

# Why Do Juries Hang?

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Hung juries are hotly debated, often castigated, and frequently unnerving. For all the debate, hung juries are relatively rare. The National Center for State Courts (NCSC) recently examined felony case data from all federal courts and 30 state courts in 75 counties across the U.S. over a multi-year period.<sup>1</sup> On average, hung juries occurred in only 5% of trials, that is, only once in every 20 trials.

This 1 in 20 trials hung jury rate is an average, and fluctuates across practice areas and jurisdictions. If you try criminal cases, you are twice as likely to experience a hung jury than if you try civil cases, and the cases you try in state court are three times more likely to result in a hung jury than the cases you try in federal court (6% versus 2%). If you try cases in Pierce County, Washington, you might never see a hung jury, as hung juries occur in only .1% of the jury trials there (i.e., 1 in 1000). By contrast, 15% (1 in 6) of the cases tried in Los Angeles County result in a hung jury.

So why do juries hang? Is increased diversity in the make-up of juries breeding an inability to agree? Are juries increasingly experiencing lone holdout jurors who refuse to go along with other jurors? Neither of these possibilities is supported by the research. First, despite juries being significantly more diverse in their make-up, hung juries are no more likely now than they were 50 years ago, when hung juries also occurred about once in every 20 trials.<sup>2</sup> The make-up of juries with respect to jurors' gender, age, education, race, and income is unrelated to the likelihood a jury will hang. Second, hung juries are not the product of one or two jurors at odds with the rest of the jury. While 42% of hung juries end deliberations with only one or two holdout jurors, these holdouts had substantial company at the start of deliberations. Hung juries usually occur only when jurors are closely split on the initial vote.

So why do juries hang, and keep hanging, at this relatively stable 1 in 20 rate? The answer is three-fold and reflects the nature of cases brought to trial:

- Evidence ambiguity. A hung jury is more likely when the evidence in a case is ambiguous or close. The hung jury rate jumps to one in 10 jury trials, on average, when case evidence is close. NCSC reported no hung juries in cases having truly clear evidence.
- Count quantity. As the number of counts charged increases, so does the likelihood a jury will hang on at least one count. Juries hang on some count twice as often as they hang on all counts. When a jury hangs on all counts, defendants are generally charged with fewer counts.
- Case complexity. The more complex a case, the more likely a jury will hang on one or more counts. Jurors on juries that hang on at least one count rate the evidence as more complex and difficult to understand than jurors on juries reaching a verdict. As jurors only rarely rate the evidence in their trial to be complex, however, case complexity is at best an infrequent cause of hung juries.

Hung juries signal weaknesses in a case rather than weaknesses in the jury system. Hung juries are the result of case characteristics, not juror characteristics. Higher rates of hung juries in particular practice areas and jurisdictions signal more cases tried with ambiguous evidence, complex facts, and extensive charging.

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<sup>1</sup> Hannaford-Agor, P. L., Hans, V. P., Mott, N. L., & Munsterman, G. T. (September 30, 2002). *Are hung juries a problem?* Final Report, National Center for State Courts, to National Institute of Justice.

<sup>2</sup> Kalven, H., & Zeisel, H. (1966). *The American Jury*. Boston, MA: Little, Brown.