Editorial

The Guinness Trial

The outcome of the Guinness trial at the end of August has generated much renewed debate – harking back to the Roskill Report, five years ago – about the use of juries in complex fraud trials. The barrister son of jailed principal defendant, Ernest Saunders, was reported as expressing doubts as to whether the jurors could have understood nearly 110 days of complicated technical evidence, and as advocating – somewhat fancifully – that jurors in such cases should be required to have A-level qualifications and an understanding of business.

But many commentators argued, on the contrary, that this case represents a vindication of the jury system, a view endorsed, by the Bar Council which, soon after the trial, published the report of its working party on the subject, chaired by Jeremy Roberts QC. This concluded that the case for retaining juries in such cases is "overwhelming", but suggested that their representativeness should be improved by increasing loss of earnings allowances to jurors. It also called for the creation of a specialist panel of judges based in court centres specially equipped for long fraud trials.

The Roskill proposal that fraud-case juries be replaced by judges sitting with assessors was rejected at the time, and the Lord Chancellor's Department has made it clear that it is not destined for resurrection. Rightly so. As a leading article in *The Independent* (28 August) argued, there is great virtue in a system that "requires lawyers to make the proceedings intelligible to ordinary people". Public confidence in the administration of justice requires that City fraud should not become a crime "beyond the comprehension of ordinary people". This echoes the spirit of Lord Devlin's celebrated defence of jury trial, in his 1956 Hamlyn Lecture, as "an insurance that the law and the prosecuting process conforms to the ordinary man's idea of what is fair and just".

This position is well defended in an article in *The Times* (4 September) by Roger Henderson QC – which makes an important further point, and one which has potentially wider implications for our understanding of the criminal trial process. Henderson points out that – *pace* the Roskill Report, which contended that the present system may allow too many fraudsters to go unconvicted – we have very little idea of what actually happens in the jury room. Research is impeded by the provisions of the Contempt of Court Act 1981, which seals the jury room from the eyes of would-be investigators. This is one of many areas of the judicial process where policy debate has been informed more by intuition than by hard evidence, and we fully support Henerson's suggestion that the 1981 Act be amended so as to enable "a carefully planned research project" to be undertaken.