CRIME AND JUSTICE
Bulletin

NSW Bureau of Crime
Statistics and Research

Contemporary Issues in Crime and Justice *Number 66*

March 2002

Hung juries and aborted trials: An analysis of their prevalence, predictors and effects

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About one in every six trials held in the New South Wales District Court fails to reach a conclusion either because the jury is unable to reach a verdict or because the judge aborts the trial. This bulletin assesses the demand placed on the District Court by these trials and identifies factors which predict whether or not a jury is likely to be hung or a trial to be aborted. It is estimated that halving the prevalence of hung juries and aborted trials would allow the District Court to dispose of an additional 44 trial cases per year. The findings on predictive factors indicate that juries are more likely to be hung if the trial is held in a metropolitan court than if held in a country court; if the trial lasts longer than three days; and if no adjournment is sought. Trials are more likely to be aborted if they are held in Sydney; if they involve multiple offence counts; if the offences involved are sex offences, violent offences or fraud; if there are multiple accused; if there is a voir dire; if the trial is a jury rather than a judge-alone trial; and if no bench warrant has been issued.

INTRODUCTION

Hung juries and aborted trials are a recurring problem in criminal court administration. Because they do not produce a final outcome, they require a retrial or finalisation by some other method, and consequently waste time, money and effort, not only for the court, but for the defence, prosecution and all other trial participants. This results in significant delays in the delivery of justice and causes inefficiencies in the operation of the criminal justice system. Furthermore, the additional delay and retrial can exacerbate the distress experienced by the victims, particularly in sexual assault cases, when they are put through the process of cross-examination once again.

In recent years hung and aborted trials have provoked a great deal of concern in New South Wales (NSW). The Chief Judge of the NSW District Court has repeatedly expressed concern about the number of hung and aborted trials, and the judicial and trial resources they waste (District Court of New South Wales 1995, 1996, 1997, 1998, 1999, 2000). The Opposition, senior legal professionals and legal commentators have also called on several occasions for the introduction of majority verdicts in an effort to reduce the incidence of hung trials (see for example The Sydney Morning Herald 24 June 1996, p. 4; Murphy & Phelan 1998; Walker 1999; Lagan 2000; The Sydney Morning Herald 18 May 2000 p. 6; Ellicott 2000; Griffith 2000).

Several highly publicised trials have been aborted, leading to calls for reform in this area. Attempts have been made to introduce legislation requiring the media to pay the costs of trials aborted because of prejudicial publicity, after inflammatory remarks about the accused were broadcast during the trial (see, for example, NSW Law Reform Commission 2000). A sexual assault trial aborted after a former Police Minister made general comments about paedophiles also led to claims of trials being aborted 'all too easily' and 'trigger happy' judges. When the accused in this same trial was released on bail and three weeks later murdered two school girls, there were calls for reform of a justice system said to be in 'tatters' (see, for example: The Sydney Morning Herald 11 Sep. 1997 p. 4; The Sydney Morning Herald 13 Sep. 1997 p. 44; Ackland 1997; Riley 1997; The Sydney Morning Herald 23 Nov. 1997 pp. 48-49). Other less publicised proposals for reform have also been put forward, such as a system of reserve jurors to reduce the number of trials aborted because of jurors dropping out (North 2000).

While there are good arguments both for and against some of these reforms, at present it remains unclear whether their introduction would be effective in reducing the number of hung and aborted trials in NSW. It is also unclear whether reform is even necessary, as we have very little understanding of why juries sometimes fail to reach a verdict,

why trials are aborted, and whether hung juries and aborted trials are a significant enough problem to warrant intervention. There has been very limited research on aborted trials, in Australia or overseas, which might shed some light on these issues. Some research has been conducted into hung trials but it is still very sparse, quite dated and mostly conducted overseas.

This study attempts to bridge some of the research gaps by examining the occurrence of hung and aborted trials in the NSW District Criminal Court. Our study looks at the prevalence of hung and aborted trials, the factors or circumstances likely to produce them, as well as the potential court time that could be saved if the numbers of hung and aborted trials could be reduced. The results provide valuable information on the demand placed on NSW criminal courts by hung and aborted trials. They also provide useful information on the circumstances in which trials are most likely to be hung or aborted and provide some insight into why these events occur. Before describing our research, however, we review the limited amount of research which has been conducted on hung and aborted trials.

EXISTING RESEARCH ON HUNG TRIALS

Underlying many of the calls for majority verdicts is an assumption that juries hang as a result of the make-up of the jury or what transpires in the jury-room. Many in favour of majority verdicts believe that juries hang because of one or two hold-out jurors, while some have speculated that the hold-out juror can emerge because a juror refuses to participate in deliberations in a rational manner, either for personal reasons, or because they have been bribed or intimidated (see, for example, Kalven & Zeisel 1966, 1967; Hannaford, Hans & Munsterman 1999; Griffith 2000). While the existing research on hung trials is very sparse, and quite dated in some instances, it does suggest that most trials do not hang because of a single hold-out juror, or because of any characteristics of the jury.

Earlier studies by Salmelainen, Bonney and Weatherburn (1997), and Kalven and Zeisel (1966) based on large scale post-trial surveys of jurors, found that minorities of one or two jurors occur in less than half of trials which are hung. Young, Cameron and Tinsley (1999) in a smaller scale study in New Zealand, found a similar result. Kalven and Zeisel's study, which also asked jurors about the split of the jury vote at the commencement of deliberations, further suggests that, even when hung trials are finally split with a minority of one or two, they are only likely to arise when the initial jury comprised a substantial minority of four to five jurors. In other words hold-out jurors do not emerge unless their views had some support initially. If the lone hold-out juror is not a common problem, the introduction of majority verdicts would therefore potentially impact on only a very small number of trials.

This supposition is supported by other findings. Kalven and Zeisel's work indicates that the prevalence of hung trials is only slightly lower in States that allow majority verdicts (3.2%) than in those that require unanimity (5.6%). Salmelainen et al. estimated that, if the introduction of majority verdicts in NSW eliminated retrials in all trials hung with a jury split of 11-1 or 10-2 the total number of court days required to hear criminal matters would be reduced by only 1.7 per cent.

The available research further suggests that hung trials, rather than being a function of the jury, may be more a product of case, evidentiary, and jurisdictional factors. Kalven and Zeisel, who interviewed presiding judges as well as jurors, found that case factors, such as the strength of the evidence and the complexity of the case, were related to the likelihood of a hung trial. Hung trials were more likely where the presiding judge rated the evidence as 'close' and the case 'difficult'. Young et al. (1999) found that in most of the hung trials in their New Zealand study the dissenting minority had a clearly articulated and reasoned basis for their dissent which probably resulted, in part, from their understanding of the evidence. Salmelainen et al. found that hung trials were more likely in long trials. Hannaford et al. (1999), based on an examination of aggregate statistics on hung juries across US courts in the 1980s and 90s, found that hung trial rates varied across different US jurisdictions with hung trial rates higher in high density, urban and heterogeneous jurisdictions. They suggest that jurisdictional characteristics such as the nature of the caseload, case management practices and legislation may all affect the types of cases coming before juries and therefore the incidence of hung trials. They also suggest that differences in the pool of jurors available in each of the jurisdictions, in terms of their cultural diversity, may also be a contributing factor.

Research which has focused on jury verdicts, rather than hung trials, also points to the importance of case and evidentiary, rather than jury factors, in jury decision making. In a US study of court, police and prosecution records and interviews with victims, Myers (1979) found that evidence factors (e.g. the testimony of the defendant or the presence of a recovered weapon) were the best predictors of jury decisions. Based on post-trial interviews with jurors serving in sexual assault trials, Visher (1987) found that case and evidential factors (e.g. the presence of corroborative evidence) are more important in an individual's assessment of the defendant's guilt (prior to deliberations) than characteristics of the defendant, victim or juror. Juror characteristics were found not to be important at all. Abbott et al. (1993) and Kassin and Wrightman (1988), in their reviews of jury research, also suggest that jury characteristics (such as demographics and personality) are generally not good predictors of whether a jury will hang.

EXISTING RESEARCH ON ABORTED TRIALS

In general there are no explicit rules governing when a trial should be aborted, but the judge may decide to abort a trial for a number of reasons. The judge may decide that a trial cannot continue because a trial participant (e.g. key witness, counsel, juror or the judge him/herself) cannot continue in the trial due

to illness or some other reason. The judge may consider that something has occurred during the trial that may unduly influence the jury's decision. Evidence prejudicial to the accused (about his/her prior convictions) may have wrongly been introduced, for example. Prejudicial comments about the accused may have been broadcast in the media during the trial. Finally, a juror may have come into contact with one of the trial participants, and the judge may consider that this will affect the jury's decision. Unfortunately, research on aborted trials and why they occur is even more sparse than that on hung juries.

Willis and Sallman (1977) have suggested that factors such as the quality of preparation and presentation of the case, the judge's handling of the trial and the gravity of the offences involved, may affect the likelihood of a trial being aborted. They also suggest that aborted trials may be more of a problem in crowded courts because there may be greater risk of contact between jurors and trial participants.

Media coverage of the issue has tended to suggest that trials are frequently aborted because of prejudicial media publicity, and less often because of breaches of rules of evidence or a juror's association with a participant in the trial (see for example Sharp 1996; Curtin 1997; Gibbs 2000; The Sydney Morning Herald 8 Sep. 1993 p. 2). Media reports have also sometimes suggested that trials are aborted 'all too easily' (The Sydney Morning Herald 13 Sep. 1997 p. 44) by 'trigger happy' judges (Ackland 1997).

Whether factors such as prejudicial media publicity, problems with prejudicial evidence being led, or judge factors, really are common reasons for trials being aborted remains unclear. Some recent studies suggest that prejudicial publicity and prejudicial evidence being wrongly led may not be a great problem, in terms of the frequency with which they occur or their influence on jury decisions. Chesterman, Chan and Hampton (2001), in an Australian study based on post-trial interviews with actual jurors, judges and counsel, concluded that juries are relatively resistant to publicity. They attributed this resistance to the fact that jurors are generally not exposed to prejudicial publicity and that jurors often do not recall the specific details of that publicity. They also suggested that, while prejudicial publicity may have affected the perceptions of individual jurors, it did not appear to have affected the verdict itself. Research based on post-trial interviews with actual jurors by Young, Cameron and Tinsley (1999) in New Zealand (where the rules on media publicity are similar to those in Australia), also suggests that prejudicial publicity and knowledge of prior convictions may not affect juror's decisions, at least on a conscious level.

This sort of research is helpful but neither it nor previous Australian or overseas studies provide much insight into what types of cases are most likely to be aborted or result in a hung jury. The main objectives in this study, therefore, were to—

(1) examine the prevalence of hung and aborted trials in the NSW District Court

(2) estimate the demand placed on the Court by hung and aborted trials

(3) identify the factors that predict hung juries

(4) identify the factors that predict aborted trials

(5) identify the main reasons why trials are aborted.

Before reporting on these findings we provide a description of the methodology of our study. The report concludes with a discussion of the findings and their implications.

METHODOLOGY

DATA SOURCES

Data addressing the first objective of our study on the prevalence of hung and aborted trials were obtained from the monthly reporting statistics of the NSW District Court. Note that these statistics record each trial that is hung or aborted. Thus, if a case proceeds to trial several times and is hung and/or aborted more than once, each occasion the case is hung or aborted is recorded.

Data employed to address the remaining four objectives of our study were obtained from a retrospective survey of court files relating to 661 criminal cases tried before the NSW District Court between 1997 and 2000 that were hung, aborted or reached a verdict. Where individual court files did not contain the required information, efforts were made to source the data from the NSW Office of the Director of Public Prosecutions (NSWODPP), either their CASES database or their files, the NSW District Court's Case Tracking System or the Bureau's Higher Courts database. Additional information on each judge's years of experience was obtained using the NSW Law Almanacs 1997-2000.

THE FILE-BASED SURVEY

Cases selected for inclusion in the file-based survey

To carry out the survey of court files it was necessary to identify criminal cases recently tried before the NSW District Court that were hung, aborted or reached a verdict. Only trials heard in the three-year period between 1 July 1997 and 30 June 2000 were included. We also chose to restrict the survey to the first trial in each case, in order to prevent any bias towards those cases which proceeded to trial numerous times.[1] We further restricted our survey to cases involving State offences.[2]

Suitable cases (and their associated court file numbers) were identified with the assistance of data sets provided by both the NSWODPP and the NSW District Court. Note that the data sets were acquired from both agencies to ensure our coverage of hung and aborted trials was as complete as possible.[3]

The NSWODPP provided a data set from their CASES database containing all District Court trials proceeding in the five-year period 1 July 1995 to 30 June 2000 in which the major outcome was recorded as aborted, hung or verdict, as identified. The data set contained the court file number, trial dates and trial outcome as well as other relevant identifying details and other factors of interest in the study. This data set was supplemented by a list of cases provided

by the District Court Case Tracking System that resulted in an aborted or hung trial during 1 July 1995 to 30 June 2000.[4]

From these combined data sets we identified a total of 230 cases in which the first trial was hung, 273 cases in which the first trial was aborted and 2268 cases in which the first trial reached a verdict.[5] To ensure roughly equivalent numbers of each type of case, all the cases which produced hung and aborted trials, and a randomly selected sample of 264 of the cases which reached verdicts, were included in the study sample, giving a total of 767 cases.

Of the 767 cases, 661 were included in the final sample for analysis. The final sample was made up of 182 hung trials, 236 aborted trials and 243 verdict trials. The remaining 106 cases were excluded because of the following reasons. Thirty-two were excluded because the court file was not available or was not able to be located during the data collection period. A further 32 were excluded because, upon inspection of the court file, the case was found to be ineligible for inclusion in the study. This occurred when a case had not proceeded to trial at any stage, or had not proceeded to trial for the first time during the 1997-2000 period, or where the first trial was not an aborted, hung or verdict trial.[6] Forty-two cases were excluded because, upon inspection of the court file, the case was found to involve a trial that had already been included in the sample as part of another case. This occurred, for example, where two or more cases were tried jointly, or in cases in which the file had been renumbered or a new file had been opened. Thus, of the 767 cases initially selected, 693 were considered eligible for the study, and 661, or 95 per cent, of these were able to be coded during the survey period. Appendix A contains details of the sample characteristics for these matters.

Survey procedures

A team of trained researchers was responsible for extracting information from the court files. The NSW District Court provided the researchers with access to the court files relating to the cases selected for inclusion in the survey at the Sydney Registry. All data collection took place during the period 21 May to 13 July 2001.

Before extracting information from the court file the researchers checked that the case in question met the eligibility criteria for the survey. It will be recalled that, to be eligible for inclusion in the survey, a case must have proceeded to trial in the NSW District Court for the first time during the period 1 July 1997 to 30 June 2000 and that trial must have been hung, aborted or reached a verdict.

A case was deemed to have proceeded to trial only once a jury had been empanelled (in the case of a jury trial) or once the Crown case began (in the case of a judge-alone trial). A trial was defined as hung if the jury could not agree unanimously on at least one of the charges tried, for at least one of the accused tried. An aborted trial was defined as a trial that did not reach a final outcome (i.e. verdict, guilty plea etc.) and that did not result in a hung jury.[7] A verdict trial was defined as a trial which reached a verdict by virtue of a jury decision, a judge-direction or a judge-alone decision.

The information collected in the survey

Normally the selection of data to be collected in a survey designed to ascertain the cause of causes of some phenomenon is guided by theory about and/or past research into the causes of that phenomenon. Given the lack of any developed theory about causes of aborted trials and hung juries, and the limited research which has been conducted in the area, our approach in this survey was necessarily exploratory in nature. We did seek to collect information on a number of case, evidentiary and judge factors which past research had suggested may be potentially important predictors of hung or aborted trials. Unfortunately, however, we were restricted by the availability and quality of information on the court files. We did not have access to factors such as the strength and nature of the evidence, how well the Crown and Defence cases were presented, how well the judge summed up or how credible the witnesses were. Nor did we have access to factors related to the defendant, the victim, or the jury itself. These are potentially important factors and our inability to collect information on them must be recognized as a significant limitation on the present study.

This said, information was extracted from the court files on a range of characteristics relating to the trial, pretrial process, and retrial process for both hung juries and aborted trials. A list of the characteristics extracted from the files follows. A copy of the coding form is provided in Appendix B.

Trial characteristics

- outcome of the trial
- court registry in which the trial was held
- judge presiding in the trial
- judge's years of experience
- trial length (from the day the jury was empanelled until the day the jury was discharged)
- type of offence(s) for which the accused was tried
- number of counts on which the accused was tried
- number of accused tried
- bail status of accused at the trial
- whether an interpreter was required for the trial
- whether a voir dire or any legal argument took place during the trial
- whether the trial was a jury trial
- duration of jury deliberations (in hung and jury verdict trials)
- the reason the trial was aborted (in aborted trials)

Pretrial characteristics

- estimated length of the first trial
- precourt duration (from the day the first offence was alleged to have occurred to the day the case first appeared in the NSW District Court)
- pretrial duration (from the day the case first appeared in the NSW District Court until the day the trial commenced)
- number of times the case was listed for trial

- whether an adjournment had been sought prior to the trial
- whether the case was transferred (that is, whether there was a change of court venue prior to the trial)
- whether a bench warrant was issued prior to the trial

Re-listing characteristics

- whether the case was listed for retrial
- whether the retrial proceeded
- delay in bringing the case to retrial (from the day the first trial ended to the day the retrial commenced)
- outcome of the retrial
- final outcome of the case
- delay in finalising the case (from the day the first trial ended to the day the final outcome was reached).

Method of analysis: identifying predictors

To examine the predictors of hung trials we compared all trials that were hung with all trials that were decided by a jury verdict. Judge-directed verdicts, judge-alone verdicts and aborted trials were excluded from this analysis. To identify the factors which predicted aborted trials we compared all trials that were aborted with all trials that were decided by a verdict. Jury, judge-directed and judge-alone verdicts were therefore included in this analysis, but hung trials were excluded.

For both sets of cases we analysed the data on a bivariate and multivariate level. Chi-square tests were used to test for bivariate associations between each of the predictor variables (the trial and pretrial characteristics) and the response variables (trial outcome – hung vs jury verdicts and aborted vs verdicts), and also to test for bivariate associations between each of the predictor variables.

Multivariate analysis was necessary to examine the relationships between each predictor variable and the response variable, controlling for the influence of all the other predictor variables. Logistic regression was used for the mutivariate analysis, due to the dichotomous nature of the trial outcome variable. The strategy used in the logistic regression analyses was to fit a model with all relevant predictor variables included where they had a potential bivariate relationship with the response variable (defined as where the *p*-value of the chi-square test was less than 0.2) and no strong relationship with another predictor variable included in the model (defined both in terms of the results of the chi-square test and a priori knowledge about the variables). In order to achieve the most parsimonious model, predictor variables were then successively dropped from the model, based on their *p*-values. Each time a variable was dropped, the deviance of the model was examined. If dropping the variable resulted in a poorer fit the variable was reinstated to the model. This process was repeated until the most parsimonious model was fitted. This model is referred to as the 'final model' throughout the Results section.

RESULTS

THE PREVALENCE OF HUNG AND ABORTED TRIALS IN THE NSW DISTRICT COURT

Figure 1 presents trends in the number of trials in the District Court between May 1998 and June 2001, both in terms of the number of trials listed and the number of trials that actually proceeded.

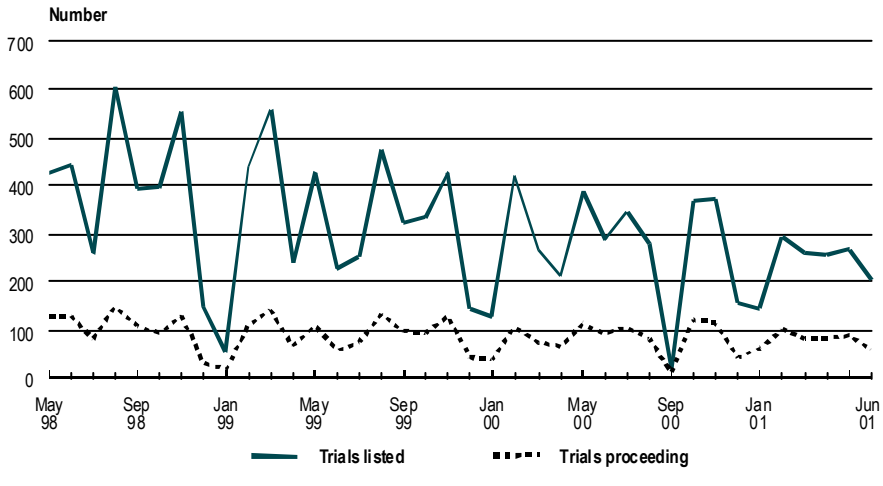
The figure shows that while the number of trials listed has fluctuated from month to month, there has been a steady decrease over the three-year period from over 400 trials to just over 200 trials. The number of trials actually proceeding has also fluctuated from month to month, but has generally remained stable over the period with an average of just under 100 trials.

Figure 2 presents trends in the number of hung and aborted trials in the District Court between May 1998 and June 2001. It can be seen that the numbers of both hung trials and aborted trials also fluctuates a great deal from month to month. Trend tests indicated that between 1998 and 2001 the number of aborted trials decreased significantly, while the number of hung trials remained stable.

Figure 3 presents trends in the prevalence of hung and aborted trials (the percentage of trials proceeding that result in a hung or aborted trial). Again there is a great deal of fluctuation from month to month, but trend tests indicate the prevalence of both hung and aborted trials has remained steady at an average of around 8 per cent of trials proceeding.

Data obtained from intermediate courts in other States over roughly the same time period suggests that the prevalence of hung and aborted trials in NSW (each at around 8%) appears to be almost double that in other jurisdictions. In Queensland the prevalence of both hung and aborted trials is 5 per cent, in South Australia the prevalence of hung

Figure 1: Number of trials, NSW District Court, May 1998 - June 2001



trials is 3 per cent and aborted trials is 4 per cent, while in Western Australia the prevalence of hung trials is 4 per cent and aborted trials is 3 per cent. Whether the higher prevalence in NSW reflects a real difference is unclear. The higher prevalence may reflect, in part, differences in the way hung and aborted trials are counted and recorded in each jurisdiction.[8] Nevertheless, if the difference is real, it is worth noting that the prevalence of hung trials is not much lower in South Australia and Western Australia which have provision for majority verdicts than in Queensland which has a unanimous jury requirement.

THE EFFECT OF HUNG AND ABORTED TRIALS ON THE NSW DISTRICT COURT

Using the information obtained from the file survey on trial length, whether trials were re-listed, whether retrials commenced, and the final outcome of the case, we were able to estimate the demand hung and aborted trials place on the District Court. Note that our survey was restricted to cases which were hung, aborted or reached a verdict on the first occasion they proceeded to trial. Thus, all further discussion of aborted, hung and verdict trials refers to the first trial only.

Figure 2: Number of aborted or hung trials, NSW District Court, May 1998 - June 2001

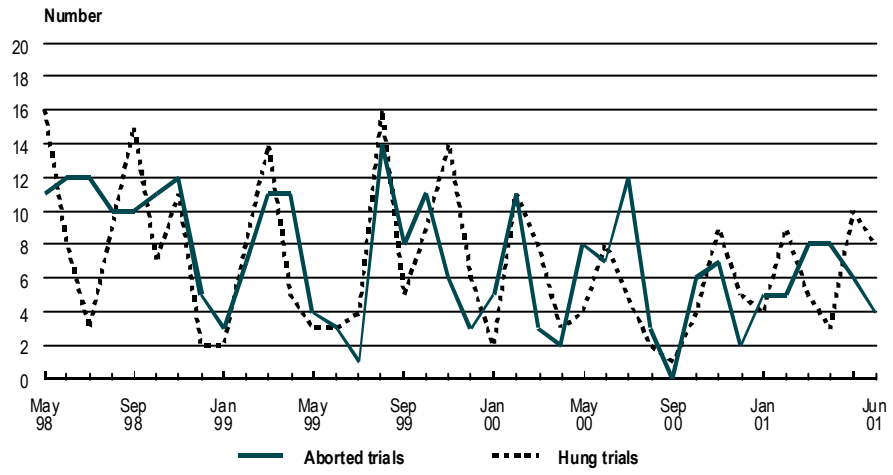
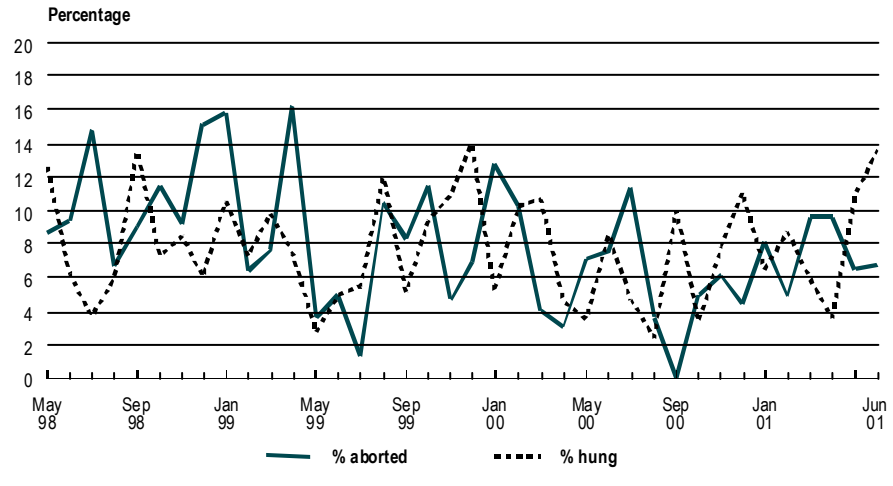


Figure 3: Percentage of aborted or hung trials, NSW District Court, May 1998 - June 2001



Hung trials

Of the 182 hung trials in our study, 141 (77%) were fully hung, that is, hung on all charges, and 41 (23%) were partly hung, that is, hung on some but not all charges. The average length of the hung trials was 6.6 days, compared with an average trial length of 4.5 days for trials which reached verdict. Eighty-two per cent of these hung trials were listed for retrial. Fifty-four per cent of hung trials were retried, some on more than one occasion. The average length of these retrials was 4.6 days. Following hung trials, cases took a further 7.3 months, on average, to finalise, either by retrial or another method.

Table 1 shows how hung trials were finally disposed of. As a comparison, this table also shows the final disposition of all cases committed for trial in the NSW District Court and finalised in 1999. Inspection of this table shows that hung trials result in lower conviction rates than the overall rate, primarily because fewer defendants in hung trials plead guilty and a high proportion of charges are 'no-billed'. The conviction rate in those hung trials which actually proceed to retrial is slightly lower (43%) than the overall rate for cases which proceeded to trial (48%).[9]

Aborted trials

Most trials were aborted relatively early on in the trial process; on average, after 2.9 days. Only five trials (2%) were aborted after 10 days or more. Ninety-three per cent of these trials were listed for retrial and 76 per cent actually proceeded to retrial, with some being retried more than once. The average retrial length was 6 days. The time taken to finalise the case following the aborted trial was, on average, 6 months, whether finalised by retrial or another method.

Table 2 shows how aborted trials were finally disposed of, compared with all cases committed for trial in the NSW District Court and finalised in 1999. As with hung trials, defendants in aborted trials were less likely to end up convicted than defendants overall, again primarily because of the higher no-bill and lower guilty plea rate. The conviction rate in those aborted trials which actually proceeded to retrial (47%) was very similar to the overall rate for cases which proceeded to trial (48%).

The demand placed on the NSW District Court by hung and aborted trials

Using the data just described on the average trial length of hung and aborted trials, the average length of the retrials, and the percentages of cases that were re-listed and retried we estimated how much demand is placed on the District Court by hung and aborted trials, in terms of court time.[10] Note that, in calculating this estimate, we assumed that 0.2 court days are consumed in setting and confirming both trial dates and retrial dates (see Weatherburn & Baker 2000).

We estimate that, in a given year, hung trials consume 598 court days, that is, an additional 176 days over what they would have consumed had they proceeded to verdict initially. Similarly we estimate that, in a given year, aborted trials consume 548 court days or an additional 238 days over what they would have consumed had they proceeded to verdict initially. Note that these estimates consider court days only. They do not take into account the preparation time required by prosecution and defence agencies. Nor do they take account of the time spent by witnesses, victims or the accused. Thus the real impact of hung and aborted trials is almost certainly higher than our estimate.

Looked at another way, our estimates mean that, if the numbers of both hung and aborted trials could be reduced by 50 per cent, 205 District Court days could be saved in a given year, which translates to an additional 44 trial cases.[11] This represents about a 5.8 per cent increase on the number of trials held in the NSW District Criminal Courts in 2000. If hung and aborted trials could be eliminated altogether, 414 District Court days could be saved, and an extra 88 trials cases could be dealt with.

The findings presented so far in this report indicate that, while the incidence of hung and aborted trials is not very high, they do consume a significant amount of court time and, in all likelihood, cause considerable disruption to the court. Any reduction in the incidence of hung juries or aborted trials is therefore likely to significantly reduce the demand placed on the court, as well as on all the other participants involved.

Table 1: Final disposition of cases beginning as hung trials compared with all cases committed for trial in the NSW District Court and finalised in 1999

	Hung trials		*All cases committed for trial in the NSW District Court and finalised in 1999*	
Final outcome of case	***No.***	***%***	***No.***	***%***
Guilty				
Plea	24	13	1496	53
Verdict	34	19	358	13
Not guilty verdict	45	25	390	14
No-bill	75	42	372	13
Other	1	1	232	8

Table 2: Final disposition of cases beginning as aborted trials compared with all cases committed for trial in the NSW District Court and finalised in 1999

	Aborted trials		*All cases committed for trial in the NSW District Court and finalised in 1999*	
Final outcome of case	***No.***	***%***	***No.***	***%***
Guilty				
Plea	35	15	1496	53
Verdict	67	28	358	13
Not guilty verdict	77	33	390	14
No-bill	54	23	372	13
Other	3	1	232	8

What factors predict whether a trial will hang?

To try to understand when hung juries are most likely to occur and why they occur we examined which trial and pretrial factors predict whether a trial will hang or reach a jury verdict. Note that only 201 of the 243 verdicts in the file survey were jury verdicts (87%). The remaining 42 verdicts were excluded from this analysis.

A summary of the results of the logistic regression analysis is shown in Table 3. This table shows all variables that were present in the final model, along with odds ratios and 95 per cent confidence intervals. All other variables were removed during bivariate analysis or the model reduction process. Note that the variables *estimated trial length* and *judge-alone trial* were not included as predictors in the analysis (because *trial length* was included and judge-alone trials were excluded from the data).

As can be seen from Table 3, the court registry in which the trial was held, trial length and whether an adjournment had been sought prior to the trial were each significant independent predictors of whether a trial would hang or reach a jury verdict.

Though retained in the final model, whether a bench warrant was issued prior to the trial was not a significant predictor. Other non-significant predictors were the number of counts on which the accused was tried, the type of offence(s) for which the accused was tried, the number of accused tried, the bail status of the accused at the trial, whether an

Table 3: Multivariate logistic regression results for whether a trial was hung or reached a jury verdict

Predictor variable	*Significance (p value)*	*Odds ratio*	*Confidence interval (95%)*
Court registry:			
Sydney metropolitan vs country	0.0001**	3.8	1.9 - 7.6
Other metropolitan vs country	0.011*	2.7	1.3 - 6.0
Trial length:			
4 to 5 days vs 1 to 3 days	<0.0001**	3.4	2.0 - 5.8
6 to 10 days vs 1 to 3 days	<0.001**	3.0	1.6 - 5.4
11 days or more vs 1 to 3 days	0.002**	3.9	1.6 - 9.2
No adjournment sought vs adjournment sought	0.005**	2.1	0.3 - 0.8
No bench warrant vs bench warrant	0.141	1.9	0.2 - 1.2

p<0.05* p<0.01** -2 Log Likelihood = 478.274 df = 375

Table 4: Multivariate logistic regression results for whether a trial was aborted or reached a verdict

Predictor variable	*Significance (p value)*	*Odds ratio*	*Confidence interval (95%)*
Court registry:			
Sydney metropolitan vs country	0.018*	2.0	1.1 - 3.4
Other metropolitan vs country	0.154	1.6	0.8 - 3.0
Number of counts:			
2 counts vs 1 count	0.032*	1.7	1.1 - 2.9
3 or more counts vs 1 count	0.117	1.5	0.9 - 2.5
Offence type:			
Sex vs other	0.001**	4.5	1.9 - 10.7
Fraud vs other	0.010*	6.6	1.6 - 28.0
Violent vs other	0.040*	2.5	1.0 - 5.9
Property vs other	0.210	1.8	0.7 - 4.7
Multiple accused vs single accused	0.015*	2.5	1.2 - 5.2
Voir dire vs no voir dire	0.003**	2.3	1.3 - 4.2
Jury trial vs judge-alone	0.001**	8.7	2.4 - 31.0
No bench warrant vs bench warrant	0.003**	3.8	1.6 - 9.1
No adjournment sought vs adjournment sought	0.117	1.4	0.9 - 2.2

p<0.05* p<0.01** -2 Log Likelihood = 585.110 df = 465

interpreter was required for the trial, whether a voir dire or any legal argument took place during trial, judge's years of experience, precourt duration, pretrial duration, the number of times the case was listed for trial or whether the case was transferred from another court.

The odds ratios presented in the table provide information on the direction and size of the relationship between each predictor variable and the trial outcome.

To illustrate: in the case of *court registry*, the odds ratio for *Sydney metropolitan* versus *country* is 3.8. Because the odds ratio is greater than one, this indicates that a hung trial was more likely when the trial occurred in a Sydney metropolitan court than when it was held in a country court. The magnitude of the odds ratio (3.8) indicates that the odds of a hung trial in a Sydney metropolitan court were 3.8 times greater than those of a hung trial in a country court.

Trials which took place in a metropolitan court outside Sydney were more likely to hang than trials which occurred in a country court, with an odds ratio of 2.7.

Longer trials (that is, those running for 4 to 5 days, 6 to 10 days, or 11 or more days) were more likely to hang than trials which ran from 1 to 3 days (odds ratios 3.4, 3.0, and 3.9, respectively).

Trials were more likely to hang when no adjournment was sought prior to the trial than when an adjournment had been sought, as shown by the odds ratio of 2.1.

However trials were no more or less likely to hang when a bench warrant was issued prior to the trial than when no bench warrant was issued.

What factors predict whether a trial will be aborted?

To identify the factors that predicted when a trial would be aborted we compared all trials that were aborted with all trials that were decided by a verdict. Note that *estimated trial length* replaced actual trial length in the current analysis, since *trial length* was considered to be more of a consequence of an aborted trial than an antecedent. Table 4 shows a summary of the final logistic regression model for aborted trials.

As can be seen from Table 4, significant predictors of whether a trial aborted or reached a verdict were: *the court registry in which the trial was held*, *the number of counts on which the accused was tried*, *the type of offence(s)*, *the number of accused tried, whether a voir dire or any legal argument took place during the trial*, *whether the trial was a jury trial* and *whether a bench warrant was issued prior to the trial*. Whether an adjournment had been sought prior to the trial was not significant. Nor was the bail status of the accused at the trial, whether an interpreter was required for the trial, the estimated trial length, judge's years of experience, precourt duration, pretrial duration, the number of times the case was listed for trial or whether the case was transferred from another court.

Trials held in *Sydney metropolitan* courts were more likely to abort than those held in *country* courts, with an odds ratio of 2.0. There was no difference between metropolitan courts (other than Sydney) and country courts in the likelihood of an aborted trial occurring.

Trials in which the accused was indicted on two counts were more likely to abort than those in which the accused was indicted on a single count (odds ratio 1.7), but trials in which the accused was indicted on three or more counts were no more likely to abort than trials in which the accused was indicted on a single count.

The odds of trials aborting when they involved sex, fraud or violent charges were 4.5, 6.6 and 2.5 times greater, respectively, than trials involving other charges. However, trials involving property charges were no more or less likely to abort than trials involving other charges.

The odds of the trial aborting when there were multiple accused were greater than when there was only a single accused, as shown by an odds ratio of 2.5.

Trials which involved a voir dire were also more likely to abort than trials in which there was no voir dire, with an odds ratio of 2.3.

Trials by jury were more likely to abort than judge-alone trials, with an odds ratio of 8.7.

If no bench warrant was issued prior to the trial, the odds of an aborted trial were 3.8 times greater than if a bench warrant was issued before the trial.

Seeking an adjournment had no significant effect on the likelihood of an aborted trial.

Judges' reasons for aborting trials

The findings just discussed help identify the factors which predict hung juries and aborted trials but we can enhance our understanding of why trials abort by examining the reasons given by judges for aborting trials. These reasons were collected from the court files or files supplied by the NSWODPP. It should be noted that the reasons for aborted trials were only available from the court files in 78 of the 236 trials (33%). The NSWODPP supplied reasons for a further 121 trials (51%). We were unable to obtain the reasons in the remaining 37 trials (16%). These latter 37 trials have been excluded from the following analysis.

The reasons given for aborting trials were classified into the various categories listed below:

- evidence-related reasons
- jury-related reasons
- witness-related reasons
- accused-related reasons
- case-related reasons
- judge-related reasons
- publicity-related reasons
- other.

The more frequently occurring categories were divided into further subcategories to assist interpretation. For example, the category *Evidence-related reasons* was divided into five subcategories. Table 5 shows these subcategorisations. Note that, in each case, the reason was coded into one category only.

Judge-related reasons referred to issues such as conflict of interest over a Crown witness or being ill. Publicity-related reasons were comprised of reasons such as prejudicial newspaper reports. These categories did not occur frequently enough to warrant division into subcategories.

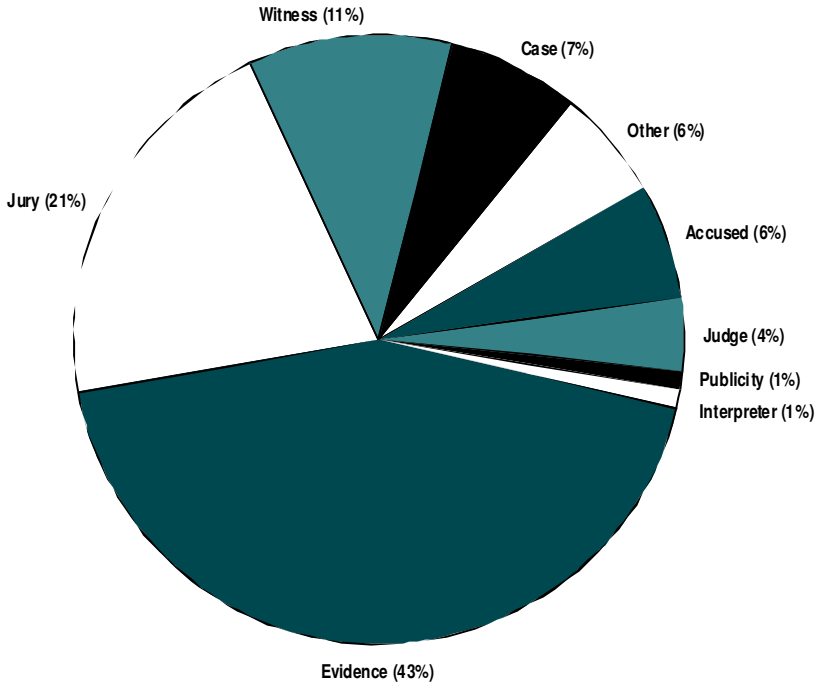
Breakdown of reasons for aborted trials

The breakdown of reasons for aborted trials is displayed in Figure 4. Inspection of this figure shows that the trials in our survey were aborted predominantly for evidence-related reasons (accounting for 43% of aborted trials), followed by jury-related reasons (21% of aborted trials) and witness-related reasons (11% of trials). That is, 75 per cent of aborted

Table 5: Coding scheme developed for the reasons for aborted trials

Category	*Subcategory*
Evidence	Inadmissible/prejudicial evidence
	New evidence presented/required
	Inconsistent evidence presented
	Evidence presented, but judge subsequently withdrew permission for its submission
	Other
Jury	Juror associated with person involved in trial or in law
	Juror unavailable
	Jury contamination
	Jury privy to prejudicial information
	Juror traumatised
	Other
Witness	Unavailable
	Traumatised
	Other
Accused	Legal representation problems
	Ill
	Other
Case	Application by prosecution/defence for joint/separate trials
	Interpreter-related problems
	Legal matter
	Change in nature of case

Figure 4: Percentage of aborted trials in each reason category



trials in our survey (where reasons for the aborted trial were available) were aborted for reasons relating to evidence, the jury or a witness. It can be further observed from this figure that few trials were aborted for judge- or publicity-related reasons (these categories accounting for a combined total of 5 per cent of aborted trials).

Within the evidence-related reason category, trials were aborted most commonly because of the submission or introduction of inadmissible or prejudicial evidence. This occurred mostly within one to three days of the trial's commencement. Only 28 per cent of trials aborted for reasons of inadmissible evidence were aborted after four or more days.

The most common jury-related reason for an aborted trial was juror knowledge of a trial participant or a person involved the trial. This was also generally identified early, that is, within three days of the trial beginning (87%). Only three trials (13%) that were aborted due to a juror knowing someone involved in the trial, ran for four or more days. In most cases (16 out of 22), the person was known to the juror prior to trial commencement.

It is possible to determine whether particular reasons given for aborting trials are associated with particular kinds of trials. It is sometimes suggested, for example, that evidence-related problems, particularly inadmissible/ prejudicial evidence, are more likely to cause sex trials to abort than other types of trials.[12] We were also interested in whether jury-related problems, particularly juror association with trial participants, might be more common in country registries than metropolitan registries, due to the smaller country populations. In addition we were interested to know whether the reasons for aborting differed between longer and shorter trials, and between less and more experienced judges.

Analysis revealed that neither *offence type* (χ^2=9.088, df=6, p=0.169), *court registry* (χ^2=1.053, df=4, p=0.902), *estimated trial length* (χ^2=5.045, df=2, p=0.080), *actual trial length* (χ^2=0.573, df=2, p=0.751) or *judge's years of experience* (χ^2=1.681, df=6, p=0.947) were associated with the reason for which trials were aborted.

SUMMARY AND DISCUSSION

Each year in the NSW District Court about 16 per cent of criminal trials fail to reach a conclusion either because the jury is unable to reach a verdict or because the judge aborts the trial. While there may be differences between jurisdictions in the way in which they count the incidence of hung juries and aborted trials, both kinds of occurrence appear more prevalent in the NSW District Court than in intermediate courts in other States which keep statistics on these problems. In 1999 hung juries resulted in a wastage of some 176 court days of court time while aborted trials resulted in a wastage of about 238 days. If the prevalence of hung juries and aborted trials in NSW were halved, the NSW District Court would be able to dispose of an additional 44 trial cases a year.

Juries were more likely to be hung if the trial in question was held in the Sydney Registry or another metropolitan registry, if it was long or if no adjournment was sought before the trial. The likelihood of a jury failing to reach a verdict was *not* related to a wide range of factors, the most salient of which were the number of counts on which an accused was tried, the type of offence(s) for which he/ she was tried, the number of accused tried, the bail status of the accused, whether an interpreter was required for the trial, whether a voir dire or any legal argument took place during the trial, the judge's years of experience, the number of times a case had been listed for trial and whether the case had been transferred from another venue.

The are several possible explanations for these findings. Metropolitan courts draw a more diverse juror pool and, for this reason alone, may be more likely to disagree on a verdict. Similar findings, as we have already noted in the introduction to this report, were obtained by Hannaford, Hans and Munsterman (1999). Jurors in country court trials may more frequently know each other and therefore be less inclined than jurors in metropolitan courts to disagree. It is also

possible that juries in metropolitan courts are more frequently dealing with complex cases. Indeed, this may be one reason why longer trials are more likely to end in a hung jury. The larger the volume of evidence and the greater its complexity, the greater the chance that jurors will disagree on its interpretation and implications.

The fact that trials in which no adjournment has been sought are more likely to end in a hung jury is difficult to understand. The most likely explanation for this finding is that the absence of any pretrial adjournment is simply a statistical marker for some other unmeasured factor or set of factors which increase the likelihood of a jury failing to reach a verdict.

Trials were more likely to be aborted if they were held in Sydney, or if they involved multiple offence counts; if the charges were for sex, violence-related or fraud offences; if there were multiple accused; if there was a voir dire; if it was a jury (rather than judge-alone) trial or if no bench warrant had been issued (i.e. the accused had not, at some stage, absconded). The most common reasons given by judges for aborting trials related either to the introduction of inadmissible evidence or to a jury-related reason, such as a juror knowing a defendant, witness or other person involved in the trial. Prejudicial media publicity is not a commonly given reason for aborting trials. The reason the judge gave for aborting the trial did not vary according to the length of the trial, the offences tried, where the trial was heard or the judge's years of experience.

Some of these findings are easy to understand. Others are not. Our survey of judges' reasons for aborting trials indicates that the introduction of inadmissible evidence is a major cause of trials being aborted. Given the prohibitions on certain kinds of evidence in trials involving sex charges, and the complexity of evidence in fraud trials, it is perhaps not surprising that these trials are more likely to be aborted. Similar considerations apply to trials which involve charges of non-sexual violence or trials in which there is a voir dire or multiple accused. On the other hand, where there is no jury (as in judge-alone trials) there is obviously less room for concern about the prejudicial effect of inadmissible evidence. The finding that trials are more likely to be aborted in metropolitan areas echoes a similar finding in relation to hung juries. However in this instance it may just signal greater judicial sensitivity to any association between a juror and a witness in metropolitan areas than in country areas, where jurors may be expected more frequently to be acquainted with a witness.

As with our earlier finding concerning adjournments and hung juries, the finding that trials are more likely to be aborted if no bench warrant has been issued (i.e. the accused has not absconded before the trial) is difficult to understand. Once again, it may be a case of the factor in question acting simply as a statistical marker for some other unmeasured factor or set of factors.

Overall, our analysis has provided insight into *when* juries are likely to fail to reach a verdict or judges are likely to abort a trial but, unfortunately, has provided only limited insight into *why* they fail to reach a verdict or why trials get aborted. Knowing when juries are likely to fail to reach a verdict or trials are likely to abort is useful for contingency planning purposes. That is, arrangements can more easily be set in place to minimize the disruption caused by a hung jury or aborted trial. Knowing why these events occur, however, is ultimately crucial if we are to find ways of reducing the incidence of hung juries and aborted trials.

It might be argued, of course, that the introduction of majority verdicts, at least, would help reduce the incidence of hung juries. The evidence we have reviewed provides few grounds for confidence in this conclusion. It is possible that improvements in the instructions to jurors or changes it the way the jury spokesperson is selected (see Young, Cameron and Tinsley 1999), would be just as effective, if not more effective, than the introduction of majority verdicts in reducing the incidence of hung juries. Our analysis has provided somewhat more insight into when and why trials are likely to be aborted. The introduction of inadmissable evidence and a trial juror's association with a defendant, witness or other person involved in the trial were found to be the most frequent reasons why trials were aborted. These findings suggest that identifying ways to reduce the frequency with which inadmissable evidence is introduced into trials may have a greater impact on aborted trials than a review of the laws relating to media publicity of trials or the introduction of a system of reserve jurors. Similarly improving the juror vetting process, so that a juror's association with any of the trial participants may be identified prior to the trial rather than after the trial has begun, may also have a greater impact on the incidence of aborted trials.

Ultimately, however, we need a much better understanding of why both hung juries and aborted trials occur, if we are to make significant inroads into reducing the incidence of hung juries and aborted trials. Without further research in this area it is difficult to see how reform can proceed on any rational basis.

The best way to proceed at this point would be to conduct a survey of jurors (in the case of hung juries) and judges (in the case of aborted trials). The present research provides some useful leads into the questions which such surveys should address. Any survey of jurors, for example, should seek an answer to our finding that juries are less likely to hang if the trial is in a country area or if the trial is shorter. Similarly, any survey of judges should be designed to shed light on the question of why trials are more likely to be aborted in metropolitan areas, if they involve multiple offence counts, or if they involve sex, violence or fraud charges.

Such a survey should also address why the introduction of inadmissable evidence and the late identification of a juror's association with a trial participant are so frequently the reasons for aborted trials, and how this situation can be improved.

ACKNOWLEDGEMENTS

We would like to thank the large number of people who have made a valuable contribution to this study, and without whom this study would not have been possible. They are—

Joanne Le, Melinda Tubolec and Shine Wong, the team of researchers who located and scoured the court files for the relevant information.

John Feneley, Principal Courts Administrator, and Mona Francis, NSW District Court, for providing our researchers with facilities and access to the relevant court files.

Robert Fornito, NSW District Court; Daryl Vilalba, Queensland Department of Justice; Gordon Drew, Western Australia Department of Justice; Adrian Barnett, South Australia Office of Crime Statistics; Michael Sands and Craig Smith, NSWODPP; for providing us with the statistics and data we required.

Craig Smith, Mark Tedeschi QC, Claire Girotto, Lorana Bartels, NSWODPP; John Feneley, NSW District Court; Richard Button, NSW Public Defenders Office; Phil Gibson, NSW Law Society; Paul Shaw, Commonwealth Office of the Director of Public Prosecutions; Doug Humphreys, NSW Legal Aid Commission; and Jennifer Hickey, Criminal Law Review Division, NSW Attorney General's Department; for sharing their valuable insights with us.

Robert Fornito, NSW District Court; Craig Smith, NSWODPP; and the Chief Judge of the NSW District Court; for reviewing an earlier version of this report.

NOTES

1 This also meant that the assumption of independence of cases was met, as required by much of our statistical analyses.

2 The study was limited to cases involving State offences for a number of reasons. The number of Commonwealth cases dealt with by the NSW District Court is too small to allow thorough and reliable analysis. Commonwealth cases are quite different in nature to State cases and therefore would make any comparison difficult. Finally the NSWODPP provided a great deal of the data for this study, which necessarily covered only State cases.

3 There is some discrepancy between the NSWODPP's and the NSW District Court's statistics on the incidence of hung juries and aborted trials. In addition the NSWODPP's database identifies only the major outcome of each trial. Therefore trials that were hung on some charges, but reached a verdict on other charges may have been recorded as a verdict (i.e. not hung). It was considered necessary to use both the NSWODPP and the court as sources of data to ensure as complete a coverage of hung juries and aborted trials as possible.

4 The relevant cases were identified in the Record of Processing (ROP), such that if the ROP date was between 1 July 1995 and 30 June 2000 and the ROP contained notation 77 (the code for an aborted trial), notation 78 (the code for a hung jury), or if any of a number of key words relating to aborted or hung trials were present in notation 19 (the free text field). The key words were 'abort', 'retrial' and jury with any of the following: hung, unable, fail, discharge. Some of the cases containing the word 'retrial' were later identified to be retrials as a result of an appeal and thus were excluded from the data set.

5 Note that the data sets required a certain degree of massaging to bring them into a useable format. The NSWODPP data set was converted to case-based rather than trial based (by sorting the data set by the court file numbers provided). Cases involving trials prior to 1 July 1997 were removed. Duplicate cases were removed, such that if a case was duplicated because it had proceeded to trial on more than one occasion (e.g. because it had been hung or aborted) then only the first trial was left in the data set. Duplicate trials were also removed.

6 Some trials were discovered to have resulted in a guilty plea from the accused, or a finding that the accused was not mentally fit for trial, for example.

7 The team of researchers usually identified these cases when it was noted in the court file that the jury was discharged without a verdict for reasons other than failing to agree.

8 Different counting rules exist, such that if a case is hung twice in NSW it would be counted twice, whereas in South Australia it would be counted only once, for example.

9 This can be ascertained by considering only the guilty verdicts and the not guilty verdicts.

10 Note that as part of the survey of court files we only collected information on the first retrial in hung and aborted trials. Thus we do not know how many cases were retried more than once. We do know as a result of the survey, however, that approximately one-third of first retrials do not produce a final outcome (because they are hung or aborted). We have assumed that second retrials proceeded in these cases in a similar pattern to that for the first retrial, but at a slightly lower rate. More specifically we assumed that one-half of the first retrials which did not produce an outcome were re-listed for a second retrial and of these, one-third subsequently proceeded to the second retrial and that the average length of the second retrial was the same as that of the first retrial. We have also assumed that no cases proceeded to a third retrial.

11 Note that we have used the average length of a verdict trial, together with the allowance for time to set and confirm trial dates, to calculate the number of additional trial cases that could be run.

12 It has been suggested that evidence relating to the victim's character or behaviour, or co-complainants may be more likely to be introduced in sex trials than other trials (see, for example, Visher 1987).

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APPENDIX A: SAMPLE CHARACTERISTICS

Of the 182 trials which were hung, 141 (77 per cent) were fully hung and 41 (23 per cent were partly hung).

A total of 76 judges presided over trials sampled in this survey.

Table A1: Breakdown of types of verdict

Type of verdict	*No.*	*%*
Jury		
Guilty	110	45
Not guilty	91	37
Judge - alone		
Guilty	6	2
Not guilty	16	7
Judge - directed not guilty	20	9

Table A2: Number and proportion of cases in each category of *pre-court duration*

Variable category	*No.*	*%*
3 months or less	46	7
Between 3 and 6 months inclusive	135	20
Between 6 and 12 months inclusive	178	27
More than 12 months	297	45

Table A3: Number and proportion of cases in each category of *pre-trial duration*

Variable category	*No.*	*%*
3 months or less	235	36
Between 6 and 12 months inclusive	167	25
More than 12 months	259	39

Table A4: Number and proportion of cases in each category of *number of trial listings*

Variable category	*No.*	*%*
1 listing	262	40
2 listings	183	28
3 listings	122	19
More than 3 listings	94	14

Table A5: Number and proportion of cases in each category of *adjournment sought*

Variable category	*No.*	*%*
Adjournment sought	210	32
No adjournment sought	451	68

Table A6: Number and proportion of cases in each category of *transfer*

Variable category	*No.*	*%*
Matter transferred	76	11
No matter transferred	585	89

Table A7: Number and proportion of cases in each category of *bench warrant*

Variable category	*No.*	*%*
Bench warrant issued	39	6
No bench warrant issued	622	94

Table A8: Number and proportion of cases in each category of *estimated trial length*

Variable category	*No.*	*%*
1 to 5 days inclusive	454	69
Over 5 days	207	31

Table A9: Number and proportion of cases in each category of *court registry*

Variable category	*No.*	*%*
Sydney metropolitan	419	63
Other metropolitan	147	22
Country	95	14

Table A10: Number and proportion of cases in each category of *trial length*

Variable category	*No.*	*%*
1 to 3 days inclusive	341	52
4 to 5 days inclusive	169	26
6 to 10 days inclusive	114	17
11 to 15 days inclusive	21	3
More than 15 days	16	2

Table A11: Number and proportion of cases in each category of *number of counts*

Variable category	*No.*	*%*
1 count	254	38
2 counts	170	26
3 or more counts	237	36

Table A12: Number and proportion of cases in each category of *offence type*

Variable category	*No.*	*%*
Sex	294	45
Fraud	19	3
Violent	194	29
Property	95	14
Other	59	9

Note: As one trial can involve more than one type of offence, the offences were classified in a hierarchical manner, such that if any sex offence was involved the offence was classified as a 'sex' offence. If any robbery or other against the person offences (other than sex offences) were involved the offence was classified as 'violent'. If any fraud offence was involved, but no 'sex' or 'violent offences' were involved the offence was classified as 'fraud'. If any theft or drug offences were involved but no 'sex', 'violent' or 'fraud' offences were involved the offence was classified as 'property'.All other offences were classified as 'other'.

Table A14: Number and proportion of cases in each category of *bail*

Variable category	*No.*	*%*
All accused on bail	509	77
All accused in custody	38	21

Table A15: Number and proportion of cases in each category of *interpreter*

Variable category	*No.*	*%*
Interpreter required	81	12
No interpreter required	580	88

Table A13: Number and proportion of cases in each category of *number of accused*

Variable category	*No.*	*%*
Single accused	601	91
Multiple accused	60	9

Table A16: Number and proportion of cases in each category of *voir dire*

Variable category	*No.*	*%*
Voir dire occurred	103	16
No voir dire occurred	558	84

Table A17: Number and proportion of cases in each category of *judge alone*

Variable category	*No.*	*%*
Judge alone trial	26	4
Jury trial	635	96

Table A18: Number and proportion of cases in each category of *judge's years of experience*

Variable category	*No.*	*%*
Up to 2 years	135	20
Between 2 and 5 years inclusive	116	18
Between 5 and 10 years inclusive	171	26
More than 10 years	207	31

APPENDIX B: CODING FORM

NSW Bureau of Crime Statistics and Research
Hung juries and aborted trials study

File No: .....

Accused: .....

Approx trial date: .....

Trial result: .....

Coder ☐☐

Date coded (dd/mm/yy) ☐☐/☐☐/☐☐

Checked ☐

Entered ☐

DATA CODING SHEET - Trial details

1. Is the trial identified on the sticker the first trial that commenced in this matter?
   ☐ 1 yes ☛ ***Go to 2***
   ☐ 2 no ☛ ***Go to 3***

2. Is the trial result on the sticker correct?
   ☐ 1 yes ☛ ***Go to 4***
   ☐ 2 no ☛ ***Go to 4***

3. Is the first trial that commenced in this matter eligible? (eligible if first trial was aborted, hung or verdict and held between 01/07/97 and 30/06/00)
   ☐ 1 yes ☛ ***Go to 4***
   ☐ 2 no ☛ ***End of survey***

4. Date first trial commenced *(dd/mm/yy)* ☐☐/☐☐/☐☐

5. Date first trial finished *(dd/mm/yy)* ☐☐/☐☐/☐☐

6. Length of jury deliberations *(if available)* ☐☐☐ days/hours *(please circle units)*

7. What was the outcome of the first trial? *(tick one only)*
   ☐ 1 fully hung ☛ ***Go to 9***
   ☐ 2 partly hung ☛ ***Go to 9***
   ☐ 3 aborted ☛ ***Go to 8***
   ☐ 4 jury verdict *(guilty of at least 1 charge)* ☛ ***Go to 9***
   ☐ 5 jury verdict *(not guilty of all charges)* ☛ ***Go to 9***
   ☐ 6 judge-directed verdict - not guilty ☛ ***Go to 9***
   ☐ 7 other *(please specify):* .....
   .....
   .....

8. If aborted, reason aborted:.....
   .....

9. Trial judge in first trial *(use code)* ☐☐☐

10. Was first trial a judge-alone trial? *(ie no jury involved in trial)?*
    ☐ 1 yes
    ☐ 2 no

11. Court location in which first trial held *(use code)* ☐☐☐

12. Number of accused involved in first trial ☐☐

13. Bail status of accused at first trial *(tick one only)*
- ☐ 1 All accused on bail
- ☐ 2 Some accused on bail, some in custody
- ☐ 3 All accused in custody

14. Types of offences charged in first trial *(tick all that apply)*
- ☐ 1 Child sex
- ☐ 2 Adult sex
- ☐ 3 Homicide
- ☐ 4 Other against person
- ☐ 5 Robbery
- ☐ 6 Theft
- ☐ 7 Fraud
- ☐ 8 Drugs
- ☐ 9 Driving
- ☐ 10 Property damage
- ☐ 11 Other

15. Total number of counts in first trial *(all offences)* ☐☐

16. Was an interpreter required for first trial?
- ☐ 1 yes
- ☐ 2 no

17. Was accused legally represented at first trial?
- ☐ 1 All accused represented
- ☐ 2 Some accused were, some weren't
- ☐ 3 All accused unrepresented

18. Did first trial involve voir dire/legal argument?
(ie were the jury sent out?)
- ☐ 1 yes
- ☐ 2 no

19. Had any party sought to have first trial adjourned beforehand
- ☐ 1 yes ☛ ***Go to 19a***
- ☐ 2 no ☛ ***Go to 20***

19a Details of adjournment (who and why):.....
.....

20. Any related matters involved in first trial?
- ☐ 1 yes ☛ ***Go to 20a***
- ☐ 2 no ☛ ***Next section***

20a. Details:.....
.....

Re-listing details

(only where outcome of first trial was fully hung, partly hung, aborted or other ie Q7 = 1, 2, 3, 7)

21. After the first trial, was this matter re-listed for trial?
- ☐ 1 yes ☛ ***Go to 22***
- ☐ 2 no ☛ ***Go to 27***

22. If yes, date re-listed *(dd/mm/yy)* ☐☐/☐☐/☐☐

23. Did this trial commence?
- ☐ 1 yes ☛ ***Go to 24***
- ☐ 2 no ☛ ***Go to 27***

24. Date this trial commenced *(dd/mm/yy)* ☐☐/☐☐/☐☐

25. Date this trial finished *(dd/mm/yy)* ☐☐/☐☐/☐☐

26. What was the outcome of this trial? *(tick one only)*
- ☐ 1 fully hung
- ☐ 2 partly hung
- ☐ 3 aborted
- ☐ 4 jury verdict (guilty of at least 1 charge)
- ☐ 5 jury verdict (not guilty of all charges)
- ☐ 6 judge directed verdict - not guilty
- ☐ 7 other *(please specify):*

  .....

  .....

27. Have all charges in this matter been finally decided?
- ☐ 1 yes ☛ ***Go to 28***
- ☐ 2 no ☛ ***Go to 30***

28. Date of last decision *(dd/mm/yy)* ☐☐/☐☐/☐☐

29. Type of decision *(tick one only)*
- ☐ 1 jury verdict (guilty of at least 1 charge)
- ☐ 2 jury verdict (not guilty of all charges)
- ☐ 3 judge-directed verdict - not guilty
- ☐ 4 guilty plea
- ☐ 5 no bill
- ☐ 6 other *(please specify):*

Pre trial details

30. Date of first offence relating to first trial *(dd/mm/yy)* ☐☐/☐☐/☐☐

31. Date of last offence (if more than one) *(dd/mm/yy)* ☐☐/☐☐/☐☐

32. Date matter first appeared in District Court *(dd/mm/yy)* ☐☐/☐☐/☐☐

33. Number of trial listings prior to first trial commencing ☐☐

34. Estimated length of first trial (days) *(use midpoint if range)* ☐☐☐.☐

35. Bench warrant issued prior to first trial
☐ 1 yes
☐ 2 no

36. Was matter transferred prior to first trial commencing?
☐ 1 yes
☐ 2 no

Other comments

37. Do you have any other comments about this matter? .....

.....

.....

.....

.....

.....

.....

.....

Thank you for completing this form.

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ISSN 1030 - 1046 • ISBN 0 7313 2644 X