

CHAPTER TWO – HUNG JURY RATES IN STATE AND FEDERAL COURTS

A recurring question in much of the literature on hung juries is what proportion of jury trials result in deadlock. To answer this question, we collected information about felony jury trial dispositions for federal courts from 1980 to 1997, and felony case dispositions from the 75 most populous counties in the United States for calendar years 1996 through 1998. The Administrative Office of the U.S. Courts provided the federal court data. For the state court data, we reviewed the annual reports from state courts, many of which provide county-by-county details about case filings and dispositions. If the information from those sources was insufficient, we contacted the courts directly and asked if they could provide data. Many courts were only able to provide partial information. For example, some could provide the number of jury trials that occurred in a given year, but not the corresponding number of bench trials. Other courts could provide detailed information about jury and bench trials, but only incomplete information about non-trial dispositions such as plea agreements and dismissals. Using these various approaches, we were able to gather at least partial information for an average of 46 counties for the three-year period, and complete information for 30 of the counties.

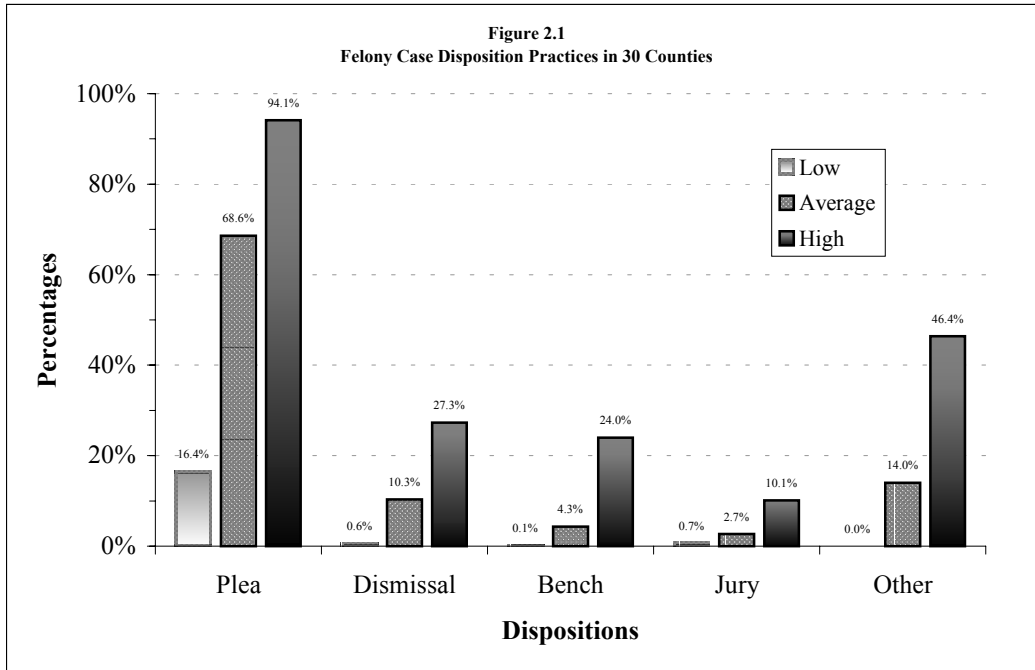
Information about the number of hung juries was particularly problematic for two reasons. First, a hung jury is an interim disposition from the court's perspective. It does not completely dispose of the case, and consequently many courts do not record this information on their automated case management system. To collect the information would require a file-by-file review of all the felony jury trials held during each year. In some jurisdictions, the courts referred us to the prosecutors' offices for detailed case information. But this source of information revealed a complication about measuring hung juries that we had not anticipated – namely, what constitutes a hung jury for the purpose of our study? Did the jury have to deadlock on all of the criminal charges it considered during deliberation? Or just on any charge? In trials with multiple defendants, did the jury have to deadlock on all defendants? Or only on one to be considered a hung jury? We discovered that between courts and prosecutors' offices, and even among courts themselves, there is no uniform definition used for counting the number of hung juries.⁹⁴

Felony Dispositions in State Courts

What we found for these 30 counties was a surprising amount of variation in felony case disposition practices. See Figure 2.1. For example, the three-year average plea rate for all 30 counties was 68.6%, but three-year rates for individual counties ranged from a low of 16.4% in El Paso, Texas to a high of 94.1% in Santa Clara, California. We found similar variations in all of the major categories of case dispositions.⁹⁵ This made us wonder to what extent hung jury rates are related to extraneous case processing practices, rather than intrinsic characteristics of cases or juries.

⁹⁴ Indeed, in many instances neither the courts nor the prosecutors' offices were able to tell us what definition was used for reporting purposes when they provided us with data.

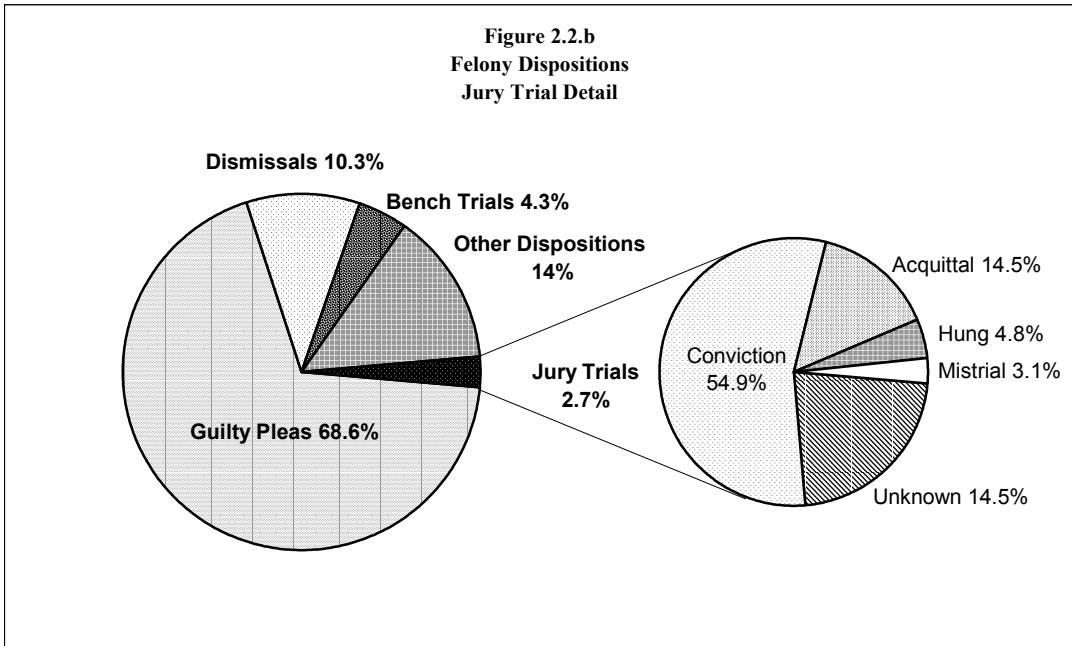
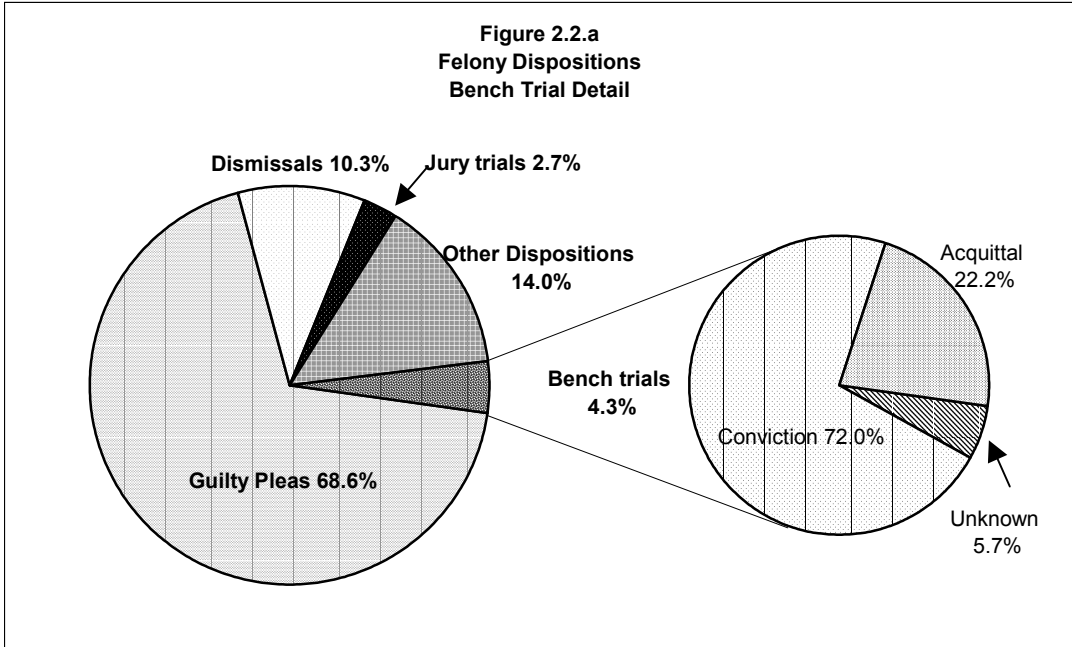
⁹⁵ To what extent these variations reflect actual differences in felony case processing practices versus differences in reporting criteria is unknown.



Bench trials accounted for 4.3% and jury trials accounted for 2.7% of all felony dispositions. Four of the courts⁹⁶ were not able to provide a breakdown of convictions and acquittals for bench trials (5.7% of all bench trials) and another four were not able to provide this breakdown for jury trials (22.7% of all jury trials).⁹⁷ Of those courts that did provide judgment and verdict information, we found that judges and juries convicted at close to the same rates. See Figure 2.2.a and Figure 2.2.b. Judges convicted in slightly more than three quarters of the cases (76.4%) compared to 71.0% for juries. Judges acquitted in 23.6% of the cases compared to 18.7% for juries. The 5% difference in both conviction and acquittal rates appears in the jury mistrial rate (6.2% hung jury and 4.0% other mistrial).

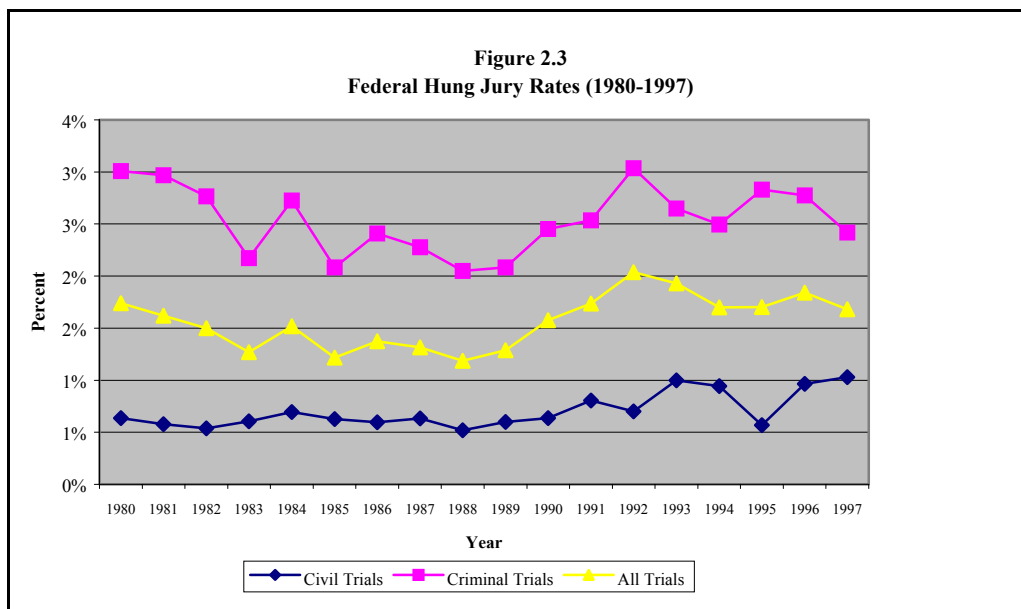
⁹⁶ Pima, Arizona; Marion, Indiana; Cuyahoga, Ohio; and Pierce, Washington.

⁹⁷ Los Angeles, California; Marion, Indiana; Cuyahoga, Ohio; and Pierce, Washington.



Hung Juries in 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. See Figure 2.3.



Perhaps the most striking aspect of the federal hung jury data is the overall low rate. 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%, with a low of 1.2% of all jury trials in 1985 and again in 1987, to a 17-year high rate of 2.0% in 1991.

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% to a high of 3.0%, which are higher and more variable than civil hung jury rates. The proportion of criminal jury trials in federal courts surpassed 50% 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 juries typically consist of only 6 jurors (compared to 12 for criminal juries).⁹⁸ Garnering consensus among this smaller number of jurors may be a less difficult task, resulting in fewer hung juries.⁹⁹ Both civil and criminal jury verdicts must be unanimous under federal rules of procedure.¹⁰⁰ Furthermore, the burden of proof is lower in civil cases and civil cases may be less likely than criminal cases to contain issues and evidence that inalterably divide jurors.

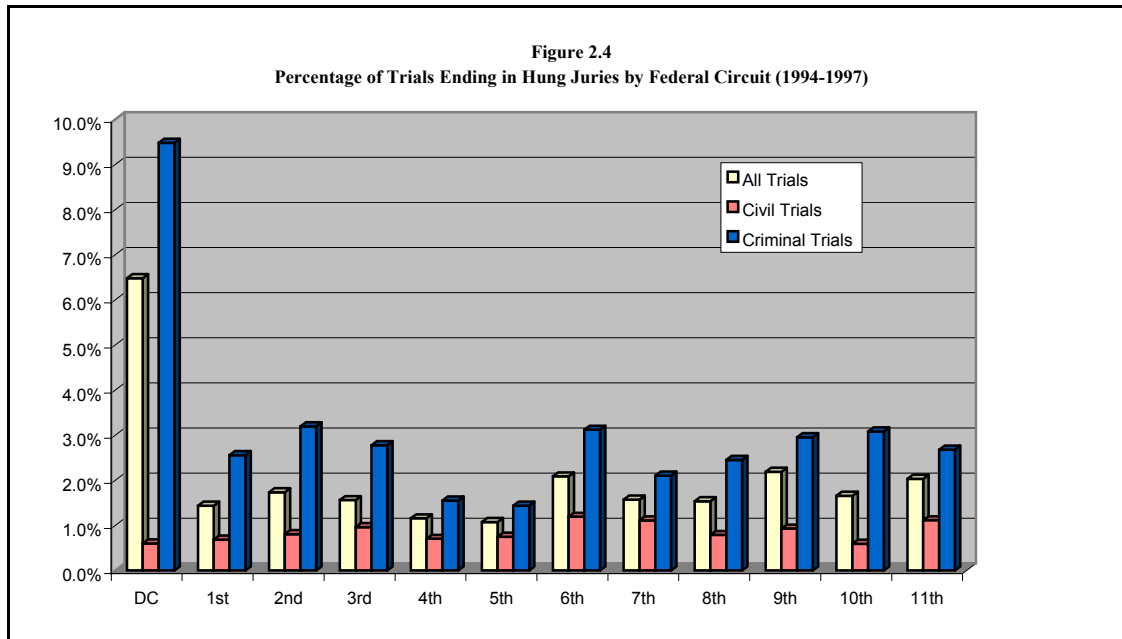
With the exception of the D.C. Circuit, which we will discuss shortly, a pattern of low, stable rates of hung juries characterizes each of the federal court circuits. See Figure 2.4. Aggregating the hung jury data from 1994 to 1997, we find very little variance among the circuits. The Ninth Circuit, encompassing the federal district courts of Alaska, Arizona,

⁹⁸ FED. R. CIV. PROC. Rule 48.

⁹⁹ See Michael J. Saks, *The Smaller the Jury, the Greater the Unpredictability*, 79 JUDICATURE 263 (1996).

¹⁰⁰ FED. R. CIV. PROC. Rule 48; FED. R. CRIM. PROC. Rule 31.

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 Tenth Circuits, which are tied. Again, the relative proportion of the criminal versus civil jury trial caseload appears to be the major factor in variations in overall hung jury rates.



The D.C. Circuit, however, presents a very different picture, attributable to higher hung jury rates in criminal trials. There, the total hung jury rate averages 6.5% during the 1994-1997 period, with a 9.5% 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 0.6% 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 will have 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, producing the highest hung jury rate (13.8%) 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%), the Western District of Arkansas reported 6 hung juries of 58 criminal trials (10.3%), and the Northern District of Missouri reported 6 hung juries of 78 criminal trials (7.7%) 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 higher 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%, 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%, while the Southern District of California (San Diego) has one of 6.3%. In the Tenth Circuit, the highest individual criminal hung jury rate among the district courts – 7.8% – occurs in the District of New Mexico (Albuquerque). 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.

Hung Juries in State Courts: An Incomplete Picture

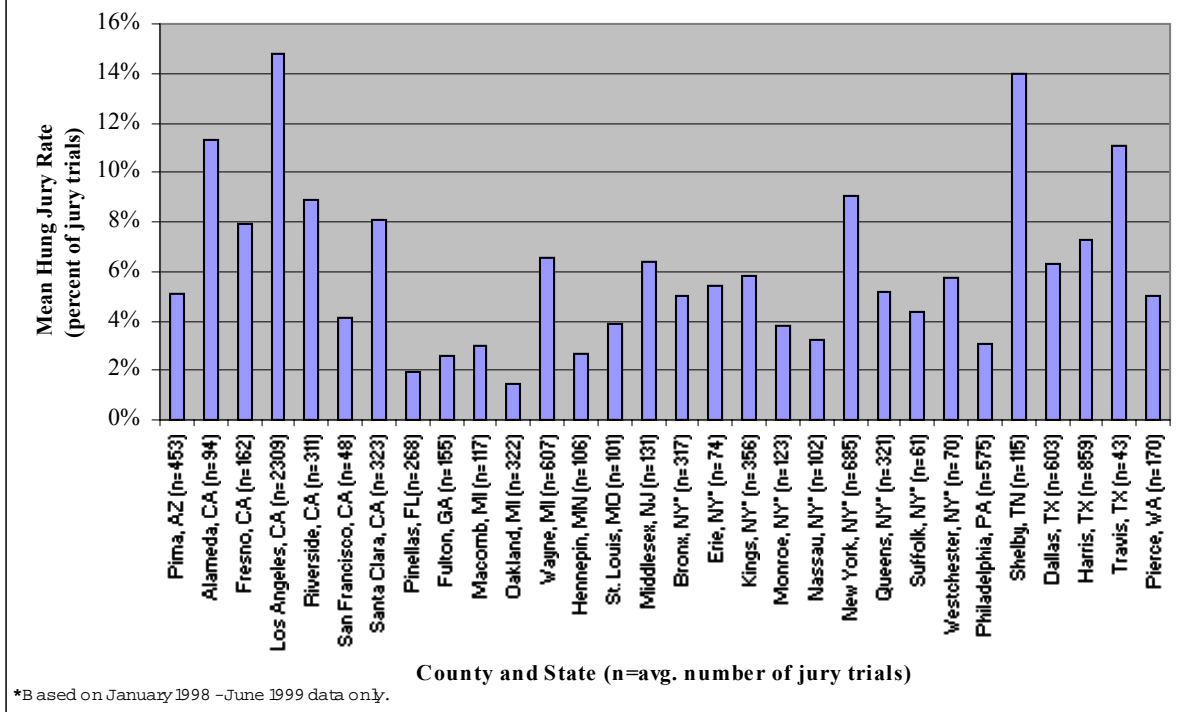
The advantages of legal and reporting uniformity are not found in the state courts, where the vast majority of criminal trials take place each year. Approximately 5,000 criminal defendants are tried in federal court each year,¹⁰¹ compared to an estimated 54,625 criminal trials in state courts.¹⁰² Moreover, the types of criminal cases that are 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 the data and to evaluate them.

Figure 2.5 provides a preliminary view of hung jury rates in several large, urban state courts.

¹⁰¹ 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).

¹⁰² BRIAN OSTROM & NEIL KAUDER, eds., EXAMINING THE WORK OF STATE COURTS, 2001: A NATIONAL PERSPECTIVE FROM THE COURT STATISTICS PROJECT 103 (2001).

Figure 2.5
Hung Jury Rates (Average 1996 - 1998)



In contrast to the Planning and Management study discussed in the previous chapter, the annual rates for each court were highly correlated, so these data reflect the 3-year average hung jury rate for the period 1996 through 1998. Because of the definitional problems discussed above, they should not be used to rank these courts according 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%, only slightly higher than the 5.5% rate reported by Kalven and Zeisel in 1966. Reported rates ranged from a low of 0.1% in Pierce County, Washington to a high of 14.8% in Los Angeles County, California. These contemporary data and those from the California study indicate that hung jury rates may fluctuate greatly from court to court, if not necessarily from year to year.

These data 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% for these state courts is considerably higher than those typically reported by the federal courts during the same period. Indeed, the rate is closest to the 9.5% rate report by the D.C. federal circuit court 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% rate of these urban courts. Data from New York State illustrate this. In addition to the 9 New York courts shown in Figure 2.5, 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%, not much higher than the 1.6% hung jury rate for the combined New York federal district courts. Rates in individual counties ranged widely, from 0% in 38 counties to 18.8% (3 of 16 jury trials) in Clinton County.

Hung Jury Rates and Community Characteristics

Using demographic information gleaned from the *City and County Data Book*,¹⁰³ we examined the hung jury rates from our data set to test some hypotheses. Of course, the assumption that community demographics are accurately reflected in the jury pools for those communities is a tenuous one. Although courts have made great progress in improving the representativeness of their jury pools in recent years, many factors intrinsic to the jury qualification and selection process can skew the jury pool.¹⁰⁴

We found no correlations between hung jury rates and population density, community diversity (measured by percent non-white), or community crime rates. Nor did we find a correlation between hung jury rates and caseload processing characteristics (e.g., pretrial disposition rates). In some ways, this was surprising given that so much contemporary commentary links high rates of jury deadlock with the demographic characteristics of the communities in which those trials take place.¹⁰⁵ But this may also be a function both of the very small sample of counties for which we were able to obtain information and of the questionable reliability of some of those data.

Post-Hung Dispositions

Obtaining information on dispositions for cases that were originally declared a mistrial due to jury deadlock was difficult. Of the 30 counties that provided filing and disposition information for felony cases, only 9 counties were able to provide follow-up data on hung jury cases.¹⁰⁶ Even with these limited data, however, we observe similarities to the post-hung dispositions found in the Planning and Management study in California.¹⁰⁷

The 9 counties reported a total of 453 hung juries during the period 1996 through 1998. Of those cases, over half (53.4%) did not require a second trial. Plea agreements resolved 144 (31.8%) cases and 98 (21.6%) were dismissed. Just under one-third of the cases (32.0%) were retried to a new jury and a very small number (2.4%) were retried as bench trials. See Figure 2.6.a and Figure 2.6.b. The cases resolved by bench trial were evenly divided between

¹⁰³ 2000 COUNTY AND CITY EXTRA: ANNUAL METRO, CITY, AND COUNTY DATA BOOK (Deirdre A. Gaquin & Katherine A. deBrandt, eds.) (9th ed., 2000).

¹⁰⁴ See, e.g., ROBERT G. BOATRIGHT, IMPROVING CITIZEN RESPONSE TO JURY SUMMONSES: A REPORT WITH RECOMMENDATIONS (1998).

¹⁰⁵ But see Michael J. Saks, Trial Outcomes and Demographics: Easy Assumptions Versus Hard Evidence, 80 TX. L. REV. 1877 (2002).

¹⁰⁶ Travis County, TX; Harris County, TX; Hennepin County, TX; St. Louis County, MO; Pinnellas County, FL; Wayne County, MI; Macomb County, MI; Oakland County, MI; and Shelby County, TN.

¹⁰⁷ See PLANNING & MANAGEMENT study, *supra* note 18, at 4-30 to 4-31.

convictions and acquittals, but the sample size for the three-year period is extremely small – only 11 cases – and thus is not necessarily reliable. Retrials to a new jury, however, mirror the distribution of the original jury trial outcomes almost perfectly. Sixty-nine percent (69%) of retrials resulted in a conviction, 19% resulted in an acquittal, 8% resulted in another hung jury, and 4% were declared a mistrial for a reason other than jury deadlock.

