal of Cyber Research and Education* 50.

⁷ 'Trial by Jury-Past and Present' (*Judiciary.uk*, 20 May 2017) <<https://www.judiciary.uk/wp-content/uploads/2017/05/hallett-lj-blackstone-lecture-20170522-1.pdf>> accessed 5 February 2025.

⁸ Penny Darbyshire, 'The Lamp that shows that freedom lives – is it worth the candle?' (1991) *Criminal Law Review* October 740 as cited in Emily Allbon and Sanmeet Kaur-Dua, *Elliott & Quinn's English Legal System* (22nd edn, Pearson 2024) 287.

Yet, concerns about jury integrity have grown increasingly intense in the 21st century. This stems from the fact that, while jurors are instructed to base their decisions exclusively on courtroom evidence to ensure impartiality, the rise of the Internet complicates enforcement. This is because the widespread availability of unverified and extraneous materials may undermine jurors' capacity to render fair judgements.⁹ Consequently, Lord Judge has highlighted this issue, asserting: "If the jury system is to survive as the system of a fair trial ... the misuse of the internet by jurors must stop."¹⁰ Therefore, this raises a critical question, does the Internet pose a threat to the viability of trial by jury?

2. Jury as Guardians of Justice and Liberty

Following the Norman Conquest in the 11th century, juries were initially established as witnesses who provided vital insights on local affairs.¹¹ Since then, their roles have evolved considerably. In contemporary practice, a randomly selected panel of 12 jurors, predominantly serving in criminal trials, is entrusted with the responsibility of impartially evaluating factual evidence, applying the law in accordance with judicial directions and ultimately adjudicating on the defendant's guilt.¹²

For centuries, defendants have consistently favoured the jury trial, viewing peers as a fairer tribunal than judges.¹³ Matravers highlights jury nullification as a key aspect of achieving fairness, where juries may set aside the law or stringent judicial interpretations,¹⁴ and instead make decisions based on conscience to ensure that a just outcome is achieved and liberty of an individual is protected,¹⁵ as depicted in *Ponting's case*.¹⁶

In 1995, Ponting was acquitted of breaching the **Official Secrets Act 1911**¹⁷ after exposing government deception. He argued that his actions served the state's interest, and despite the judge's

⁹ Nicola Haralambous, 'Juries and Extraneous Material: A Question of Integrity Juries and Extraneous Material' (2007) 71(6) *Journal of Criminal Law* 520, 521.

¹⁰ 'Top judge says internet 'could kill jury system' *BBC News* (London, 19 November 2010) <<https://www.bbc.com/news/uk-11796648>> accessed 5 February 2025.

¹¹ Emily Allbon and Sanmeet Kaur-Dua, *Elliott & Quinn's English Legal System* (22nd edn, Pearson 2024) 286.

¹² Jacquis (n 6).

¹³ Haralambous (n 9).

¹⁴ Matt Matravers, "'More Than Just Illogical': Truth and jury nullification' in A. Duff, L. Farmer, S. Marshall and V. Tadros (eds.), *The Trial on Trial Volume 1: Truth and due process* as cited in Kevin Crosby, 'Controlling Devlin's jury; what the jury thinks, and what the jury sees online' (2012) *Criminal Law Review* 15, 16.

¹⁵ Lewis Ross, 'The curious case of the jury-shape hole: A plea for real jury research' (2023) 27(2) *The International Journal of Evidence & Proof* 107, 11.

¹⁶ *R v Ponting* [1985] Crim LR 318.

¹⁷ Official Secrets Act 1911, s 2.

instruction that the state's interest aligned with the government's, the jury rejected this reasoning.¹⁸ Their verdict clearly demonstrated jury nullification, either as a defiance of legal provisions or a resistance to judicial control.¹⁹ In the pursuit of justice, it reinforces the jury's role as the 'conscience of the community'²⁰ and as a 'safeguard against state oppression'.²¹ This concept of jury nullification strongly resonates with Devlin's assertion that 'the law means something but not everything'.²² Unlike judges, who adhere strictly to legal principles, juries offer a fresh, morally driven perspective, ensuring justice is not confined to rigid legal interpretations.²³

A crucial element in achieving jury nullification lies in the decision of *Bushell's Case*,²⁴ which establishes that juries serve as independent decision-makers and are free from judicial coercion. This is further strengthened by the principle of jury secrecy, as jurors are not required to disclose their reasoning in reaching a verdict, allowing them to make decisions without fear of scrutiny.²⁵ Reflecting on these fundamental principles, Lord Devlin has famously described trial by jury as 'the lamp that shows freedom' and each jury as 'a little parliament'.²⁶

Nonetheless, Lord Devlin's view is not without criticism. W.J. Cornish and Auld L.J. argue that jury cannot be equated with Parliament as jury nullification is less a democratic safeguard and more a challenge to parliamentary sovereignty as it allows juries to undermine laws enacted by elected representatives.²⁷ Auld L.J. further criticizes this paradox, arguing that requiring jurors to swear an oath to follow judicial directions is inherently redundant if they retain the discretion to disregard them.²⁸ However, in Devlin's defence, Crosby argues that Devlin's analogy between parliament and jury hinges not on representation but on their parallel power to veto stronger authorities.²⁹ Just as Parliament can challenge the executive, juries can also defy rigid legal

¹⁸ Ross (n 15) 17.

¹⁹ *Ibid.*

²⁰ Young Jae Lee, 'The criminal jury, moral judgements, and political representation' (2018) 2018(4) *University of Illinois Law Review* 1255 as cited in Lewis Ross, 'The curious case of the jury-shape hole: A plea for real jury research' (2023) 27(2) *The International Journal of Evidence & Proof* 107, 108.

²¹ Michael Huemer, 'A defense of jury nullification. In: *The Palgrave Handbook of Philosophy and Public Policy*' (2018) Springer Verlag 39 as cited in Lewis Ross, 'The curious case of the jury-shape hole: A plea for real jury research' (2023) 27(2) *The International Journal of Evidence & Proof* 107, 108.

²² Kevin Crosby, 'Controlling Devlin's jury; what the jury thinks, and what the jury sees online' (2012) *Criminal Law Review* 15, 24.

²³ Haralambous (n 9) 529.

²⁴ [1670] 124 E.R. 1006.

²⁵ Haralambous (n 9) 523.

²⁶ Patrick Devlin, *Trial by Jury* (Stevens & Sons, London 1966) as cited in Catriona Murdoch, 'The Oath and The Internet' (2012) 176 *Criminal Law & Justice Weekly* 149, 150.

²⁷ Crosby (n 22) 18.

²⁸ *Ibid.*, 18.

²⁹ *Ibid.*, 22.

provisions or strict judicial interpretations which are unfair. But, Devlin acknowledges that while jury nullification is crucial to acquit morally innocent individuals like Ponting, judges must also uphold a baseline of legality and ensure juries follow legal directions in most cases to maintain consistency by regulating the evidence presented to the juries and guiding their understanding of the evidence.³⁰ However, the rapid rise of the Internet has made this challenge increasingly difficult.

3. Is the Internet a Threat to the Viability of Trial by Jury?

As the right to a jury trial upholds the right to a fair trial under Convention Rights,³¹ Langford explains that ‘fair trial’ here refers to procedural fairness.³² To ensure that it is achieved, specific rules have been established. For instance, in *R v Owen*,³³ it was held that no further evidence should be introduced after the judge has summed up the case. Additionally, jurors are also instructed to consider only the evidence presented in court.³⁴ This requirement is enforced by **section 20** of the **Juries Act 1974**, which prohibits jurors from intentionally conducting research and sharing findings with other jurors. In *R v Thomas*,³⁵ the Court of Appeal explained that this rule ensures transparency by allowing both parties to be aware of all the evidence considered and have the opportunity to address them, thus guaranteeing a fair trial. This is particularly important when unverified Internet information may be false which creates a risk of unfair bias against either party in trial.

Although strict rules prohibiting extraneous materials are firmly established, the growing influence of the Internet has undermined this. With the Internet’s rapid development in recent years, access to information on a global scale has become much easier.³⁶ With 66.33 million Internet users in the UK in 2024, which amounts to 97.8 percent of the population,³⁷ it is inevitable

³⁰ *Ibid*, 17.

³¹ European Convention of Human Rights, Art 6.

³² Ian Langford, ‘Fair Trial: The History of an Idea’ (2009) 8 *Journal of Human Rights* 37 as cited in Jessica Clarke, ‘The Demise of the Traditional Jury and Jury Impartiality with Particular Focus on Media Intrusion’ (2018) 10 *The Plymouth Law & Criminal Justice Review* 67, 68.

³³ [1952] 2 QB 362.

³⁴ *Haralambous* (n 9) 524.

³⁵ [1987] CA , per Watkins LJ [Unreported Case].

³⁶ *Jacquis* (n 6).

³⁷ Simon Kemp, ‘Digital 2024: The United Kingdom’ (*DataReportal*, 21 February 2024) <<https://datareportal.com/reports/digital-2024-united->

that some jurors may disregard judicial directions and conduct independent research, given the increased accessibility of information,³⁸ as research has shown that 5 to 12 percent of jurors actively conduct research on their trial online, while between 13 to 26 percent inadvertently encounter it while browsing through the Internet.³⁹

In *Attorney General v Dallas*,⁴⁰ a juror conducted research on the defendant's prior rape conviction online and shared it with other jurors, resulting in a six-month custodial sentence. Similarly, in *Attorney General v Frail and Stewart*,⁴¹ a juror not only conducted research online but also violated **section 8 of the Contempt of Court Act 1981** for disclosing jury deliberations to the acquitted defendant, for which she received a two-month suspended sentence. Consequently, their actions led to the jury's discharge and a retrial which not only wasted the court's time but also added financial burden to the justice system.⁴² This occurred because the irrelevant online information obtained may bias their decision-making process, thereby undermining jury integrity as their impartiality in reaching a verdict is compromised.

These cases demonstrate that despite various efforts like judges' warning and HM Courts & Tribunals Service providing jurors with materials and presentation emphasizing the importance of avoiding Internet research,⁴³ some jurors still disregard these instructions, indicating the Internet's overwhelming temptation.⁴⁴ Although some jurors conduct Internet research out of curiosity,⁴⁵ others may do so due to misunderstanding of the rules.⁴⁶ According to Professor Cheryl Thomas' research, amongst 23% of jurors who misinterpret rules regarding internet use, 16% believed all Internet use was banned, while 5% assumed there were no restrictions.⁴⁷ Meanwhile, Lacey

[kingdom#:~:text=The%20state%20of%20digital%20in%20the%20United%20Kingdom%20in%202024&text=There%20were%2066.33%20million%20internet,percent%20of%20the%20total%20population.>](#) accessed 10 February 2025.

³⁸ Lyndon Harris, 'Has the Internet Destroyed Trial by Jury?' (2013) 177 *Criminal Law & Justice Weekly* 561.

³⁹ Crosby (n 22) 26.

⁴⁰ [2012] EWHC 156.

⁴¹ [2011] EWCA Crim 1570.

⁴² Catriona Murdoch, 'The Oath and The Internet' (2012) 176 *Criminal Law & Justice Weekly* 149, 153.

⁴³ Harris (n 38).

⁴⁴ Alec Samuels, 'The Jury Is Being Killed by the Internet' (2020) 84 *JCL* 163, 166.

⁴⁵ *Ibid*, 166.

⁴⁶ Harris (n 38).

⁴⁷ University College London, 'Almost a quarter of jurors confused about rules on internet use during a trial' (*UCL News*, 15 May 2013) <<https://www.ucl.ac.uk/news/2013/may/almost-quarter-jurors-confused-about-rules-internet-use-during-trial>> accessed 10 February 2025.

suggests that another possible reason is that jurors believe information is purposely being withheld from them and they are pursuing justice by conducting additional research.⁴⁸

Although some jurors inevitably conduct online research, Lord Widgery held that a conviction's safety would ultimately depend on whether the jury saw inadmissible evidence and whether a miscarriage of justice occurred,⁴⁹ a contrast evident in *Karakaya* and *Hawkins*. In *Karayaka*,⁵⁰ a rape case, the jury introduced inaccurate online materials regarding the justice system, judicial influence on jury and low rape conviction rates during deliberation, which were only discovered post-verdict. Conversely, in *Hawkins*,⁵¹ a drug possession case, the jury informed the judge before deliberation that a juror had conducted research on drug addiction, causing the judge to instruct them to disregard the information. As a result, *Karakaya* led to a retrial due to an unsafe conviction, while the conviction in *Hawkins* was upheld. The differing outcomes stemmed from two key factors.⁵² In *Karakaya*, no judicial direction was given regarding the inaccurate material, which meant that jurors may have considered them, whereas in *Hawkins*, the judge explicitly instructed them to ignore it. Furthermore, the material in *Karakaya* was directly related to the core issues of the case, while in *Hawkins*, it was considered peripheral. While some argue that judicial direction may mitigate the Internet's impact on a fair trial, it is not always effective, as jury secrecy can leave Internet misuse unnoticed.⁵³

While jurors actively searching for information online poses a challenge, an equally concerning issue is of 'passive awareness', where juries inadvertently come across unsolicited information online.⁵⁴ This issue arose in *R v F and D*,⁵⁵ where widespread prejudiced comments on Facebook prompted the jury's discharge due to the high risk of jurors inadvertently encountering them and becoming biased. This risk is amplified in high-profile cases, where media coverage is more widespread and the fact that online media outlets nowadays often use negative and biased

⁴⁸ Gareth Lacy, 'Should Jurors Use the Internet' (National Law Review, 2014) as cited in Jessica Clarke, 'The Demise of the Traditional Jury and Jury Impartiality with Particular Focus on Media Intrusion' (2018) 10 The Plymouth Law & Criminal Justice Review 67, 79.

⁴⁹ *R v Davis* [1976] 62 Cr App R 194, [201]-[202].

⁵⁰ *R v Karakaya* [2005] EWCA Crim 346.

⁵¹ *R v Hawkins* [2005] EWCA Crim 2842.

⁵² Haralambous (n 9) 527.

⁵³ Ross (n 15) 110.

⁵⁴ Jessica Roberts, 'Courting contempt?: Untangling the web of jurors' internet use under section 8 of the Contempt of Court Act 1981' (2015) 3 CL 86, 87.

⁵⁵ [2016] EWCA Crim 12.

headlines for publicity purposes.⁵⁶ This can be seen through Taylor Jacquis' mock jury trial research which found that jurors were more likely to convict when exposed to negative online information about the defendant and the other way around when given positive information.⁵⁷ Although Lord Taylor CJ in *The Telegraph PLC*⁵⁸ addressed this issue by emphasizing that jurors should be trusted to have the capability of disregarding unsolicited materials, research by Professor Thomas suggests otherwise in which it was shown that jurors in high-profile cases were seven times more likely to recall media coverage, and 20% of those jurors found it difficult to ignore it, thus possibly creating a biased perspective.⁵⁹ Lord Taylor CJ's viewpoint is further weakened as the 'fade factor' has now become a less reliable presumption.⁶⁰ In the 1998 case of *Bunn v BBC*,⁶¹ it was assumed that older media reports, such as newspapers, had minimal impact on juries since they rarely resurfaced and were often forgotten by the time of trial. However, in today's digital age, biased information is constantly recycled online, making it harder for jurors to ignore it and remain impartial.⁶²

Therefore, as Lord Judge warned, the Internet does indeed threaten the jury's reputation as a fair tribunal and its misuse must be curbed if the fairness of trial by jury is to be preserved.

4. How can the Jury System Survive as the System of a Fair Trial?

In recent years, several effective measures have been introduced to reduce Internet misuse by jurors. For instance, **section 71** of the **Criminal Justice and Courts Act 2015** in amending **section 20** of the **Juries Act 1974** has made it an indictable offense for jurors to conduct research which serves as a strong deterrent as it includes punishment such as imprisonment and fine.⁶³ **Section 74** of the **Criminal Justice and Courts Act 2015** also allows jurors to disclose deliberations to expose miscarriages of justice, encouraging them to report improper online materials being

⁵⁶ Jessica Clarke, 'The Demise of the Traditional Jury and Jury Impartiality with Particular Focus on Media Intrusion' (2018) 10 *The Plymouth Law & Criminal Justice Review* 67,74.

⁵⁷ Jacquis (n 6) 56.

⁵⁸ *R v Central Criminal Court Ex parte The Telegraph PLC* [1993] 1 WLR 980 [98].

⁵⁹ Cheryl Thomas, 'Are Juries Fair?' (Ministry of Justice Research Series, 2010) as cited in Jessica Roberts, 'Courting contempt?: Untangling the web of jurors' internet use under section 8 of the Contempt of Court Act 1981' (2015) 3 CL 86, 88.

⁶⁰ Clarke (n 56) 73.

⁶¹ [1998] 3 All ER 552.

⁶² Catriona Murdoch, 'The Oath and The Internet' (2012) 176 *Criminal Law & Justice Weekly* 149, 150.

⁶³ Jeniffer Agarte and Jocelyn Ledward, 'Contempt and Social Media: Update' [2014] 25(2) *Ent. L.R.* <https://www.qebholliswhiteman.co.uk/cms/document/contempt_and_social_media_update_j_agarte_and_j_ledward.pdf> accessed 11 February 2025.

introduced.⁶⁴ Other suggestions like clearer and more consistent judicial instructions by judges on Internet usage to jurors have also been proposed, but they are deemed insufficient since some jurors will still ignore them.⁶⁵ However, Lyndon Harris suggests education as a more effective approach, as it would help jurors to understand the rationale behind these restrictions rather than simply being forbidden to conduct online research.⁶⁶

Despite various efforts being implemented, some, including the former Director of Public Prosecutions, argue that the misuse of the Internet is still unavoidable, leaving judges with no choice but to accept the fact that jurors may access biased materials online.⁶⁷ However, while the Lord Judge agrees that jurors cannot be completely prevented from using the Internet, he argues that it is still possible to control the evidence they consider through the implementation of ‘route to verdict’ directions.⁶⁸ By using this system, the jury must follow a structured sequence of written legal questions regarding the case, ensuring a logical pathway to reaching a verdict. This approach encourages jurors to focus on the evidence presented in court when answering the legal questions rather than being influenced by biased thoughts stemming from Internet research.⁶⁹ The downside is that it may limit jury nullification, as jurors would adopt a more legalistic approach over moral reasoning.⁷⁰

Another suggestion for ensuring a fairer trial is by adopting the American approach of *voir dire*, where judges question potential jurors to identify and exclude those with biased views.⁷¹ However, a major concern is that this process may result in an unrepresentative panel of jury and increase the risk of jury rigging.⁷²

While these methods all have their pros and cons, perhaps the most effective way to curb Internet misuse as emphasized by Lord Judge is through public education on ethical online behaviour. Encouraging individuals to think rationally before posting or sharing information and to evaluate online content logically can help reduce the spread of misinformation and prevent jurors from being influenced by biased materials. Yet this alone cannot prevent jurors from being

⁶⁴ Roberts (n 54) 88.

⁶⁵ Harris (n 38) 562.

⁶⁶ *Ibid.*

⁶⁷ Crosby (n 22) 33.

⁶⁸ *Ibid.*, 34.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*, 38.

⁷¹ Jacquis (n 6), 59.

⁷² Roberts (n 54), 88.

swayed by unchallenged material which, though true, remains unfair to consider as it has not been raised in court.

5. Conclusion

The jury system has long been regarded as an essential pillar of justice. Jurors, who are seen as fair and impartial, can exercise jury nullification to reach just decisions based on their conscience, even when it requires disregarding judicial directions. However, to maintain consistency in verdicts, judges are obliged to regulate the evidence that jurors are exposed to. Yet, this has become significantly challenging due to the rapid development of the Internet.

To ensure a fair trial, judges would instruct jurors to only consider courtroom evidence. However, with the increased accessibility of information on the Internet, jurors can now deliberately or inadvertently encounter case-related information with ease, making it harder to uphold these restrictions.

While cases like Hawkins show that internet research does not always lead to injustice, the Internet still undeniably compromises jury integrity. As seen in *Attorney General v Dallas*, easy access to irrelevant information online risks juror bias towards the defendant which undermines fair decision-making. Even when such materials are relevant, it may be false and the right to a fair defence is violated as both parties are denied the opportunity to challenge the evidence.

Therefore, as Lord Judge warned, if the jury system is to remain fair, the misuse of the Internet needs to stop. While punishing jurors who conduct research has shown some effectiveness, proposals like the 'route to verdict' direction and voir dire have their merits and drawbacks. However, the most effective approach would be public education on ethical online behaviour. By encouraging rational thinking and logical assessment of online content, it helps in limiting spread of misinformation online and prevents jurors from being influenced by biased materials, which at the end of the day preserve the fairness of the jury system as emphasized by Lord Judge.