

## The Evolution of a Hung Jury

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"...we adhere, as though to a raft, to those ideas which represent our understanding."  
John Kenneth Galbraith, Economist, 1958.

Somewhere in the heap of jurors' experiences and varied opinions lies the ultimate goal of any jury deliberation: A fair process. But the deliberative process can become skewed for a variety of reasons, culminating with a hung jury. While one or more jurors may depart from the experience feeling that their means achieved an acceptable end, others walk away frustrated and battle weary with the result.

This newsletter provides an eyewitness account, from Juror #12, (an international banker, and an "Undecided" vote when deliberations began), about how a New York City jury remained hopelessly hung, despite some jurors' tenacious efforts to avoid that conclusion. The jury was composed of a hodgepodge of occupations—artists, financial professionals, a retired teacher, a marketing executive, university students, and administrators. To the observer, this jury would be described as a well educated, middle to upper middle class group of mostly Caucasians. The following testimonial recounts a day by day description of a mixture of confusion over what to discuss and how to discuss it, as well as unsuccessful attempts at seeking cooperation from some inflexible jurors. The memories captured by Juror #12 were recorded in a written diary after the completion of the two days of evidence presentation and during the five days of deliberations.

The case involved allegations of domestic violence, made by a young mother who alleged that her boyfriend beat her, caused her bodily harm, and damaged her property. There were three charges that the jury was instructed to deliberate: First Degree Burglary, Second Degree Assault, and Child Endangerment to the victim's child.

### Day 1: Some Jurors Enter the Deliberation Room with An Agenda

When the deliberation room door closed, the discussion had not even begun when a male juror [Juror #5, retired college English teacher] declared that his vote would be "not guilty." His spontaneous declaration signified self-centeredness as well as an emotionally based agenda that avoided any arduous review of the evidence. To circumvent the possibility of a verdict based on emotion and bias, another juror suggested that they review the charges and evidence and write their requests for specific evidence on the special jury request form. At this early stage of the deliberations, four jurors appeared resentful of this suggestion because they wanted to sideline the evidence, vote Guilty or Not Guilty, and then be excused. Begrudgingly, they went along with the evidence review. From that, coalitions formed as some expressed their opinions. Nevertheless, the social interaction became tense as the emotion-based jurors clashed with the more evidence-centered thinkers.

*"The Judge called us in. She said that we would get the evidence, but not a transcript of the testimony... We were allowed to take notes, while she re-read the charges to us along with her lengthy instructions."* [Note: In this Manhattan courtroom, the jurors were not allowed to take notes during trial.]

### Certain Jurors Exhibit Emotionally-Based Confirmation Bias and Narcissistic Tendencies When Communicating This Bias

Confirmation Bias exists when a juror looks for confirming evidence of their opinion and may hear but do not acknowledge the opposing side of the argument. They forget all the other evidence that may not coincide with the direction in which they believe the evidence should point. Some jurors who demonstrate Confirmation Bias display narcissistic tendencies by presenting themselves during voir dire as being confident, dominant and authoritarian. At first blush, they may appear to be good leaders when, in fact, their myopic viewpoint inhibits the exchange of information, perspectives, and knowledge.

As such, they create patterns of the evidence to confirm their belief. They remain steadfast as they dig their heels in, and reject any analysis of logical inferences.

*"Juror #2 (the guitarist, who was very friendly) had formed a definite opinion before starting deliberations and would not change, even after hearing other jurors' explanations... He was on auto pilot when speaking and constantly threw out the words, 'Clearly', 'Obviously', 'Never', 'Always'. He would come up with nonsensical theories."*

### The Evidence-Centered Decision Makers

Quite opposite from the Confirmation Bias jurors are the Evidence-Centered decision makers. These jurors curb their emotions and rely on reason to examine the total gambit of testimony, as they weigh certain testimony against other testimony. They often relay their corresponding life experiences and present analogies as a tactic to convince others.

*"Juror #6 [the artist] displayed open-mindedness. He did a good job of summarizing events in a logical way and expressing his thoughts. He told the story of when he broke up with his girlfriend, and as a result, she egged his art. People on both sides seemed to have listened to him because he admitted his doubts."*

### Day 2: A Day Seeking Clarification of the Jury Instructions and Reviewing Exhibits

This was the day that the jury sought definitions, of "intent" and "substantial pain" and other key words extracted from the jury instructions. Most of the jurors closely examined the photos, medical report, and tried to recall certain testimony. From that, the initial vote took place, the first of many to occur. The majority still felt undecided. One male juror explained his reasons leaning to a Guilty finding, which impressed some of the Guilty leaning female jurors:

*"Juror #10 [the director of community relations at a private middle school for disadvantaged youth] told the others that '...he put himself in a woman's shoes...' when describing his rationale for voting Guilty."*

### Day 3: Positions Are Becoming More Hardened

Another vote took place early in the morning with the same four jurors refusing to budge from their positions. This Not Guilty coalition avoided initiating any request for review of specific evidence. Some of their extreme rationalizations actually dissuaded the undecided jurors from gravitating to the Not Guilty side. They relied on their own interpretation of a legal term over the literal definition provided by the judge.

*"We took a vote with raised hands to see where everyone stood. The same four always voted 'Not Guilty.' We were stuck. Although their unfiltered comments resulted in a loss of their credibility, they knew that their minority status gave them power over the majority, making them less willing to be flexible. Hence, they held the other side hostage. We submitted a note to the judge telling her that we couldn't come to a consensus. She called us into the courtroom and told us to keep deliberating. She told us to take our jury duty seriously and work with each other to review the evidence and come to a conclusion."*

### Day 4: The Acceptability of Horse Trading by the Guilty Faction; Refusal by the Not Guilty Jurors

The majority faction once again combed through the photos, police report, and medical report. These Evidence Centered jurors wanted more legal definitions to confirm additional points of argument. In accordance with the jury's request, the judge read over the charges a second time, except this time more slowly.

Back in the deliberation room, a juror expressing a Guilty vote indicated that she would be willing to compromise by voting Not Guilty on two of the three charges in order to reach some consensus. Other jurors from the Guilty faction were also willing to negotiate if the four Not Guilty voters would indicate some movement off of their position on the remaining issues.

*"It seemed that the Guilty folks were willing to do some horse trading to get at least one guilty verdict, but the Not Guilty folks remained unwilling to change at all. Juror #9 [neuroscience post-doctorate student at Columbia] indicated that it was 'clear' that the defendant was Guilty but that she would vote Not Guilty on the last two charges if the Not Guilty jurors would change their views on something. Otherwise she would 'not be able to sleep at night' if we found him Not Guilty on all three charges."*

### Day 5: The Impasse Continues; Jurors Request All Jury Instructions in Writing

The jury sent another note to the judge stating their frustration at the impossibility of moving beyond this impasse. Once again, the judge encouraged the jury to continue deliberations. One of the Confirmation Bias jurors, who initially expressed his Not Guilty opinion before any discussion or evidence review was the least willing to rethink facts. He seemed to feel that the missing piece of evidence, no matter how material or immaterial, created doubt. His closed-minded determination to reject any divergent viewpoint illustrated a narcissistic tendency of self righteous indignation.

*"He [Juror #5, retired college English teacher] never initiated a request to ask the judge for clarification, definitions, re-reading of the testimony, any of that. I think it was because he figured that he wasn't going to change his mind anyway... He never took notes when we would go back into the courtroom for clarification."*

### Day 6: Deliberations Are Abruptly Ended

The judge called the jury in and disclosed that something arose concerning the testimony, and as a result, charges were dropped. And with that, the arguments in the deliberation room were silenced.

*"At the end of our deliberations, our jury consisted of four people who believed he was Not Guilty of all charges and 8 people who believed he was Guilty of at least one charge. During the entire deliberation process, one side was very stubborn and didn't let the evidence or the other jurors persuade them to change their minds."*

### Conclusion

A hung jury can result when one or more jurors walk into the deliberation room with closed minded determination to reject any divergent viewpoint. With this New York City jury, the two decision-making styles of Emotionally Based Confirmation Bias and the Evidence-Centered decision makers could not mesh because egotistical involvement, preconceived notions, and authoritarianism dominated, implicit of a narcissist or two in the group. Thus, during voir dire, counsel should stay alert to the person who appears overly confident, impressed by their intelligence, and too self-involved to consider others' opinions. These are the prospective jurors to consider striking out if counsel's trial strategy is to avoid a hung result. Conversely, some defense counsel may seek out the narcissistic personality in order to close the trial with a hung jury.

For most jurors, when consensus eludes them in deliberations, their frustration levels rise and cynicism develops about the jury process. To reach a verdict without sacrificing the respect and dignity of self and others, becomes a source of pride and promotes trust in the legal process. Indeed, they recollect and reflect back on their jury experience for years after.

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