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How Much Justice Hangs in the Balance? A New Look at Hung Jury Rates

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Concerns about hung juries have prompted calls for reform, but new research suggests these calls may be premature.

"12 ANGRY MEN" (1957)/THE KOBAL COLLECTION

How much justice hangs in the balance?

A new look at hung jury rates

by Paula L. Hannaford, Valerie P. Hans, and G. Thomas Munsterman

Earlier this year, U.S. district judge Claude M. Hilton declared a mistrial in the case of *United States v. Julie Hiatt Steele* when the seven-woman, five-man jury deadlocked, unable to reach a unanimous verdict. Steele had been charged with four counts of lying to the FBI and two federal grand juries in connection with the Independent Counsel's investigation of President Bill Clinton. In light of the jury's dispositions in the trial of Susan McDougal a month earlier, many political pundits attributed the disposition in the *Steele* trial to growing public hostility to the Independent Counsel's prosecutions stemming from the Monica Lewinsky investigation. The hung juries were regarded as a reflection not of the juries' inability to agree on the facts of these cases, but rather of their perception of the legitimacy of the prosecution.

But is that conclusion warranted?

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Could it be that the evidence introduced at trial was subject to multiple interpretations, and that reasonable people could disagree about the facts? Consider that both the defendant, Julie Hiatt Steele, and the state's key witness, Kathleen Willey, testified at trial that their stories concerning if and when Willey told Steele that President Clinton had groped her in the Oval Office had changed over time. Both admitted lying about various details of their respective stories to Independent Counsel investigators. And both had significant financial motives for doing so. Strictly from an evidentiary viewpoint, this case involved conflicting statements of two witnesses with dubious credibility, and little evidence to corroborate either witness's story. In short, it was not a particularly easy case for the jury to decide, regardless of the jurors' views about the motivations for prosecution. If jurors held diverging views about the worthiness of the prosecution, that would only have exacerbated the evidentiary problems.

The *Steele* case is but one of several recent high profile trials in which the jury was unable to reach a verdict on one or more of the charges. Other cases include the Susan McDougal trial, in which the jury acquitted McDougal of the obstruction of justice charge but hung on two charges of criminal contempt of court; the first Menendez brothers' trial, which was tried to dual juries—both of which hung; and the sentencing phase of the Terry Nichols trial, in which the jury hung on whether to impose the death penalty for his part in the Oklahoma City bombing. The media attention to these cases and their outcomes may be one factor contributing to the public perception that the American criminal jury is often unwilling or unable to reach consensus.

Indeed, reports of apparent increases in the number of hung juries in some jurisdictions have caused concern among policy makers. A 1995 report by the California District Attorneys Association cited hung jury rates in 1994 that exceeded 15 percent in some jurisdictions (the rates varied from 3 to 23 percent across the nine counties for which data were available).[1] In 1996, the District of Columbia Superior Court reported a higher-than-expected hung jury rate of 11 percent.[2]

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Susan McDougal (left) and Julie Hiatt Steele. Although the jury acquitted McDougal of the obstruction of justice charge, it hung on two charges of criminal contempt of court. One month later, in United States v. Julie Hiatt Steele, the jury deadlocked.

Why juries hang at these rates isn't clear, but some commentators have claimed that hung juries are the product of eccentric or nullifying holdout jurors and that reforms are in order. Most commentary focuses rather narrowly on the supposed failings of individual jury members. Jury deadlock is blamed on jurors' inability to comprehend the evidence and the law, on their unwillingness to follow the law, and on their illegitimate refusal to reach a verdict. Policy makers have responded to the reports of a hung jury problem with proposals to implement such procedures as non-unanimous verdicts, disqualification of "nullifying jurors," and a host of less radical jury modifications.

Yet very little information about actual hung juries exists, and most of what does is based on 40-year-old data from the classic jury study by Kalven and Zeisel.[3] Kalven and Zeisel identified some common characteristics about the hung juries that appeared in their sample, but admitted that their conclusions were based on only a cursory examination of this phenomenon. Subsequent studies of hung juries based on actual trials are extremely rare. The only known empirical study that specifically focused on hung juries was conducted in California in 1975.[4]

Difficulty in gathering data about hung juries is one possible explanation for the lack of substantive research. The key problem is that a hung jury is an interim rather than a final disposition in a case. Courts typically do not report information about interim dispositions such as hung juries as a separate category for statistical reporting purposes. Court caseload statistics generally include only final dispositions such as dismissal, guilty plea, acquittal, or conviction. Al-

1. Cal. Dist. Atty's Ass'n, NON-UNANIMOUS JURY VERDICTS: A NECESSARY CRIMINAL JUSTICE REFORM (1995).

2. "Jury Management: Practices and Possibilities" (materials distributed at the District of Columbia Superior Court Judicial Education Conf., April 26, 1996).

3. Kalven Jr. and Zeisel, THE AMERICAN JURY 453-463 (Boston: Little, Brown, 1966).

4. *See* Planning & Mgmt. Consulting Corp., FINAL REPORT: EMPIRICAL STUDY OF THE FREQUENCY OF OCCURRENCE, CAUSES, EFFECTS, AND AMOUNT OF TIME CONSUMED BY HUNG JURIES (1975); Flynn, *Does justice fail when the jury is deadlocked?* 61 JUDICATURE 129 (1977).

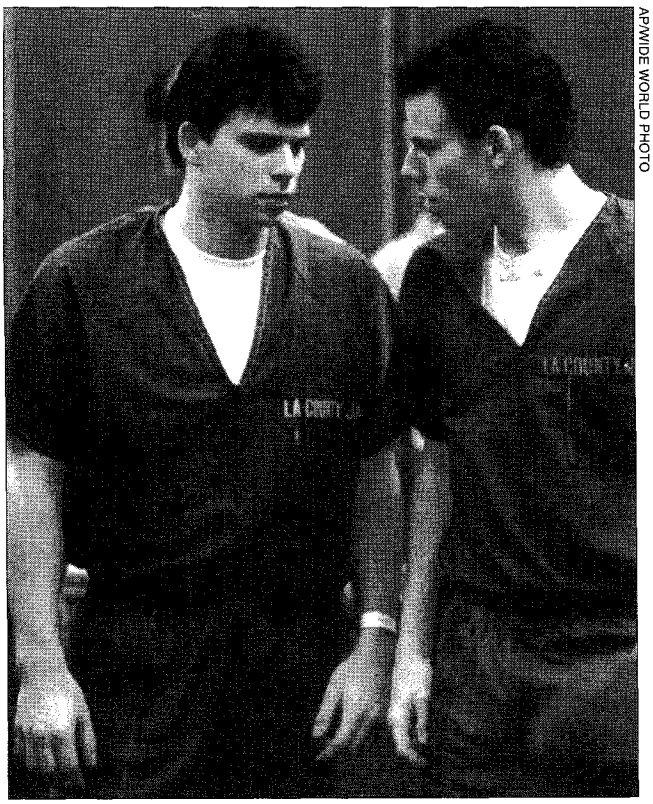
though interim information is usually available in individual court files, researchers find it difficult to identify and access these cases in a timely manner.

Studies of mock jury deliberations, so useful for other research topics, can provide only limited insights into the dynamics of hung juries. Mock jury studies are often conducted under time constraints, and thus don't provide mock jurors with a full opportunity to arrive at a consensus when serious disagreements occur. In addition, the real-life consequences of actual jury verdicts, such as juror concerns about erroneous conviction or acquittal, are missing in a mock jury setting. Controlled jury experiments also shed little light on exogenous factors such as the rate of plea bargaining, prosecution and defense litigation resources, and changes in local public sentiment concerning the criminal justice system. As a result, mock jury studies offer little information about the actual frequency of hung juries or their underlying causes.

This article discusses what is currently known about hung juries based on existing empirical research and examines some preliminary data about the contemporary incidence of hung juries in the federal courts and several state courts. The paucity of information on hung jury rates highlights the need for a rigorous and system-wide examination that extends beyond the scope of the jury itself and encompasses the institutional characteristics of each jurisdiction and how those characteristics affect the types of cases that are presented to juries.

What's known

The American Jury, the classic study conducted by Kalven and Zeisel in the mid-1950s, was the first to focus, albeit briefly, on the phenomenon of hung juries. Using a sample of 3,576 criminal trials conducted in 1955-56 and 1958, the authors reported that 5.5 percent resulted in hung juries. Although Kalven and Zeisel acknowledged that some judges in their sample may not have reported mistrials, leading to an undercount of hung juries, their work apparently forms the basis for the conventional wisdom that a hung jury rate of 5 percent is the norm—and that rates exceeding this indicate a serious problem.



APWIDE WORLD PHOTO

The Menendez brothers were tried to dual juries, both of which hung.

Kalven and Zeisel analyzed the types of cases leading to hung juries and identified a few case characteristics that appeared to be related. Judges surveyed for the study attributed most hung juries to evidentiary factors. When the judge rated the evidence as easy and the case was clear for one side or the other, just 2 percent of the juries hung. Juries hearing clear cases with difficult evidence hung at a 5 percent rate. However, in cases in which the judge rated the trial evidence as close—that is, it did not strongly favor either the prosecution or the defense—10 percent resulted in hung juries, whether the evidence was seen as easy or difficult. Furthermore, post-trial juror interviews revealed that juries that eventually hung tended to have substantial splits of opinion among jurors at the beginning of deliberations.

The only empirical study to focus exclusively on actual hung juries was conducted in California in 1975. Under a contract from the California Office of Criminal Justice Planning, the Planning and Management Consulting Corporation attempted to study four aspects of hung juries: their frequency, their underlying causes, their effects, and the amount of time they consume.[5] The study, which focused on the 10 largest counties in California (representing 76 percent of the state population and 81 percent of all superior court trials), studied all hung juries from 1971 through 1973. Due to data collection problems and the lack of detailed records on case characteristics, the researchers were unable to examine the causes and effects of hung juries.

The study did produce some interesting findings, however. The frequency of hung juries was 12.2 percent, rather than the expected 5 percent. The rate varied from a low of 5.1 percent in San Bernadino County to a high of 21 percent in Alameda County. Some of the periods of extremely high hung jury rates corresponded to periods of accelerated criminal dockets in which the courts attempted to catch up with backlogs of criminal cases. (Evaluations of expedited case management systems in criminal dockets, however, have never identified increased hung jury rates as a possible consequence.) There was no correlation between the incidence of hung juries and the type of cases.

In 1995, the California District Attorneys Association reported on

5. *Id.*

hung jury rates for four of the ten counties included in the 1975 study.[6] The data show a strikingly similar pattern across the two decades. Table 1 summarizes the hung jury rates of the four counties for the reporting periods 1971-73 and 1992-94.

Table 1 Hung jury rates for selected California county courts

County	1971	1972	1973	1992	1993	1994
Alameda	16%	25%	22%	N/A	8%	15%
Contra Costa	24%	16%	9%	N/A	18%	19%
Los Angeles	12%	10%	9%	14%	13%	14%
Orange	5%	14%	8%	11%	9%	7%

These statistics are notable for several reasons. The first is that high levels of hung juries are not a recent phenomenon in the California courts. Recent events often blamed for the problem—such as the Rodney King beating case verdict and riots, the Menendez hung juries, California Proposition 115 (on criminal justice reform), and Proposition 13 (on property tax reform)—are probably unrelated. The second is that hung jury rates in excess of 10 percent—twice the usually quoted 5 percent rate—appear regularly. Third, there is great variation from year to year and from court to court.

Methodological issues

A great deal of caution should be exercised when examining aggregate statistics concerning hung juries, since a number of definitional and exogenous factors may affect the likelihood that a jury will be unable to reach a verdict in any given case.

The definitional problem is the most significant issue. How one defines a hung jury necessarily affects its measurement. The 1975 California study defined a hung jury as one "unable to agree upon a verdict with respect to one or more defendants and one or more charges."[7] Thus, if several defendants were tried together and each charged with multiple offenses, a jury's inability to reach a decision on any one of the charges would lead to the case being defined as a hung jury. Other jurisdictions appear to use a much narrower definition: for example, whether the jury hung on the most serious charge.

In the context of statistical reporting by courts, this definitional issue becomes critically important in complex cases such as those involving multiple charges or multiple defendants. For purposes of caseload management assessments, courts tend to measure outcomes primarily on the basis of whether an outcome completely disposes of the case. Thus, a trial in which the jury hangs on the most serious charge, but convicts on a lesser charge, is likely to be reported for court statistics purposes as a conviction unless the prosecution indicates its intention to retry the most serious charge.

Another related factor is the pretrial decision-making process: the prosecutor, the defense counsel, and the court all make decisions that determine the relative complexity of the case and the closeness of the evidence presented to the jury. Kalven and Zeisel found that case complexity and weight of the evidence were both related to the frequency with which juries hung.[8] Thus, cases in which the prosecution pursues a comparatively aggressive charging policy—for example, by prosecuting all relevant charges rather than focusing on the most serious offenses—may affect the likelihood that the jury will hang on one or more charges. It could amplify the level of complexity and the opportunity for jurors to disagree. However, it may also provide jurors who disagree about significant issues during deliberations more opportunity to arrive at a compromise verdict.

If the prosecutor's office employs a liberal plea agreement policy, only trying cases in which the evidence is quite substantial and unambiguous, it should reduce the number of hung juries. Thus, the ratio of plea agreements to total dispositions may be a critical indicator of the types of cases that juries in any given jurisdiction are asked to decide.

A defendant's litigation strategy of waiving the right to a jury trial and choosing a bench trial may also have an impact on the types of cases presented to juries and the outcomes that those juries render. A further complicating factor is whether the right to waive a trial by jury is the exclusive right of the defendant, or whether the prosecution must concur in that decision. Twenty-five states, the District of Columbia, and the federal courts permit prosecutors to request a jury trial or override a defendant's waiver of a jury trial.[9]

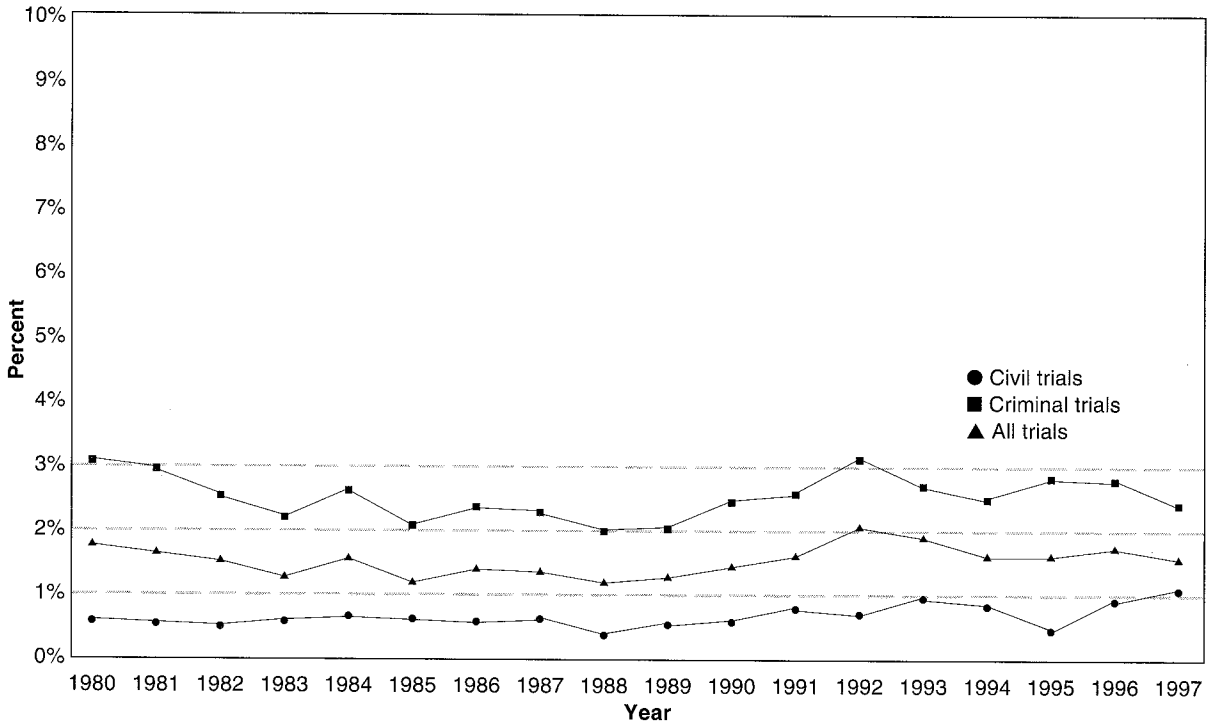
Finally, the comparative resources of the prosecution and defense counsel may be a factor in hung jury rates. Recall that the California study of hung juries in 1975 found that hung jury rates increased during periods of accelerated criminal dockets to clear backlogs of criminal cases.[10] This relationship suggests that prosecutors during these periods may have had insufficient time to adequately prepare the cases for trial. Although the prosecution always has the burden of proof in criminal cases, the extent of defense resources to rebut the state's evidence may also be a factor in the jury's ability to reach a definitive judgment.

Current hung jury rates

To examine whether and how these and other factors affect the incidence of hung juries, the National Center for State Courts, with funding by the National Institute of Justice, has begun compiling aggregate filing and

6. Cal. Dist. Atty's Ass'n, *supra* n. 1.
7. Planning & Mgmt. Consulting Corp., *supra* n. 4, at 2-4.
8. *Supra* n. 3, at 457.
9. Smith, *Empowering Prosecutors: Movement to Allow Equal Rights to Jury Trial Has Judges Fearing Overload,* ABA JOURNAL (March 1999), at 28.
10. Planning and Mgmt. Corp., *supra* n. 4, at 4-18 to 4-19.

Figure 1 Federal hung jury rates (1980-1997)



disposition statistics in criminal felony cases in state and federal courts. This is part of a larger study to investigate the underlying causes of hung juries and, if hung juries are found to constitute a significant problem, to propose appropriate responses by the criminal justice community. Although these aggregate statistics may not reveal an entirely accurate view of the frequency of hung juries due to the definitional problems discussed above, they offer a useful starting point.

Federal courts: low, stable rates. Federal court statistics provide a common reporting framework across federal court jurisdictions. Therefore, we first examine the rates of hung juries in federal civil and criminal trials from 1980 to 1997 using data provided by the Administrative Office of the U.S. Courts.

Perhaps the most striking aspect of the federal hung jury data is the overall low rate (see Figure 1). Indeed, the number of hung juries during this period is almost insignificant given the total number of jury trials. The highest number of hung juries is 203 out of a total of 9,971 jury trials in 1992. Also striking is the relative stability of hung jury rates over time. From 1980 to 1997, the total federal hung jury rate varies only .8 percent, from a low of 1.2 percent of all jury trials in 1985 and again in 1988, to a 17-year high of 2.0 percent in 1992.

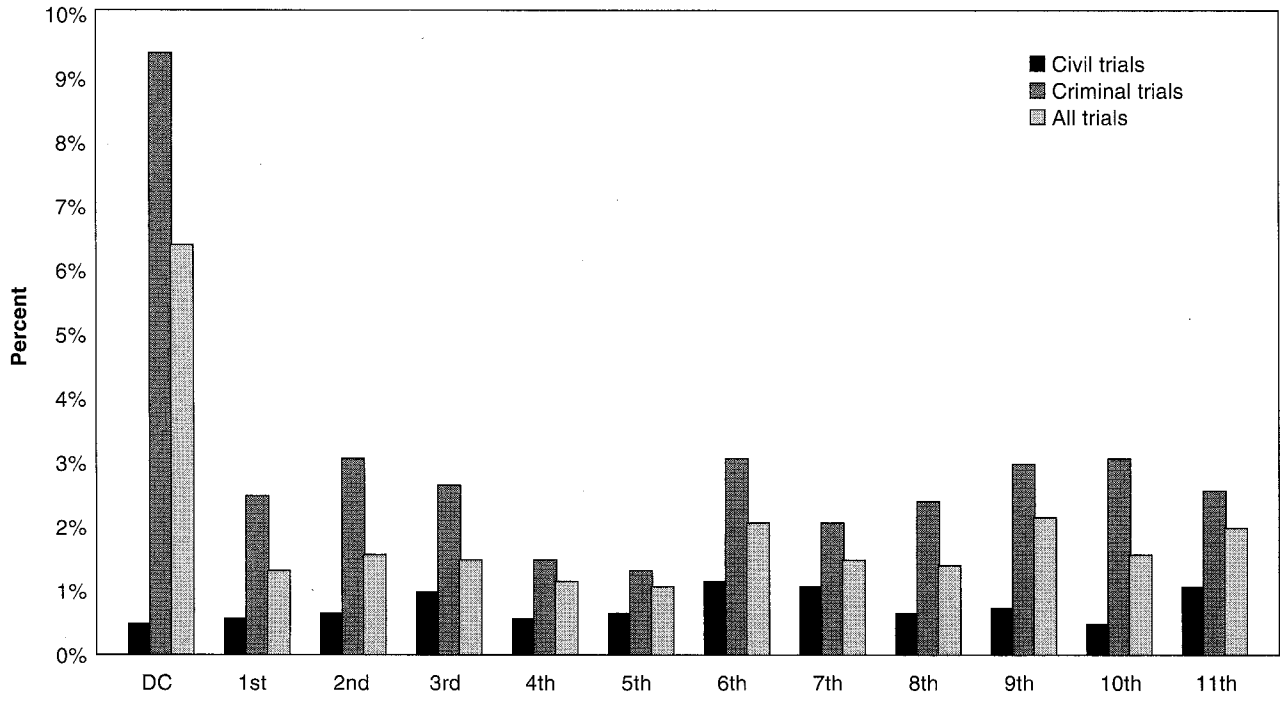
One clear pattern is that civil juries are much less likely to hang than criminal juries. Criminal hung jury rates during this period range from a low of 2.1 percent to a high of 3.0 percent—higher and more variable rates than those of civil hung juries. The proportion of criminal jury trials in federal courts surpassed 50 percent of the total jury caseload from 1990 to 1993, which appears to explain the peak in hung jury rates during this same period.

The comparatively low rate of hung juries in civil cases may be a function of several factors. Under federal Rules of Civil Procedure, federal civil juries consist of only 6 jurors, rather than the 12 required for criminal juries, and both civil and criminal jury verdicts must be unanimous. Garnering consensus among a smaller number of jurors in civil trials may be a less difficult task, resulting in fewer hung juries.[11] Furthermore, the burden of proof is lower in civil cases, and they may be less likely than criminal cases to contain issues and evidence that inalterably divide jurors.

With the exception of the D.C. Circuit, a pattern of low, stable rates of hung juries characterizes each of the federal court circuits (see Figure 2). Upon aggregating the hung jury data from 1994 to 1997, we find very little variance among the circuits. The Ninth Circuit, which encompasses the federal district courts of Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington, has the second highest total rate of hung juries. The Fifth Circuit (Louisiana, Mississippi, and Texas) has the lowest total rate. With respect to criminal hung jury rates, the Second Circuit moves into second place behind the D. C. Circuit, while the Ninth Circuit falls to fourth place behind the Sixth and

11. *See* Saks, *The smaller the jury, the greater the unpredictability*, 79 JUDICATURE 263 (1996).

Figure 2 Percentage of trials ending in hung juries, by federal circuit (1994-1997)



Tenth circuits, which are tied for the third highest rates. Again, the relative proportion of criminal versus civil jury trial caseloads appears to be the major factor in variations in overall hung jury rates.

The D.C. Circuit rates, however, paint a very different picture—one attributable to higher hung jury rates in criminal trials. There, the total hung jury rate averaged 6.5 percent during the 1994-97 period, with a 9.5 percent criminal hung jury rate. This comparatively high rate of hung juries in the D.C. Circuit is similar to rates reported for the D.C. Superior Court. The higher rate is specific to criminal trials: the civil rate, at .6 percent during the same period, is actually tied with the Tenth Circuit for the lowest hung jury rate for civil trials.

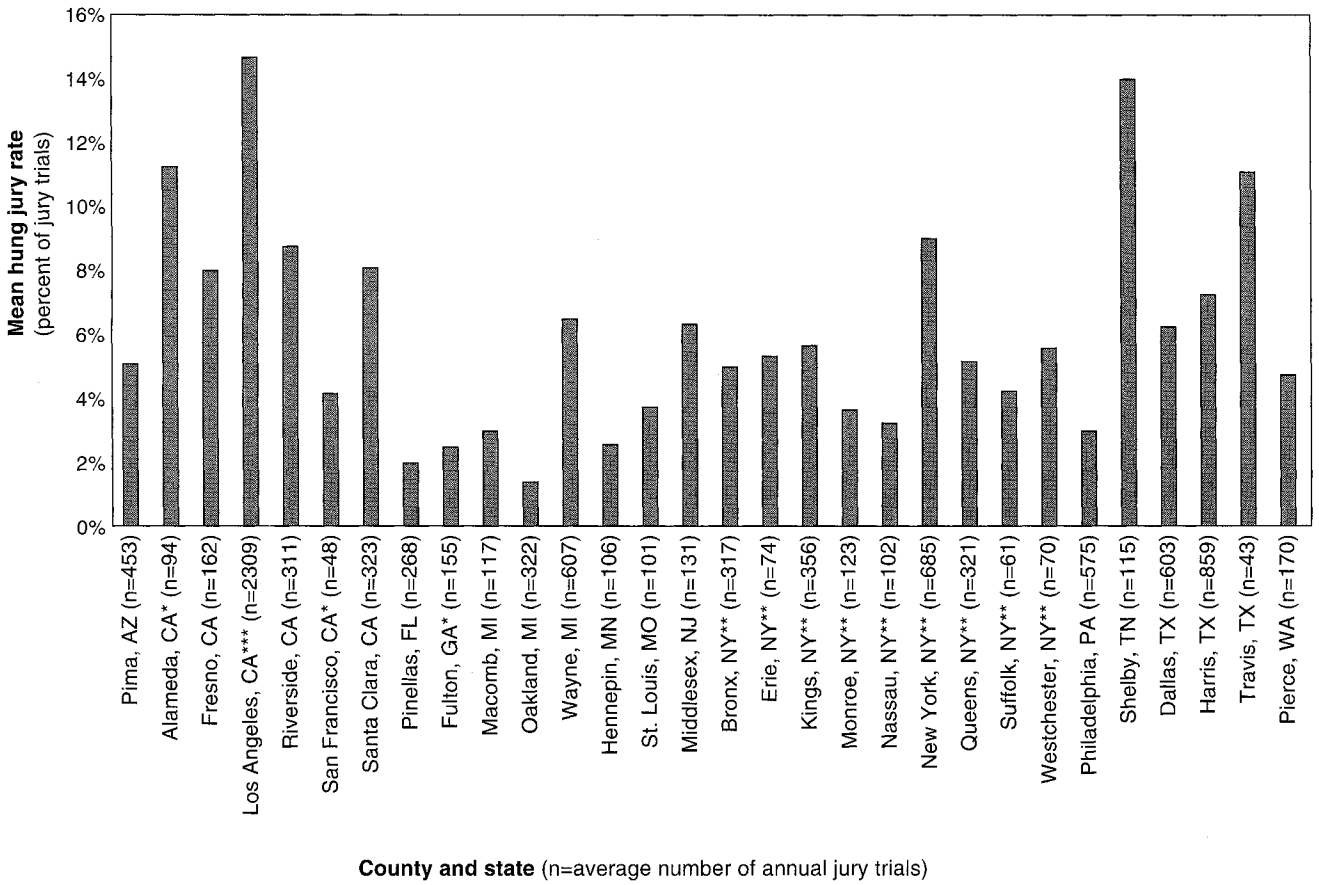
What could possibly account for such a dramatic difference between the D.C. Circuit and the other federal circuits? One possibility is the relatively small sample size included in the D.C. Circuit statistics. For the entire four-year period, the D.C. Circuit tried only 327 criminal jury trials—a significantly smaller number than the average circuit caseload of 1,364 criminal trials. With a low base of trials, even a modest increase in the absolute number of hung juries would produce a sizable impact on the hung jury rate. Indeed, in 1996 the number of hung juries in the D.C. Circuit was only 8 of a total of 58 criminal trials—the highest hung jury rate (13.8 percent) of the four-year period.

This pattern also appears in a number of the individual district courts that make up the federal circuits. The Western District of Kentucky reported 6 hung juries of 101 criminal trials (5.9 percent), the Western District of Arkansas reported 6 hung juries of 58 criminal trials (10.3 percent), and the Northern District of Missouri reported 6 hung juries of 78 criminal trials (7.7 percent) during this period. Although the rates themselves appear high, the absolute numbers of hung juries suggest a less alarming picture.

Another unique characteristic of the D.C. Circuit is its relatively small, and overwhelmingly urban, geographic jurisdiction. The D.C. Circuit is the only federal circuit that consists of a single city. The other circuits all encompass substantially larger geographic areas with both urban and rural locations and variable population densities. The inclusion of rural areas of the country could mask higher hung jury rates in urban areas.

A closer look at the individual district court statistics tends to support the proposition that higher hung jury rates could be typical of high density and heterogeneous jurisdictions. The Southern District of New York, which includes all of the New York City boroughs except Brooklyn, has a criminal hung jury rate of 4.2 percent, almost double that of the rest of the district courts within the Second Circuit. The Northern District of California, which draws its cases mainly from the San Francisco Bay area, has a criminal hung jury rate of 6.0 percent, while the Southern District of California (San Diego) has one of 6.3 percent. In the Tenth Circuit, the highest individual criminal hung jury rate among the district courts—7.8 percent—occurs in the District of New Mexico (Albuquer-

Figure 3 Hung jury rates in state courts (average 1996-1998)



* Based on 1998 data only.
** Based on Jan. 1998-June 1999 data only.
*** Based on Jan. 1996-June 1998 data only.

que). Thus, the comparatively high hung jury rate in the D.C. Circuit may be typical of heterogeneous urban jurisdictions rather than a problem unique to the D.C. Circuit.

Examining the frequency of hung juries in federal courts has several advantages, one of which is a uniform reporting system for trial court statistics. A second advantage is relative consistency across jurisdictions with respect to caseload composition and applicable law and procedures. Both of these advantages are helpful for making meaningful comparisons among federal courts.

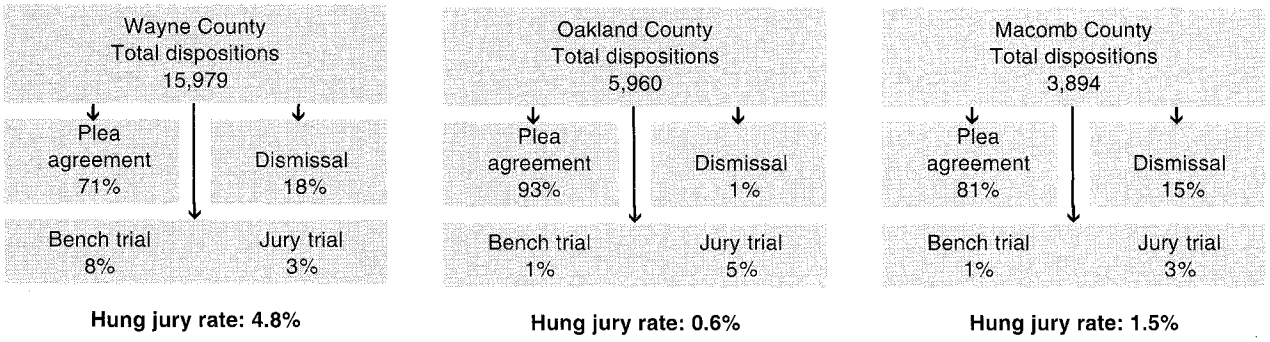
State courts: an incomplete picture. The advantages of legal and reporting uniformity are not found in the state courts, where the vast majority of criminal trials take place. Approximately 5,000 criminal defendants are tried in federal court each year,[12] compared to an estimated 128,000 criminal trials in state courts.[13] Moreover, the types of criminal cases filed in federal courts are limited to those crimes articulated in federal statutes. The caseloads of federal and state courts are quite different. Unfortunately, it is also true that state court statistics concerning the frequency of hung juries are not subject to uniform reporting criteria. As we noted above, only a handful of courts compile statistics about interim dispositions such as hung juries, making it very difficult both to collect and evaluate the data.

Figure 3 provides a preliminary view of hung jury rates in several large, urban state courts. In contrast to the 1975 California study discussed earlier, the annual rates for each court were highly correlated, so these results reflect the three-year average hung jury rate in each court for 1996 through 1998. The information was provided either by the courts themselves or, in some cases, by the prosecutors' offices. Because of possible differences among courts' definitions of "hung juries," the results should not be used to rank these courts ac-

12. Administrative Office of the United States Courts, JUDICIAL BUSINESS OF THE UNITED STATES COURTS, Table D-4, "Criminal Defendants Disposed of, by Type of Disposition and Offense, During the Twelve-Month Period Ended September 30, 1996" (1997).

13. The estimate was calculated based on the known proportion of criminal trials conducted in 28 unified and general jurisdiction courts, then extrapolated to all state courts based on the proportion of the populations of the 28 states to the U.S. population. *See* Ostrom and Kauder, eds., EXAMINING THE WORK OF STATE COURTS, 1997: A NATIONAL PERSPECTIVE FROM THE COURT STATISTICS PROJECT 61 (Williamsburg, Va.: National Center for State Courts, 1998).

Figure 4 Criminal dispositions for Wayne County, Oakland County, and Macomb County, Michigan (1998)



cording to their respective hung jury rates. They do, however, provide a compelling illustration of the tremendous variability in hung jury rates from community to community.

The average hung jury rate for the 30 jurisdictions from which we were able to gather data was 6.2 percent, only slightly higher than the 5.5 percent rate reported by Kalven and Zeisel in 1966. Reported rates ranged from a low of 1.5 percent in Oakland County, Michigan, to a high of 14.8 percent in Los Angeles County, California. These contemporary figures, as well as those from the 1975 California study, indicate that hung jury rates may fluctuate greatly from court to court, if not necessarily from year to year.

These numbers also support the contention that lower hung jury rates across a broad geographical area can obscure higher rates in discrete jurisdictions. The average hung jury rate of 6.2 percent for these state courts is considerably higher than those typically reported by the federal courts during the same period. Indeed, the rate is very close to the 6.5 percent rate reported by the D.C. Circuit for 1994 through 1997. The state courts represented here are mostly located in urban and heterogeneous communities and encompass a much smaller geographic area than the federal circuits.

We suspect that complete hung jury data from all jurisdictions would probably show lower overall rates than the 6.2 percent rate of these urban courts. Data from New York state illustrate this. In addition to the 9 New York courts shown in Figure 3, we were able to obtain county data for all 62 counties in New York state from January 1998 through June 1999. During this 18-month period, the statewide hung jury rate was 2.8 percent, not much higher than the 1.6 percent hung jury rate for the combined New York federal district courts. Rates in individual counties ranged widely, from 0 percent for 38 counties to 18.8 percent (3 of 16 jury trials) in Clinton County.

Exogenous factors

The difficulty in determining the precise definition of a "hung jury" makes it inappropriate to make conclusive statements about the relative frequency of hung juries in state courts. However, the available data can provide a starting point for exploring how exogenous factors such as jurisdictional characteristics, plea and dismissal policies, and preferences for bench versus jury trial affect hung jury rates.

As an example of the differential effect of exogenous factors, let us examine the caseload disposition for the three Michigan courts included in our data set. Wayne County (Detroit), Oakland County (Pontiac), and Macomb County (Mount Clemens) are contiguous counties, but differ substantially with respect to their hung jury rates. Wayne County reported rates of 6.7 percent in 1996, 8.2 percent in 1997, and 4.8 percent in 1998. Oakland County's rates for the same time period were 1.5 percent, 2.3 percent, and 0.6 percent, respectively. Macomb County's rates were 5.6 percent, 1.8 percent, and 1.5 percent, respectively (see Figure 4).

Certainly, one possible factor for this difference may be the composition of each county's respective jury pool.[14] Wayne County has a population of approximately 2 million. The median household income is approximately $28,000. Seventy percent of its residents have a high school education, while 14 percent have a college education. Forty-four percent are nonwhite. Oakland County, in contrast, has a population of approximately 1.2 million. The median household income is approximately $43,000. Eighty-five percent of Oakland County residents have a high school education, and 30 percent have a college education. Eleven percent are nonwhite. Macomb County has a population of approximately 780,000. The median household income is approximately $47,000. Seventy-seven percent of the county's residents have a high school education; 13.5 percent have a college education. Just 3.7 percent of its residents are nonwhite.

14. The following data on the population, crime rates, and criminal caseloads of Wayne, Oakland, and Macomb counties are from Gaquin and Littman, eds., 1998 COUNTY AND CITY EXTRA: ANNUAL METRO, CITY AND COUNTY DATA BOOK 292, 294-295 (Washington, D.C.: Bernan Press, 1998).

The crime rate and criminal caseloads for these communities also differ appreciably. The FBI crime rate per 100,000 population in Wayne County in 1998 was 8,580, of which 1,400 (16 percent) is attributed to violent crime. The Oakland County crime rate per 100,000 population for that year was 4,068, of which 342 (8 percent) is attributed to violent crime. For Macomb County, the crime rates were not available. The Wayne County trial rate per 100,000 was 89.4 in 1998 compared to 31.2 in Oakland County and 17.7 in Macomb County.

Criminal caseload management also differs markedly across the three communities, and these differences might well affect the types of cases presented to juries. The data are relatively stable during the 1996-98 period for the three courts, so for illustration purposes we will limit our discussion to 1998. One major distinction among the three jurisdictions is the proportion of criminal cases disposed of by trial versus pretrial dispositions such as pleas or dismissals. In Wayne County, 89 percent of criminal cases are disposed of without a trial, compared to 94 percent in Oakland County and 96 percent in Macomb County. Thus, the proportion of criminal cases disposed of by trial in Wayne County is nearly double that of Oakland County and nearly four times that of Macomb County. The Wayne County trial rate is also nearly three times higher than the estimated national trial rate for criminal dispositions.[15]

There are also striking differences in the ratio of bench versus jury trials in these courts. In Wayne County, bench trials accounted for 72 percent of the total trials conducted in 1998, as compared to only 17 percent and 12 percent in Macomb and Oakland counties, respectively. This is surprising given the comparable conviction/acquittal ratios in judge versus jury trials in the three courts. Only in Macomb County was the rate differential significant enough (64 percent in bench trials versus 48 percent in jury trials) that criminal defendants would be particularly motivated to seek a decision in one forum rather than the other. One possibility, however, is that defendants' *expectations* of trial outcomes for specific types of crimes (e.g., drug-related, violent, or property crimes) affect the criminal caseload composition of the two types of trials.

As a result of these differences in criminal case management, Oakland County and Macomb County juries hear the vast majority of criminal cases that go to trial, but compared to Wayne County these cases are a much smaller proportion of the total criminal caseload. If the higher pretrial disposition ratio in Oakland and Macomb counties reflects a prosecution policy to dispose of cases in which a jury would have difficulty coming to a consensus based on the evidence, one would expect to find a relatively low hung jury rate—as is the case here. In contrast, Wayne County juries hear only one quarter of the criminal cases that proceed to trial, but depending on the nature of the evidence in those cases, juries may have a more difficult time achieving consensus.

Is jury reform warranted?

The information we have collected thus far does not support the belief that hung jury rates in criminal cases are a widespread problem. The findings from federal courts reveal a long-term pattern of hung jury rates for both civil and criminal cases that is well below the 5 percent rate reported by Kalven and Zeisel. The D.C. Circuit has a relatively high hung jury rate, but that rate is based on relatively small raw numbers of hung juries. Moreover, that jurisdiction is unique among the federal district courts for its extraordinarily urban and heterogeneous characteristics.

State court data on hung juries, where they exist at all, are difficult to interpret in the absence of uniform reporting criteria and a common definition of a hung jury. The data gathered thus far suggest that hung jury rates may be as much a function of jurisdictional characteristics as a product of jurors' attitudes and beliefs.

Concerns about hung juries have prompted calls for reforms such as non-unanimous verdicts, removal of "nullifying jurors," aggressive prosecution of jurors who fail to disclose personal information during voir dire, and a host of less draconian measures aimed at individual jurors. Yet the research so far suggests that other factors, such as the nature of the jurisdiction and caseload management, are linked to hung jury rates. That shouldn't be surprising. The types of cases that juries are asked to decide are very much the result of prosecution charging, plea agreement policies, prosecution and defense counsel resources, and choices about judge versus jury trials. To obtain a complete picture of why juries hang, both individual and contextual factors need to be taken into account.

The next phase of the research project from which this article developed aims to do this. The National Center for State Courts is planning to conduct an in-depth examination of hung juries in criminal felony cases across multiple sites, in which hypotheses about the causes of hung juries will be tested. The methodology of the study will include not only statistical analysis of hung jury rates but also the collection of information from judges, attorneys, and jurors in jury trials. Researchers will be able to compare the cases in which juries reach a verdict with those in which they do not. With fuller information about what distinguishes hung jury trials from other cases, the project should be able to identify the causes of hung juries—and, more to the point, determine whether hung juries constitute a serious problem that requires criminal justice reform.

15. Ostrom and Kauder, *supra* n. 13, at 60.