

Why Do Hung Juries Hang?

Final report submitted to NIJ, Are Hung Juries a Problem?, Paula Hannaford-Agor, Valerie P. Hans, Nicole L. Mott, and G. Thomas Munsterman, grant number 98-IJ-CX-0048, available online at http://www.ncsconline.org/WVC/Publications/Res_Juries_HungJuriesProblemPub.pdf.

A criminal trial can be very expensive. It is even more costly when it has to be redone—and that’s just the monetary cost. Retrials also take an emotional toll on victims and witnesses.

With these facts in mind, the National Center for State Courts examined deadlocked, or “hung,” juries to see what characteristics they share and how they might be avoided. As one part of the study, surveys of jurors, judges, and attorneys were conducted in four jurisdictions. The Central Division, Criminal, of the Los Angeles County (California) Superior Court and the Superior Court of the District of Columbia were selected because of reported concerns about hung jury rates in those jurisdictions. The Maricopa County (Arizona) Superior Court was chosen because of an innovative procedure there that permits judges to allow further evidence and arguments when a jury reports it is deadlocked. The Bronx County (New York) Supreme Court was included because, like the other sites, it had a high volume of felony jury trials (allowing for quick collection of data) and had court personnel willing to cooperate in the study. A total of 382 cases were included in the analysis.

A second part of the study took a closer look at 46 of the cases, trying to determine the primary and peripheral causes of deadlock. This subgroup, while too small to provide statistically significant numbers, nonetheless offers some interesting insight into the factors leading to a hung jury.

What Is a Hung Jury?

The definition of a “hung jury” varies, and this led to differences in the reporting of hung juries across jurisdictions. Some

counted a jury as “hung” if it failed to reach a verdict on any charge or on any defendant. Some only counted a hung jury if the jury failed to reach a verdict on all counts or on all defendants.

To control for these disparate definitions, the research team’s analysis included several categories of jury deadlock. Juries that hung on all counts occurred least frequently (8 percent of cases studied). Juries hung on the first count of the indictment (generally the most serious charge) in 10 percent of cases and on at least one count charged in 13 percent of cases. The number of defendants tried was related to the likelihood of the jury deadlocking. In 12 percent of single-defendant cases, the jury hung on at least one count, but that figure increased to 27 percent when multiple defendants were tried.

Effect of Multiple Counts

As predicted by the researchers, the number of counts affected the likelihood of a hung jury. As the number of counts increases, so does the opportunity for disagreement. So, the more counts, the more likely that a jury will hang on at least one of them. On the other hand, more counts also means more opportunity for jurors to agree. Accordingly, juries that hang on all charges generally had fewer counts to consider.

The type of crime charged also made a difference in the jurisdictions studied. Drug cases constituted 28 percent of the total sample, but only 12 percent of the hung juries. In contrast, juries in murder cases were more likely than was expected to hang on at least some counts given their proportion of the total caseload—13 percent of the sample, but 24 percent of the hung juries.

Effect of Complex Evidence

Cases with complex evidence or complex legal instructions may make it more difficult for jurors to reach agreement. When asked to rate how easy the trial was for them

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Figure 1: Primary Reasons for Hung Jury, by Site

Reason	Site			
	Los Angeles	Maricopa	Bronx	Washington, DC
Weak Case	12	5	—	10
Police Credibility	2	—	2	3
Juror Concerns About Fairness	1	1	—	5
Case Complexity	—	—	—	2
Dysfunctional Deliberation Process	—	—	—	—
Unknown	—	1	1	1
Total Number of Cases	15	7	3	21
Total	46*			

*These in-depth case studies were a subsample of the 382 cases studied.

and their fellow jurors to understand, members of hung juries were more likely to describe the trial as complex and difficult. Interestingly, judges and attorneys did not share the jurors’ perceptions; they rated the complexity of the evidence and law as comparable in hung and verdict cases.

Case complexity rarely appeared as the primary cause of jury deadlock in the second part of the study. However, it did play a peripheral role for some of the hung juries.

Effect of Quality of the Evidence

Quantity of evidence and length of trial did not appear to affect the likelihood of a hung jury. However, the quality of the evidence was a very important factor. By far, the most frequently perceived primary cause of hung juries in the second part of the study was weak evidence (see figure 1). When asked to rate the strength of the prosecution’s case, members of hung juries displayed much more disagreement in their ratings than did members of verdict juries. Another effect was seen when jurors were asked to rate the ambiguity of the evidence. When a jury’s average rating of evidence “closeness” was high (that is, the jurors did not view the evidence as clearly in favor of the prosecution or the defense), that jury was significantly more likely to have been

unable to reach a verdict on at least one charge (see figure 2, page 27).

Sentiments About Fairness of the Law

Another factor leading to hung juries was the degree to which jurors believed that the law they were instructed to apply was fair and would lead to the legally correct outcome. The concern seemed to be not one of sympathy for the individual defendant, but rather dissatisfaction with the fairness of the law in principle or its application in that particular trial.

Effect of the Deliberation Process

Several aspects of the jury deliberation process appeared to affect the final trial result in the jurisdictions studied. These included:

- Members of hung juries reported taking their first vote earlier than the members of verdict juries—on average, within the first 10 minutes of deliberation.
- Where jurors ultimately could not reach a verdict, there was less likely to be a large majority in the first vote favoring either conviction or acquittal.
- Compared to verdict jurors, members of hung juries were more likely to categorize fellow jurors as “unreasonable people” and were more likely to feel that one or more jurors “dominated” the deliberations.

The deliberation process was never reported as a primary reason for a hung jury, but it did contribute to jury deadlock at a secondary level in over one-fourth of the trials.

Presumptions Proven Wrong

A number of presumptions about the causes of hung juries have been expressed in recent years. Many observers have asserted that the primary cause of jury deadlock is individual jurors holding out for illegitimate reasons. Some also view the problem as racial or ethnic bias or conflict. Others

RECOMMENDATIONS FOR DECREASING THE NUMBER OF HUNG JURIES

What can policymakers do in jurisdictions with unacceptably high hung jury rates? One popular proposal is to eliminate the requirement of a unanimous verdict in felony trials, adopting a supermajority rule (for example, 11–1 or 10–2) instead. There is no question that this approach would substantially reduce the number of hung juries in most jurisdictions. Proponents of this approach point out that it eliminates the “veto power” of individual jurors who unreasonably or illegitimately seek to thwart a consensus.

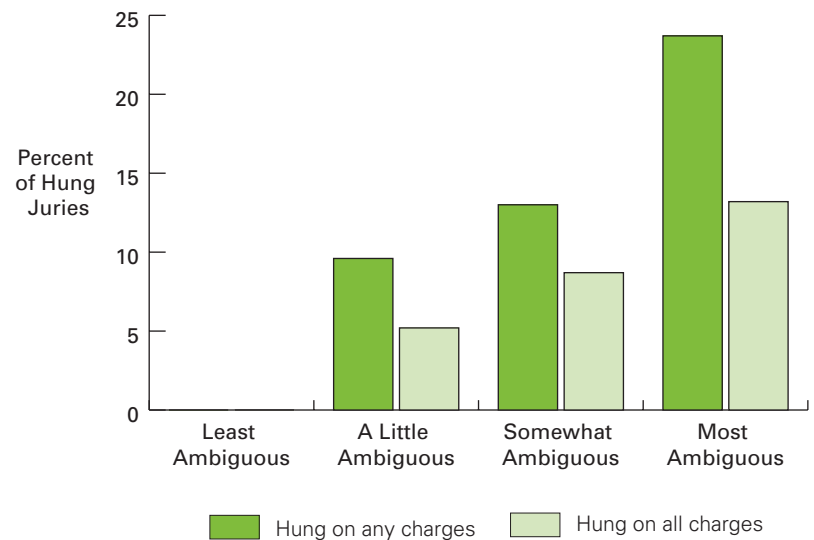
But such an approach may address the symptoms of disagreement among jurors without addressing the causes. Moreover, a nonunanimous verdict rule might affect a jury’s deliberations in unintended ways, such as cutting off minority viewpoints before jurors have had an opportunity to consider them thoughtfully.

Other solutions, based on other theories of juror deadlock, may prove to be more effective. Some approaches being tried are:

- Better preparation of evidence by prosecutors and defense attorneys.
- Better tools to help jurors understand the evidence and the law, such as permitting jurors to take notes, allowing jurors to question witnesses, and providing written copies of instructions.
- Better guidance for jurors on how to engage in productive deliberations.

see jury nullification—the refusal of some jurors to base their verdict on the evidence and the law—as the main cause. A variety of proposals based on these presumptions have been offered to deal with the problem of hung juries. (See “Recommendations for Decreasing the Number of Hung Juries.”)

Figure 2: Percent of Juries That Hang, by Ambiguity of Evidence



However, prior to this research project, only a handful of studies gave more than superficial consideration to the dynamics of hung juries. On this slim basis, it was difficult for policymakers to reach informed judgments about the probable effect of various reform proposals.

This research—which combined a limited survey of hung jury rates, a jurisdictional study of felony jury trials, and case studies of the 46 hung juries documented in the sample—provides a clearer picture of the reasons for hung juries and should help those who are searching for ways to decrease the number of cases requiring retrial because of jury deadlock.

For more information

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