

Hung juries and majority verdicts

By Dave Gooley – Wenona

Introduction

The *Jury Amendment (Verdicts) Act 2006* commenced on 26 May 2006. The legislation established that a majority verdict may be returned if a unanimous verdict cannot be returned, after jurors have deliberated for a reasonable time, having regard for the nature and complexity of the case (not less than 8 hours).

The reforms were prompted by resource efficiency concerns and a need to address community concerns after high profile hung trials such as the *Phuong Ngo case (2000)*, and the *Bruce Burrell trial (2005)*

At the time the legislation was introduced, concerns were raised as to whether will juries deliberate in the same manner if they know they only have to 'wait out' a dissenting juror? Additionally, does the existence of one to two dissenters indicate an element of '*reasonable doubt*'?

Two recent cases in which a majority verdict could not be reached despite extensive deliberation have answered some of these concerns. However, at the same time, these cases highlight the fact that majority verdicts are not a 'cure all' solution to the challenges posed by the nature of the adversarial trial and the use of juries.

Read the articles attached and answer the questions and activities below.

Robert Xie trial jury discharged after failing to reach verdict over Lin family murders

By Paul Bibby and Louise Hall, Sydney Morning Herald on 1 December 2015

Read more: <http://www.smh.com.au/nsw/robert-xie-trial-jury-discharged-after-failing-to-reach-verdict-over-lin-family-murders-20151130-glc39o.html#ixzz3t3LY9haK>

The wife of the accused Lin family murderer Robert Xie has proclaimed her husband's innocence after a jury was unable to reach a verdict following his marathon trial.

"My husband is innocent and we will never, ever give up," Kathy Lin declared outside court after the jury in the trial was discharged.

Mrs Lin asked the media to "please respect my privacy" before walking from the court flanked by a Salvation Army Chaplain and a friend.



Robert Xie leaves court after the jury was discharged. *Photo: Nick Moir*

The comments came after Justice Elizabeth Fullerton formally discharged the jury, which had been unable to reach a verdict despite persevering through a nine-month trial and 11 days of deliberations.

Mr Xie, 51, bowed to the jury but remained composed as Justice Elizabeth Fullerton thanked the jury for their efforts.

"This is not something you should take as a personal failure of any of you," Justice Fullerton said. *"I thank each of you for your toils, your good humour, hard work, your patience."*

"Ladies and gentlemen each of you are discharged."

Mr Xie's wife, Kathy Lin, who has supported her husband from the moment he was charged, burst into tears as the jury walked from the court room. For a few moments, the couple stood less than two metres apart, separated by a corrective services officer who stopped them from touching. As he left, Mr Xie's composure finally cracked and, despite his best efforts, he began to cry as he was taken away from his wife.

After the jury was discharged, Crown prosecutor Mark Tedeschi, QC, immediately indicated that the Director of Public Prosecutions was seeking a retrial and that Mr Xie should remain in custody until that occurred.

Justice Fullerton said that she would seek to have the new trial listed for late February or early March next year.

Mr Xie's defence barrister Graham Turnbull, SC, said he would be applying for his client's release on bail on Friday ahead of the new trial, but foreshadowed that he might not be representing him in the retrial.



"We will never, ever give up": Kathy Lin, wife of Robert Xie, leaves the Supreme Court. *Photo: James Brickwood*

Family bludgeoned to death

Mrs Lin has steadfastly maintained her husband's innocence from the moment he first came under suspicion for the murder of her brother Min "Norman" Lin, and Mr Lin's family in July 2009.

Mr Xie, 51, is accused of murdering Mr Lin, his wife Lily, their two sons Henry, 11, and Terry, 9, and Lily's sister Irene, in their North Epping home. The discovery of the family's bodies, bludgeoned to death in the bedrooms, had a devastating effect on the small, suburban community and shocked many across the state.

It took a further 20 months before Mr Xie was arrested over the crime, for which he has pleaded not guilty.

The prosecution had alleged that Mr Xie was driven by a combination of bitter resentment over what he saw as the Lins' favoured status within the broader family group, and a desire to get his hands on his brother-in-law's financial assets.

It says the former restaurant owner allegedly crept into their house using the key he and his wife had been given, and then beat the Lins to death with a hammer-like object in their bedrooms.

Kathy Lin gave sworn evidence during the trial that her husband was with her in bed on the night in question and never left their bed, effectively providing him with an alibi.

Mr Xie's defence maintained that one man, acting alone and in the dark, could not have killed five people in their bedrooms without any one escaping or raising the alarm.

The discharge followed two separate notes from the jury indicating that they were unable to reach a verdict.

The second note was followed by a direction from Justice Fullerton that she would accept a majority verdict from 11 of the 12 jurors. But the jury was still unable to agree.

At nine-and-a-half months, the trial was the longest murder trial involving a single accused in the state's history.

After the evidence and final directions were completed two weeks ago, Justice Fullerton ordered that the jury be sequestered together in a hotel while they deliberated so that they could focus on their task.

After discharging the jury, Justice Fullerton indicated that she would make an order that they be excused from any further jury service for the rest of their lives.

See 7.30 Report on Hung Jury in Xie Trial. www.abc.net.au/7.30/content/2015/s4363941.htm

Steven Fesus murder jury discharged after being unable to reach a verdict

By Paul Bibby Court Reporter, Sydney Morning Herald on 22 December 2015

The family of Jodie Fesus have waited more than 18 years for a resolution to the legal saga which followed her alleged murder.



Steve Fesus: Facing a re-trial. Photo: Nick Moir

And they will now have to wait many months more after a jury was unable to decide whether or not the young woman's husband, Steven Fesus, was responsible for the crime.

On Tuesday the jury in Mr Fesus' murder trial was formally discharged in the NSW Supreme Court after 13 days of deliberations and more than two months of evidence.

The Crown Prosecutor in the case, Joe Crespo, told the court that prosecutors intended to continue pursuing Mr Fesus, meaning that he will likely face a re-trial some time next year.

The presiding judge, Justice Helen Wilson, formally discharged the jury after they indicated that they were unable to reach a unanimous verdict, or a majority verdict of 10 jurors to one.

"You may feel somewhat frustrated and let down that this has been the outcome," Justice Wilson said. *"But it is not unknown for juries to be unable to reach a verdict...Because you are obliged to stick to your own view of the evidence, that can be the result."*

"You have spent a significant portion of this year involved in these matters. You have certainly suffered inconvenience. I thank you for your service."

It was the latest development in a case which began back in September 1997 when the body of Jodie Fesus, 18, was found partially uncovered in a shallow beach grave at the South Coast town of Gerroa.

It took nearly 16 years for police to arrest and charge Mr Fesus over the crime, an event which took place in July 2013. Mr Fesus has consistently maintained that he loved his wife and had no involvement in her death.

The matter will return to court on February 5 to set a new trial date.

Read more: <http://www.smh.com.au/nsw/jury-in-murder-trial-of-steven-fesus-discharged-after-being-unable-to-reach-a-verdict-20151203-glehn6.html#ixzz3yVrydscB>

Activities and Review Questions.

1. At the time the articles were published, how long had the trials been running in:
 - a. Xie Trial
 - b. Fesus trial
2. In both cases, the prosecution has indicated that they will pursue retrials. What implications have the hung juries had in terms of:
 - a. Resource efficiency for the community
 - b. Justice for the offender and the victim's families
3. The ***Jury Amendment (Verdicts) Act 2006*** states that a majority verdict may be returned if a unanimous verdict cannot be returned, after jurors have deliberated for a reasonable time, having regard for the nature and complexity of the case (not less than 8 hours). How long did each of the juries deliberate in a) the Xie Trial and b) the Fesus trial? Does this in your view constitute 'reasonable time for deliberation'?

Extension

4. Given the complexity of the evidence involved, are the Xie and Fesus trials examples of where judge alone trials may be more appropriate? Discuss.
5. What would be required for a judge alone trial to be granted?
6. To what extent have the introduction of majority verdicts balanced the rights of the offender with the needs of the community?

Link to themes:

- *The extent to which the law balances the rights of victims, offenders and society*
 - *The role of law reform in the criminal justice system*
7. How might you incorporate the above case studies if you were given a question based on one of the following 'Learn to' statements:
 - *Evaluate the effectiveness of the jury system in the criminal trial*
 - *Assess the effectiveness of the criminal trial process as a means of achieving justice*