

Phil Jeffries and Duncan Campbell write: The current row over the ethics of jury vetting, and the *Guardian's* disclosures of the prospective jurors' pedigrees, ought to bring about an investigation of the entire process of jury selection. But as far as packing and vetting juries is concerned, we ought perhaps to be sophisticated enough not to be surprised that it happens. It would be more surprising if the business of court administration and jury selection, caught up in a historical structure of considerable complexity and no accountability, did not involve some tampering by the state. We have recently unearthed some new evidence of how government lawyers wholeheartedly set up the juries they want.

Jonathan Wooler and William Hone were the defendants in trials for seditious and blasphemous libel – prosecuted in a determined government attempt to clamp down on the radical press. Prior to Wooler's trial, an officer of the Treasury Solicitor's Department visited the court officer responsible for summoning the jury. The Treasury Solicitors instructed the prosecuting counsel; their role has more recently been taken over by the Director of Public Prosecutions. The clerk who received this visit later described its unusual nature to a committee of enquiry; the Treasury Solicitor was

requesting to know whether certain persons, the names of whom were contained in a list 'were good men'. The gentleman then asked me the question as to their political opinion and which were good men. I said yes, they were all good men, and he replied but mark some of the names of the best. I considered it very improper and refused for a long time . . . He urged me to do so and I then complied, but thinking that it would be highly improper for a Clerk to further the views of Ministers in reference to the juries, I marked two or three of the names as good men whose political opinions I knew to be in favour of liberty . . .

This all happened, it should be said, in 1817, when the process of packing juries was rather more visible (and evidently aroused more dissent from public servants) than now. The documents concerning these and other cases are now fully available from the Public Records Office and the Corporation

of London Record Office*. Concealed in the lawyers' papers and elsewhere are some revealing pieces of official mischief, which the weeders missed. The packing of juries had then already aroused considerable public concern; in such cases as Wooler's, notorious 'Special Juries' were selected from a black book containing the names of those with at least £100 to their credit. Even then, the Master of the Crown Office who selected the jury was observed to be moving his pen to the names of those he considered 'good men', as the City of London Common Council enquiry later in 1817 discovered. But the vetting went further than all of this; the Attorney General's brief for the prosecution of Hone now available at the PRO** contains correspondence from another official whose views on selecting the jury had been sought. The Attorney was told:

You could not have two better than John Paterson of Old Broad Street and William Soltan of St Helens Place. Jas Gibson is a capital jurymen in civil matters, but he is a Presbyterian, or rather a Unitarian –

His informant was aware that such matters should never reach the public record and lower public confidence in the legal process. The letter concluded:

Pray burn this.

Even without such underhand operations, public confidence in fairness of the official jury system was then less than noticeable. Some 20,000, according to the *Times*, mustered outside the City of London Guildhall to support Hone. Most of the carefully picked jury failed to appear, and ordinary unvetted jurors had to make up the numbers. The Attorney General dared not challenge a single juror without good cause. Hone was acquitted of all the three charges he faced.

The acquittals however abated the fury over selection practices, and very little changed subsequently, except the circumspection with which juries were vetted. Former Attorney General Sam

**Report and papers of the Jury Committee, 1817: Misc MS 173.4.*

Silkin notes at the beginning of his guidelines on jury vetting, published last year, that 'Prior to 1974, a practice had grown up . . . of prosecutors asking for information concerning potential jurors'. In fact, this was not a 'practice' – it was an institution which had until then enjoyed almost total secrecy.

Of course, as Judge Gibbens pointed out in allowing the prosecution to vet the first jury panel in the current 'Persons Unknown' conspiracy trial, there are two ways to pack juries. One is to get your blokes in to start with; the other is to knock off the unwanted ones until you have a reasonable degree of bias, if you can get away with this. The row so far has been about vetting juries whose members have previously been selected, supposedly at random.

The contemporary institutions of jury panel selection – today's pricklers of the black books – have not previously received much attention. Former Air Commodore Thomas Thomas, who is the principal jury summoning officer for Greater London explained this week to the NEW STATESMAN how his office operated. He is employed by the office of the Under-Sheriff of Greater London – in fact, a firm of solicitors called Burchell & Ruston – and through them hired out under the 'operational control' of the South Eastern courts circuit. He and his staff – which by coincidence consists of four other ex-officers, a Group Captain and a Wing Commander – prick names as they choose where their pen alights on the electoral register. These names are then eventually passed on to the court; in the case of the Old Bailey, at the rate of 1,500 a month. Thomas was recruited through the Officers' Association.

The initial selection of juries thus takes place without external supervision, and without any attempt at mathematically random techniques. The same is true throughout the rest of Britain. In these circumstances, it is unsurprising that defence lawyers and others have from time to time complained about the systematic under-representation of women, blacks and other ethnic groups. But they should be glad they get in at all.

***Prosecution papers, Hone: TS11/44.*