Jury trials are held in open court, but jury deliberations can be mysterious, especially when the jury “hangs.” A jury “hangs,” or is “dead-locked,” 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 complex 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 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.

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. The only other empirical study of hung jury rates was conducted in 10 California counties in 1975 by the Planning and Management Consulting Corporation. 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.

### State Hung Jury Rates (Average 1996-1998)

- Los Angeles, CA
- Shelby, TN
- Alameda, CA
- Travis, TX
- New York, NY
- Riverside, CA
- Santa Clara, CA
- Fresno, CA
- Harris, TX
- Wayne, MI
- Middlesex, NJ
- Dallas, TX
- Kings, NY
- Westchester, NY
- Erie, NY
- Queens, NY
- Pima, AZ
- Bronx, NY
- Suffolk, NY
- San Francisco, CA
- St. Louis, MO
- Monroe, NY
- Nassau, NY
- Philadelphia, PA
- Macomb, MI
- Hennepin, MN
- Fulton, GA
- Pinellas, FL
- Oakland, MI
- Pierce, WA

### Federal Hung Jury Rates (1980-1997)

- Criminal
- Total
- Civil

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

![Hung Jury Rates in Four Sites](image)

Hung Jury Rates in Four Sites

<table>
<thead>
<tr>
<th></th>
<th>Bronx</th>
<th>Maricopa</th>
<th>Los Angeles</th>
<th>District of Columbia</th>
<th>All Sites</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hung on all counts</td>
<td>3.1%</td>
<td>3.3%</td>
<td>11.7%</td>
<td>12.8%</td>
<td>7.7%</td>
</tr>
<tr>
<td>Hung on most serious count</td>
<td>3.1%</td>
<td>5.1%</td>
<td>16.2%</td>
<td>16%</td>
<td>10.1%</td>
</tr>
<tr>
<td>Hung on any count</td>
<td>3.1%</td>
<td>7.7%</td>
<td>19.5%</td>
<td>22.3%</td>
<td>13.2%</td>
</tr>
</tbody>
</table>

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.

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.

What Characterizes Hung Juries?
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

<table>
<thead>
<tr>
<th>Race/Ethnic Diversity of Jury *</th>
<th>LA Hung</th>
<th>LA Verdict</th>
<th>Maricopa Hung</th>
<th>Maricopa Verdict</th>
<th>Bronx Hung</th>
<th>Bronx Verdict</th>
<th>DC Hung</th>
<th>DC Verdict</th>
</tr>
</thead>
<tbody>
<tr>
<td>Juror Attitudes b</td>
<td>Trust in Police</td>
<td>5.0</td>
<td>5.3</td>
<td>5.6</td>
<td>5.7</td>
<td>4.8</td>
<td>4.6</td>
<td>4.7</td>
</tr>
<tr>
<td>Trust in Courts</td>
<td>5.3</td>
<td>5.6</td>
<td>5.7</td>
<td>5.7</td>
<td>4.8</td>
<td>5.2</td>
<td>5.2</td>
<td>5.3</td>
</tr>
<tr>
<td>Fairness of Legally Correct Outcome</td>
<td>4.5</td>
<td>5.8</td>
<td>4.2</td>
<td>5.6</td>
<td>3.9</td>
<td>5.3</td>
<td>4.8</td>
<td>5.2</td>
</tr>
</tbody>
</table>

* 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, 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

- Most Ambiguous: 24%
- Somewhat Ambiguous: 13%
- Less Ambiguous: 10%
- Least Ambiguous: 0%

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

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

<table>
<thead>
<tr>
<th>Complexity of Case</th>
<th>Juror Responses</th>
<th></th>
<th>Judge Responses</th>
<th></th>
<th>Attorney Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Verdict Juries</td>
<td>Hung Juries</td>
<td>Verdict Juries</td>
<td>Hung Juries</td>
<td>Verdict Juries</td>
</tr>
<tr>
<td>How complex was this trial?</td>
<td>3.57</td>
<td>4.13 *</td>
<td>2.53</td>
<td>2.52</td>
<td>3.20</td>
</tr>
<tr>
<td>How complex was the evidence presented at trial?</td>
<td>2.82</td>
<td>3.20</td>
<td>3.18</td>
<td>3.34</td>
<td></td>
</tr>
<tr>
<td>How complex was the law?</td>
<td>3.20</td>
<td>3.39</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* The difference between the two outcomes was statistically significant.

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

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

![Graph showing jury decisions from first vote to final vote.]

**Summing Up: What Factors Relate to Hung Jury Rates?**

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

CASELOAD HIGHLIGHTS

National Center for State Courts
300 Newport Avenue
Williamsburg, VA 23185-4147
Research Division
800/616-6109

Points of view expressed herein are those of the authors and do not necessarily represent the official position or policies of the Bureau of Justice Statistics.