

**AMERICAN BAR ASSOCIATION PRINCIPLES FOR JURIES AND
JURY TRIALS**
(2006; Revised 2016)

Principle 4: Jury Decisions Should Be Unanimous.

In civil cases, jury decisions should be unanimous wherever feasible. A less-than-unanimous decision should be accepted only after jurors have deliberated for a reasonable period of time and if concurred in by at least five-sixths of the jurors. In no civil case should a decision concurred in by fewer than six jurors be accepted, except as provided in C. below [by stipulation].

Studies suggest that where unanimity is required, jurors evaluate evidence more thoroughly, spend more time deliberating and take more ballots. In contrast, where unanimity is not required juries tend to end deliberations once the minimum number for a quorum is reached.

Unanimous verdicts also protect jury representativeness—each point of view must be considered and all jurors persuaded. Studies have shown that minority jurors participate more actively when decisions must be unanimous. A non-unanimous decision rule allows juries to reach a quorum without seriously considering minority voices, thereby effectively silencing those voices and negating their participation. This fosters a public perception of unfairness and undermines acceptance of verdicts and the legitimacy of the jury system.

Unanimity rule will not result in more hung juries. Juries rarely hang because of one or two obstinate jurors. Generally, when deadlocks occur, they reflect genuine disagreement over the weight of the evidence and arise within juries that had substantial differences in verdict preference at the outset of deliberations.

The need for accuracy, representativeness and public confidence in verdicts all argue for the unanimity standard in civil cases. In deference to local variation on this question, the [ABA] proposes that, in no case should a verdict be accepted that is concurred in by less than five-sixths of the jurors. Thus, on a jury of twelve, there may be no more than two dissenting votes; on a jury of fewer than twelve, no more than one

dissenter. On a jury of six, the [proposal] requires unanimity. The requirement that jurors deliberate for a reasonable period of time helps to ensure that minority voices will be heard during deliberations, even if a quorum is reached on the first vote.

VERMONT SUPREME COURT REPORT OF THE JURY POLICY COMMITTEE **(2003)**

The committee recommends elimination of the requirement of unanimous verdicts in civil cases and substituting a new rule making a vote of 80% of the jurors, a super-majority, a verdict of the jury.

Thirty states allow a non-unanimous verdict to be effective in civil cases; the most common rule (in 16 states) allows a verdict based on 5/6ths of the jury. Only a minority of states retain the unanimous verdict requirement for civil cases. The trend to non-unanimous juries in civil cases reflects a recognition that a unanimity requirement leads to three negative consequences: lengthy and protracted deliberations, hung juries and compromised verdicts.

Of the three, the Committee is most concerned with compromised verdicts which, it believes, have been a significant problem in Vermont. As Justice Louis Powell once observed: the unanimity requirement leads not to full agreement among the twelve, but to agreement by none and compromise by all. In civil actions where a jury must be unanimous to determine both liability and the amount of damages, the opportunity for one or two jurors to force a significant compromise is apparent.

Research also supports the conclusion that unanimous verdicts are no more reliable than a super-majority verdict, for example, in which a 10 of 12 is needed. Very often, the holdouts are not being rational. In one study, the confidence level among juries required to reach a 10-2 verdict was higher than among unanimity-rule juries. Even holdout jurors on super-majority-rule juries expressed greater confidence in the verdict than did the jurors on unanimity-rule juries.

Also, the Committee had before it the example of Massachusetts, as provided by Judge Peter Lauriat of the Massachusetts Superior Court. By

statute, Massachusetts provides that a vote of five/sixths of the jurors in a civil case shall constitute a verdict of the jury. Judge Lauriat reported that the judges support the super-majority requirement because it reduces hung juries and compromise verdicts.