

Volume 9 • Number 1

CASELOAD HIGHLIGHTS

EXAMINING THE WORK OF STATE COURTS

A Profile of Hung Juries

Jury trials are held in open court, but jury deliberations can be mysterious, especially when the jury “hangs.” A jury “hangs,” or is “deadlocked,” if jurors cannot agree upon a verdict: the result is mistrial.¹ Hung juries threaten court and public interests in several

ways. First, they challenge perceptions about the credibility and fairness of the legal process. Beyond issues of basic justice, jury trials are expensive and require considerable time and resources from the judge, court staff, legal counsel, litigants, and witnesses. Finally, hung juries raise questions about juror abilities to handle com-

plex legal and evidentiary issues. This issue of *Case-load Highlights* profiles the circumstances surrounding hung juries.

The National Center for State Courts (NCSC) recently completed a national examination of hung juries, the first such cross-jurisdictional study in nearly forty years. The background of the NCSC study and methods used are discussed to the left.

The following figure shows the manner in which felony cases were resolved in 30

state courts between 1996 and 1998. Approximately 70 percent of the 1.2 million cases examined ended in a guilty plea, about 24 percent were dismissed or disposed as an “other” disposition (e.g., diversion to an alternative court program such as a drug court or transfers to a federal court), and less than 3 percent were resolved by jury trial. Of the 33,000 cases disposed of by a jury trial, about 1,600, or 6 percent, “hung.” Regardless of whether resolved by bench or jury, about three-quarters of trials end in conviction.

¹ A judge may also declare a mistrial due to prejudicial error or an extraordinary event.

Study Background & Methods

The results presented in this *Caseload Highlights* are derived from a 2002 National Center for State Courts’ study covering 32 counties across 14 states and all federal circuit courts in two separate phases. The project was funded by the National Institute of Justice with the first results presented in *Are Hung Juries a Problem?*² The purpose of the study was to conduct a comprehensive analysis of the factors that relate to hung juries and determine how often juries hang and why.

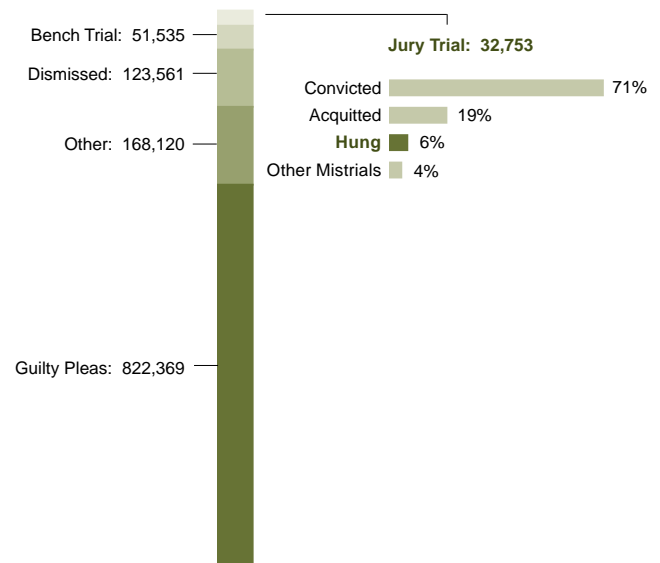
In the first stage of the project, NCSC compiled aggregate civil and criminal data from 1980 through 1997 for all 12 federal circuit courts from the Administrative Office of the U.S. Courts. In addition, NCSC assembled wide-ranging data from the state courts and prosecutors’ offices supplemented with information from annual reports. These data covered 30 courts between 1996 and 1998 on state felony criminal trials.

In the second stage of the study, researchers conducted an in-depth review of four sites on nearly 400 felony trials. In this phase, NCSC collected detailed data on felony jury trials that hung or ended in a verdict. NCSC surveyed jurors, judges, and attorneys to examine case characteristics and jury behavior across dispositions (hung or verdict) and compare hung jury rates across jurisdictions using comparable definitions.

² Paula L. Hannaford-Agor et al., *Are Hung Juries a Problem?* National Center for State Courts, at http://www.ncsconline.org/WC/Publications/Res_Juries_HungJuriesPub.pdf.

State Felony Dispositions in 30 Counties, 1996-1998

Total Felony Dispositions: 1,198,338



■ How Often Do Hung Juries Occur?

Past reports are scarce, but suggest considerable variation in rates of hung juries. In 1966, Kalven and Zeisel reported an average criminal hung jury rate of 5.5 percent nationwide of all jury trials.³ The only other empirical study of hung jury rates was conducted in 10 California counties in 1975 by the Planning and Management Consulting Corporation.⁴ They reported a 12.2 percent hung jury rate, with significant variations over

time and between localities.

The first phase of the current NCSC study confirms these earlier findings. The average hung jury rate across all 30 sites was 6.2 percent, with slightly higher rates ranging from 8 percent to 14.8 percent in 5 of the 6 California counties. The figure below displays the individual jurisdictional rates and shows the variation across counties.

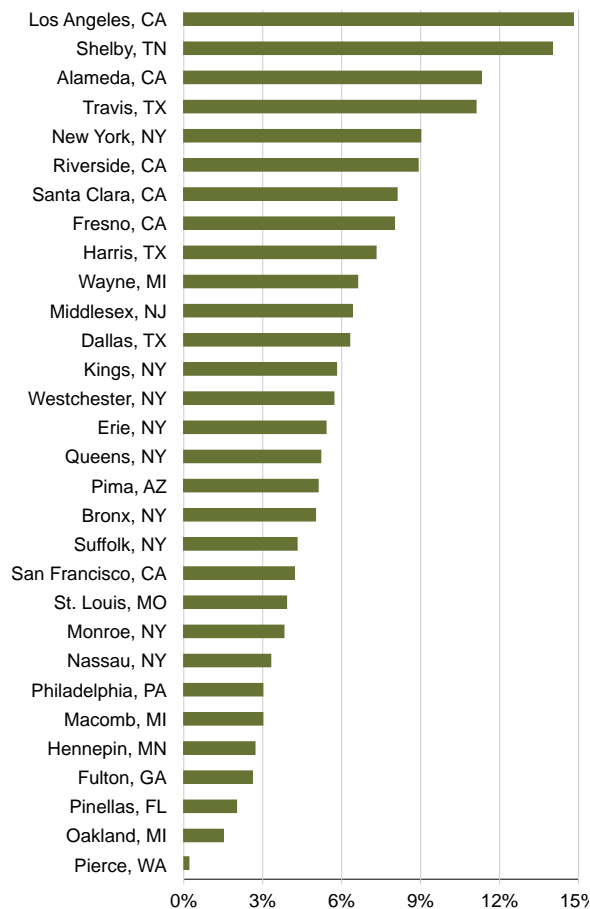
Compared to the state rate of 6.2 percent, the federal hung jury trial rate for criminal cases averages 2.5 percent. The federal Administrative Office of the Courts' centralized data system makes it possible to examine federal rates over time. The trend lines below show fairly stable rates from 1980 to 1997 for both civil and criminal trials.

It should be noted that the federal D.C. Circuit Court reports a much higher hung jury rate of 9.5 percent (a clear exception to the other 11 federal districts). One potential explanation for this difference is the demographic characteristics of the court's jurisdiction; the D.C. court is the only federal circuit court that comprises a single, highly urbanized city. All other federal circuits encompass multiple states.

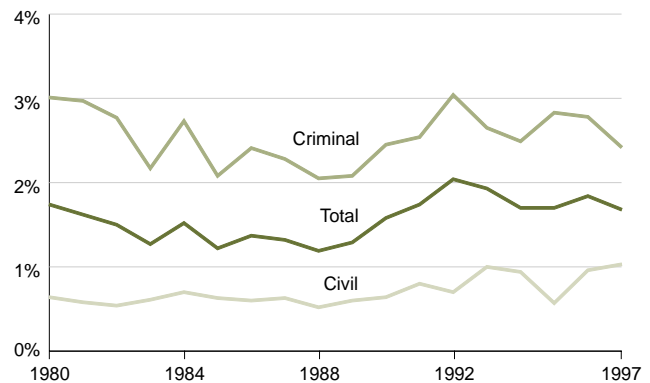
³ Harry Kalven & Hans Zeisel, *THE AMERICAN JURY* 453 (1966).

⁴ Planning & Management Consulting Corporation, *Empirical Study of Frequency of Occurrence Cases Effects and Amount of Time Consumed by Hung Juries*, 4-30 to 4-37 (1975).

State Hung Jury Rates (Average 1996-1998)



Federal Hung Jury Rates (1980-1997)



Note: Differences exist in the way courts calculated hung jury rates.

A Closer Look at Four Large Courts

Most courts do not systematically track hung jury outcomes in their automated case management systems. Many courts do not consider a hung jury to be a final disposition, but rather an intermediate case status. To overcome difficulties of comparisons, NCSC obtained detailed data on 382 felony jury trials from Los Angeles, CA; Maricopa, AZ; Bronx, NY; and the District of Columbia.⁵ Los Angeles and D.C. participated in the study due to concerns over high hung jury rates, Maricopa's participation allowed NCSC to evaluate recent trial innovations, and the Bronx courts were solicited, in part, due to the high volume of trials. Thus, these four sites were not intended to be representative of courts nationwide.

Definitional differences are one reason hung jury rates vary. That is, a broader definition captures higher rates, while a more restrictive one

yields lower rates. To make a fair comparison, in-depth data from the four sites were examined using three definitional "levels"—determined if the jury hung on:

1. Any count against the defendant
2. The most serious count against the defendant
3. All counts against the defendant

As seen below, the first definition yielded the highest rates—almost 13 percent of the juries hung on at least one count. The most restrictive definition, where the jury hangs on all counts, occurred in 7.5 percent of the cases. Juries

hung on the most serious charge facing the defendant in about 10 percent of the cases.

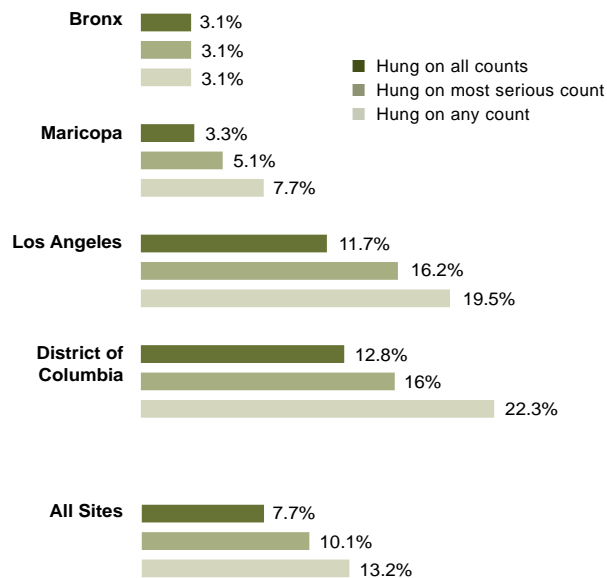
Hung jury rates varied across the jurisdictions regardless of which definition was used. Rates of hung juries were highest in the D.C. Superior Court at about 22.3 percent, followed closely by Los Angeles County at 19.5 percent. Rates were lowest in the Bronx Supreme Court where just three of 97 jury trials ended in a hung jury (3.1 percent). In these three cases, the jury hung on all counts faced by the defendant, so the hung jury rate was identical across all three definitions.

■ What Characterizes Hung Juries?

To better understand the circumstances and characteristics of hung juries, numerous social and legal factors were analyzed across the four selected sites. NCSC examined demographic factors such as juror race and general juror attitudes on such issues as police, courts, and crime in the community. Specific attitudes relating to the case at hand—law, evidentiary issues, and interpersonal small-group dynamics—were also analyzed and found to be especially critical in predicting the likelihood of a hung jury.

The legal fairness, evidentiary, and jury dynamic issues are discussed on the following two pages.

Hung Jury Rates in Four Sites



⁵ The courts and corresponding dates for data collection were as follows: the Central Division, Criminal, of the Los Angeles County Superior Court, CA, June–October 2000; the Maricopa County Superior Court (Phoenix), AZ, November 2000–October 2001; the Bronx County Supreme Court, NY, February–August 2001; and the Superior Court of the District of Columbia, April–August 2001.

Legal Fairness

Both popular culture and recent commentators paint a vivid picture of a hung jury characterized by a holdout juror engaged in race-based jury nullification. Nullification occurs if one or more jurors intentionally disregard the law or vote to acquit a defendant despite the evidence. The adjacent table shows that although specific juror intentions (e.g., holding out due to racial issues or general distrust of police) are difficult to ascertain, the diversity of the jury's racial makeup did not predict whether the jury would hang. Even though it was not possible to determine definitively if individual jurors consciously or deliberately refused to agree on a verdict due to perceptions that the legally correct outcome was unfair, jurors who hung believed the outcome was less fair than did jurors who reached a verdict. Specific attitudes of legal fairness varied, yet there were no significant differences between hung and verdict juries regardless of demographic factors or general perceptions of trust of the courts or police.⁶

⁶ The average ratings by hung juries in the Bronx are to be read with caution, as only three juries hung in the Bronx.

Jury Demographics and Attitudes

	LA		Maricopa		Bronx		DC	
	Hung	Verdict	Hung	Verdict	Hung	Verdict	Hung	Verdict
Race/Ethnic Diversity of Jury^a	.73	.71	.35	.36	.70	.63	.51	.53
Juror Attitudes^b								
Trust in Police	5.0	5.3	5.6	5.7	4.8	4.6	4.7	4.9
Trust in Courts	5.3	5.6	5.7	5.7	4.8	5.2	5.2	5.3
Fairness of Legally Correct Outcome	4.5	5.8	4.2	5.6	3.9	5.3	4.8	5.2

^a Diversity ranges from 0 = least diverse (e.g., all-white jury) to 1 = most diverse (e.g., one juror of each racial/ethnic category). Categories include: Black/African American, White/Caucasian, White/Hispanic, Nonwhite/Hispanic, Native American, Asian/Pacific Islander, and other.

^b On a scale of 1 to 7, 7 = a great deal or very fair.

Evidentiary Issues

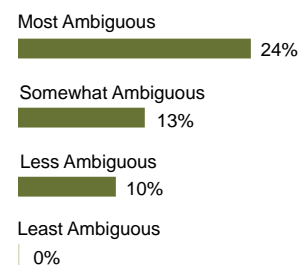
Do cases with complex evidence or legal instructions make it more difficult for jurors to reach agreement? Previous research suggested that closeness of evidence plays a significant role in hung juries.⁷ The bar chart to the right shows further support that evidence was most ambiguous in hung juries (i.e. did not favor one side).

Juries that hung on at least one count noted that the case was more complex and difficult than did juries that reached a verdict (see table below). Yet interestingly,

⁷ *Supra* note 2.

neither judges nor attorneys found hung jury cases to be more complex than verdict cases, suggesting that judges and lawyers may consistently underestimate the level of case complexity as compared to the jurors' perspective. Generally, judges and attorneys rated the jurors' comprehension of legal and evidentiary issues high. However, once the jury hung, judges and prosecutors expressed concern of jurors' abilities. Of course, attorneys and judges provided the ratings after the jury declared a verdict, so perhaps some reflection was done in hindsight.

Percent of Juries that Hang, by Ambiguity of Evidence as Assessed by Jurors



Does the Perceived Complexity of Evidence Relate to Hung Jury Rates?

	Complexity of Case	
	Verdict Juries	Hung Juries
Juror Responses		
How complex was this trial?	3.57	4.13*
Judge Responses		
How complex was the evidence presented at trial?	2.53	2.52
How complex was the law?	2.82	3.20
Attorney Responses		
How complex was this trial?		
Prosecutor	3.20	3.39
Defense	3.18	3.34

The numbers represent values on a 7-point scale (1 = least complex to 7 = most complex).

* The difference between the two outcomes was statistically significant.

A Closer Look at Four Large Courts, continued

Interpersonal Jury Dynamics

In general, jurors tend to persist in their early opinions about defendant guilt or innocence. More often than not, the jurors' first vote in deliberations is the same as the jury's final group decision. The graphic below shows that when jurors first leaned toward acquittal or conviction, their final decision was likely to be consistent with their earlier opinion. However, if on the first vote jurors were

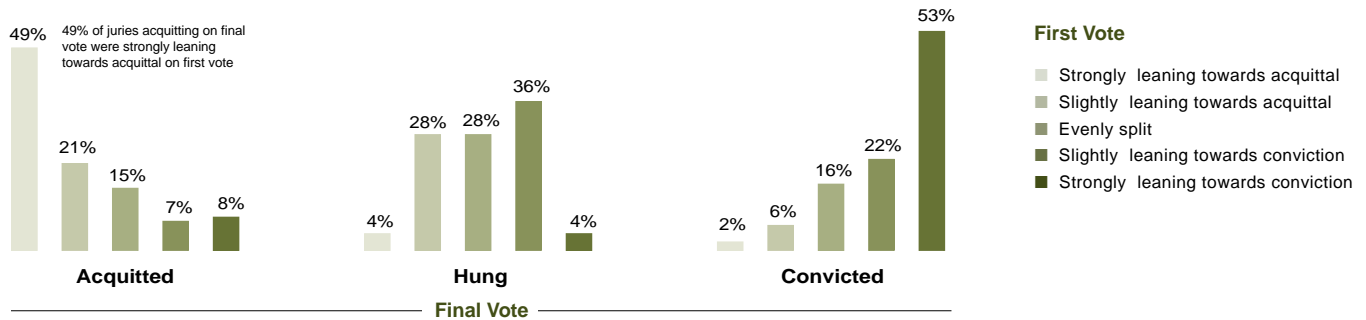
more evenly split, the case was more likely to hang.

Although serving on a jury sometimes bonds jurors together on a personal level, interpersonal dynamics may also cause contention. For instance, hung juries were more likely to report that one or two jurors had dominated the discussion in deliberations. Group dynamics also shape the way jurors conduct

deliberations. Typically, jurors focus either on securing a verdict in deliberations or on assessing the evidence. The former orientation is more characteristic of hung juries than verdict juries. Declaring a vote to other jurors solidifies the opinion as compared to deliberations in which jurors delay a formal vote and focus their discussion on the evidence.

Although mandating certain procedures for conducting deliberations may be viewed as an invasion of the jury's province, providing jurors with guidance to structure the process might prevent some group and individual juror behaviors that relate to jury deadlock. For example, the court may suggest methods for resolving conflicts effectively and conducting ballots.

Jury Decisions in Four Districts – From First Vote to Final Vote



Summing Up: What Factors Relate to Hung Jury Rates?

Factor	Related?	How?
Demographics & Jurisdictions		
Locality demographics	yes	Evidence of urban rates higher, such as for DC Federal Circuit Court.
Racially diverse jury?	no	Differences in racial makeup by jurisdiction, but no difference for hung/verdict juries.
State (more likely) vs. Federal (less likely)	yes	Federal court rates lower than state courts, possibly due to case mix and attorney resources.
Complexity		
Number of charges	yes	More charges increase likelihood that jury will hang on at least one. Yet juries with fewer charges to consider more likely to hang on all charges.
Quantity of evidence	no	
Length of trial	no	
Level of case complexity	yes	Hung cases were more complex for jurors, but not according to judges/attorneys.
Evidence		
Ambiguity of evidence	yes	Close-call cases more likely to hang.
Police credibility	yes	Hung juries disagreed more often on believability of police testimony.
Defendant believability	yes	Hung juries thought defendant was less believable.
Attorney skills	yes	Judge rated defense attorney skills as more favorable in hung jury cases.
Deliberations		
Timing of the first vote	yes	Juries were more likely to hang if they voted early in deliberations.
Structure of deliberations	yes	Verdict-driven more likely to hang as compared with evidence-driven discussions.
Interpersonal dynamics of jury	yes	Hung juries report more conflict and more unreasonable jurors.
Jurors' perception of unfairness of law	yes	Hung juries thought legally correct outcome and law were unfair.

Conclusion

There will always be cases in which juries are unable to reach consensus. The current work has provided valuable data on how often jurors hang and whether, as some commentators contend, jurors hang due to illegitimate reasons. We know that, on average, state court jurisdictions have hung jury rates of about 6.2 percent. The data also show that rates vary considerably due to definitional standards and from jurisdiction to jurisdiction, from a low of 3 percent to a high of 22 percent.

The data from this project suggest that hung jury rates may be reduced by paying attention to evidence strength and charging decisions, focusing on fairness of the law as applied in individual contexts, and determining how courts may guide jurors in deliberations.

A summary table of what characterizes hung juries is displayed on the previous page. In addition, the current study proposes the following goals and recommendations to courts, especially

for jurisdictions with high hung jury rates:

Evidentiary Issues

Facilitate learning process for jurors by providing notebooks, plain-English instructions, copies of instructions for jurors and allowing jurors to take notes and ask questions during evidence presentation/testimony.

Legal Fairness

Prosecution should evaluate charging decisions for cases with ambiguous evidence and prepare to offer corroborating evidence in trials relying heavily on police testimony.

Group Dynamics

Offer guidance on selecting presiding juror, conducting ballots, and resolving conflicts, as many jurors lack previous experience in small-group problem solving similar to deliberations.

These goals improve the likelihood that juror deadlock will only take place in cases in which the evidence is so closely matched that reasonable members of a jury can disagree about a case outcome. While this may not be the preferred result, it helps preserve the traditional role of the jury in the American justice system.

The Court Statistics Project (CSP)

In existence since 1975, the CSP is administered by the National Center for State Courts, with generous support by the Bureau of Justice Statistics. The CSP receives general policy direction from the Conference of State Court Administrators through its Court Statistics Project Advisory

Committee. Those wishing a more comprehensive review and analysis of the business of state trial and appellate courts are invited to read the CSP's latest publication, *Examining the Work of State Courts*, 2002.



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