What Jury Holdouts Can Teach Trial Lawyers About Strategy

By **Clint Townson** (May 15, 2026)

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A unanimous verdict can be a challenge for 12 strangers to achieve. Twelve different identities, experiences and perspectives have to converge on a single point — and for most verdict forms, they have to do this several times consecutively to answer all the verdict questions.

There's a reason news of hung juries is fairly common.

In Ohio v. FirstEnergy Corp, the high-profile bribery case in the Ohio Court of Common Pleas, Summit County, a jury was stuck at an impasse for several days in March before a mistrial was declared. Even in civil matters, where the stakes are ostensibly lower, jurors often fiercely defend their own view of the case to the point of mistrial.

Earlier in the year, the jury hung in a medical malpractice case in Pennsylvania state court involving St.Luke's Hospital, where several days of deliberations led to split decisions on liability among several individual caregivers.[1]

While no firm data exists on how common hung juries are, they've been estimated to make up as much as a tenth of all cases that reach verdict.[2]

There is a surprising trend among most hung juries: Post-mistrial interviews tend to reveal the obstacle to unanimity is often only a juror or two, rather than an even split in the group or several separate factions divided on the issues.

It's an instance of reality mirroring fiction. Most attorneys are very familiar with the famous Henry Fonda role in "12 Angry Men," in which his character plays a holdout juror who spends the movie convincing the other 11 jurors to switch their vote. Notably, this is a key element of holdouts that is not as frequently discussed: How do holdouts influence others when a verdict is actually reached?

There are two useful lenses in which it may be illuminating to examine this phenomenon. One lens is how the law views holdouts: A jury at an impasse is common enough that numerous solutions have been proposed and practiced aiming to force a resolution. The law has levers to push jurors toward unanimity, with varying degrees of efficacy and morality.

The second lens is how the social sciences view holdouts — the psychology of a juror who digs in opposite his or her fellow jurors, dogmatic in drawing out the process, and occasionally driving the result toward what amounts to a fruitless exercise for the jurors themselves.

Even in instances where someone who starts as a holdout ultimately gives in, there is a certain mental fortitude required to stick to your guns when all others are in disagreement. This article will examine both perspectives and discuss how trial lawyers should consider the part potential holdouts may play in greater trial strategy.

Allen Charges and How the Law Treats Holdouts

Most judges view a hung jury as a disappointment.[3] From the bench, the sense is that the previous days (or weeks, or months) have been time and resources wasted, without the resolution both parties sought by bringing the matter to a jury.

The parties themselves may not always view a hung jury the same way: Defendants often welcome a hung jury as a point of leverage for getting a more favorable deal or settlement, and some dyed-in-the-wool trial attorneys welcome the opportunity a mistrial presents (more on this later).

Nonetheless, courts have implemented various measures to curb the instances of mistrials due to hung juries. The most commonly implemented tool is the Allen charge. Derived from 19th century case law, the Allen charge generally involves the judge instructing a deadlocked jury that the group in the minority should reexamine the reasonableness of their position in the interest of reaching unanimity.[4]

Much debate has occurred over the coerciveness of such instructions, which firmly applies pressure to holdouts rather than equally distributing such pressure to all jurors. Indeed, nearly half of U.S. states have banned the Allen charge, and numerous others have sought to implement language that serves to be less coercive and more equitable in terms of where pressure is applied.

Additionally problematic is that the instruction is believed to be successful more often than not and is generally held up on appeal. Fascinatingly, the courts have delved into the field of psychology in examining appeals based on Allen charges, with one successful 1961 appeal in the U.S. Court of Appeals for the Fourth Circuit in United States v. Rogers highlighting a 15-minute follow-up deliberation as "long enough for acceptance of a theory of majority rule, but [not] long enough to have permitted a painstaking re-examination of the views which the minority had held."

Another solution has attempted to undercut the power of a holdout entirely. In many civil matters held in state courts, unanimity is not required, and thus a holdout may argue their position before ultimately being passed by the remainder of jurors who form a supermajority.

These holdouts often still exert influence, given they are still instructed to attempt to reach a unanimous verdict, and every juror is expected to participate in the group decisions. Thus, even in instances where unanimity will not be achieved, the law accounts for holdouts to affect a verdict.

These legal solutions do not truly address the underlying disposition of a holdout, however. While somewhat helpful for pressing a verdict forward in a practical manner, they generally reflect a stunted understanding of why a holdout pushes back against a group in the first place.

What Is the Psychological Makeup of a Holdout?

A potential holdout is often exceedingly difficult to identify in jury selection, even if attorney voir dire is extensive. However, there are undoubtedly commonalities among jurors who would hold out against a group, especially in the most challenging circumstances (e.g., a full jury of 12, a long case or a high-profile matter).

After all, holdouts may in many ways resemble the leaders and staunch advocates on a jury — the only difference is in their failure to build consensus on their side.

Two key factors common among holdouts have been documented by previous studies: attitudes toward the law and previous jury service.[5] Both are tied to perspectives of how to apply the burden of proof and other jury instructions to the evidence, which is a common source of disagreement that can lead to a hung jury.

One can imagine a common refrain from a holdout amounting to "I still have reasonable doubts" or "I just don't see how they've proved this element." Such jurors may perceive the law or justice system as a whole to be unfair and may interpret instructions in a way that impedes other jurors.

In a related manner, a juror who has previously served on a jury may interpret evidence and the jury charge in a very different manner from others. Given their existing understanding of how the jury group dynamics may play out, they feel more confident and comfortable in taking a firm position counter to the majority, citing their previous experience as the foundation for their resistance.

Holdouts may also have a facet to their personality that better enables them to stand alone and resist conformity with the group. In some psychological research, such individuals are referred to as moral rebels.

Moral rebels tend to have a formidable sense of self-efficacy and moral standards — their resistance to compliance is founded upon an unceasing belief in their own convictions. They enact this dogmatism in predictable ways, given the above factors documented in other studies. They appeal to a sense of fairness and application to the law, pushing back against other jurors' desire to simply reach a resolution in the case.

Indeed, holdouts who are actually worn down and eventually give in may go through one of several processes before doing so. One process is ego depletion. Ego-depletion research typically involves putting participants through a cognitively effortful task and then subjecting the same subject to persuasion; results show that persuasion is easier to achieve after ego depletion.

One could imagine ego depletion occurring through painstaking review of exhibits and repeated emotional appeals to a holdout, which then facilitates the holdout to essentially give in. In other words, the verdict is reached not through a true change in heart, but rather through attrition.

Another may be for the group to compromise, even in the face of instructions to the contrary. More than one mock juror has been witnessed attempting to trade a verdict response in favor of the majority for a compromise on damages (e.g., "I'll find liability but only if we aren't punishing the defendant").

Predeliberation instructions generally admonish jurors against trading answers, but in the spirit of compromise and group harmony, some holdouts may ultimately agree to a verdict on this basis, or conversely, the majority may offer a concession to the holdout to attain their agreement elsewhere. Ironically, the Allen charge may often result in this kind of verdict rather than a jury reaching a genuine unanimity.

Lastly, some holdouts may undergo a true epiphany. This kind of change of heart may be the product of an overnight review, a fellow juror pressing the right button in terms of

getting a holdout to consider a specific closely held value, or genuine persuasion from an influential juror.

Why the Trial Attorney Should Care About Holdouts

As alluded to previously, an understanding of holdouts can serve several purposes.

First and foremost, it helps understand leadership and group composition as a function of jury selection. Identifying the most staunch advocates on the panel is an important element of voir dire. Who seems to be the most opinionated and thoughtful panelist, and is she someone who could help your side?

Imagine a highly educated clerk in a civil case who reads contract language strictly; the rest of the jury may start the deliberation by trying to decide the case through general biases for and against the parties, but that single juror may start as a holdout who brings the rest of the group to heel through an appeal to the instructions from the court.

It may also shape a trial lawyer's tactics in how damages are argued in civil matters. Considering that holdouts may ultimately be successful in pushing the remainder of a group toward a middle ground, strategies like counter-anchors can be all the more powerful.

Understanding that liability and damages may be hotly contested, a sharp defense attorney gives the holdout multiple points to make their final stand. If your holdout eventually gives in on liability, they might be in a better position to leverage a compromise on damages through using a compelling counter-anchor.

Lastly, when a holdout truly digs in and drives the case toward a mistrial, that presents an opportunity for enterprising trial lawyers. When afforded the opportunity to interview trial jurors after such an occurrence, the holdout may offer lessons for how to approach the next trial.

Regardless of whether the holdout was for you or against you, such a juror can articulate the pathways for winning down the road. One could imagine the holdout in the aforementioned medical malpractice case illuminating certain liability evidence that could have tipped the scales had it been emphasized further.

Overall, the holdout who prevents a verdict is one that undoubtedly frustrates the majority of the legal community. However, this ignores an important subcategory of holdouts who either flip the rest of the group or force compromise among the jurors. Such holdouts can be powerful allies or foes on the jury, especially if they are not properly assessed early in the trial.

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[1] https://www.lehighvalleylive.com/bethlehem/2026/02/northampton-county-jurors-find-some-blame-but-not-enough-for-a-verdict-in-st-lukes-fatal-medical-malpractice-trial.html.

[2] Hannaford-Agor, Paula, Valerie P. Hans, Nicole L. Mott, and G. Thomas Munsterman. "Are hung juries a problem?." (2002).

[3] Hannaford, Paula L., B. Michael Dann, and G. Thomas Munsterman. "How judges view civil juries."DePaul L. Rev.48 (1998): 247.

[4] Editors, Law Review (1964) "Deadlocked Juries and Dynamite: A Critical Look at the "Allen Charge","University of Chicago Law Review: Vol. 31: Iss. 2, Article 13.

[5] Id at I.