EMPIRICAL STUDY OF FREQUENCY OF OCCURRENCE, CAUSES, EFFECTS, AND AMOUNT OF TIME CONSUMED BY HUNG JURIES

PMCC

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TABLE OF CONTENTS

TABLE OF CONTENTS (Continued)

LIST OF ILLUSTRATIONS

SECTION I

INTRODUCTION AND SUMMARY

SECTION I

INTRODUCTION AND SUMMARY

1.1 PURPOSE

Reliable empirical knowledge about the hung jury phenomenon in criminal trials and its effect on the criminal justice system has never been rigorously developed. The research results reported in this study have been in response to this need. The need is by no means a trivial one. Over the past several years, numerous governmental bodies have addressed themselves to problems confronting judicial effectiveness and efficiency and have proposed a wide range of solutions. Among them have been prescriptions which recommend reduction of the size of criminal trial juries and institution of the nonunanimous verdict in order to improve overall system performance. While the specific goal of this study is not to resolve the foregoing matters on their empirical merits, the research effort was executed to meet the more general need for systematic information about the incidence of hung juries, the reasons for their occurrence, and their impact on the criminal justice system.

Within California's criminal justice system, a hung jury in a criminal case is a jury which, in the judgment of a trial court, has deliberated for a sufficient period of time to establish that unanimity cannot be reached and accordingly has been discharged by the court because there appears to be no reasonable probability that the jury can reach a verdict.

Specifically, the purpose of this study is to provide empirical information about the hung jury phenomenon with respect to four major areas of inquiry: (1) the frequency of occurrence of hung juries, (2) the causes of

hung juries, (3) the effects of hung juries, and (4) the amount of time consumed by hung juries and, if practicable, the incremental costs associated with hung juries.

1.2 RESEARCH METHODOLOGY

Execution of the study consisted of the construction of a hung jury data base designed for the storage and retrieval of data from three major files. The files were built with data routinely collected by the Administrative Office of the California Courts and the Bureau of Criminal Statistics, and case files maintained by the Superior Courts of California's ten most populated counties.

Given the available time and resources, the scope of the study was limited to hung juries which occurred in felony cases over a three year period, 1971 to 1973, in the Superior Courts of Alameda, Contra Costa, Los Angeles, Orange, Sacramento, San Bernardino, San Diego, San Francisco, San Mateo, and Santa Clara Counties. These ten counties represent approximately 76 percent of the State's total population and about 81 percent of all Superior Court trials which took place during 1971, 1972, and 1973.

The three data files were organized as follows: (1) a verdict trial data file on the number of 1971-1973 Superior Court criminal trial verdicts, based on monthly Superior Court statistical reports submitted by the Superior Courts of the ten study counties to the Administrative Office of the California Courts, (2) a disposition file on 1970-1972 Superior Court defendants, produced by the staff of the Bureau of Criminal Statistics utilizing a computerized data base of its own, and (3) a hung jury file, developed from data collected on-site in each of the ten study counties which were then subsequently key-punched to create a data deck coded from nearly 1,000 data collection instruments.

The data analysis consisted of preparation of a series of computer programs to read and format the data, to display relevant distributions of selected frequency, causal, effect, and time-series variables, and to determine the extent to which certain independent and dependent variables were related to one another pursuant to application of statistical tests.

1.3 SUMMARY OF RESULTS

The results of the data analysis are grouped according to the four major areas of inquiry: the frequency of occurrence of hung juries, the causes of hung juries, the effects of hung juries, and the amount of time consumed by hung juries and the costs of hung juries. The principal results are highlighted briefly below:

Frequency of Occurrence:

- Between 1971 and 1973, 978 hung juries occurred representing a frequency of 12.2 percent of all felony cases tried in the Superior Courts of the ten most populated counties in California;
- This 12.2 percent finding is over twice the hung jury frequency expected on the basis of previously reported research;*
- Nevertheless, the incidence of hung juries with respect to felony trials appears to be a stable problem over time.

Causes of Hung Juries:

- Development of the hung jury data base did not permit capture of statistically significant observations on several key variables which would have supported a rigorous empirical analysis of the causes of hung juries;
- However, the following results were obtained from analysis of the available data:
  - Hung jury vote splits and crime types appear to be unrelated to one another;

*See Kalven & Zeisel, infra, p. 4-4.

- Juries which deadlock in multiple charge felony cases appear to remain divided in the same vote split configurations on all charges; and

- Young, Black males are hung jury defendants in frequencies which are not only disproportionate to their distribution in the general population but also to their distribution among Superior Court verdict trial defendants.

Effects of Hung Juries:

- Most hung jury cases are disposed by dismissals;

- Nearly one third of all hung jury cases are disposed by entry of guilty pleas; and

- Slightly over one fourth of all hung jury cases are retried, resulting in convictions in a ratio of more than two to one.

Time Consumed and Costs of Hung Juries:

- The 978 hung juries which occurred between 1971 and 1973 are estimated to have consumed a total of 3,804 court days, a time increment which is nearly 12 percent in excess of the amount of time which is estimated would have been consumed had the juries reached verdicts; and

- The incremental cost of the amount of time consumed by the 978 hung juries over the three-year study period is estimated to have been at least $8,730,180, a dollar amount representing 11.6 percent of the total estimated court costs of the verdict trial court days which elapsed over the study period in the ten counties.

1.4 DISCUSSION OF RESULTS

The empirical knowledge which has been gained as a result of the research reported in this study has established with a high degree of confidence the frequency with which hung juries occur as a result of criminal cases tried in the Superior Courts of the most populated jurisdictions of the State. As noted above, this finding is the most significant insofar as the 12.2 percent frequency

of hung juries is over twice the expected frequency of hung juries reported in previous research. This information is one of the most discussed aspects of the hung jury phenomenon, as the annotated bibliography, appearing in Appendix A, demonstrates.

In general, hung juries do not seem to be a problem which in any fundamental sense is rendering the felony trial court system in California either ineffective or inefficient. However, because a hung jury occurs in approximately one out of eight verdict trials, this is not to say that hung juries are not time-consuming and do not require substantial expenditure of criminal justice system resources.

This report is organized into four sections. Section II is an exposition of the research methodology. Section III describes the data collection effort. Section IV presents and discusses the analytical results in detail. Section V summarizes conclusions and recommendations.

SECTION II

RESEARCH METHODOLOGY

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RESEARCH METHODOLOGY

2.1 THE PROBLEM

The hung jury is one of the most seemingly contradictory phenomena arising in the criminal justice system. On the one hand, the hung jury is admission of system failure insofar as the outcome of a criminal trial is indefinite, requiring the declaration of a mistrial. On the other hand, the hung jury is reaffirmation of system integrity insofar as it serves to protect a minority's dissent acknowledging the subtle interplay of two vital concepts in the criminal law -- the presumption of innocence and the exercise of reasonable doubt.

In California, the incidence of hung juries in criminal cases has been for some time a recurring aspect of public discussion about the efficiency of the judicial process. Indeed, within the last three years, the hung jury problem has been a subject of concern expressed by three significant groups. For example, the California Select Committee on Trial Court Delay and the Governor's Select Committee on Law Enforcement Problems both published reports which recommended the institution of nonunanimous verdicts and the reduction of jury size in some criminal cases.* Among the justifications for these proposals was the belief that their implementation would reduce the frequency of hung juries and the resulting duplications, delays, and costs of retrials. In its 1973 report, the Los Angeles County Grand Jury made similar recommendations proposing that nonunanimous verdicts should be allowed in criminal trials

*Select Committee on Trial Court Delay, SELECT COMMITTEE ON TRIAL COURT DELAY, REPORT 3, pp. 13-15 and 20-22, San Francisco: Select Committee on Trial Court Delay (February 1972), and Governor's Select Committee on Law Enforcement Problems, "CONTROLLING CRIME IN CALIFORNIA," REPORT OF THE GOVERNOR'S SELECT COMMITTEE ON LAW ENFORCEMENT PROBLEMS, p. 60, Sacramento: California Office of State Printing (August 1973).

except in cases involving the death penalty and that legislation be passed permitting the use of six member juries in all noncapital cases. Using 1972 data compiled about the Central District of the Los Angeles County Superior Court, the Grand Jury concluded that "retrial caused reduced efficiency and greater cost."* However, despite the assertions in the foregoing documentation, the hung jury problem in California criminal courts has never been the object of systematic empirical research. No reliable data have been compiled about the frequency, causes, effects, costs, and amount of time consumed by hung juries. Within certain prescribed limits, the purpose of this study is to illuminate all of these matters.

The next subsection is an exposition of the key issues toward which the research effort was directed. Subsequent subsections explain the research design, define the information requirements specified by the design, and describe the approaches which were developed for the data collection and data analysis. A final subsection discusses the research design in terms of alternative methodologies and indicates some of the empirical constraints which a research project of this kind inevitably encounters in the field.

2.2 KEY STUDY ISSUES

The overall goals of this study are (1) to determine the extent to which hung juries in criminal trials actually constitute a problem in the California court system, and (2) to develop empirical information about the causes, effects, costs, and amount of time consumed by hung juries. Design of a research strategy

*County of Los Angeles, LOS ANGELES COUNTY GRAND JURY, FINAL REPORT 1973, p. 54, Los Angeles: County of Los Angeles, 1973 Grand Jury (1973). Annot: The report erroneously stated that in 1972 "in the Central District of Los Angeles Superior Court, there were months when over 50 percent of felony matters tried by jury resulted in 'hung juries' -- typically 11-1 and 10-2 for conviction." This percentage subsequently was reduced to five percent. As this study shows, reliable frequency statistics on vote split are difficult to compile.

to investigate hung juries began with formulation of a series of definitions by which the research could be bounded. These definitions divide into two principal categories. The first refers to what is meant by the term, "hung jury." The second refers to the statistical meaning of a hung jury as a unit of count. That is to say, a hung jury can occur within a range of relatively complex procedural circumstances. Criminal cases frequently are tried involving multiple defendants, multiple charges, and multiple counts resulting in a range of outcomes which potentially can include acquittals, convictions, and/or hung juries (mistrials). Each of these complexities is explored more fully below.

2.2.1 DEFINITION OF A HUNG JURY

A survey of the legal and judicial process literature reveals few rigorous operational definitions of hung juries. BLACK'S LAW DICTIONARY defines a hung jury as "a jury so irreconcilably divided in opinion that they cannot agree upon any verdict."* Kalven and Zeisel, who devote an entire chapter to the hung jury phenomenon in their book THE AMERICAN JURY,** do not offer a technical definition of a hung jury although they present a number of interesting empirical findings about hung juries.*** Bloomstein defines a hung jury as one that is "hopelessly deadlocked."****

For purposes of this study, the most important definitional elements of a hung jury are found in the California Penal Code (PC). PC 1140 [entitled "A Jury Not To Be Discharged After Cause Submitted: Exceptions"] provides

*Black, Henry C., BLACK'S LAW DICTIONARY, p. 875, St. Paul: West Publishing Co. (4th Ed., 1951).

**Kalven, Harry, Jr. and Zeisel, Hans , THE AMERICAN JURY, Boston and Toronto: Little Brown and Company (1966).

***Ibid., pp. 35-38, 47, and 55-57 in addition to Chap. 36.

****Bloomstein, Morris J., VERDICT: THE JURY SYSTEM, p. 31, New York: Dodd, Mead and Company (1968).

as follows: "Except as provided by law, the jury cannot be discharged after the cause is submitted to them until they have agreed upon their verdict and rendered it in open court, unless by consent of both parties, entered upon the minutes, or unless, at the expiration of such time as the court may deem proper, it satisfactorily appears that there is no reasonable probability that the jury can agree."

In other words, a hung jury in a California criminal court is a jury (1) which, in the judgment of the court, has deliberated for a proper period of time, and (2) which has been discharged by the court because there appears to be no reasonable probability that the jury can agree upon a verdict. Such a jury, in either Black's or Bloomstein's terminology, is one that is either "irreconcilably divided" or "hopelessly deadlocked."

In a statistical sense, for purposes of this study, a hung jury is further defined to include all cases where a jury is unable to agree upon a verdict with respect to one or more defendants and one or more charges. For example, if a criminal case, involving three defendants each of whom is charged with two distinct offenses, results in verdicts on five of the charges, but a hung jury with respect to one defendant and one charge, then the case is "counted" as a hung jury. The reasons for breaking down criminal cases into such specific components for purposes of analysis are threefold: (1) Many, if not most, criminal cases involve, if not more than one defendant, more than one criminal offense charged, and therefore present special problems to the researcher trying to count all hung juries that occur; (2) In the multiple-defendant, multiple charge case, the fact that a jury may reach verdicts on some defendant(s) and/or charge(s) is meaningful in terms of the fact-finding discriminations which

complex criminal cases require jurors to make; and (3) Each charge resulting in a hung jury ultimately must reach some type of final disposition and whether it proceeds to a subsequent dismissal or verdict upon retrial is important to know in the analysis of the effects and amount of time consumed by hung juries. The need for these distinctions will become more apparent as the exposition of the data collection and data analysis is more fully developed in subsequent sections.

2.2.2 STUDY OBJECTIVES

The specific objectives of the study identified four areas of empirical research. Each objective and its associated research activities is outlined below:

1. Determine the Frequency of Occurrence of Hung Juries -- This objective seeks to assess how often hung juries occur in California courts. The research activities are to:

   - Determine the proportion of total jury trials which result in hung juries;
   - Determine the proportion of hung juries involving multiple defendants;
   - Determine the proportion of hung juries involving multiple charges;
   - Develop a crime-specific frequency profile of hung juries;
   - Develop a profile of hung jury defendants; and
   - Assess time trends with respect to the ratio of hung juries to total jury verdicts.

2. Assess the Causes of Hung Juries -- This objective attempts to develop reasons to explain why some juries hang while others succeed in reaching unanimity. The research activities are to:

   - Identify variables which enter into the logic of explaining the hung jury as a dependent variable;
   - Describe those variables for which empirical observations are available; and
   - Evaluate the explanatory power of those variables to the extent that they permit the drawing of conclusions about why some juries remain deadlocked and other juries reach verdicts.

   Each of these activities consists of a series of analytical procedures which are described more fully in Sections III and IV.

3. Assess the Effects of Hung Juries -- This objective focuses upon the impact of hung juries in terms of the reprocessing requirements for hung jury defendants within the court system. The research activities are to:

   - Determine the proportion of hung jury cases which are never retried, i.e., dismissed or disposed in some other way not involving imposition of a criminal sanction;
   - Determine the proportion of hung jury cases which are resolved by plea; and
   - Determine the proportion of hung jury cases which are retried, the outcomes of which include either another hung jury or a verdict, i.e., conviction or acquittal.

   These activities are closely related to the fourth objective which addresses two effects of hung juries which merit special attention, the amount of time consumed by hung juries and the costs they entail.

4. Determine the Amount of Time Consumed by Hung Juries -- This objective attempts to specify how much time is consumed by the court system as a result of hung juries and to make some estimates as to the costs involved. The research activities are to:

   - Determine the mean of trial days consumed by hung juries in California;
   - Compare the foregoing with the mean of trial days in jury trial cases resulting in verdicts; and
   - Apply the foregoing time-series results as a "multiplier" to cost data based upon research about the actual costs of criminal courts in California.

As is the case with any research study which is entering new territory, it proved impossible to meet all of the objectives as they were originally formulated. As subsequent sections show, concepts and definitions had to be adjusted to the realities of court operations in the field, particularly the reporting mechanisms of California trial courts. These realities are best comprehended once the technical scope of the study is explained.

2.3 RESEARCH DESIGN

The first step in the design of the research work plan was the definition of the study scope. Given the general areas of empirical research activity described above, PMCC wanted to execute a data collection program and complete a set of defined analytical procedures which were consistent with the available time and resources of the study.

2.3.1 SCOPE OF THE STUDY

The hung jury research effort was restricted to hung juries which occur in Superior Court criminal trials. PMCC's decision to limit the technical scope of the study to felony cases was made as a practical matter and does not reflect any preconceptions that hung juries in misdemeanor cases are inherently less interesting or less deserving of study. Rather, the decision was based on prior research experience of PMCC staff members and consultants in the California criminal justice system. Previous judicial data collection efforts have shown that dispositional information for criminal cases is maintained more systematically and comprehensively in felony cases. Preliminary inquiries with the Bureau of Criminal Statistics (BSC)* indicated that the foregoing conclusion

*Bureau of Criminal Statistics, Division of Law Enforcement, Department of Justice, State of California; See Title III [Criminal Statistics], Chap. 1 [Bureau of Criminal Statistics], Penal Code.

especially applied to the present availability of hung jury data.* In any event, the conceptual approach and empirical findings of the study with respect to felony hung juries can be applied usefully to hung juries in misdemeanor cases in the future. Part of this report, which specifically concerns the development of a hung jury reporting system, will address reporting of hung juries in misdemeanor cases.

The scope of the study was bounded further by restricting the research effort geographically and over time. The study was limited to the Superior Courts of ten of the most populous counties in the State of California: Alameda, Contra Costa, Los Angeles, Orange, Sacramento, San Bernardino, San Diego, San Francisco, San Mateo, and Santa Clara. The time frame studied was limited to hung juries occurring in calendar years 1971, 1972, and 1973. The ten counties represent approximately 76 percent of the State's total population and about 81 percent of all Superior Court criminal juries sworn in the State. These geographical and time limits were delineated to ensure that the data collection effort would not be overwhelming either in terms of logistics or magnitude. The locations of the counties selected allowed organization and deployment of two major data collection teams, one in Northern and one in Southern California. Initially, the three-year data base for the ten counties was estimated to yield somewhat less than 500 hung jury cases.** It was anticipated that the data collection effort would be feasible given these delimitations of scope. The next step in the research design was identification of the information required to pursue the research activities.

*The extent to which such data actually were available is discussed in Section III.

**As noted earlier, this estimate was based upon the only empirical research previously done on hung juries, which indicated that hung juries represent approximately five percent of total criminal trials which go to verdict. See Kalven & Zeisel, infra, p. 4-4.

2.3.2 INFORMATION REQUIREMENTS

Based upon preliminary research and discussions with criminal justice system practitioners, PMCC developed a matrix displaying information requirements, associated data elements, possible data sources, and methods of data capture. Development of the matrix was an iterative process, with frequent revisions being necessary during the early phases of the study as gaps in the available data were identified. The matrix as shown in Table 2-1 reflects the structure of the data base which supported the research.

A preliminary review of the published jury research, and in particular the Kalven and Zeisel work, indicated that certain types of variables are likely to be related to the frequency, causes, effects, and amount of time consumed by hung juries. All of the variables were defined as independent; that is to say, it was assumed that they might be related, either directly or indirectly, to the incidence of a hung jury, defined as the dependent variable. Initially, the independent variables were categorized as either procedural or substantive in character. The procedural variables were assumed to relate to the rules of criminal procedure in California which govern jury organization, the formulation and delivery of judicial instructions on the applicable law, and the litigants' and jury's participation in or reaction to their administration. The substantive variables were assumed to relate to the merits of the case at issue and therefore to the jury's success or failure in agreeing upon a verdict. Examples of these variables included the defendant's age, race, sex, and occupation; evidentiary factors; performance of counsel; the credibility of witnesses; and so on.

TABLE 2-

INFORMATION REQUIREMENTS, DATA SOURCES, AND DATA CAPTURE METHODS

STUDY OBJECTIVE AND INFORMATION REQUIREMENTS	DATA ELEMENTS	HUNG JURY CASE FILES IN STUDY COUNTIES	HUNG JURY PARTICIPANTS	EXISTING BCS EXTENDED DATA AND JUDICIAL COUNCIL STATISTICS
FREQUENCY OF OCCURRENCE				
• Hung juries as % of Total Juries, by County	Number of Hung Juries	County Clerks' Files District Attorneys' Files		Arrest and Disposition Summaries by Case Number, BCS Computer Listing by Case Outcome
• % Hung Juries with Multiple Defendants, by County	Number of Hung Juries with Multiple Defendants	Research and Record on Data Collection Instrument (DCI)		
• % Hung Juries with Multiple Charges	Number of Hung Juries with Multiple Charges	Research and Record on DCI		
• Frequency Distribution of Hung Juries by Crime Type	Crime Type for Each Hung Jury	Research and Record on DCI		
• Hung Juries as % of Total Over Time	Date of Hung Jury; Total Number of Jury Trials per Month, by County	Research and Record on DCI		County Jury Trial Verdict Summaries, Judicial Council
CAUSES				
• Defendant Profiles	Defendant Age, Sex, Race, Occupation	Research and Record on DCI		Superior Court Disposition Summaries, BCS Extended Data by Study County for 1970, 1971, 1972, and 1973 (1st Six Months)
• Victim Profiles	Victim Age, Sex, Race, Occupation	Research and Record on DCI		
• Characteristics of the Crime	Crime, Type, Defendant/ Victim Relationship, Injury or $ Loss	Research and record on DCI		
• Juror Disagreement on Procedural Factors	Juror Comprehension Juror Interpretation Juror Reinstruction	Research and Record on DCI	Juror Questionnaire Juror Questionnaire	
• Juror Disagreement on Substantive Factors	Evidentiary Assessment Prosecutorial Presentation Defense Presentation		Juror, Judge Questionnaire Juror, Judge, Prosecutor Questionnaire Juror, Judge, Defense Counsel Questionnaire	
EFFECTS				
• Proportion of Hung Juries Subsequently Dismissed	Outcome of Case	Research and Record on DCI		
• Proportion of Defendants Ultimately Convicted	Outcome of Case	Research and Record on DCI		
• Proportion of Defendants Ultimately Acquitted	Outcome of Case	Research and Record on DCI		
TIME CONSUMED				
• Mean, Median, Mode, Trial Days	Trial Start/End Dates	Research and Record on DCI		
• Mean, Median, Mode Juror Deliberation Days	First Day of Deliberation Hung Jury Date	Research and Record on DCI		
• Mean, Median, Mode Days Before Deliberation	Trial Start, First Day of Deliberation	Research and Record on DCI		

The initial on-site review of available data in the case records of the Superior Courts of the ten study counties revealed not only that this classification of variables was impracticable, but also that certain key empirical observations specified in Table 2-1 were impossible to make. In particular, those observations which were expected to derive from the proposed administration of a hung jury questionnaire to court participants* could not be included in the data collection plan. The next two subsections summarize the data collection and data analysis approaches as they were adapted in the field to these empirical constraints.

2.3.3 DATA COLLECTION PLAN

PMCC's data collection plan comprised three phases: (1) Initial Research and Orientation, (2) Data Collection Instrument (DCI) Design and Test, and (3) Field Data Collection. The plan phases are explained below.

- Initial Research and Orientation - The project director and key project personnel were scheduled to visit all study counties and the Courts and Probation Section of the Bureau of Criminal Statistics for purposes of researching existing data systems, establishing the liaison for the field data collection, and selecting a site suitable for preliminary testing of the field data collection phase. These visits were scheduled over the first two months of the study.

- Data Collection Instrument Design and Test - A preliminary DCI was scheduled for design and test during the second and third months of the study. The DCI was designed to capture the case file data elements displayed in Table 2-1. The results of the test of the DCI were used to make any refinements in the instrument or in data collection procedures prior to full field data collection. The DCI test was scheduled to be conducted by a field research assistant, under the close supervision of a key project member. Observations on the time required to conduct the data collection were used to plan schedules for the field data collection.

*The portion of the research plan which proposed the administration of a questionnaire to judges, prosecutors, and defense lawyers, and jurors involved in hung jury cases was abandoned because of (1) the practical problems of adequately reaching a statistically significant sample of the population to be surveyed, and (2) a change in the scope of the contract which was executed midway through the course of the study to permit more intensive analysis of the unanticipated high volume of data which eventually were collected.

- Field Data Collection - As noted earlier, PMCC's plan for field data collection called for the deployment of two teams of field research assistants, one team for the Southern California area and one for the Northern California area. Each team initially was to be under direct supervision of project staff, with continuing close supervision and assistance throughout the field data collection phase. Each team was scheduled to visit the Superior Courts in the respective areas to research hung jury case files and to record the research data on the DCIs. This phase was scheduled for project months three through seven.

Concurrent with the three phases described above, PMCC staff planned on-going dialogues with the BCS and the Administrative Office of the California Courts, the staff agency serving the Judicial Council, to determine most effective utilization of their considerable data bases.

2.3.4 DATA ANALYSIS PLAN

Upon execution of the data collection in the ten study counties, the PMCC work plan called for the construction of a data base on all hung juries which occurred in the subject counties during 1971, 1972, and 1973. In addition to these case-by-case data, the data base design made provision for inclusion of two additional data files: (1) the BCS Extended Data concerning Superior Court defendant dispositions rendered in all court and jury trials during the study period, and (2) the Judicial Council verdict data concerning trial dispositions rendered in each of the study counties over the three-year period on a month-by-month basis. With these observations recorded, the PMCC study staff planned to keypunch the data collected in the study counties and the Judicial Council data for processing by computer. Detailed keypunch and data analysis specifications then were to be prepared and a series of computer programs were to be written for the analysis of the data. The analytical routines included programs to read and format the data, to display relevant distributions of selected

frequency, causal, effect, and time-series variables, and to determine the extent to which certain independent and dependent variables were related by application of the chi-square test.*

In the specification of the statistical routines in the data analysis plan, one basic guideline was built into the work plan. The PMCC staff recognized from the outset the impossibility of devising a series of controlled experiments in the field which would have permitted the compilation of empirical observations on all of the variables of interest associated with both hung jury and verdict cases. The logic of a controlled experiment requires that everything be held constant and comparable except the experimental variable. If, all other things being equal, there is a difference observed in the dependent variable, then the difference is inferred to be attributable to the variation introduced by the experimental variable. This is the logic of the controlled experiment in its simplest form. However, even in its simplest form, it was impossible to apply this logic to the data available and accessible in the study counties. Hence, the staff selected the three substitute or "surrogate" data sources identified in Table 2-1: the hung jury data collected from the case files stored in the individual study counties, the BCS data, and the Judicial Council data.

The consequences of these necessary methodological decisions are explored in greater detail in Sections III and IV which explain the data collection and the analysis results. However, before turning to the significance of these choices, a brief review of alternative hung jury research techniques will help to place what follows in better perspective.

*For the nontechnical reader, the chi-square test is a mathematical procedure which is used to compute a statistic which expresses the extent to which there is a relationship between two variables. For a brief introduction to the chi-square test, see Lovejoy, Elijah P., STATISTICS FOR MATH HATERS, Chap. 22, New York: Harper & Row (1975).

2.4 ALTERNATIVE HUNG JURY RESEARCH TECHNIQUES

The research design described above is based upon a series of quantitative measures, which are practicable to make in the "real world" of Superior Court operations and recordkeeping in California, and the conclusions which analysis of the measures rigorously support. The methods which are described in the sections which follow were formulated according to three considerations. Primarily, they were developed to permit reliable assessment of the actual extent of the hung jury problem as it arises in Superior Court felony litigation in the most populated jurisdictions of the State. Secondarily, they were developed to yield useful inferences about the causes, effects, costs, and amount of time consumed by hung juries. These substantive objectives became secondary of necessity because of the absence of crucial empirical data in the case files and the statistics which are maintained on prosecutorial and judicial operations throughout the State. Finally, the identification of important information gaps suggested focus on specific empirical aspects of hung jury phenomena which might yield analytical payoffs if additional research were to be undertaken.

With these considerations in mind, PMCC examined four alternative methodologies, which have been employed in previous jury research for their applicability to the present study. These research methodologies, which are described below, were evaluated during formulation of the research design, but were found either to be too impracticable to implement in the field or beyond the scope of the present inquiry.

Professional researchers who have specialized in jury research have experimented with essentially four different techniques to investigate jury phenomena. The first method is to interview jurors after agreement has been reached upon their verdict, judgment pronounced, and the jury discharged. Many lawyers apply this method informally as part of their trial experience. The same approach could be applied to juries which "hang." The jury members, once they have satisfied the judge that they are irreconcilably divided and are therefore discharged, could voluntarily submit to either formal or informal interviews. This type of post-trial inquiry has inherent deficiencies. The principal one is that it does not provide a detailed and accurate account of what happened during the actual deliberations. Moreover, jurors often are guarded in their remarks when they are interviewed after discharge, particularly if they have had contact with unsuccessful counsel or the press.*

Interviewing of jurors can be supplemented with administration of either questionnaires or interview schedules to the trial judge and counsel for both the prosecution and the defense. The principal data collection effort of the Kalven and Zeisel Chicago Jury Project was based upon a judicial sample** to carry out their judge-jury agreement approach.

A second method, one which is frequently used and one which is logistically feasible, is the mock trial. This method is closely analogous to the moot court practices of many law schools. The major difficulty with this technique is that, while it avoids the legal and ethical problems of direct observation

*Perhaps, most conclusive among the foregoing deficiencies is inhibition on the part of prosecutors, judges, court administrators, and jury commissioners to encourage direct contact with jurors who, upon discharge after a hung jury, may still be prospective jurors and subject to summons to serve in future trials. This inhibition turned out to be a very "real" constraint in two of the study counties where interview methods were proposed to local criminal justice officials.

**See Kalven & Zeisel, loc. cit.

of actual trial juries, the setting and the participants are not the "real world" of the criminal court. The participants, who are volunteers, of course know this fact and are influenced by it. Utilization of this approach to study hung jury phenomena only compounds this difficulty insofar as the commitment to duty of a legal jury is much more keenly felt than the duty to meet the simulated requirements of a research project. There is also the logistical problem of prolonged deliberation which research projects, even the most lavishly funded, are not equipped to accommodate. Jury duty is highly disruptive to citizens' lives and livelihoods; time for deliberation is limited in simulated situations. One research project readily acknowledged the significance of this time constraint.*

A third method employed in studying the jury process is the simulated jury, a jury which is not legally impaneled to hear and deliberate a real case but which participates concurrently with and deliberates separately from the legal jury. "[S]ometimes the jury believes that its decision is binding."** However, unless the jurors really believe that the verdict is binding, this technique suffers from the same deficiency as the second, namely, the make-believe aspects inherent in a pseudo proceeding.

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*Padawer-Singer, Alice M., FREE-PRESS FAIR TRIAL, p. 4, unpublished paper prepared for the Symposium on Psychological Research in Legal Setting, American Psychological Association (August 31, 1970). In the course of the first phase of the experimental procedure, Padawer-Singer noted that "[m]ost of our first ten juries were hung juries, because of the time constraint -- four to five hours of deliberations constituted the maximum time available, and this time was fully utilized by the jurors."

**Forston, Robert F., HOW THE JURY DECIDES, p. 3., Xerox, monography, Des Moines: Trebor Associates (1972).

The fourth method, which is empirically the most reliable, is direct observation and clandestine recording of an actual jury deliberation. Initially, it was one of the techniques of the Chicago Jury Project. However, the public reaction to recording of an actual jury, without the knowledge and consent of the jury,* was overwhelmingly against this practice, as one might expect. Despite judicial knowledge and authorization, the fact that the researchers had functioned as eavesdroppers was so hostile to the tradition of confidential deliberations that this method has been completely abandoned, at least in the study of criminal juries. In any case, application of this method in California is a crime. PC 167 [Unauthorized Recording of Jury Proceedings Prohibited] provides that observation and/or recording is a misdemeanor.**

*At one point in its research approaches, the Chicago Jury Project recorded five Federal District Court civil case juries with the knowledge and consent of a U.S. District Court Judge. The recording generated "a national scandal." Kalven and Zeisel had this to report in the preface to THE AMERICAN JURY [op. cit., pp. vi-vii]: "As one of several lines of approach, it was decided to obtain recordings of actual jury deliberations, partly to learn whether post-trial interviews with jurors permitted reconstruction of the events of the jury room. The move was undertaken, with the consent of the trial judge and counsel, but without the knowledge of the jurors, in five civil cases in the Federal District Court in Wichita, Kansas. Although extensive security measures were taken to insure the integrity of the effort, when the fact became public in the summer of 1955, there followed public censure by the Attorney General of the United States, a special hearing before the Sub-Committee on Internal Security of the Senate Judiciary Committee, the enactment of statutes in some thirty-odd jurisdictions prohibiting jury-tapping, and for a brief, painful moment, widespread editorial and news coverage by the national press." The authors hastened to add that "[n]one of the Wichita data is included in this book, nor will it be included in future books."

**PC 167: "Every person who, by any means whatsoever, willfully and knowingly, and without knowledge and consent of the jury, records, or attempts to record, all or part of the proceedings of any trial jury while it is deliberating or voting, or listens to or observes, or attempts to listen or observe, the proceedings of any trial jury of which he is not a member while such jury is deliberating or voting is guilty of a misdemeanor."

While such a method, if legal, certainly would aid in the study of hung jury phenomena and in the evaluation of various prescriptions already proposed, direct observation and recording of the deliberations of a criminal jury do violence to the Anglo-American common law tradition of the inviolable privacy of jury deliberations.

Consequently, any research methodology which is designed for an in-depth study of hung jury phenomena must of necessity be based upon one or a combination of the first three methods discussed above. The research findings of this study identify in large measure which methods should be selected for application in the field. Attention now turns to the discussion of these findings as they emerged first from the data collection and then from the data analysis phases of the study.

SECTION III

DATA COLLECTION

SECTION III

DATA COLLECTION

3.1 HUNG JURY DATA BASE -- AN OVERVIEW

As noted in the previous section, efficient execution of the various research tasks of the study required the development and implementation of a hung jury data base capable of storing the data collected in the field, from the BCS, and from the Judicial Council, and of supporting the analytical routines. Because of this need, PMCC's initial work plan conceptually proposed a structure for the data base. As experience was gained from the field and from technical discussions with the BCS and the Administrative Office of the California Courts, the original structure, defining seven major data sets, was reduced to three data sets, to be developed from four principal types of sources.

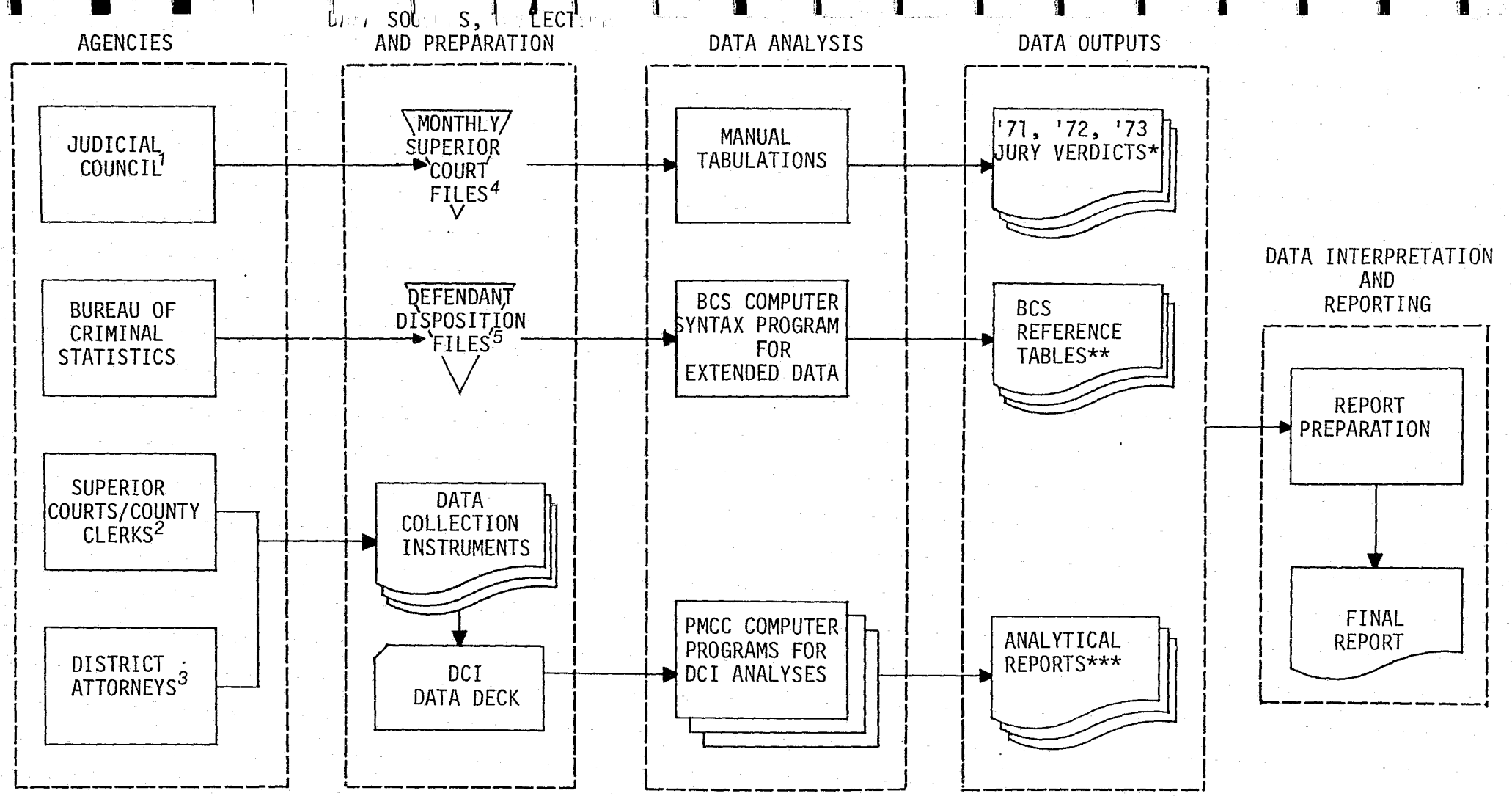
Figure 3-1 depicts the structure of the hung jury data base as it was eventually implemented. Four types of agencies supplied empirical data to PMCC:

1. The Judicial Council -- which provided time-series data on Superior Court jury trial verdicts, disaggregated by month and by county, for purposes of computing the most meaningful ratio of hung juries to the total population of jury trials in the 10 study counties and of running certain time-series regressions;

2. The Bureau of Criminal Statistics -- which provided defendant-specific data on Superior Court felony dispositions resulting from court trials and jury trials, disaggregated by year and by county, for purposes of analyzing hung jury data patterns among certain defined variables and verdict data patterns among similarly defined variables;

3. Superior Courts/County Clerks -- which provided case-specific data on all hung juries occurring during the three-year study period; and

4. District Attorneys - who provided case-specific data on hung jury variables for which empirical observations were unavailable from the judicial or clerical case files identified above in 3.



NOTES:
1. Which directs the Administrative Office of the California Courts.
2. Refers to recordkeeping functions of a Superior Court, generally vested with the County Clerk or the Superior Court Administrator.
3. Refers to recordkeeping functions of a District Attorney, generally assigned to a Supervising Clerk in the Criminal Records Division.
4. Refers to Monthly Superior Court Reports to Judicial Council, see Appendix B.
5. Refers to either Form JUS 700, Report of Criminal Proceeding, or Form JUS 8715, Disposition of Arrest and Court Action, see Appendix C.

*By Month/by County
**On Superior Court Dispositions by County
***On All Statistically Significant Hung Jury Variables

FIGURE 3-1

STRUCTURE OF HUNG JURY DATA BASE

From these agency sources, three separate files were created: a Judicial Council data file, consisting of monthly Superior Court statistical reports; a BCS data file, consisting of a series of reference tables on Superior Court dispositions in the ten study counties, produced by computer from inputs on Form JUS 700, known as Report of Criminal Proceeding, and Form JUS 8715, an improved version of Form 700 known as Disposition of Arrest and Court Action; and a DCI data file, consisting of a keypunched data deck coded from nearly 1,000 DCIs used by the Northern and Southern California data collection teams. These files are shown with their respective sources on Figure 3-1.

Because of the relevance of the BCS input forms not only for purposes of understanding the data base files but also for purposes of presenting specific recommendations regarding the modification of Form JUS 8715 to improve hung jury reporting, background information about their development is included here in some detail even though it is peripheral to the principal empirical findings of the study. It is single-spaced and blocked for reader convenience on the following page.

BACKGROUND -- BCS FORMS

Forms JUS 700 and JUS 8715 are the principal sources of comprehensive information about Superior Court dispositions. JUS 700, while apparently still in use, has been effectively supplanted by JUS 8715. Some background on 8715 and criminal justice statistical reporting generally will be helpful to the technical reader insofar as discussion about 8715 appears later in this section. By 1978 under California Law, local criminal justice agencies will be required to maintain and report records and statistics which are crime-specific, case-specific, and offender-specific [PC 13020, Duties of Public Agencies and Officers]. The law further specifies that all arrests are to be reported to the Department of Justice, that in cases where felony charges are filed specific action taken against an offender is to be reported to the Department, and finally provides for the reporting of court dispositions within certain time limits [PC 13150, Information Required on Each Arrest; PC 13152, Filing of Complaint - Where a Felony Charge is Already Recorded; and PC 13151, Time for Reporting Court Disposition of Case]. Existing law requires the reporting of all court dispositions of criminal offenses, including mistrials, although hung juries are not mentioned as such [PC 11116, Disposition Report on Criminal Complaint or Accusation]. The BCS, in cooperation with the Bureau of Identification, is responsible for the implementation of these reporting requirements. Accordingly, under Department of Justice regulations, JUS 8715 was designed by the BCS which requires reporting of the following criminal offender record information by the following agencies or officers pursuant to each arrest: (1) law enforcement information from the arresting agency, (2) complaint information from the prosecution agency, (3) lower court information, where a complaint charges either a misdemeanor or a felony, from the lower court having jurisdiction, and (4) Superior Court information from the appropriate county clerk.

For purposes of this study, the PMCC study staff were unable to avail themselves of 8715 outputs despite the fact that one of the benefits of 8715 is a hung jury data element. Prior to 1973, 8715 was still in the development stages and was being tested on a pilot basis only. During 1973, the form was partially implemented in Los Angeles, San Diego, Orange, and San Bernardino Counties. During 1974, the form was fully implemented in these four counties and partially implemented in 14 more counties, all of them among the most populated in the State. This year, 8715 is being implemented on a Statewide basis. Form 8715 implementation is part of California's development of a comprehensive system of criminal statistics. The capture of offender-specific and disposition-specific data through utilization of JUS 8715 is intended to support the eventual computerization of the Offender-Based Transaction System of the Comprehensive Data System (CDS), an effort which represents California's participation in the national program to upgrade the quality of criminal justice statistics. CDS is supported by grants to the various states from the Law Enforcement Assistance Administration.

In accordance with the specifications in the data analysis plan, referenced in Section II, these files were processed either by manual or computerized means to produce three principal types of outputs: (1) case-specific time-series tabulations of jury trial verdicts, (2) defendant-specific breakdowns of Superior Court criminal trial verdicts by age, race, sex, and crime type, and (3) analytical reports on all statistically significant results obtained from the DCI data. Together, these outputs form the basis of the analysis set forth in Section IV of this report.

The next subsection presents a description of the methods employed to identify hung juries in the ten study counties. Two subsequent subsections then explain the development and testing of the DCI and the data collection in the field. The final subsection is a critique of the data base as it was completed and rendered ready for the data analysis. The reliability and comprehensiveness of the data are addressed as well as the significance of important information gaps.

3.2 IDENTIFICATION OF HUNG JURIES

At the outset of the study, an important first task was to develop a practicable method which would permit reliable identification of hung jury cases in each of the counties. Preliminary contact with the BCS indicated that hung jury case identification might be assisted by using a central data source, namely the BCS computerized data base which included entries of all Superior Court felony trial offender dispositions. However, this initial optimism proved to be premature after discovery that the computerized listing of jury trial dismissals, acquittals, and convictions by county did not coincide with the relevant subsets of hung jury case numbers in two of the study counties.

This problem first became apparent after the Southern California data collection team compared the BCS case listing output for Los Angeles Central with the Los Angeles Central hung jury case listing developed locally from Juror Service Reports maintained by the Jury Commissioner. Similar discrepancies were discovered by the Northern California data collection team working in Alameda County. The discrepancies are explained by the fact that dispositional reporting to the BCS for the most part reflects "final judicial outcomes" which do not necessarily reflect a declaration of a mistrial as the result of a hung jury. In many instances, hung juries simply are not reported to the BCS. Clerks, completing the report forms, often wait until the case is dismissed, retried, or disposed in some other fashion, regarding the hung jury only as an "interim disposition." Consequently, the PMCC data collection teams endeavored to find alternative means to identify hung juries in each of the ten study counties.

The alternative methods in all instances were painstaking, manual ones. They ranged from study of court registers and minute orders to court calendars and as noted above, juror service reports in Los Angeles. Table 3-1 summarizes the sources of hung jury case listings by county, by source agency, and by type of record.

TABLE 3-1

SUMMARY OF HUNG JURY CASE LISTING SOURCES

COUNTY	AGENCY	RECORD TYPE
ALAMEDA	District Attorney	Weekly Summary of Cases Disposed
CONTRA COSTA	Superior Court Administrator	Judicial Council Report, Cases Heard, Monthly
LOS ANGELES CENTRAL	Criminal Courts Coordinator	Juror Service Reports
• POMONA	District Attorney	Weekly Calendar Report
• PASADENA	District Attorney	Weekly Calendar Report
• VAN NUYS	District Attorney	Weekly Calendar Report Jury Trial Summaries
• LONG BEACH	District Attorney	Weekly Calendar Report
• NORWALK	District Attorney	Weekly Calendar Report
• TORRANCE	District Attorney	Weekly Calendar Report
• SANTA MONICA	District Attorney	Weekly Calendar Report
ORANGE	District Attorney through the Office of the Court Administrator	Disposition by Defendant Name, Date, Charge
SACRAMENTO	Private Jury Service District Attorney	Minute Orders, Register of Action
SAN BERNARDINO	District Attorney	Monthly Trial Summaries
SAN DIEGO	District Attorney	Jury Trial Record
SAN FRANCISCO	Criminal Courts Coordinator	Calendar
SAN MATEO	District Attorney	Register of Action
SANTA CLARA	District Attorney	Jury Trial Summaries

Before the actual procedures of the field data collection are described, a technical understanding of the development and field testing of the DCI, which was used to capture hung jury data on a case-by-case basis, is necessary.

3.3 DATA COLLECTION INSTRUMENT DESIGN AND TEST

Technical exposition in Section II identified the basic set of information requirements defined to support the determination of the frequency of occurrence, causes, effects, and amount of time consumed by hung juries. These information requirements were structured into a series of data elements which easily could be disaggregated for purposes of computer analysis. The intent was to extract available empirical observations on the variables of interest from court case files, supplemented by prosecutorial files where needed. Accordingly, a case-specific Data Collection Instrument was designed to record the desired empirical observations.

In its preliminary test version, the DCI was designed to capture data which were known to be available and accessible from judicial and prosecutorial files in the study counties. The PMCC staff, as part of the initial research and orientation phase of the study, visited all ten counties and completed an on-site review of the available records. The test version of the DCI then was developed from these findings.

The definition of specific elements required deletion of certain elements originally linked to the cause and effect variables. The on-site review of local records revealed that trial information about evidentiary factors, juror attitudes toward the law, juror attitudes toward the defendant, the delivery

of judicial instructions, and the jury's technical comprehension of them could not be systematically developed. However, the PMCC staff did discover that reliable information could be collected about the frequency of occurrence and the amount of time consumed by hung juries and that partial information about causes and effects could be compiled. The DCI was designed with these constraints in mind.

The field test of the DCI was conducted with "live" data available from the case records of the Office of the County Clerk and the Clerk of the Superior Court of the Central District of Los Angeles County and the District Attorney's Office. The test results revealed that isolation of accurate and commensurable data about a hung jury can be a complicated procedure. For example, among the initial cases sampled in the field test were procedural nuances which were not susceptible to adequate exposition on the DCI. The identification of a hung jury often falls within a network of procedural and substantive details which cannot be omitted as the following five examples from the records of Los Angeles Central demonstrate:

- A case involving nine defendants -- where the jury convicted some defendants but hung on others;
- A case involving one defendant charged concurrently with robbery, kidnapping, and forcible rape -- where the jury convicted on the robbery charge but hung on the latter two charges;
- A case representing the third trial for the defendant -- where the two previous trials had resulted in hung juries;
- A case involving one defendant charged with several counts of the same crime -- where the jury was deadlocked over the number of counts; and
- A case involving one defendant charged with a serious felony -- where the jury agreed on the guilt of the defendant but was deadlocked over the degree of the offense.

These findings among the Los Angeles records demonstrated the need for a revised instrument which could take adequate account of cases involving multiple defendants, multiple charges, and multiple counts, where both verdict and hung jury dispositions could be associated with any one or combination of these three variables. The operational definition of a hung jury took note of these statistical subtleties, but they were not fully appreciated until the test data collection began. The DCI revision shown in Appendix D, in the form in which it was used in all 10 study counties, made provision for the above problems. The format of the instrument was structured to facilitate punching of the data on 80-column Hollerith cards for computer analysis. The DCI coding instructions, included in Appendix D, explain the format of all data elements. The actual data collection procedures which were followed in the field is the subject of the next subsection.

3.4 FIELD DATA COLLECTION

Using the hung jury case listings developed from the sources shown in Table 3-1, the two data collection teams generally followed a procedure consisting of three steps. First, the Register of Action - Criminal was examined in the County Clerk's Office, a summary record of the judicial proceedings in Superior Court criminal cases which notes all major events, and, for the most part, shows declarations of mistrials. Where the Clerk's Register was incomplete, the Register of Action - Criminal or a case card file was consulted in the District Attorney's Office to supply the missing data. Generally, the Register or card file data helped to confirm the identification of a hung jury or identify hung jury cases not shown in the Clerk's Register; indeed, hung juries often were noted explicitly. In addition, these sources provided local Superior Court case numbers, the names of defendants, data on the criminal

charges alleged, and data on the procedural dates, e.g., arraignment, preliminary examination, and mistrial dates.

Second, the individual case files maintained by the County Clerk or Superior Court Administrator were studied carefully and relevant observations were transcribed onto the DCI. This source provided confirmation of many of the data elements in the Registers described above. In general, the files contained the following types of documents at a minimum: Superior Court information or indictment, a transcript of the preliminary hearing held in Municipal Court, a series of minute orders summarizing each day of Superior Court trial, and a copy of the judge's instructions. From these documents, it was generally possible to record most of the observations set forth on all three pages of the DCI. Where information gaps appeared, they generally pertained to the age, race, sex, and occupation of the defendant(s); the nature of the offender-victim relationship, where applicable; the amount of property loss involved in the case, where applicable; and the vote-split data concerning the hung jury.

Third, the individual case files maintained by the District Attorney were studied carefully either to supplant or supplement Superior Court files where information gaps were extensive. In those counties where access to prosecutorial records was permitted, relevant observations then were transcribed on the DCIs. This source was used at varying levels of frequency in all ten counties. The case files were particularly helpful in capturing the vote split data.* In

*California law does not require a judge to query a hung jury as to the numerical breakdown on a deadlocked ballot or the direction of the vote. This information is not included within the official recordkeeping responsibilities of the court. However, in most of the cases researched, the data collection teams were able to ascertain the vote split either through reading marginal notations in the Clerk's case files, and in some instances the minute orders, or through reading "informal" notations in prosecutorial files. In a significant number of instances, the trial deputies who tried 1971, 1972, and 1973 cases resulting in hung juries were
(Footnote continued on page 3-12.)

eight of the counties, direct access to Registers, card files, and/or case files was permitted. In two of the counties, access was indirect and accomplished through the efforts of the prosecutor's clerical staff. In one of these instances, PMCC hired a member of a District Attorney's clerical staff on a part-time basis to collect the required data. Without exception, these third-party data collectors met the prescribed requirements conscientiously. Cross-referencing was undertaken from time-to-time and these checks, while not deliberately random or systematic, generally confirmed the reliability of the data recorded on the DCIs.

As the foregoing exposition implies, the field data collection effort involved the collection and storage of hung jury information based upon hundreds of data elements about defendants, judicial actions, charges, prosecutions, verdicts, and related matters. Given the scope of the hung jury data base, and particularly the intent to process the data by computer, the PMCC study staff developed a security and privacy plan to insure the confidentiality of the data. This plan, which was followed, appears as Appendix E.

(Footnote from page 3-11 continued.)
queried directly. In almost all instances, they remembered the vote split. As one deputy remarked, a hung jury is a "searing" experience for a prosecutor. Consequently, a caveat should issue as to the formality and reliability of the vote split data. First, vote split data are not officially part of the records of a criminal case. Second, the "informal" notations or memory recall of individual prosecutors is not practicably susceptible to independent checking. In a few instances, inconsistencies between clerical and prosecutorial vote-split notations were discovered. These inconsistencies were never fully resolved and provision was made on the DCI for noting the reliability of vote split observations with respect to the identification of the direction of the vote. One final legal footnote is appropriate here. In any future hung jury research which proposes capture of vote split data, it should be noted that there is no legal bar to a trial judge asking the foreman of a deadlocked jury for the vote split. The Los Angeles County Superior Court BENCHBOOK provides on page 293 as follows: "Ask the foreman [in the case of a deadlocked jury] what the numerical breakdown was at the last ballot (BEING CAREFUL NOT TO PERMIT THE FOREMAN TO TELL YOU IN WHICH DIRECTION WAS THE LAST VOTE.)"

The next subsection presents an evaluation of the three major data sets captured and stored in the hung jury data base and identifies specific deficiencies which affect the descriptive and analytical power of the research results.

3.5 CRITIQUE OF THE DATA BASE

The hung jury data base was developed and implemented in order to provide empirical information about the four research objectives of the study: description and explanation of the frequency of occurrence, causes, effects, and amount of time consumed by hung juries. Specifically, the data base was structured to consist of three data sets which, to the maximum extent feasible, would meet the information requirements of the research design and satisfy the need for appropriate research controls.

As noted in the exposition of the research design in Section II, the hung jury data base could not be constructed according to the rigor of a controlled experiment. The research design of necessity had to take full account of the limits of practicability, time, and resources. The consequence was that the data sets which were developed are not fully capable of yielding complete empirical observations on all relevant variables. Allusion to data gaps already has been made. However, their impact upon certain study variables requires systematic delineation with respect to the four study objectives.

The determination of the frequency of occurrence of hung juries depends upon a reliable count of hung juries in felony jury trials reported by the Superior Courts in the ten study counties over the study period. The analytical significance of this number depends upon the compilation of reliable figures

on the number of verdicts in felony jury trials reported by the same courts over the same period. The hung jury data base is capable of supplying all of the foregoing numbers.

The assessment of the causes of hung juries is a far more difficult task. The data available in the study counties on a case-by-case basis were not sufficient to yield empirical observations on certain crucial variables which enter into the logic of statistical inference about the causes of hung juries. As already noted, the on-site review of local Superior Court records and the initial design and test of the DCI revealed that empirical information about the impact of evidentiary factors, juror attitudes toward the law, juror attitudes toward the defendant, the delivery of judicial instructions, and the jury's technical comprehension of them were not recorded in any systematic way and therefore could not be captured. Similarly, empirical observations on these same variables with respect to verdict cases were equally unavailable for the purpose of introducing a rigorous research control. In short, the development of a statistically significant sample of "cohort" hung jury and verdict cases proved to be an impossible task. However, certain observations which were recorded in the DCI and BCS data sets are capable of yielding useful descriptive statistics about hung jury and verdict cases with respect to the following variables: vote splits; outcomes; crime types; primary versus lesser included and lesser charges; and defendants' ages, races, and sexes. Although analysis of the data captured pursuant to these independent variables is not sufficient to support inferences as to the causes of hung juries, the analytical presentation of the data in Section IV does yield empirical results, heretofore unknown, which can direct future researchers focusing on the causal analysis of hung juries.

The assessment of the effects of hung juries depends upon the analysis of data about the reprocessing requirements of hung jury defendants. Reprocessing refers to the outcomes which may occur after a mistrial is declared as the result of a hung jury. Reliable data about hung jury outcomes, e.g., those occurring because of dismissal by the court or prosecution, or acquittal or conviction upon retrial, are available from the DCI data set. The display of analytical results based upon the foregoing data permit the formulation of specific statements about the effects of hung juries. In addition, the availability of vote split observations, when combined with outcome observations, should illuminate the process by which decisions are made to retry a hung jury case. Because the data can be disaggregated by county, the data base may support some limited exploration of the foregoing effects on a county-by-county basis.

The determination of the amount of time consumed by hung juries depends upon the capture of precise data about the number of days consumed by Superior Court criminal trials which resulted in hung juries and a control sample of time data deriving from Superior Court verdict cases. The time data, to be useful, must be in commensurable units of count. Data commensurability turned out to be a problem insofar as precise measurement of jury deliberation time constituted part of the overall time computations.

The on-site review of court records in all study counties revealed that many hung juries occur within hours after deliberation begins. Only a small sample of the cases recorded in the DCI data set counted deliberation time in units of hours. Consequently, only aggregate figures in units of days are

available about the amount of time consumed by hung juries. However, the aggregate figures are useful for purposes of indicating how many total trial days are consumed by hung jury cases. Comparable time figures, based upon empirical results reported in a recent research study undertaken in Los Angeles County,* should provide a basis for comparison. The same Los Angeles study also provides "multiplier" figures which can be applied to the time data for purposes of estimating the costs of hung juries. The specific details supporting this analysis are set forth in Section IV.

In summary, the data base is adequate for purposes of fully addressing three of the main study issues: frequency of occurrence, effects, and amount of time consumed by hung juries. Because of the unavailability of key data elements with respect to the causal variables, the DCI and BCS data sets are only partially capable of illuminating the causes of hung juries. The reasons for the unavailability of the data and an approach which could support a rigorous causal analysis of hung juries are set forth in a concluding comment about judicial recordkeeping and hung jury research which appears in Section V. The next section presents and discusses the results of the data analysis.

*Greenwood, Peter W., Wildhorn, Sorrel, et al., PROSECUTION OF ADULT FELONY DEFENDANTS IN LOS ANGELES COUNTY: A POLICY PERSPECTIVE, R-1127-DOJ, Santa Monica: The RAND Corporation (1973).

SECTION IV

DATA ANALYSIS

CONTINUED

1 OF 3

SECTION IV

DATA ANALYSIS

4.1 OVERVIEW

The data utilized in the analyses were organized into three major data sets as previous exposition has explained. (1) the DCI data, consisting of a data deck of cards punched for computer processing, (2) the Judicial Council data, consisting of a series of manual tabulations which also were punched on cards for computer processing, and (3) the BCS data, consisting of a series of Extended Data computer output reports produced by the BCS staff according to specifications prepared by the PMCC study staff.

For the DCI and Judicial Council data analyses, a series of computer programs were written to perform mathematical operations on the data. The data were formatted by one of the programs so that their input into the computer enabled their arrangement in the form of a large multidimensional array. Specific operations using this array included the following:

1. Report generation of output displays on the frequency of hung juries; the number of total verdicts; crime type distributions according to two aggregation schemes; defendant profiles according to distributions by age, sex, race, and occupation; vote split distributions; and hung jury case distributions by subsequent outcome;

2. Computation of a series of statistical tests on the extent to which relevant variables were related to hung juries.

3. Report generation of output displays on the effects of hung juries including the computation of a statistical test which determined the extent to which hung jury vote split distributions are related to hung jury distributions by subsequent outcome; and

4. Computation of the amount of time consumed by hung juries as opposed to verdict juries and utilization of the time results as a multiplier in estimating the costs of hung jury cases as opposed to verdict cases.

The remaining subsections present and discuss the empirical results of the foregoing operations. They are organized to address frequency, causes, effects, time consumed and costs of hung juries separately. However, a statistical profile of the study counties precedes this presentation in order more adequately to explain the nature of the study sample and the geographical scope of the courts involved.

4.2 GENERAL PROFILE

The empirical data on hung juries in Superior Court criminal trials were collected in California's 10 most populated counties. Together, these counties in 1970 represented 75.8 percent of the State's total population. They also represent 80.9 percent of the felony litigation which took place over the two most recent years for which complete data are available, 1971 and 1972.

Table 4-1 summarizes the statistics on population and Superior Court criminal litigation by county. The first row set presents population. The percentages show a high of 35.3 percent of the total population residing in Los Angeles County followed by 7.1 percent residing in Orange County. The second row set presents figures on the number of felony defendants charged in Superior Court during 1971 and 1972 and computes these figures as percentages of the total Superior Court defendant population over the same period. Again, Los Angeles County led, accounting for 48.3 percent of the defendants, and San Diego County followed, accounting for 5.8 percent of the defendants.

TABLE 4-1

GENERAL PROFILES OF

THE STATE OF CALIFORNIA AND THE STUDY COUNTIES

DESCRIPTOR	TEN COUNTY TOTAL	ALAMEDA	CONTRA COSTA	LOS ANGELES	ORANGE	SACTO	SAN BDO	SAN DIEGO	SAN FRAN	SAN MATEO	SANTA CLARA
• TOTAL POPULATION 1970*	15,095,416	1,073,184	558,389	7,036,463	1,420,386	631,498	681,092	1,357,782	715,674	556,234	1,064,714
- PERCENT OF STATE TOTAL (19,957,715)	75.6	5.4	2.9	35.3	7.1	3.2	3.4	6.8	3.6	2.8	5.3
• SUPERIOR COURT FELONY DEFENDANTS 1971, 1972**	98,527	5,256	1,652	58,900	4,944	2,886	3,916	7,037	5,897	2,584	5,455
- PERCENT OF STATE TOTAL (121,822)	80.9	4.3	1.4	48.3	4.1	2.4	3.2	5.8	4.8	2.1	4.5
• DEFENDANTS CONVICTED BY JURY 1971, 1972**	3,89(	443	149	1,422	233	214	311	393	293	122	316
- PERCENT OF STATE TOTAL (5,689)	68.5	7.8	2.6	25.0	4.1	3.8	5.5	6.9	5.2	2.1	5.6
• DEFENDANTS ACQUITTED BY JURY 1971, 1972	1,326	162	32	607	66	65	72	106	79	39	98
- PERCENT OF STATE TOTAL (1,848)	71.8	8.8	1.7	32.8	3.6	3.5	3.9	5.7	4.3	2.1	5.3

*U.S. Bureau of the Census, 1970 Census of Population and Housing.

**Bureau of Criminal Statistics, California State Department of Justice.

Clearly, Los Angeles County constitutes a "special" jurisdiction insofar as its population accounts for over one third of the State's total and its level of felony court activity reflects nearly one half of the defendants arraigned in the Superior Courts of all 58 counties in California. However, as the next subsection shows, the frequency of hung juries in Los Angeles County is not fully commensurate with either its population or number of felony court defendants. Indeed, the data about the remaining nine study counties, reflecting somewhat more than one third, 37 percent, of the State's population and one third of the felony processing, account for nearly two thirds of the hung juries.

The third and fourth row sets present figures on the number of Superior Court defendants convicted and acquitted by jury trial during 1971 and 1972. As with the defendant distribution, Los Angeles County led with 25 percent of the convictions and 32.8 percent of the acquittals. Alameda County was next with 7.8 percent of the convictions and 8.8 percent of the acquittals. More detailed reference to the distribution of jury verdicts will be made later in the context of the analysis of hung jury vote split distributions.

4.3 FREQUENCY OF OCCURRENCE OF HUNG JURIES

The number of hung juries which occurred in the 10 study counties over the three-year study period was 978 out of a total of 8,011 jury verdicts reached in Superior Court criminal cases tried in those counties. As a ratio expressing the frequency of hung juries, this result means that an average of 12.2 percent of all felony cases tried by jury during 1971, 1972, and 1973 resulted in hung juries. As noted earlier, this finding is over twice the frequency originally expected.*

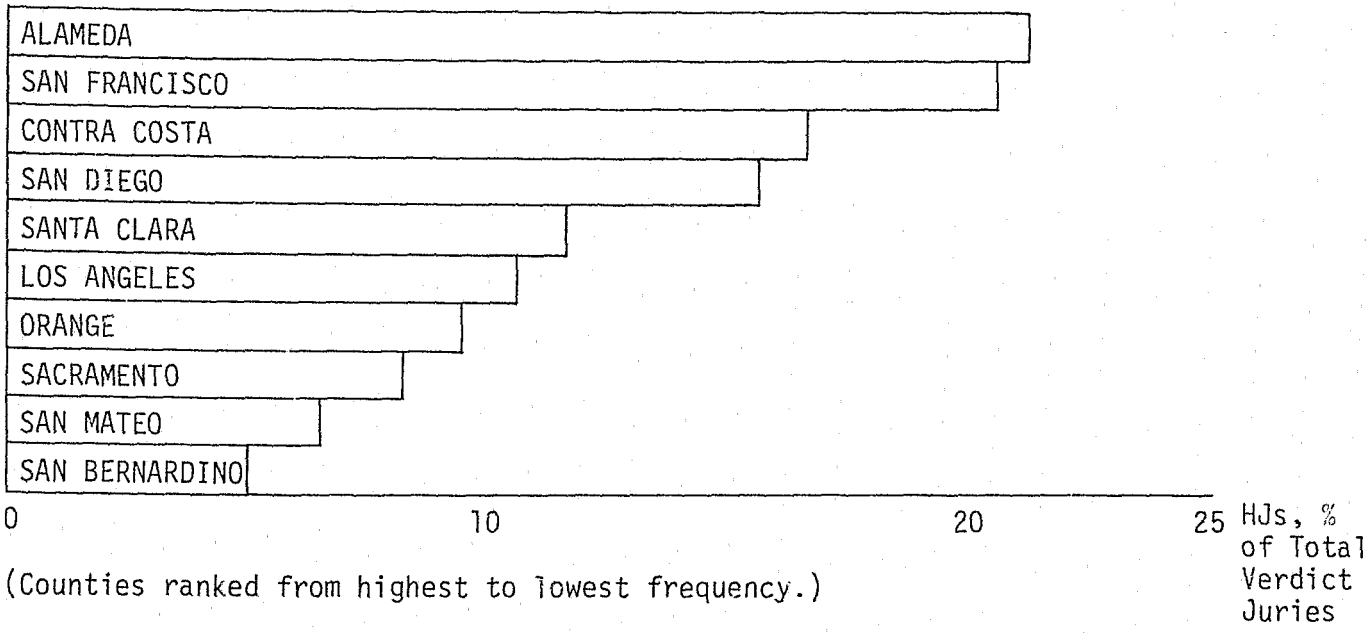
*"... in terms of sheer numbers, the hung jury is an important phenomenon, since more than five percent of all juries, or some 3,000 trials per year, end in such a mistrial." See Kalven & Zeisel, op. cit., p. 453 and Note 3, Appendix A, p. 509.

Figure 4-1 presents a county-by-county distribution of the frequency of hung juries. Alameda County ranks highest with a frequency of 21 percent followed by San Francisco with a percentage of 20.4. Contra Costa and San Diego Counties are next with frequencies of 16.5 percent and 15.5 percent respectively. San Bernardino and San Mateo Counties had the lowest frequencies in the study sample with percentages of 5.1 and 7.4 respectively. In terms of a north-south division among the larger jurisdictions, hung juries occur with greater frequency in the three most populated counties of the Bay Area. During the study period, the Superior Courts of Alameda, San Francisco, and Contra Costa Counties all experienced an average hung jury rate of nearly 20 percent while the comparable rate for the four Southern California counties, comprising well over half of the State's population, is slightly more than 10 percent.

In general, the frequency results developed from the three-year study sample establish the fact that hung juries, and the mistrials that derive from them, are episodes which occur with significant regularity within the criminal court system at the felony level. Over one in eight felony cases, delivered to a jury for deliberation upon a verdict, results in declaration of a mistrial because the jury is deadlocked. In view of this frequency, what types of criminal offenses result in hung juries, who are the people who allegedly commit them, how do jurors divide on the question of guilt or innocence, how are hung jury cases eventually disposed, and are hung jury rates increasing or decreasing?

Distribution of the hung jury data by crime type shows that over one half of all hung jury trials are prosecuted as offenses charging robbery, burglary, or drugs. An additional 30 percent of hung juries result from charges of

HUNG JURIES AS PERCENTAGE OF VERDICT JURIES



(Counties ranked from highest to lowest frequency.)

HUNG JURY/VERDICT JURY COUNTS

COUNTY*	1971		1972		1973		HJ DATE UNK.	TOTALS		
	VER-DICT	HUNG JURY	VER-DICT	HUNG JURY	VER-DICT	HUNG JURY		VER-DICT	HUNG JURY	%**
LOS ANGELES	1044	124	1033	102	1426	132	4	3503	362	10.4
ALAMEDA	286	45	275	69	204	45	2	765	161	21.0
SAN DIEGO	231	30	259	41	246	43	1	736	115	15.6
SAN FRANCISCO	191	44	191	38	158	29	0	540	111	20.4
SANTA CLARA	173	18	206	20	164	21	3	543	62	11.4
ORANGE	151	7	173	25	193	16	2	517	50	9.7
CONTRA COSTA	72	17	89	14	75	7	1	236	39	16.5
SACRAMENTO	123	7	133	11	171	17	0	427	35	8.2
SAN BERNARDINO	202	5	166	11	159	11	0	527	27	5.1
SAN MATEO	92	4	70	2	55	10	0	217	16	7.4
TEN COUNTY TOTAL	2565	301	2595	333	2851	331	13	8011	978	12.2

*Ranked by highest to lowest absolute total number of hung juries.

**Hung Jury percent of verdict.

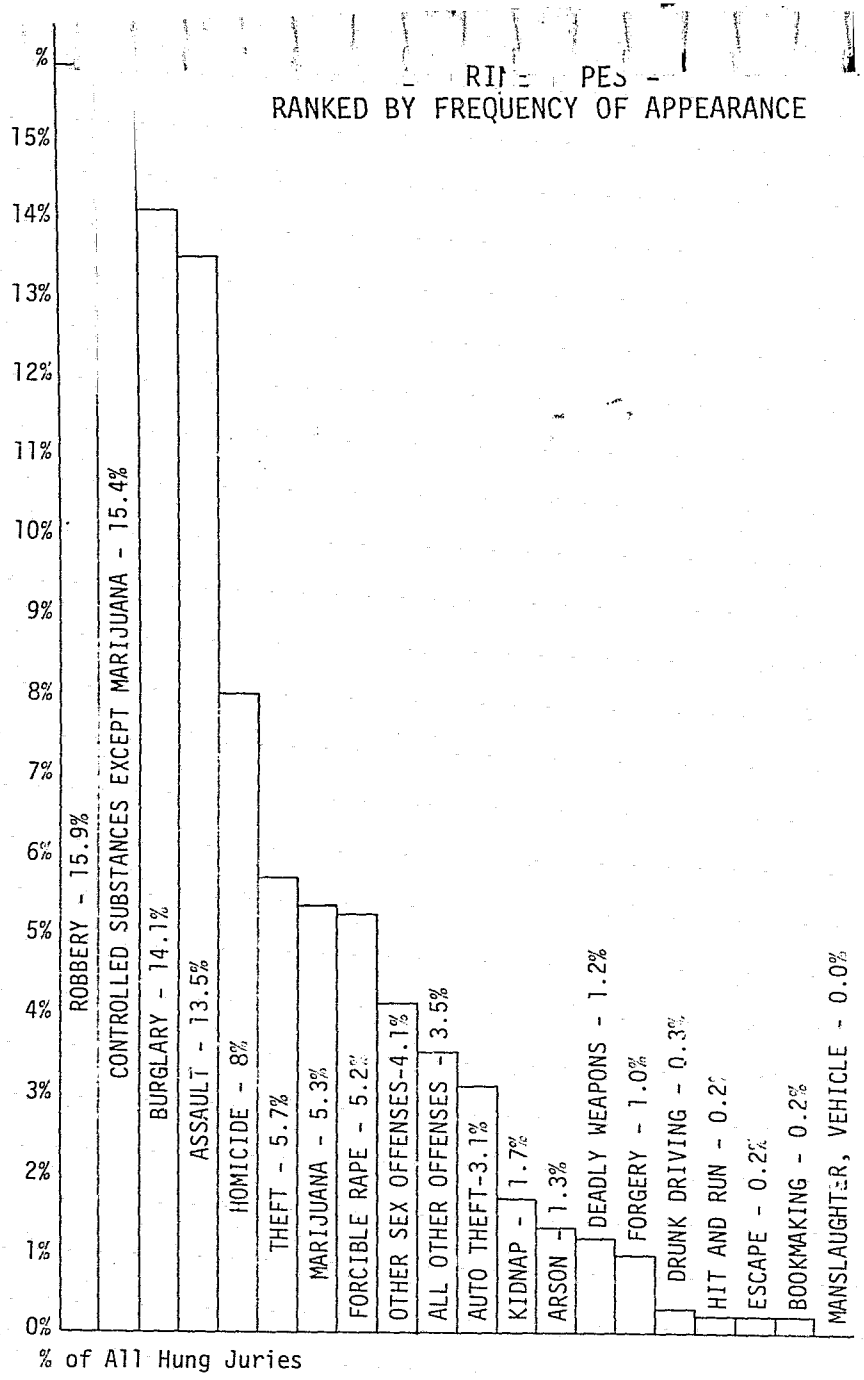
FIGURE 4-1

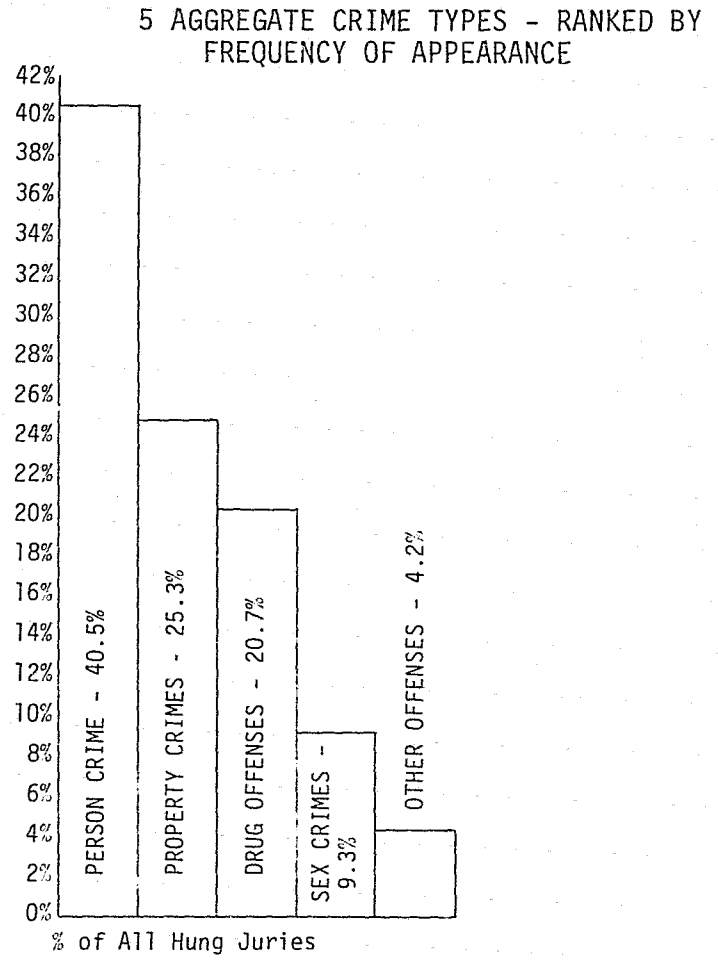
FREQUENCY OF OCCURRENCE OF HUNG JURIES BY COUNTY, 1971-73

homicides, assaults, and sex offenses, including forcible rape. Similarly, distribution of the BCS Superior Court verdict data, compiled by the BCS staff in a report for PMCC on the 10 study counties, shows similar patterns. Approximately one half of all Superior Court defendant dispositions results in jury verdicts with respect to robbery, burglary, or drugs. An additional 28 percent of all felony defendants disposed by jury trial results from verdicts on homicides, assaults, and sex offenses.

Figures 4-2 and 4-3 are histograms depicting the distribution of hung jury and defendant verdict percentages by crime type. The hung jury data displayed in Figure 4-2 are presented according to two aggregation schemes and the rankings reflect the full three-year study period. The verdict data displayed in Figure 4-3 are based on aggregations of over 400 individual BCS crime codes. While the data in Figure 4-3 reflect different units of count, i.e., defendant-specific counts in the case of the BCS data and jury-specific counts in the case of the hung jury data, distributions are expressed as percentages for purposes of comparison.* In short, the types of crimes for which hung jury defendants are charged do not appear to be significantly different than the crimes for which verdict defendants are charged. One interpretation of this finding is that the hung jury phenomenon, to the extent it is a problem which inhibits judicial effectiveness and efficiency, is not associated with any particular crime type(s) except perhaps when such reference is also linked to other explanatory

*It should be noted that while the verdict data include three years of observations, i.e., 1970-1972, the periods of comparison are shifted by one year owing to the fact that data for 1973 Superior Court defendant dispositions have not yet been published by the BCS.

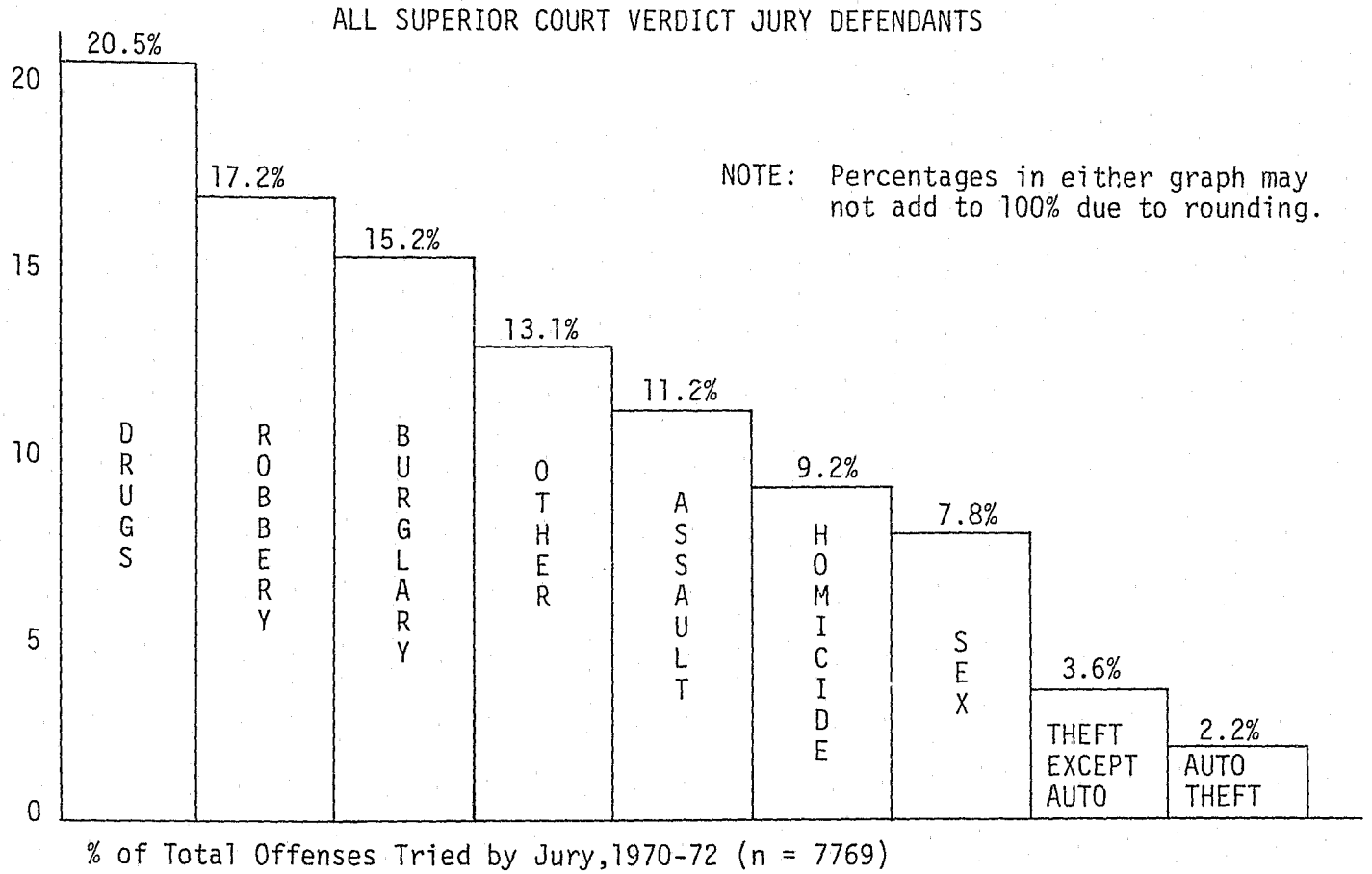




NOTE: Percentages may not add to 100% due to rounding.

FIGURE 4-2

HUNG JURY CRIME PROFILE, ALL STUDY COUNTIES, 1971-73



NOTE: Percentages in either graph may not add to 100% due to rounding.

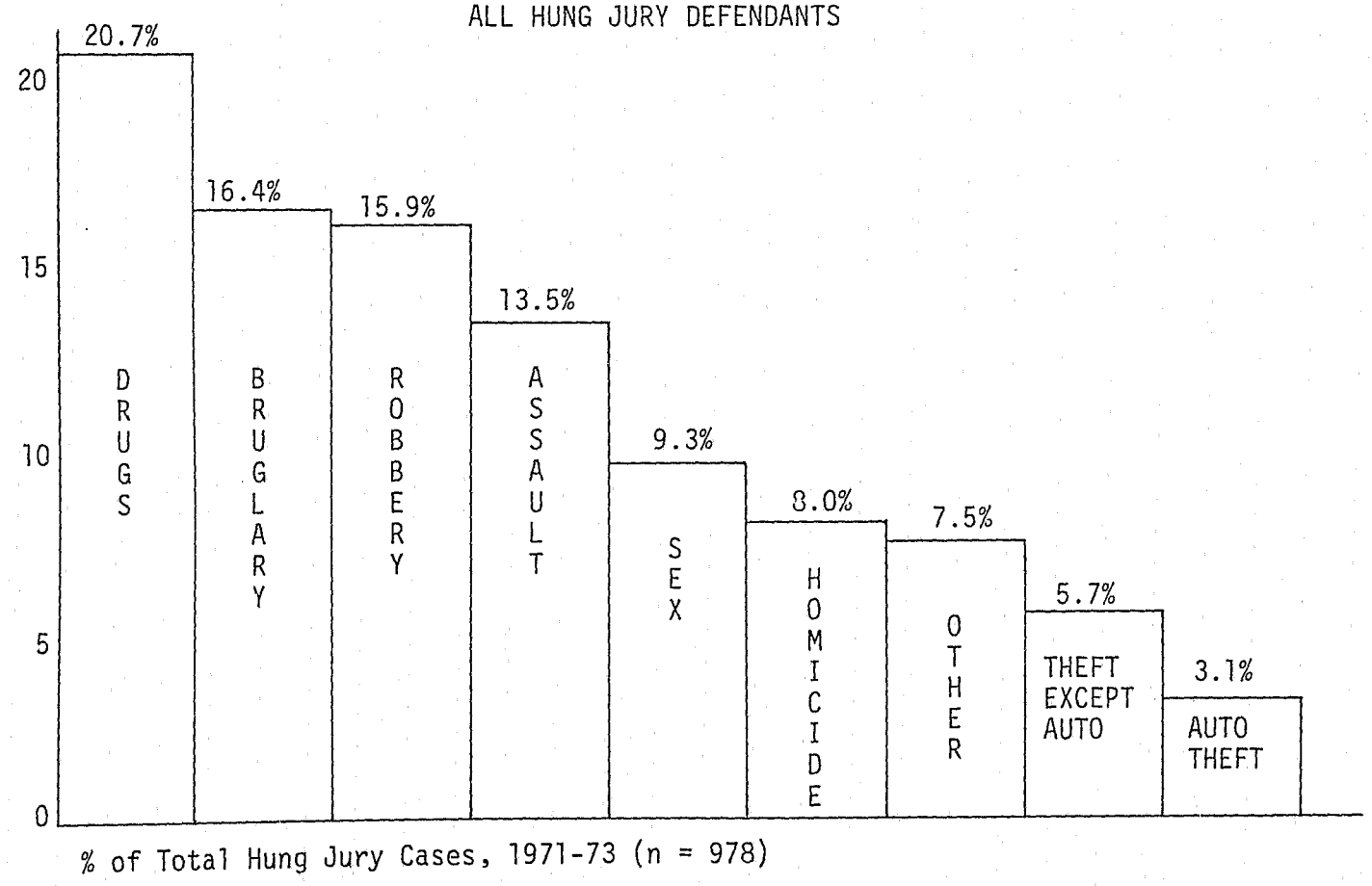


FIGURE 4-3

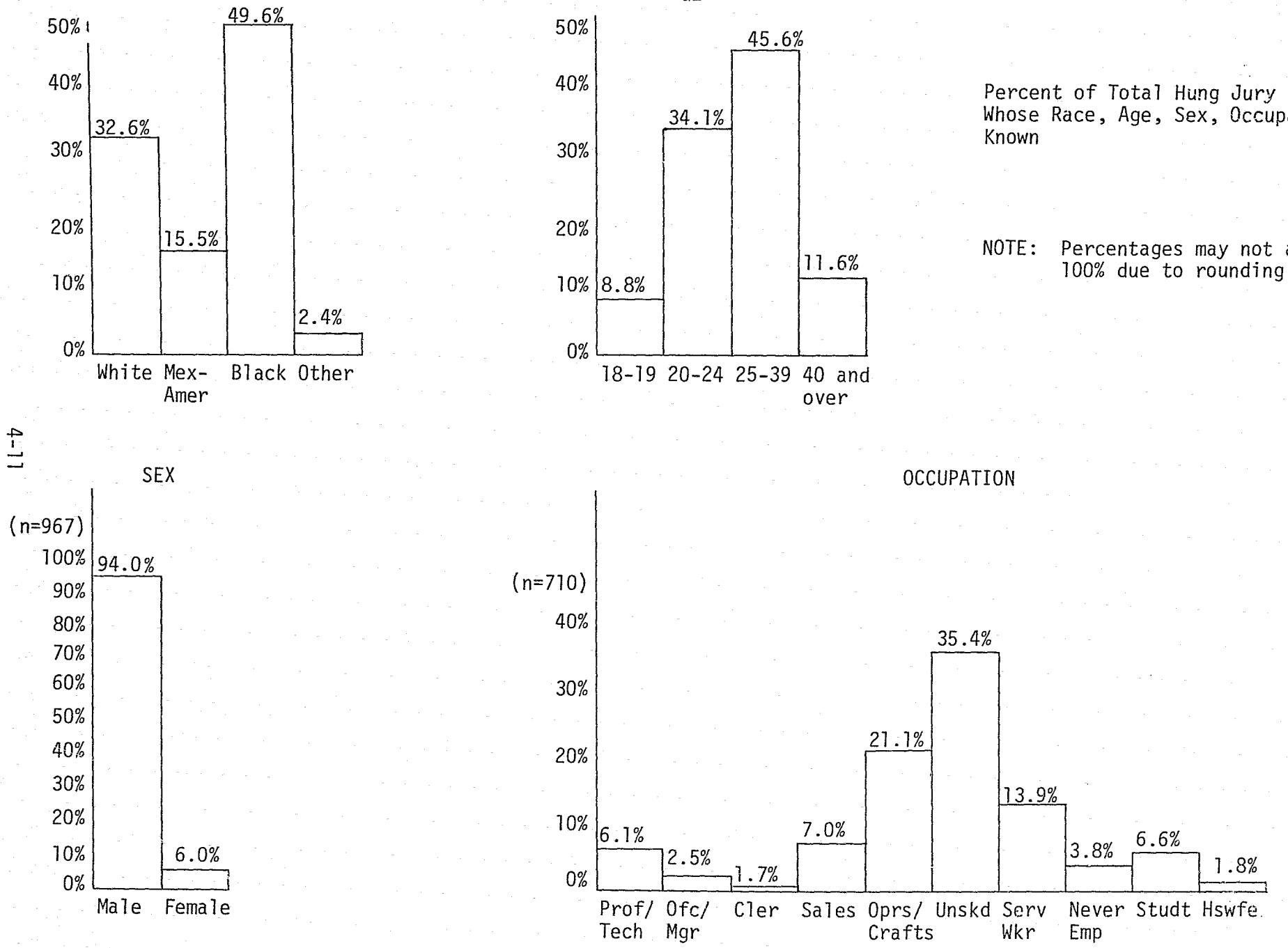
CRIME-SPECIFIC PROFILE, ALL STUDY COUNTIES

variables.* An empirical description of hung juries, solely in terms of crime types, does not lead to any obvious or simple explanation of hung juries. The discussion of the crime type variables continues in another context later in this section.

The characteristics of hung jury defendants are not significantly different from those of verdict defendants. The "typical" hung jury defendant is male, has a close to even chance of being Black, and is relatively young. Occupationally speaking, chances are better than one out of three that he will be unskilled. Figure 4-4 and 4-5 display defendant background characteristics by age, sex, and race. Figure 4-4 presents a statistical description of the hung jury defendants identified in the ten county sample over the three-year study period and includes an occupational profile. Figure 4-5 presents a similar description for comparative purposes of verdict defendants drawn from 1970-1972 BCS Superior Court dispositional data.**

*In an attempt to isolate possible other explanatory variables, analyses were performed on each individual county's hung jury/verdict jury charges. Significant results were found for Alameda, Los Angeles, and San Francisco Counties. In Alameda County, there are disproportionately large numbers of hung juries on theft (except auto) and drug offenses. In Los Angeles County, there are disproportionately large numbers of hung juries on assault offenses and small numbers on robbery offenses. In San Francisco, sex offenses result in hung juries twice as frequently as expected. In each of these counties, the differences were statistically significant at the 99 percent level or better. However, the significance of these findings should not be construed as anything more than crime-specific patterns the explanation of which depends upon discovery of relationships among observations on other independent variables not stored in the present data base.

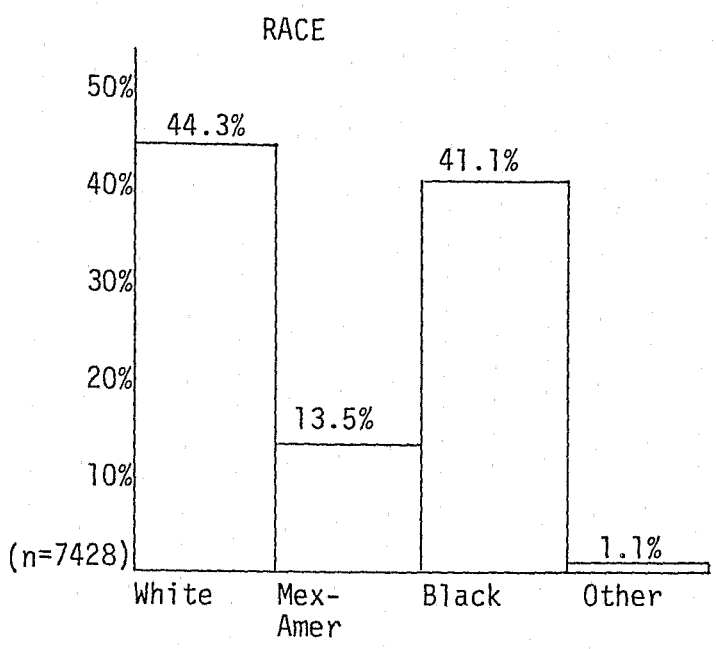
**As noted above with regard to the crime type distribution, the BCS demographic data on Superior Court verdict defendants covers the period 1970-1972 and therefore is not strictly coincidental with the study period 1971-1973. Because of this twelve-month shift, the background characteristic distributions are expressed as percentages for purposes of comparison.

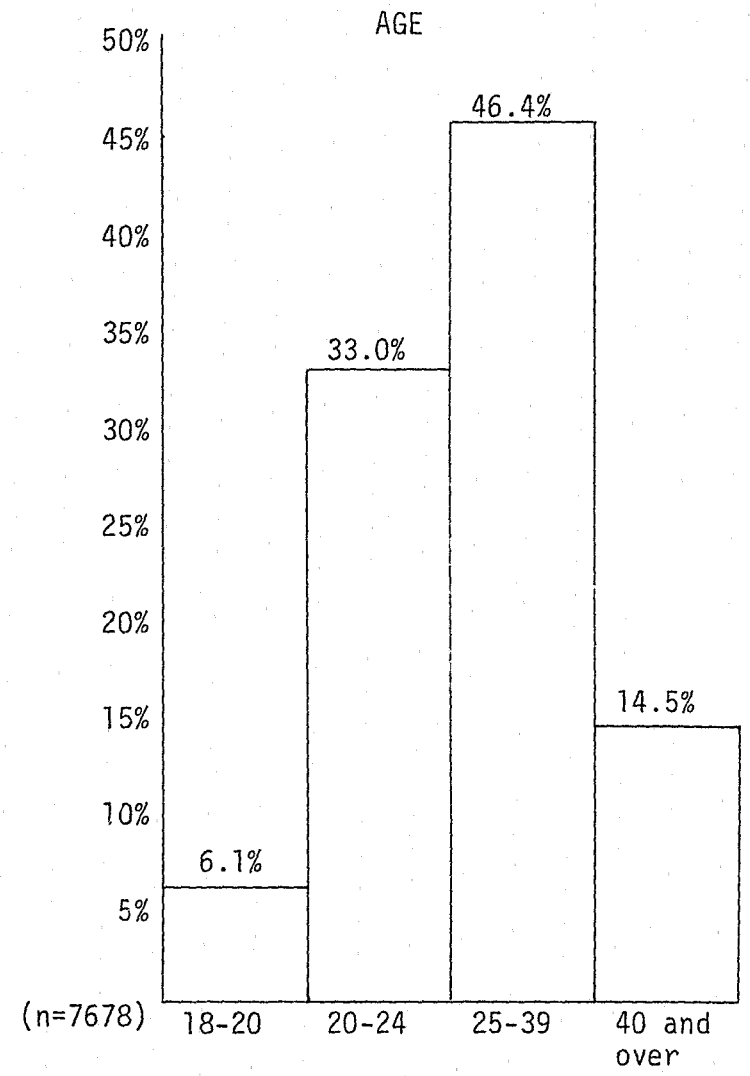


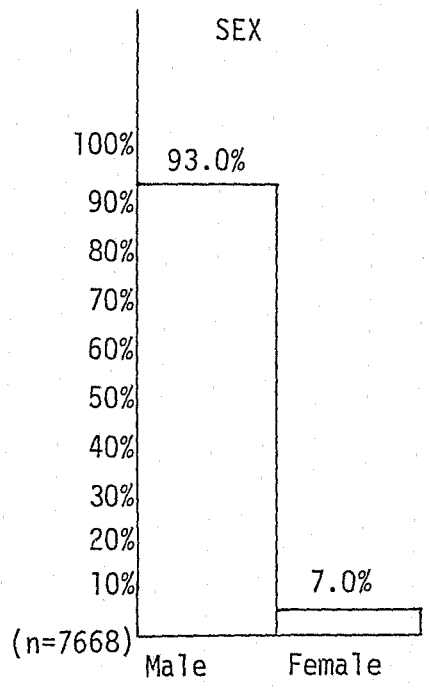
4-11

FIGURE 4-4

HUNG JURY DEFENDANT PROFILES, ALL STUDY COUNTIES, 1971-73, ALL KNOWN DEFENDANTS







Percent of Total Superior Court Jury Defendants Whose Race, Age, Sex Was Known.

FIGURE 4-5

SUPERIOR COURT JURY TRIAL DEFENDANT PROFILES,

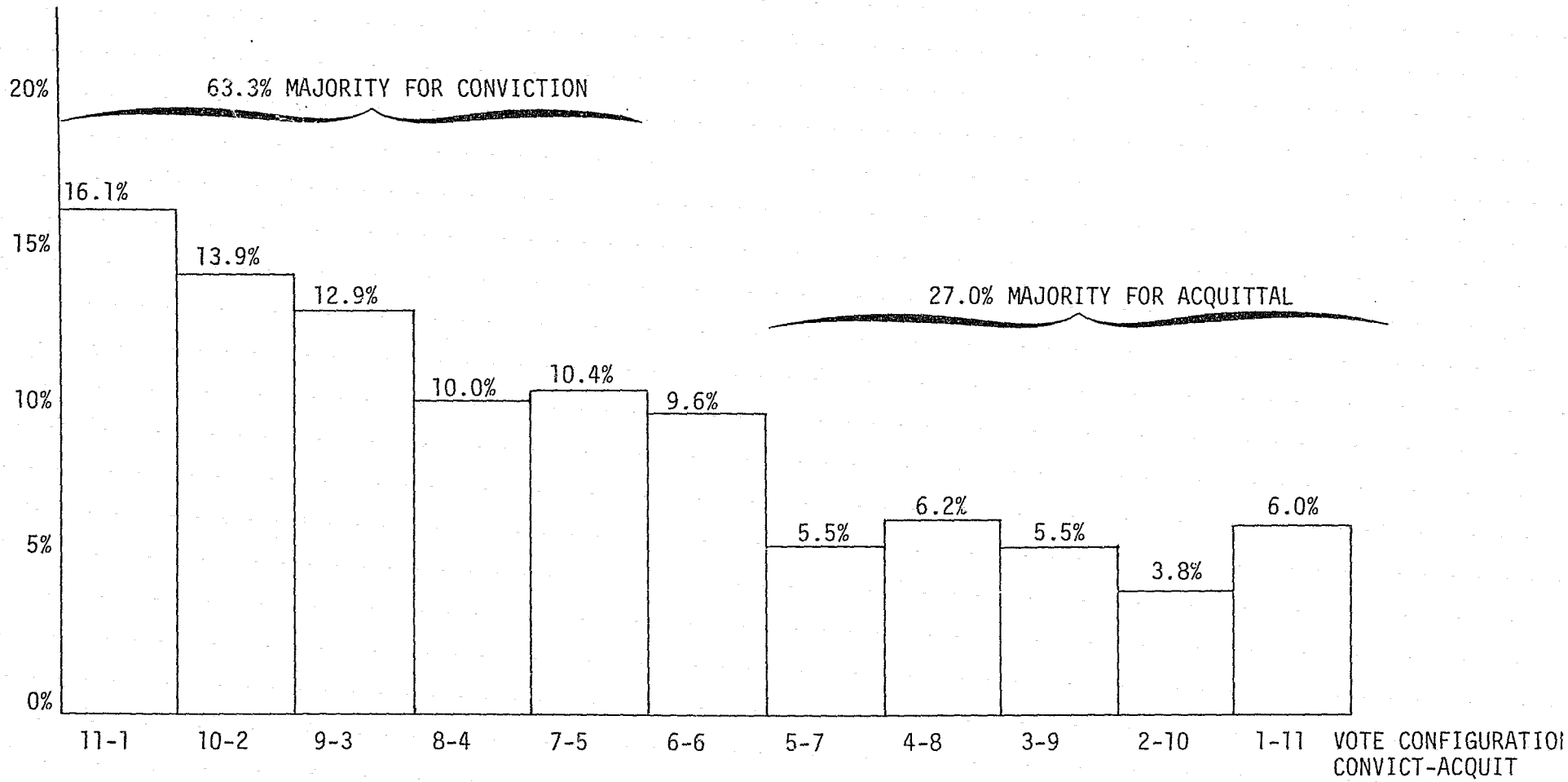
ALL STUDY COUNTIES, 1970-72, ALL KNOWN DEFENDANTS

The juries which try defendants with the backgrounds just described appear to disagree in favor of conviction more than twice as often as juries which disagree in favor of acquittal. Figure 4-6 breaks down the vote split configuration data from the DCI data set and presents them in histogram form. Inspection of the figure suggests restating the foregoing in another manner: In slightly less than two thirds of the cases, a minority of jurors hold out for acquittal, and in slightly less than one third of the cases, a minority of jurors hold out for conviction. This observation is very similar to the Kalven and Zeisel research* of two decades ago. But as they cautioned then, one cannot therefore conclude that there is something unique about the acquittal position that makes a juror "more stubborn" than when he is in the conviction position.

Reference back to the BCS dispositional data in Table 4-1 shows that while jury verdicts split apart at a larger ratio than hung juries, they divide in the same general direction: three fourths for conviction and one fourth for acquittal. The difference between the 2/3 and 3/4 conviction/acquittal ratios does not appear sufficient to support any hypothesis which explains the incidence of hung juries in terms of vote split directions.

A more interesting observation based on the data in Figure 4-6, however, is the size of the minority that blocks unanimity. The data supporting the histogram show that almost two fifths of all hung juries result from either an 11-1 or a 10-2 vote split. The tempting conclusion to draw from this statistic is that hung juries, two times out of five, are a function of one or two "hanging jurors" and that the obvious solution to 40 percent of the problem is a legislative modification of the nonunanimous verdict rule in criminal cases. A rule

*Kalven & Zeisel, op. cit., p. 460-461.



Percent of All Known Vote Split Configurations.

NOTES: Percentages do not add to 100% due to rounding.
n=728

FIGURE 4-6

HUNG JURY VOTE SPLIT DISTRIBUTION, ALL STUDY COUNTIES, 1971-73

permitting 11-1 and 10-2 vote split configurations, according to the above reasoning, would reduce the incidence of hung juries by 40 percent. As discussion of the limitation of the results presented in the remainder of this document demonstrates, such a conclusion is simplistic. A host of other variables may hold explanatory potential with respect to how and why hung juries occur and, more specifically, how vote split configurations result. Some of these variables are discussed below. However, before information developed about causes, effects, and amount of time consumed by hung juries is presented, the question of the future incidence of hung juries should be explored in order properly to characterize the scope of the problem in terms of time trend analyses.

In order to determine whether hung juries are increasing or decreasing over time, the time-series hung jury and verdict data were sujected to several trend analyses at varying levels of statistical sophistication. Figure 4-7 displays aggregate monthly hung jury rates over time for all 10 study counties. The rates are expressed as percentages of hung juries to verdict juries and are shown on the figure as the data points forming the jagged line. The jagged line then was "smoothed" by the method of least squares* to derive the straight trend line also shown in the figure. A trend line is one which mathematically expresses the observed linear correlation between two variables where the empirical observations do not all lie exactly on a straight line. Inspection of the trend line reveals a slightly positive slope which means that the hung jury rate has been increasing slightly over the three-year sample period. More-

*The method of least squares is a statistical procedure for deriving the equation of a straight line which passes through a distribution of points where their observed linear correlation is not perfect, i.e., the points do not lie along a straight line. The trend equation derived from the observations displayed in Figure 4-7 is $y_t = 12.156 + .0095x$. This equation means that the hung jury rate increased by only .0095 hung juries per month on the average over the 36-month sample period.

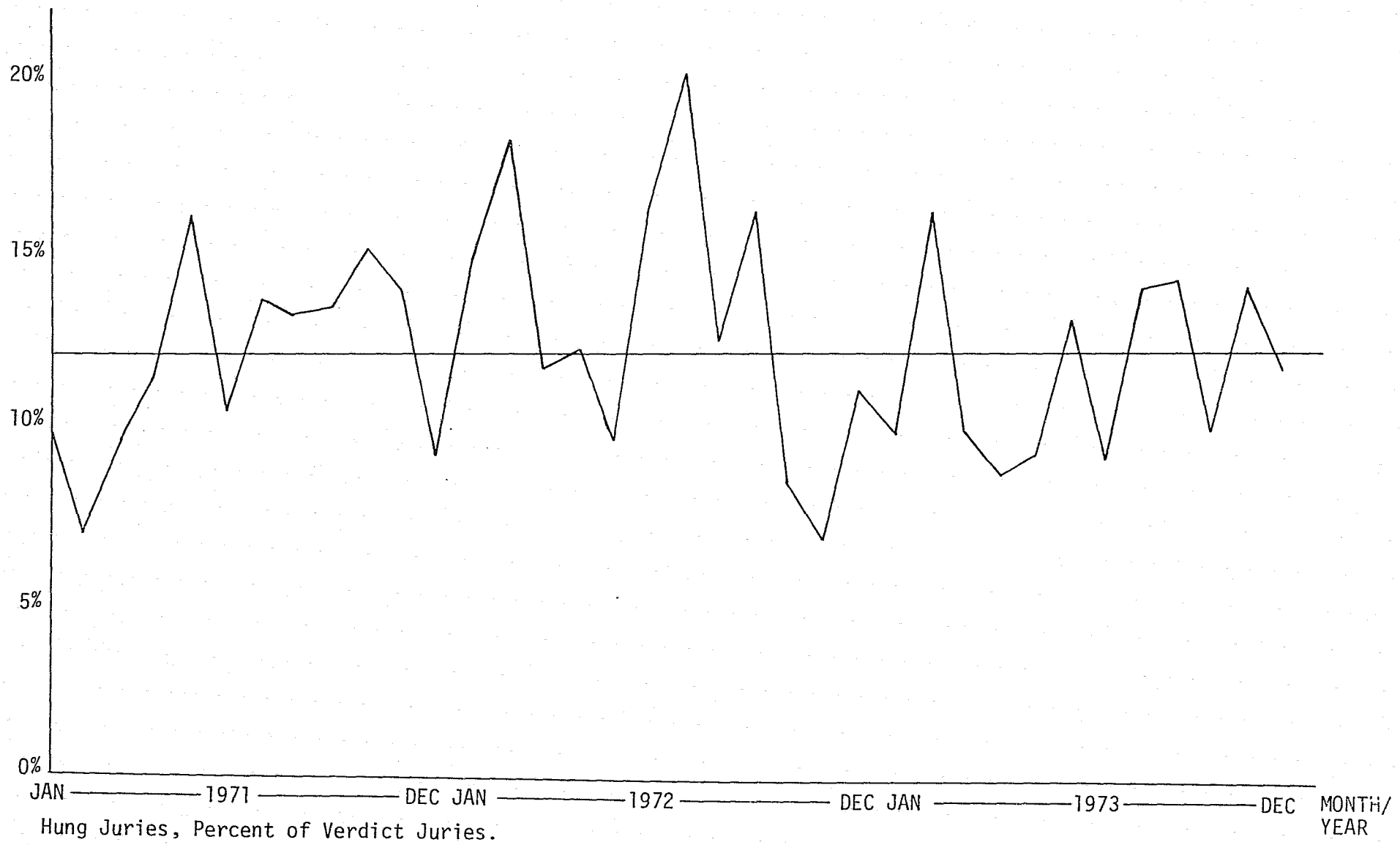


FIGURE 4-7

HUNG JURY TIME TRENDS, ALL STUDY COUNTIES

HUNG JURIES AS PERCENT OF VERDICT TRIALS, BY MONTH

over, if the trend continues, it would require the passage of nine years before the aggregate hung jury rate increases by one percent. If should be emphasized that the trend line is not a prediction. Rather, it is a mathematical expression of an "if-then" nature: If the trend line established by the three-year aggregate hung jury rates as given in Figure 4-7 continues, all other things being equal, then the increase in the incidence of hung juries will be negligible. This kind of extrapolation implies nothing more than the foregoing. Many factors could intervene to change the hung jury rate, such as prosecutorial or judicial policies affecting the number of felony filings in Superior Court or the number of jury trials.

Because the trend analysis performed on the aggregate data conceivably could have masked specific hung jury trends in individual counties, the PMCC study staff undertook a series of trend analyses using separate data subsets from each of the counties. This decision was reinforced by a preliminary analysis of the Alameda County hung jury/verdict data over time which indicated that the hung jury rate appeared to be seasonally affected by summer and fall.

Figure 4-8 displays monthly hung jury rates for the Alameda County Superior Court over all 36 months of the study period. Like the aggregate data shown in the preceding figure for all study counties, a jagged line results, but with two notable characteristics. The two principal "spikes" in the figure register substantial increases in the hung jury rate during the fall and early winter months of 1971 and the summer months of 1972. These increases are consistent with two periods during 1971 and 1972 when shifts of judicial manpower were made from the civil calendar to the criminal calendar of Superior Court. In 1971, the criminal departments of the court were increased from the normal complement of 6 to 16, involving an augmentation of 10 additional judges during August, September, October, and part of November. Traditionally in Alameda

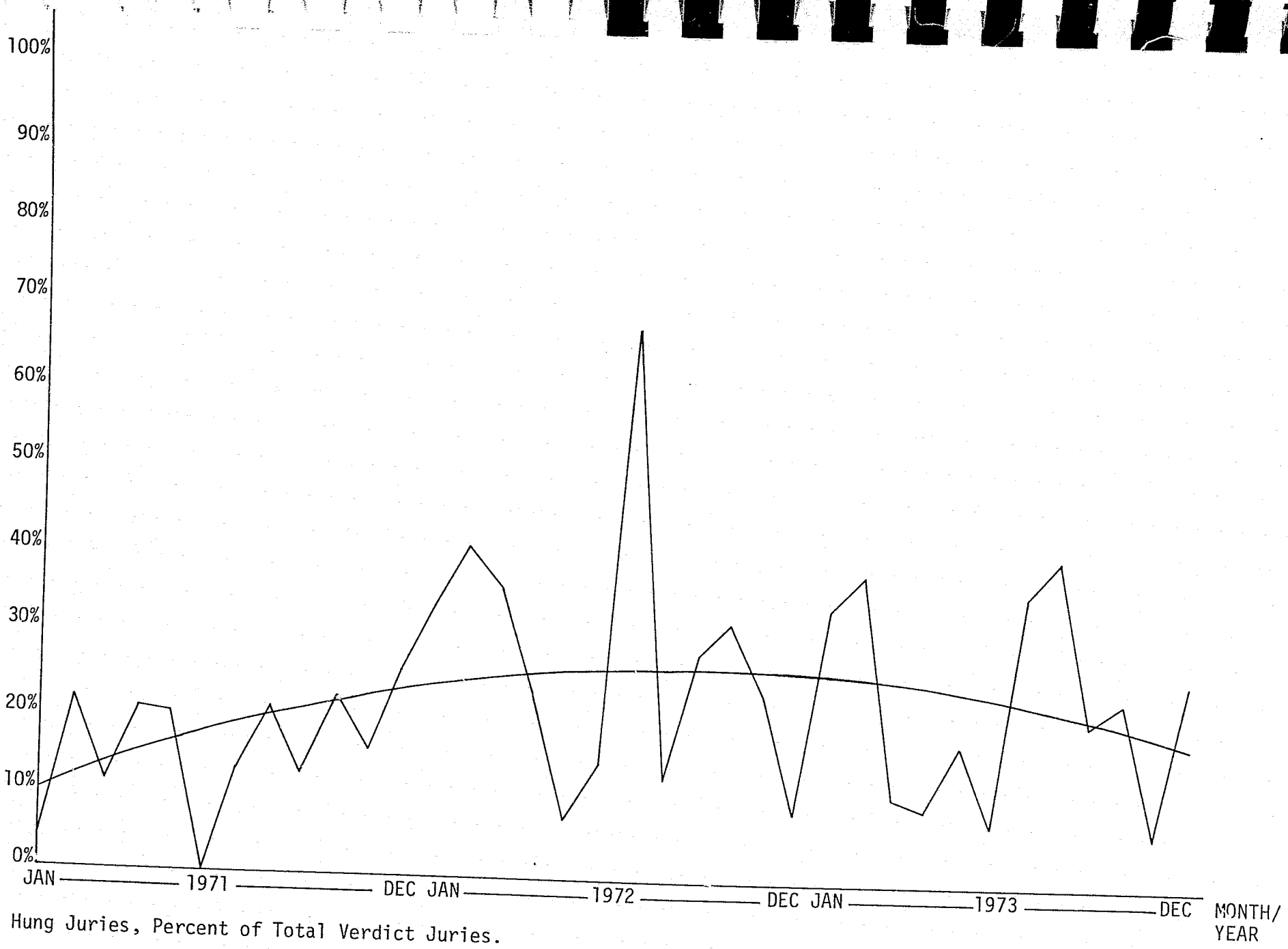


FIGURE 4-8

ALAMEDA COUNTY - TIME TREND ANALYSIS OF HUNG JURY RATE

County, the summer months are "slack" periods of civil litigation because of vacations. The management decision by the court to reallocate Superior Court staff to the criminal case backlog accordingly placed tremendous pressure on the District Attorney's felony staff to prepare for trial. Interviews with selected members of the District Attorney's staff elicited the opinion that the time pressures to prepare cases for trial resulted in a substantial number of less thorough prosecutorial presentations,* which may account for the increase in hung juries.** During 1972, the reallocation of judges from the civil to the criminal departments was repeated during the summer months and a corresponding increase in the hung jury rate is shown on the figure. However, these two variations appear to be episodic insofar as the "smoothing" of the jagged line by the curvilinear trend line,*** shown also on Figure 4-8, shows that the hung jury time trend peaked during 1971 and 1972, and since the summer of 1972, has been declining. While the derivation of a linear trend line would show a positive slope over the 36-month period, the net increase is actually explained by the 1971-1972 "bulge." In other words, the hung jury rate in Alameda County is consistent with the ten county trend line shown in Figure 4-7.

With respect to the other study counties, the hung jury problem appears to be stable over time. Hung jury rates cannot generally be explained as a

*The problem of prosecutorial thoroughness is not simply a function of careful legal preparation by the District Attorney's felony trial deputies. For example, effective prosecutions depend upon the availability of witnesses, time to exercise aggressive criminal discovery, and the availability of investigative staff for work in the field.

**Unfortunately, neither the BCS dispositional data nor the Judicial Council verdict data were susceptible to monthly disaggregation by outcome to permit computation of changes in the conviction/acquittal ratios for purposes of comparison.

***The curvilinear trend line is expressed by the equation $y_t = 8{,}035 + 1.701x - .04029\ (x^2)$. Where x = time; x^2 = time squared.

function of time.* The explanation of hung juries must therefore derive from analysis of observations on other independent variables.

4.4 CAUSES OF HUNG JURIES

The causes of hung juries are impossible to isolate given the data sets of the hung jury data base. As noted in the data base critique in Section III, the available hung jury and verdict data in the study counties were not sufficient to support analyses which are essential to the logic of statistical inference about the causes of hung juries. However, valuable subsets of empirical observations were obtained from all study counties about the following variables which are part of any causal analysis: vote split, outcome, type of charge, and defendant background characteristics of age, sex, race, and occupation.

*Because of the Alameda County results, trend analyses were performed on the hung jury/verdict data subsets of the nine remaining study counties. These individual county time trend analyses were of four types:

1. Least squares arithmetic time trends, expressed by the equation, $y_t = a + bx$;
2. Curvilinear time trends, expressed by the equation, $y_t = a + bx + cx^2$, used to describe data not appropriately explained by straight-line trends;
3. Curvilinear time trends with a dummy binary variable to represent summer, expressed by the equation, $y_t = a + bx + cx^2 + d$ (summer), used to account for variations during summer which might affect the overall hung jury rate; and
4. Curvilinear time trends with linear time trends fitted with binary variables for each month, expressed by the equation, $y_t = a + bx + cx^2 + e_1$ (February) + ... e_{11} (December), used to attempt to remove any seasonal effects in the variables.

As a result of analyses utilizing the foregoing methods, significant results were obtained for Contra Costa and Orange Counties. In Contra Costa County, the least squares arithmetic time trend equation was found to be statistically significant. The trend described by the equation was decreasing over time at 2.6 percent per year. The Orange County analysis yielded similarly significant results when fitted by the curvilinear time trend equation, both without and including the dummy variables for the seasonal effects. The trend described by the Orange County equation was similar to that of Alameda County, but registered a less pronounced bulge and a much lower y-intercept.

The PMCC computer analysis generated a series of six contingency tables which displayed observations of the foregoing variables in paired groups. The empirical and expected results in the tables were then subjected to the chi-square test to determine the extent to which the variables were related.

A contingency table is a method of analyzing the relationship between two variables, such as vote split and crime type. The chi-square test can be applied to a contingency table to test the hypothesis that a significant relationship exists. For example, the table might summarize vote split observations along a series of rows and crime type observations along a series of columns, thus creating an 11 by 20 table, reflecting the 11 possible vote split configurations and 20 aggregate crime types, and thus containing 220 cells. The statistical question then becomes whether there is any pattern to the frequencies of data displayed in the cells, and if there is a discernible pattern, whether it is attributable to "pure chance" or to a relationship between the variables. The chi-square statistic is computed by generating expected cell frequencies, on the assumption that the variables are not related, and then computing the discrepancies between the expected frequencies and the observed frequencies. The computed statistic is then used to judge whether any apparent relationship between the variables is due merely to chance variation.*

*For the nontechnical reader, a description of contingency tables and the chi-square test can be found in Lovejoy, op. cit., pp. 194-200, supra at p. 2-13.

Accordingly, contingency tables were generated and chi-square tests were computed for the following six pairs of variables:

1. Hung Jury Vote Splits/Crime Types;
2. Hung Jury Vote Splits Primary Charge/Vote Splits Lesser Included and Lesser Charges;
3. Hung Jury Vote Splits/Defendant Age;
4. Hung Jury Vote Splits/Defendant Sex;
5. Hung Jury Vote Splits/Defendant Race; and
6. Hung Jury Vote Splits/Defendant Occupation.

It should be noted that had empirical observations been available on hung jury and verdict variables concerning the impact of evidentiary factors, juror attitudes toward the law, juror attitudes toward the defendant, the delivery of judicial instructions, and the jury's technical comprehension of them, a rigorous causal analysis could have been performed involving more sophisticated and incisive statistical tests. Despite the crucial information gaps, useful descriptive results were obtained from the partial data available.

As the above list of variable pairs shows, vote split was included as an element in every combination selected for analysis. The hung jury vote split configuration was chosen as the best "surrogate" indicant of juror behavior given the absence of specific data about individual jurors. The varying vote split configurations allowed identification of varying degrees of "propensity

to convict/acquit," and these surrogates in turn allowed somewhat more refined analysis of the relationship between hung juries and other independent variables for which observations were entered into the data base.

The analysis of the vote split/crime type contingency table yielded results at the 95 percent significance level where the rows and columns were highly aggregated.* Specifically, there were five findings:

- Person crimes are somewhat less likely to deadlock juries in 11-1, 10-2, 9-3 and 8-4 vote split configurations for conviction than expected;
- Property crimes are somewhat more likely to deadlock juries in 11-1, 10-2, 9-3 and 8-4 vote split configurations for conviction than expected;
- Sex crimes are somewhat less likely to deadlock juries in 11-1, 10-2, 9-3 and 8-4 vote split configurations for conviction than expected;
- Drug crimes are somewhat more likely to deadlock juries in 11-1, 10-2, 9-3 and 8-4 vote split configurations for conviction than expected; however,
- Juries deadlocked 7-5, 6-6, and 5-7 in the direction of conviction are associated with no particular crime types at variance with the frequencies expected, although the frequencies are somewhat higher than expected for person and sex crimes.

Table 4-2 quantitatively summarizes these frequencies expressed as actual percentages compared to expected percentages.

*The row aggregation scheme reduced the vote split breakdown from 11 to three configurations: (1) 11-1, 10-2, 9-3 and 8-4, (2) 7-5, 6-6, 5-7, and (3) 4-8, 3-9, 2-10, and 1-11. All were defined in the direction of conviction. The column aggregation scheme originally included five crime types: person, property, sex, drugs, and other. The "other" category was deleted because of low cell frequencies.

TABLE 4-2

ACTUAL/EXPECTED FREQUENCIES OF AGGREGATED CRIME TYPES

WITHIN AGGREGATED VOTE SPLIT CONFIGURATIONS

VOTE SPLIT CONFIGURATIONS \ CRIME TYPE	PERSON ACT/EXP	PROPERTY ACT/EXP	SEX ACT/EXP	DRUGS ACT/EXP	TOTAL
11-1, 10-2, 9-3, 8-4 FOR CONVICTION	41.7% / 44.1%	28.9% / 26.2%	6.5% / 9.0%	22.9% / 20.7%	100%
7-5, 6-6, 5-7 FOR CONVICTION	47.5% / 44.1%	24.6% / 26.2%	9.5% / 8.9%	18.4% / 20.7%	100%
11-1, 10-2, 9-3, 8-4 FOR ACQUITTAL	46.4% / 44.1%	20.9% / 26.0%	14.4% / 9.1%	18.3% / 20.8%	100%

Despite the 95 percent significance level, inspection of the table does not reveal any pronounced differences between the actual and expected frequencies. However, the fact that differences appear in all of the cells was sufficient to produce the significance level reported. Nevertheless, it is misleading to interpret this statistical result as validation of any empirical hypothesis which attempts to establish a relationship between the crime type and the vote split variables. The reason for this caveat is that the contingency tables, which were constructed and analyzed at higher levels of disaggregation, yielded insignificant results. Consequently, the aggregation scheme employed for the display of the percentage results shown in Table 4-2 may have overdrawn the statistical significance of the results.*

*Insofar as the three by four contingency table tends to reflect small variances in all 12 cells.

To summarize these results, the crime type and vote split variables appear to be independent of one another. This finding of independence is reinforced when vote split as to primary charge is paired with vote split as to lesser charge.*

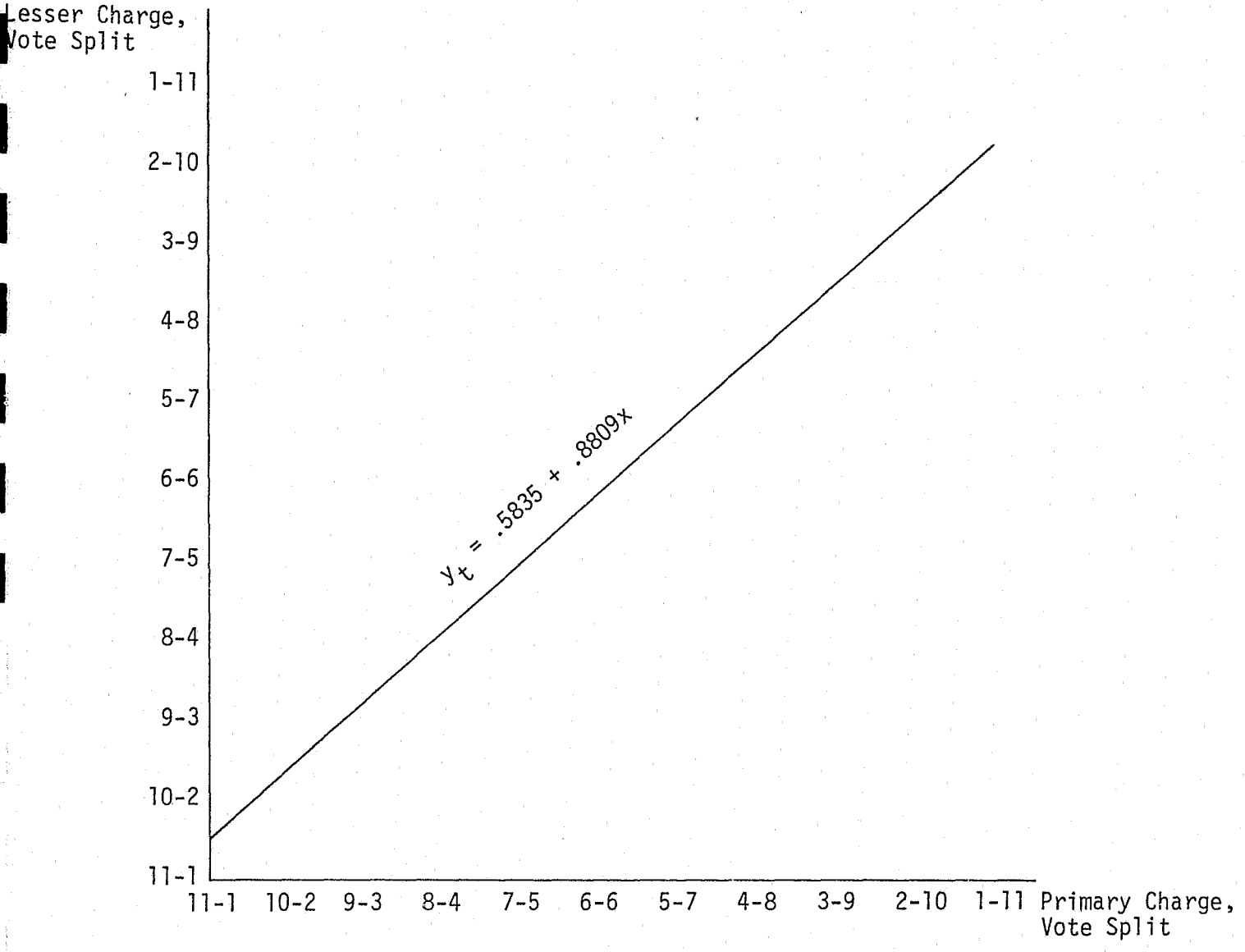
Approximately 20 percent of the hung juries cases involved jury disagreement on more than one charge. Specifically, 203 of the 978 hung jury cases in the data base involved multiple vote splits on multiple charges. Of this subtotal of 203 cases, 172 reflected consistent vote split configurations among primary and lesser charges. In other words, while individual jurors may have changed their votes with respect to more serious versus less serious charges, the aggregate vote split configurations in 85 percent of these multiple charge cases did not change.

Visual inspection of the distribution of the primary vote split and lesser vote split observations in a contingency table pointed to more than simply an unusually high chi-square statistic. It pointed to a direct correlation between primary and lesser vote splits as expressed by the linear regression line shown in Figure 4-9.** The fit of this line to the empirical data describes a linear relationship at a very high level of significance.

Interpretation of this result is meaningful in two important respects. First, the correlation illuminates one pattern of hung jury behavior heretofore unknown: 85 percent of the time, juries which are deadlocked in multiple charge cases appear to remain consistently divided in their ballots regardless of the charge alleged. Second, the correlation supports the preceding finding of independence between vote split and crime type.

*Refers to lesser included, lesser, and other charges. On the DCIs, the most serious charge involving a hung jury was always recorded as the primary charge.

**The regression equation derived from the observations displayed in Figure 4-9 is $y_t = .5835 + .8809x$.



NOTE: The fact that the regression line does not intercept at the origin is explained by 15 percent of the data points which were off the true diagonal.

FIGURE 4-9

CORRELATION BETWEEN PRIMARY CHARGE AND

LESSER CHARGE VOTE SPLIT CONFIGURATIONS

It would be premature, however, to begin drawing additional inferences which the data cannot adequately substantiate. The available data are not sufficient to explain the consistency of multiple charge balloting by hung juries. The influence of other important factors, such as the evidence, juror attitudes about the defendant, and the impact of judicial instructions on the jury, cannot yet be assessed properly. Nevertheless, the fact that hung juries divide in the same configurations more than four times out of five in multiple charge hung jury cases* suggests the hypothesis that they make discriminations which are not influenced by the gravity of the offenses charged. An extension of this result could be construed to imply that juror attitudes about the criminal law, at least as to awareness of the possible penal consequences of its application, are not significant explanatory factors of hung juries deadlocked on more than one charge. These hypotheses are testable, but not without the availability of empirical observations on the causal variables and rigor of the controls outlined in Section III above.

The preceding discussion of the analytical results of the vote split and crime type variables suggests that one of the original hung jury causal hypotheses, i.e., that there is a relationship between crime type and the incidence of hung juries, does not appear to be very fruitful. Crime type initially appeared promising as an explanatory variable because of the supposition that hung juries occur in crime-specific patterns. This reasoning posited that certain types of felonies, requiring proof of specific elements to support a successful case-in-chief, manifested discernible and common characteristics. Clearly, the hung jury patterns reported thus far are not crime-specific in this sense.

*It should be noted that the correlation results do not include analysis of those multiple charge cases where a verdict was reached on one or more charges.

Given this finding, the next systematic step involved development of analytical information on vote split and the remaining variables, defendant background characteristics. The age, sex, and race distributions displayed in Figures 4-4 and 4-5 suggested that this procedure might be a productive avenue of inquiry. However, none of the vote split/background characteristics contingency tables yielded significant results.

This finding was not commensurable with all of the racial frequencies displayed in Figures 4-4 and 4-5. There, the data show higher frequencies of Blacks among the hung jury population than would be expected in terms of either their general demographic representation in California* or their representation among the Superior Court verdict population.

Therefore, a chi-square test was computed to test the relationship between the racial frequencies of hung jury cases and verdict cases. The chi-square statistic, computed for this relationship, is significant at the 99 percent level. As noted earlier, the "typical" hung jury defendant has a better than even chance of being Black. That description does not fully explain the significance of this probability. The chi-square analysis suggests that Blacks not only are appearing as jury trial defendants in percentages grossly disproportionate to their distribution within the general population, but also are becoming hung jury defendants in percentages disproportionate to their distribution

*According to the 1970 Census, 8.23 percent of the total population of the ten study counties consisted of Blacks. See U.S. Department of Commerce, Social and Economic Statistics Administration, Bureau of the Census, COUNTY AND CITY DATA BOOK, 1972, pp. 54 and 66, Washington: GPO (1973).

within the Superior Court defendant population. Table 4-3 indicates that Blacks are overrepresented by almost 10 percent while Whites are underrepresented by 13.5 percent. The probability that these variances occur as a result of chance is less than one in 100. In other words, a hung jury is more likely to occur if a trial defendant is a Black.

TABLE 4-3

SUMMARY OF HUNG JURY AND

VERDICT DEFENDANT RACIAL DISTRIBUTIONS

	WHITE	MEXICAN AMERICAN	BLACK	OTHER	TOTAL
ACTUAL NUMBER OF HUNG JURY DEFENDANTS	301	143	458	22	924
PERCENT OF TOTAL HUNG JURY DEFENDANTS	32.6%	15.4%	49.6%	2.4%	100.0%
EXPECTED PERCENT OF HUNG JURY DEFENDANTS (BASED ON PERCENTAGE DISTRIBUTION OF ALL VERDICT JURY DEFENDANTS)	46.1%	13.1%	39.7%	1.1%	100.0%
PERCENT DIFFERENCE BETWEEN ACTUAL AND EXPECTED	-13.5%	2.3%	9.9%	1.3%	

The present data base is not capable of explaining this phenomenon. The inclusion of observations on a wider range of variables, such as juror background characteristics, evidentiary discriminations, prosecutorial policy-making, and small group decision-making, should be part of a future research design on hung juries in order to provide the necessary controls to test more powerful causal hypotheses. Despite the absence of a rigorous explanation of hung juries, it does not inhibit an informed understanding of their effects.

4.5 EFFECTS OF HUNG JURIES

The declaration of a mistrial following a hung jury imposes a special obligation upon the criminal justice system because (1) although the hung jury defendant has had a day in court, he is as a matter of right entitled to another if he so chooses, and so (2) the trial process may have to begin all over again. However, the retrial option is exercised by either the prosecution or the defense only one fourth of the time. While retrial can result in a final disposition on the merits, i.e., acquittal or conviction as charged, or conviction of a lesser or other charge, or another hung jury, or another mistrial (for legal reasons other than a second hung jury), there are a number of other options which can be exercised by the court, the prosecution, or the defense which three fourths of the time lead to one of the following possible outcomes:*

- Dismissal of the charge by the court;
- Dismissal of the charge by the court upon motion by the prosecution;
- Dismissal of the charge by the court upon motion by the defense;
- Entry of a plea of guilty as charged; or
- Entry of a plea of guilty to a lesser or other charge.

Dismissals involve reassessments of the probability of conviction and are the most frequent outcome, 41.4 percent of the time, after a hung jury mistrial. Guilty pleas, which also are based upon reassessments of the probability of conviction upon retrial, are entered with a frequency of 32.9 percent. Conviction upon retrial happens with significant frequency, 18.2 percent of the

*Disposition still pending further action was one outcome recorded on the hung jury DCIs. However, this outcome was not included in the proportions presented above or in the analyses which follow.

time. Acquittal upon retrial is the least frequent outcome after a hung jury mistrial with a frequency of 7.5 percent. Hung juries upon retrial, of course, impose the largest burden and frustration upon the criminal justice system, but they are not very frequent.*

The analysis of hung jury effects is based upon the relative frequency with which each of the foregoing outcomes occurred in the study counties.** The frequency of each outcome category was paired with aggregated vote split configurations and contingency tables were constructed to test the extent to which vote split and outcome variables are related. The chi-square statistics for three of the contingency tables were significant at the 95 percent level or above.

The chi-square analysis for the ten study counties as a whole yielded results at the 95 percent level. The ten counties with the Los Angeles County results deleted were highly significant at the 99 percent level. The Los Angeles County results considered separately also were highly significant in excess of the 99 percent level. The most interesting findings among these results are summarized in Figure 4-10 and discussed according to the three aggregate vote split configurations.

*Of the total of 978 hung jury cases identified over the study period, 50 or 5.1 percent involved more than one hung jury. To the extent that hung juries do occur upon retrial, they tend to follow vote splits in the direction of conviction reported for the first hung jury. This phenomenon was discovered among 75 percent of the retrial cases for which the original vote split and the incidence of a second hung jury were known.

**Because of the relatively low number of hung juries occurring upon retrial, this outcome, along with "disposition still pending" and "other," was not included in the contingency table analysis.

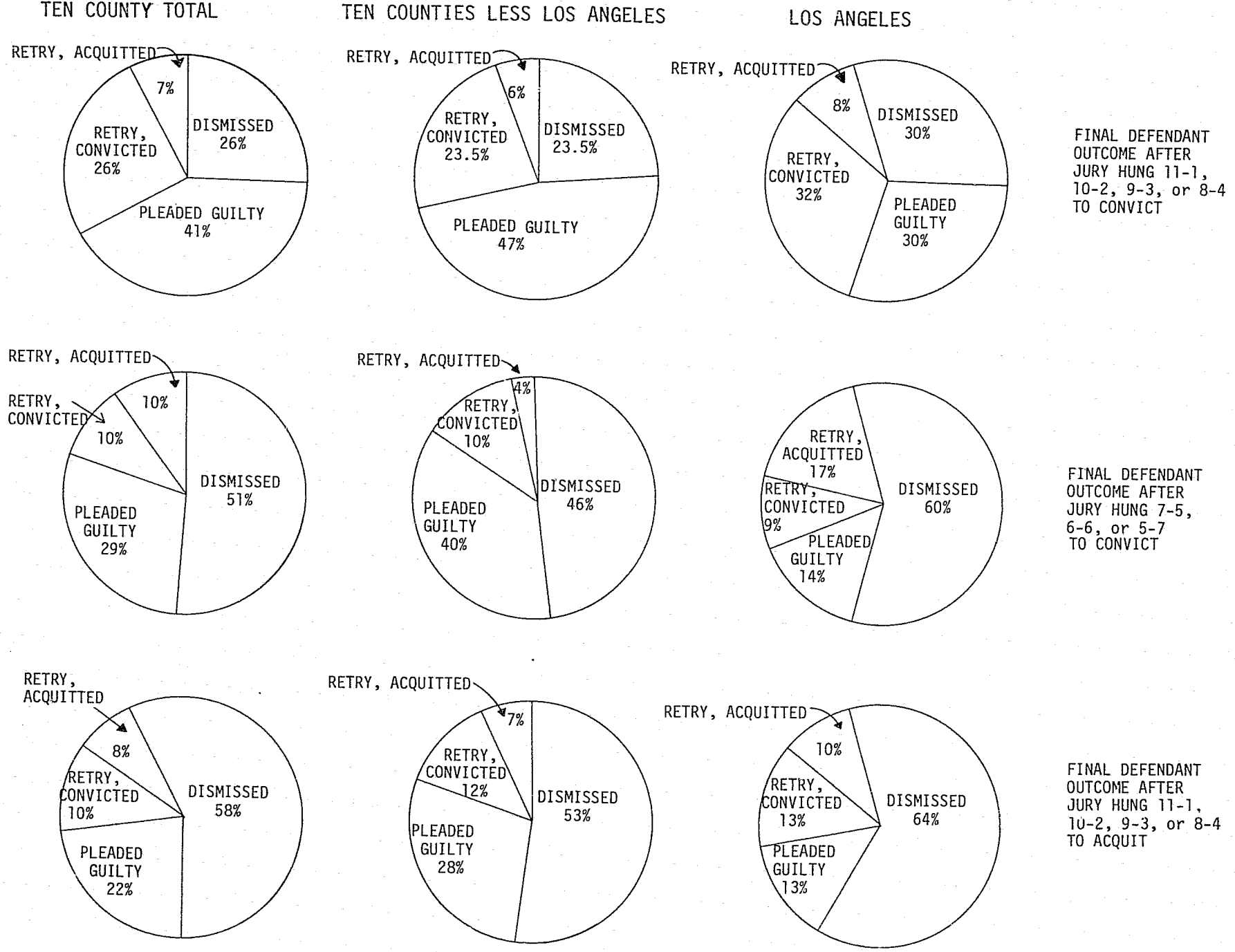


FIGURE 4-10

DISPOSITION OF DEFENDANTS AFTER HUNG JURY, BY VOTE SPLIT CONFIGURATION

Outcome after 11-1, 10-2, 9-3, or 8-4 Vote Split for Conviction:

After a jury divides 11-1, 10-2, 9-3, or 8-4 in the direction of conviction, Los Angeles County historically retries 40 percent of the hung jury defendants and convicts four fifths of them. The other nine counties retry approximately 30 percent of their hung jury defendants and convict in the same proportion as Los Angeles.

When the Los Angeles percentage of retrial convictions is combined with the plea percentage, a total of 62 percent of hung jury defendants were under some form of criminal sanction. For the other nine counties, this figure is 70 percent of all hung jury defendants. The difference between Los Angeles and the rest of the study sample seems to be explained by the lower percentage of defendants disposed by plea in Los Angeles.

Outcome after 7-5, 6-6, or 5-7 Vote Split for Conviction:

After a jury divides 7-5, 6-6, or 5-7 in the direction of conviction, Los Angeles County historically retries 26 percent of the hung jury defendants and convicts about one third of them. The other counties retry only 14 percent of their hung jury defendants and convict more than two thirds of them.

When the conviction percentages are combined with the plea percentages, a total of 23 percent of the Los Angeles hung jury defendants were under some form of criminal sanction. For the other study counties, this same figure is 50 percent of all hung jury defendants. The difference between Los Angeles and the rest of the study sample seems to be explained again by the lower percentage of defendants disposed by plea and the significantly higher percentage of dismissals in Los Angeles.

Outcome after 11-1, 10-2, 9-3, or 8-4 Vote Split for Acquittal:

After a jury divides 11-1, 10-2, 9-3, or 8-4 in the direction of acquittal, Los Angeles County historically retries 23 percent of the hung jury defendants and convicts well over half of them. The other counties retry 19 percent of their hung jury defendants and convict almost two thirds of them.

When the conviction percentages are combined with the plea percentages in this vote split category, a total of 26 percent of the Los Angeles hung jury defendants were under some form of criminal sanction. For the other study counties, this same figure is 40 percent of all hung jury defendants. The difference between Los Angeles and the rest of the study sample seems to be explained once again by the substantially lower percentage of defendants disposed by plea and the significantly higher percentage of dismissals in Los Angeles.

Three general conclusions with respect to hung jury effects emerge from these findings. First, most hung jury cases are disposed by dismissal. As noted above, 41.4 percent of the cases eventually are dismissed. Figure 4-10 offers additional insight into the dynamics of dismissal as a hung jury disposition. The percentage of dismissals increases as the vote split changes in the direction of acquittal. The results are as dramatic for Los Angeles County as they are for the other study counties. In Los Angeles, the dismissal rate increases from 30 to 64 percent as vote split configurations shift to acquittal majorities. For the other counties, the dismissal rate increases from 23.5 to 53 percent. These effects are difficult to evaluate in objective terms strictly defining justice because they reflect the exercise of discretion by

either a court or a prosecotor taking account of a host of practical factors. In the case of the prosecutor, for example, the decision to dismiss generally means that there is perceived to be a low probability of conviction if the case were to be retried. While dismissals are therefore impossible to evaluate in any neutral terminology, they generally do not require additional action by the criminal justice system.

Second, a large number of hung jury cases are disposed by plea -- nearly a third. As in the case of dismissals, Figure 4-10 offers some insight into the dynamics of plea dispositions. The percentage of plea dispositions increases as the vote split shifts in the direction of conviction. In Los Angeles County, the plea rate increases from 13 to 30 percent as the vote split majority builds in favor of conviction. Similarly in the other counties, the plea rate increases from 28 to 47 percent as vote split favors conviction. Again, these effects are difficult to evaluate in strictly neutral terms because the outcome is not based on a trial on the merits, but upon a process which is generally a negotiation. In any case, like dismissals, pleas do not require additional adjudication on the facts at issue.

Third, while only 25.7 percent of all hung jury cases are retried, it is this process which requires expenditure of additional criminal justice system resources for judicial fact-finding purposes. For this reason, the data may be more instructive insofar as the findings were not fully expected.

Two geographical patterns emerge from the retrial findings. First, regardless of the vote split configurations of hung juries in Los Angeles County, Los Angeles retries proportionately more hung jury defendants than the nine other most populated jurisdictions in the State. Second, Los Angeles County convicts proportionately fewer hung jury defendants than the other sample

jurisdictions given vote split configurations where there are not large majorities for conviction. Table 4-4 displays the probabilities of conviction of hung jury defendants upon retrial in terms of the three vote split aggregations. Inspection of the table reveals that if a hung jury defendant is retried in any of the sample counties except Los Angeles, the percentages range from 63 to 80 percent that he will be convicted. However, if a hung jury defendant is retried in Los Angeles County, the risks are much lower, ranging from a 35 to a 43 percent probability of conviction if the vote split does not reflect more than a majority of seven for conviction. These risks shift dramatically in a negative direction when the majority for conviction increases to eight or more, i.e., to an 80 percent probability of conviction.

TABLE 4-4

CONVICTION PROBABILITIES OF HUNG JURY DEFENDANTS UPON RETRIAL

VOTE SPLIT CONFIGURATIONS \ COUNTY AGGREGATION	ALL TEN COUNTIES	TEN COUNTIES LESS LOS ANGELES	LOS ANGELES
11-1, 10-2, 9-3, 8-4 FOR CONVICTION	79%	80%	80%
7-5, 6-6, 5-7 FOR CONVICTION	50%	71%	35%
11-1, 10-2, 9-3, 8-4 FOR ACQUITTAL	56%	63%	43%

NOTE: Percentages in cells denote the probability of conviction by jurisdictional aggregates of hung jury defendants who are retried following vote splits as defined in the rows. Percentages are rounded.

These retrial results mean that few hung jury defendants successfully obtain acquittals on retrials. Among hung jury retrial defendants, the probability of conviction is nearly 80 percent regardless of geographical location where there is a majority of eight or more for conviction. Conversely, where there is a majority of eight for acquittal, the risks do not improve to better than even odds except in Los Angeles County, and only then where the original jury was almost evenly divided or strongly in favor of acquittal.

In short, hung juries do not seem to represent a phenomenon which in any fundamental sense is rendering the felony court system in California either ineffective or inefficient or is frustrating the operations of other institutions in the criminal justice system. Where there is failure to reach unanimity in the jury trial process, the process is only repeated in one out of four instances and, in general, reflects a much higher probability of success for the prosecution than for the defense. None of these conclusions, however, should be interpreted to mean that hung juries are not time-consuming and do not require substantial expenditures of criminal justice system resources.

4.6 TIME CONSUMED BY HUNG JURIES

Hung jury time data were collected for this study in increments of number of court days elapsed between significant processing dates -- the date of Superior Court arraignment, the date of the first day of Superior Court trial, the date the jury was impaneled, the date jury deliberation began, and the date upon which a mistrial was declared due to a hung jury. The data collection teams initially sought to gather time data in units of hours between start of

trial and declaration of mistrial. However, judicial recordkeeping formats in the study counties generally were not formatted to permit measurement in hourly increments. Therefore, the substitution of days as a less accurate measure of time was the only alternative.

The hung jury time data represent only the amount of time consumed by the trial which resulted in a hung jury. They do not account for the additional time consumed as a result of subsequent processing of the defendant in Superior Court unless the action was a trial which resulted in another hung jury during the three-year sample period. The foregoing limitations of the data should be borne in mind as the time results are considered.

The average trial times in days for hung jury cases is presented by county in Figure 4-11 and is expressed as an all-county average. As the bar chart in the figure shows, the average number of trial days consumed by hung jury cases in nine of the counties is 6.85 days.* In order to determine whether this average is significantly different from the average time consumed by verdict cases, it is first necessary to know the amount of time by verdict jury cases in all the study counties. The development of this specific information was beyond the scope of this study. However, a recent study of the processing of felony defendants in Los Angeles County** reported some empirical results which can be applied to the present findings. Specifically, the Los Angeles study established that one "court day" of Superior Court time is equal to 255 minutes. The study also discovered that the average time required for a jury trial, not resulting in a hung jury, is 1,000 minutes or 3.92 court

*Time data on the San Diego hung jury trials were excluded from the analysis because of a keypunch error which was discovered after the computer processing of the DCIs.

**See Greenwood et al., op. cit., supra at p. 3-16.

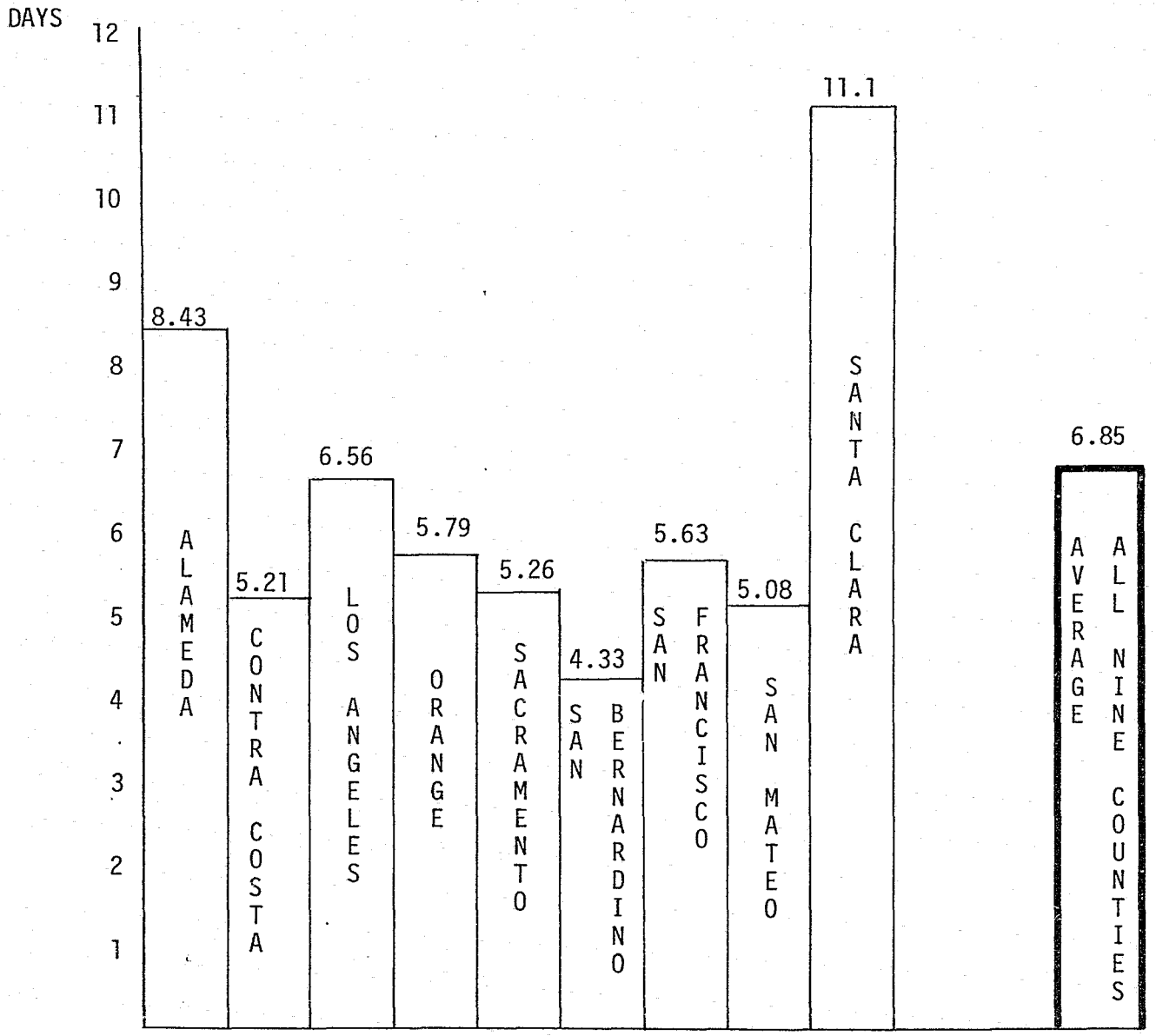


FIGURE 4-11

AVERAGE TIME OF HUNG JURY TRIALS IN DAYS - NINE STUDY COUNTIES

days. Converting the Los Angeles hung jury average of 6.56 days into minutes, the average Los Angeles hung jury trial consumed 1,673 minutes or 1.67 times the amount of time consumed by a verdict trial. Since hung juries occurred in Los Angeles County at a frequency of 10.4 percent over the three-year study period, the difference between the amount of time consumed by hung jury trials as opposed to verdict trials is a very substantial amount of time, i.e., an estimated 953 additional court days* over the three-year sample period. With one relatively straightforward assumption, this result could be extrapolated to the full study sample. The assumption is that the ratio of time consumed by Los Angeles verdict trials to hung jury trials, 1 to 1.67, applied Statewide. The result is that the difference between jury trials resulting in hung juries and jury trials resulting in verdicts is an estimated 2,690 additional court days over the three-year sample period.**

However, these differences do not describe the full impact upon the judicial system of the amount of time consumed by hung juries because they do not take into account the additional time required for the retrials that occur. Unfortunately, the hung jury data base was not designed for measurement of the amount of time consumed by additional defendant processing subsequent to hung juries. Nevertheless, if four assumptions are made, a "ball park" estimate of

*The total number of hung jury days in Los Angeles County is 2,375, i.e., 362 hung juries x 6.56 average days of trial. Since the ratio of time consumed by Los Angeles verdict trials to hung jury trials is 1 to 1.67, the number of verdict trial days, i.e., 1,422, can be obtained by solving the following equation for x: $\frac{1}{1.67} = \frac{x}{2375}$. The difference between 2,375 hung jury days and 1,422 verdict trial days is 953 days.

**Using the same equation as above, $\frac{1}{1.67} = \frac{x}{978 \times 6.85}$, solving for x using the Statewide total of 978 hung juries at an average time of 6.85 days, yields the total number of verdict days in the ten county sample over the three-year study period had the 978 hung jury trials been verdict trials.

the amount of time consumed by retrials pursuant to hung juries can be developed. The assumptions are (1) that all retrials are jury trials, (2) that the proportion of hung juries which occur among retrials is the same as the proportion of hung juries which occur among verdict trials, roughly one in four, (3) that the average amount of time consumed by a retrial resulting in a hung jury is the same as the sample average, 6.85 days, and (4) that the average amount of time consumed in the whole study sample by a retrial resulting in a verdict is in proportion to the hung jury time as expressed by the Los Angeles ratio. Given these assumptions, it is possible to estimate the total increment of court days resulting from the incidence of hung juries over the three-year study period. The data supporting the estimate are displayed in Table 4-5. As the figures in the table show, the 978 hung juries which occurred in the sample can be estimated to have consumed a total of about 3,804 days which would not have been consumed had the trials gone to verdicts. The magnitude of the time consumed by hung juries best can be displayed by several simple calculations, pursuant to the assumptions above. The number of jury trials in the sample totaled 8,011. Had each trial resulted in a verdict, the total time required would have been 32,845 days. However, because 978 of these trials were hung juries, the incremental number of days consumed and the time for retrial must be added. Thus the estimated actual time consumed by the 8,011 trials was 36,649 days, or nearly 12 percent in excess of the time which have been consumed, i.e., 32,845 days, if all of the trials had been verdict trials.

The following subsection uses the time estimates developed here to discuss the fiscal impact of hung juries upon the court system.

TABLE 4-5

TIME CONSUMED BY HUNG JURIES

BASE TIME

Number of Hung Juries	978		
Average Trial Time, Days, Hung Jury	6.85		
Average Trial Time, Days, Verdict	4.1		
TOTAL Hung Jury Days for Trial	978 (6.85) =	6,700	
TOTAL Average Days for Trial	978 (4.1) =	4,010	
Increment of Time Consumed by Hung Juries		2,690	Days
Trial Time Days, for Verdict Trials	8,011 (4.1) =	32,845	Days

RETRIAL TIME

Number of Hung Juries	978			
Percent retried	25.7%			
Number of Retrials of Hung Juries	978 (.257) =	251		
Percent of Retrials Resulting in Another Hung Jury	12.2%			
Number of Retrials Resulting in Another Hung Jury	251 (.122) =	31		
TOTAL Days for Retrials Resulting in Verdicts	(251 - 31)(4.1)=	902	}	1,114.4
TOTAL Days for Retrials Resulting in Hung Juries	(31) (6.85) =	212.4	}	
TOTAL Retrial Time		1,114.4		

TOTAL ADDITIONAL TIME CONSUMED BY HUNG JURIES

Incremental Time Plus Retrial Time 2,690 + 1,114.4 = 3,804.4 Days

4.7 COSTS OF HUNG JURIES

The collection of case-specific cost data pertaining to hung juries was beyond the scope of the research. However, based upon the hung jury time estimates developed in the preceding subsection combined with application of the results of the Los Angeles study, it is possible to estimate in "ball park" terms the impact of hung jury costs upon the court systems in the study counties.

The Los Angeles study estimated the cost of operating a single Superior Courtroom at $9.00 per minute, or $2,295 for a court day (255 minutes).* Again, assuming that the Los Angeles proportions hold true for the other nine counties, it is possible to calculate the cost of hung juries.

As noted in the Table 4-5 estimates, the time which would have been consumed in the ten counties by 8,011 trials, had all been verdict trials, was 32,845 days. The estimated actual time consumed, given the 978 hung juries in the sample was 36,649 days. Using the Los Angeles cost figure of $2,295 per court day, the cost of 8,011 verdict trials would be 32,845 days at $2,295 a day, or $75,379,275. But, the cost of the time consumed due to the hung juries in the sample would be 36,649 days at $2,295 a day, or $84,109,455. The difference between these dollar amounts, $8,730,180, is the incremental cost of hung juries over the three year period in the counties studied.

This incremental cost figure cannot be compared with actual judicial costs in the ten counties. Criminal justice costs, available from even the most sophisticated surveys, are not disaggregated to levels where the judicial costs

*Greenwood, et al., op. cit., p. 28.

can be computed for the criminal trial departments of Superior Courts of individual counties.* However, the incremental estimate does represent 11.6 percent of the total estimated court costs of the criminal jury trial days which elapsed over the study period in the ten counties. This hung jury cost percentage is commensurate with the hung jury frequency percentage of 12.2 percent.

The final section of this report discusses the significance of the results of the data analysis; summarizes the principal conclusions under each of the four major areas of inquiry, i.e., frequency of occurrence, causes, effects, and time consumed; and presents a series of recommendations regarding hung jury reporting, judicial recordkeeping, and future hung jury research.

*For example, see U.S. Department of Commerce, Social and Economic Statistics Administration, Bureau of the Census, EXPENDITURE AND EMPLOYMENT DATA FOR THE CRIMINAL JUSTICE SYSTEM, 1971-1972, Washington: GPO (1974), Annot: The section on judicial expenditures presents aggregate "major trial court" costs by "large county," including the ten study counties. However, these cost data cannot be further disaggregated to discriminate between civil and criminal costs.

SECTION V

CONCLUSIONS AND RECOMMENDATIONS

SECTION V

CONCLUSIONS AND RECOMMENDATIONS

5.1 RESEARCH CONCLUSIONS

The empirical knowledge which has been gained as a result of the execution of this research study has definitely established the frequency with which hung juries occur as a result of criminal cases tried in the Superior Courts of the most populated jurisdictions of the State, has yielded useful descriptive statistics pertaining to the causes of hung juries, has reliably described the principal effects of hung juries, has estimated the amount of time consumed by hung juries, and has estimated the costs of hung juries to the judicial system. With the exception of the findings which do not permit isolation of the causes of hung juries, the principal objectives of the study have been achieved.

The specific conclusions arising from the empirical findings are summarized below according to the four areas of inquiry: (1) frequency of occurrence of hung juries, (2) causes of hung juries, (3) effects of hung juries, and (4) amount of time consumed by hung juries and the costs of hung juries.

Frequency of Occurrence of Hung Juries

Between 1971 and 1973, hung juries occurred at a frequency of 12.2 percent among all felony cases tried in the Superior Courts of the ten most populated counties of the State. This finding is significant insofar as the ten counties include 75.6 percent of the State's total population and try over 80 percent of the felony defendants prosecuted throughout the State.

In terms of frequency, the hung jury phenomenon appears to be a stable one, neither increasing nor decreasing over time. Indeed, a projection based on the three-year time trend revealed that nine years must elapse before the aggregate hung jury rate increases by one percent. Consequently, to the extent hung juries constitute a problem for the judicial system at the felony level, they are not a growing problem.

Analysis of other frequency variables produced the following profile about hung juries:

- Crime type does not appear to be a significant factor in describing the hung jury phenomenon; hung jury crime type distributions are not significantly different from verdict crime type distributions;
- The "typical" hung jury defendant is overwhelmingly male, young, and is disproportionately Black;
- Hung juries divide in the direction of conviction three times as often as they do in the direction of acquittal; and
- Hung juries, dividing in 11-1 and 10-2 configurations regardless of direction, occur with a frequency of 40 percent.

This 40 percent finding must be carefully interpreted. It should not be construed to mean that promulgation of a nonunanimous verdict rule, permitting 11-1 and 10-2 vote split configurations, would eliminate 40 percent of the hung juries that now occur. Implementation of such a rule without further research is tantamount to assuming that hung juror voting preferences are not influenced by small group interactions and that changes in decision rules for small groups do not affect outcomes, particularly outcomes which are defined in binary terms. Acceptance of such an assumption is unsatisfying because it ignores the probable effects of a host of other variables which may affect vote split frequencies. The variables include measurement of the impact of evidentiary factors, juror attitudes toward the law, juror attitudes toward the defendant, the impact of judicial instructions, and jurors' comprehension of them.

Causes of Hung Juries

The hung jury data base did not capture statistically significant observations on several key variables which would have supported rigorous analysis of the causes of hung juries. However, the data analysis which was completed on the vote split, crime type, defendant background, and outcome variables yielded the following descriptive findings:

- Hung jury vote splits and hung jury crime types appear to be unrelated to one another;
- Juries which deadlock in multiple charge cases appear to remain divided in the same vote split configurations on all charges, a result which supports the hypothesis that jurors make discriminations which are not influenced by the gravity of the offenses charged;
- As a corollary, data supporting the foregoing result also imply that juror attitudes about the criminal law, at least with regard to awareness of the possible punitive consequences of its application, do not appear to affect decisions to change vote direction; and
- The defendant background characteristics, when analyzed against Superior Court verdict trial defendant background characteristics, appear significant in one important respect: Black males, whose frequency among Superior Court trial defendants is grossly disproportionate to their distribution among the general population, also become hung jury defendants in frequencies disproportionate to their distribution among the Superior Court defendant population.

An expanded interpretation of these results cannot be made without development of a statistically significant sample of "cohort" hung jury and verdict cases. The future development of a data base, storing empirical observations on the evidentiary, juror attitude, and judicial instruction variables described earlier, would permit the necessary analyses. These analyses would yield results which would permit isolation of specific causal factors associated with hung juries.

CONTINUED

2 OF 3

Effects of Hung Juries

The effects of hung juries can be assessed in terms of the dispositional outcomes following declaration of a mistrial. The hung juries which occurred between 1971 and 1973 eventually led to the following outcomes: 41.4 percent of the cases were dismissed; 32.9 percent of the cases were resolved by entry of guilty pleas, either of offenses as charged or of lesser crimes; 18.2 percent resulted in convictions pursuant to retrials; and 7.5 percent resulted in acquittals pursuant to retrials.

Three observations are significant in view of these percentages. First, most hung jury cases are disposed by dismissal, a disposition which can be initiated by the court or upon motion by either the prosecution or the defense. Second, a large number of hung jury cases, nearly a third of them, are disposed by plea, a disposition which generally is the result of a negotiation between the prosecution and the defense. Third, slightly more than one fourth of all hung jury cases are retried, resulting in convictions rather than acquittals in a ratio of more than two to one.

In short, hung juries do not seem to be a problem which in any fundamental sense is rendering the felony trial court system in California either ineffective or inefficient. However, because a hung jury occurs in approximately one out of every eight verdict trials, this is not to say that hung juries are not time-consuming and do not require substantial expenditure of criminal justice system resources.

Time Consumed by Hung Juries and Costs of Hung Juries

The 978 hung jury trials which occurred over the three-year study period are estimated to have consumed a total of 3,804 court days, an increment which is nearly 12 percent in excess of the amount of time which is estimated would have been consumed had the trials resulted in verdicts.

Although the compilation of case-specific data reflecting the actual costs of hung jury cases was beyond the scope of the present research effort, the incremental cost of the amount of time consumed by the 978 hung juries over the three-year study period is estimated to have been at least $8,730,180, a dollar amount representing 11.6 percent of the total estimated court costs of the verdict trial court days which elapsed over the study period in the ten counties. This hung jury cost percentage, based on the foregoing time and fiscal "multipliers," is commensurate with the hung jury frequency percentage of 12.2 percent.

The cost estimates draw upon previously reported research which approximated the direct unit costs of operating a single Superior Courtroom in Los Angeles County. The unit costs include the participation of court, county clerk, sheriff, district attorney, public defender, and probation personnel.

The closing section of this report presents a series of "lessons learned" regarding judicial recordkeeping and hung jury reporting and recommends a number of specific measures which can be taken for the improvement of these processes. A final comment addresses the nature and scope of future research which should be undertaken for the purpose of isolating the causes of hung juries.

5.2 RECOMMENDATIONS

The technical and geographical scope of the study afforded frequent opportunities to examine the nature of judicial recordkeeping, the comprehensiveness of judicial statistics, and the consequences of specific information gaps. The PMCC study staff inevitably found areas where practical, and relatively inexpensive, measures might be taken to improve the availability of information about the operations of the trial judiciary. These subjects are divided into three separate areas: judicial recordkeeping, hung jury reporting, and future hung jury research.

5.2.1 JUDICIAL RECORDKEEPING

The implementation of any research design requiring comprehensive and reliable statistics about judicial phenomena can either (1) draw upon the statistical resources of the Judicial Council's Administrative Office of the California Courts or the BCS, or (2) capture data "the hard way" by sending data collectors into the field. If the design, as is the case with the hung jury research study, requires judicial data disaggregated by court and by time increments in addition to the specific variables of interest, the input constraints of both the Judicial Council and BCS automated data files may exclude empirical observations on many important variables of interest. This of course was the problem in the present study and the reason for the development of the DCI data set. However, a study which involves a substantial commitment of resources to "onetime" data collection should document the experience of working with field data sources insofar as it can contribute to future development of better reporting systems in the future.

Accordingly, the PMCC study staff made a number of general observations about the quality and level of detail of Superior Court recordkeeping. In general, the study staff found a wide range of reporting practices among the ten study counties. Case files in some counties ranged from seemingly random collections of documents and "free-form," illegibly written minute orders to more systematic case jackets in other counties which were formatted for each reference to information of interest to court management personnel and thoughtfully formatted minute orders designed to display important procedural and outcome data for rapid comprehension. Because of the requirement for monthly statistical reporting to the Judicial Council and offender-specific dispositional reporting to the BCS, the PMCC study staff recommends that the Judicial Council and the BCS jointly consider sponsoring a project which would develop a uniform case file folder for felony criminal cases for use by all Superior Courts of the State. Such a project could be similar to the Model Case Jacket project undertaken by the National Center for Prosecution Management which in 1973 developed a case jacket for prosecutors.* The development of a uniform Superior Court criminal case file would insure more accurate judicial recordkeeping, eliminate many of the important information gaps which now exist in criminal case records, enhance the security and privacy of judicial records,** and enable

*National Center for Prosecution Management, MODEL CASE JACKET, LEAA Grant 72-DF-99-0038, Washington: National Center for Prosecution Management (October 1973).

**The inclusion of criminal records ("rap sheets") and probation reports was noted in certain case files. In some instances, these documents were sealed; in others, they were available for public scrutiny. Revisions of the Penal Code, legislated in 1972, sharply restrict access to and release of criminal offender record information. A series of code sections [PC 11075-11081] implement a public policy of general restriction. PC 11077 delegates the responsibility for security of criminal offender record information to the Attorney General and vests with him authority to promulgate regulations to assure such security. Similar provisions with respect to the security of probation records were legislated in 1971. PC 1203.05 provides that probation records "shall be made available only to persons authorized or required by law to inspect or receive copies ... and shall not be open to public inspection."

better and easier compilation of local judicial statistics* and the efficient preparation of periodic reports required by the Judicial Council and the BCS. Finally, such a uniform approach would enable criminal justice researchers to collect more comprehensive and commensurable data about judicial operations. These recommendations are set forth here as "by-product" of this study because execution of the hung jury data collection tasks required detailed knowledge about judicial recordkeeping in ten of California's most populated counties.

5.2.2 HUNG JURY REPORTING

Because of local differences in the way judicial dispositions are recorded and subsequently reported to the Judicial Council for statistical purposes and to the BCS for both statistical and offender-based transaction file update purposes, the identification of hung jury cases required a much more painstaking clerical effort than originally anticipated.

In order to simplify the process of developing reliable statistics on the frequency of hung juries, the PMCC study staff recommends that the revision of Form JUS 8715 make provision for more precise entry of hung jury data.** Specifically, the single hung jury data element, now included among the Superior Court data fields of JUS 8715, should be expanded to include the date of the

*Some counties maintain local computerized data bases for management information and statistical purposes. For example, the District Attorney's Automated Legal Information System (DALITE) in Alameda County enables detailed computerized storage and retrieval of Superior Court dispositional information, including specific "case information" about hung jury vote splits. The Criminal Justice Information Control (CJIC) in Santa Clara County is an on-line subject-in-process tracking system which by means of a remote terminal entry capability "posts" the results of all criminal proceedings into a computerized data base. Eventually, the CJIC should be able to identify all hung juries declared as Superior Court mistrials.

**The PMCC study staff is aware from numerous conversations with Judicial Council staff members, local court clerks, and BCS staff members in the Courts and Probation Section that inter-agency discussions for modifying the data elements and format of JUS 8715 have been in progress for some time. The suggestions which are set forth here are consistent with the scope of these discussions.

hung jury by month and year and a notation as to whether the mistrial, declared as the result of the hung jury, resulted in further judicial proceedings. Provision should also be made for notation of any disposition resulting from further court action, similar to the coded outcome categories indicated on the DCI instructions.* For reader reference, Form JUS 8715 is reproduced in Appendix C. Many Superior Court hung juries have not been reported to the BCS pursuant to the instructions of Form JUS 8715 because some county clerks are under the impression that hung juries should only be reported if they are final dispositions. Because most hung juries in fact are interim dispositions, pursuant to which further prosecutorial and judicial action takes place, accurate reporting of hung juries is supplanted by the withholding of the submission of an 8715 until a final disposition, e.g., verdict upon retrial, dismissal, etc., is reached.** The proposed modification of JUS 8715 would add only two brief data elements to the Superior Court data fields of a revised JUS 8715 and only seven or eight columns to the computer input codings. The specification of clearer instructions with respect to the entry of the data by county clerks in the 58 counties of the State would insure the availability of ongoing and reliable hung jury data about the frequency of Superior Court hung juries. In addition, the PMCC study staff believes that similar data elements should be added to the Municipal Court data fields to provide similar Statewide statistics on the frequency of occurrence of hung juries among Municipal Courts on a Statewide basis, the level of jurisdiction at which most criminal litigation takes place.

*See p. D-7 of Appendix D, Data Collection Instruction and Coding Instructions.

**County clerks have the responsibility for completing the Superior Court data elements on Form JUS 8715. The 8715 instructions specify that the county clerk shall initiate an 8715 whenever a case is reopened for any reason or the defendant returns to court after an 8715 disposition has been reported. In the case of a hung jury, the instructions further specify that the hung jury data element should be checked "if proceedings are resumed after [a] mistrial is declared as a result of a hung jury." Therefore, at least two Form JUS 8715s are prepared on a hung jury defendant who becomes the subject of subsequent judicial proceedings. See Department of Justice, State of California, Bureau of Criminal Statistics, INSTRUCTIONS FOR COMPLETION OF THE DISPOSITION OF ARREST AND COURT ACTION REPORT FORM JUS 8715, pp. 16-17, Sacramento: BCS (April 1973, Revised).

5.2.3 FUTURE HUNG JURY RESEARCH

Because of the information gaps which constrained the assessment of the causes of hung juries in the present study, future hung jury research should focus on this specific area of inquiry into hung jury phenomena. The knowledge to be gained about causes should have direct application to issues which have been the subject of policy debate over the course of the last few years. The principal issues of course relate to reasoned arguments for and against modifying the unanimous verdict rule and the twelve man jury size in criminal cases -- policies which are deeply embedded in the traditions of Anglo-American jurisprudence. This study has made a partial contribution to the empirical merits of that debate, insofar as the perceived incidence of hung juries as a judicial problem motivated their formulation. However, the findings of this study do not yield any specific recommendations on the issue of changing the unanimity rule or reducing jury sizes. Such recommendations should await discovery of more reliable and complete empirical knowledge about hung jury causes.

The nature and scope of the information required to execute a rigorous causal analysis, using cohort samples of hung jury and verdict statistics, involves sophisticated data capture methods similar to the development, test, and utilization of the hung jury DCI described in Section III. The data elements, required to measure empirical observations about evidentiary factors, performance of counsel, juror attitudes toward the defendant and the law, and the impact of judicial instructions, cannot be collected pursuant to the everyday reporting routines of the Superior Courts of the State. Development of the kind of data base for the specialized purpose of isolating causal factors of hung juries, now that their frequency and effects are known, should be the purpose of a one-time future research study.

Such a study, if it is to be successful in California, should involve detailed case-by-case analysis of hung jury cases and comparable verdict cases. The geographical scope of the research effort should be limited to jurisdictions where hung jury frequencies are high, for example, urban counties like Alameda, San Francisco, or San Diego all of which had high frequencies for the three-year study period. The research approach should consist of an intensive field data collection program executed by experienced judicial researchers. A questionnaire should be developed which could be administered to five of the most knowledgeable people involved in any hung jury or verdict trial: the trial judge, the bailiff, the deputy district attorney, the deputy public defender, and the jury foreman. Vigorous steps should be taken to insure absolute security and privacy of the data, similar to the plan set forth in Appendix E. The questionnaire should draw upon the experience of the Kalven and Zeisel "reason assessment" method,* a technique which involves assessment by third parties on an individual case-by-case basis. If a study were to be executed along these general outlines, the data analysis program could be constructed based upon a logic of causal explanation which should reduce considerably the present ignorance about how and why hung juries occur in the California's felony trial court system.

*Kalven & Zeisel, op. cit., pp. 92-97

APPENDIX A

ANNOTATED BIBLIOGRAPHY

APPENDIX A

ANNOTATED BIBLIOGRAPHY

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APPENDIX B

JUDICIAL COUNCIL SUPERIOR COURT

MONTHLY SUMMARY REPORT, FORM 1-A

APPENDIX B

JUDICIAL COUNCIL SUPERIOR COURT

MONTHLY SUMMARY REPORT, FORM 1-A

THE JUDICIAL COUNCIL OF THE STATE OF CALIFORNIA

SUMMARY FOR THE MONTH OF_____, 19__

SUPERIOR COURT OF_____

*BRANCH_____

**If this report pertains to a branch (as defined by the Regulations) give its name or location.*

I. CIVIL PROCEEDINGS

Read Regulations on Superior Court Reports to the Judicial Council before completing this form.	PROBATE AND GUARDIANSHIP	ANNULMENT DIVORCE AND SEPARATE MAINTENANCE	PERSONAL INJURY DEATH AND PROPERTY DAMAGE		EMINENT DOMAIN (PARCELS)	OTHER CIVIL	
			MOTOR VEHICLE	OTHER		COMPLAINTS	PETITIONS
Filings:							
1 Number of cases filed							
Dispositions:							
2 **Before Trial**							
(a) Dismissals for lack of prosecution							
(b) Other dismissals and transfers							
(c) Judgments by clerk	XXX	XXX	XXX	XXX	XXX		XXX
(d) Summary judgments							
3 **After Trial**							
(a) Prior to introduction of evidence by both sides							
(b) Following introduction of evidence by both sides							
Other Data:							
4 Juries sworn							
5 Jury verdicts							
6 New trials							

II. INSANITY AND OTHER INFIRMITIES

Filings:	
1 Petitions or affidavits filed	
Dispositions:	
2 **Before Hearing**	
(a) Transferred or dismissed	
3 **After Hearing**	
(a) Uncontested	
(b) Contested	
Other Data:	
4 Juries sworn	
5 Jury verdicts	

III. JUVENILE

	Delinquency	Dependency
Filings:		
1 Number of juveniles subject of originating petitions		
Dispositions:		
2 **Before Hearing**		
(a) Transferred or dismissed		
3 **After Hearing**		
(a) Uncontested		
(b) Contested		
Other Data:		
4 Hearings on subsequent or supplemental petitions		
(a) Uncontested		XXX
(b) Contested		XXX
5 Detention hearings		

IV. CRIMINAL

Filings:	
1 Number of defendants accused	
Dispositions:	
2 **Before Trial**	
(a) Dismissals	
(b) Transfers	
(c) Convicted after plea of guilty	
3 **After Trial**	
(a) Change of plea or dismissal	
(b) On transcript of preliminary hearing	
(c) Other dispositions after start of trial	
Other Data:	
4 Probation hearings	
5 Juries sworn	
6 Jury verdicts*	
7 New trials	

V. APPEALS FROM LOWER COURTS

	From Superior Court		From Municipal Court	
	Civil	Criminal	Civil	Criminal
Filings:				
1 Appellate department				
2 Trial department				XXX
Dispositions:				
3 Before hearing				
4 After hearing				
(a) Question of law				
(1) Without opinion				
(2) Memo opinion				
(3) Written opinion				
a. Published				
b. Unpublished				
b. Trial de novo				XXX

VI. HABEAS CORPUS

Filings:	
1 Petitions filed	
Dispositions:	
2 Without hearing	
3 After hearing	

Signature of Clerk

DATE_____

FORM 1-A, 6/67

21173-653 5-68 25M OSP

*The REGULATIONS ON SUPERIOR COURT REPORTS TO THE JUDICIAL COUNCIL specify the following instructions on pages 8-9: "Report on this line [line 6] the number of criminal jury trials which resulted in verdicts or in which the jury could not reach agreement. The entry on this line is in addition to any entry made on lines 3(a) [change of plea or dismissal after trial] or 3(c) [other disposition after start of trial] or line 5 [juries sworn]. Report no more than one 'Jury Verdict' for each jury sworn even though a single jury renders multiple verdicts."

APPENDIX C

BCS EXTENDED DATA INPUT

FORMS JUS 700 AND JUS 8715

APPENDIX C

BCS EXTENDED DATA INPUT

FORMS JUS 700 AND JUS 8715

FORM JUS 700

Sup. Ct. Number

☐ Male ☐ Female

Yr. Birth ..... Race .....

Name (LAST / FIRST / M.I.)

LEAVE BLANK

Charge:

CII # .....

S.S. # .....

DATE	PROCEEDING		DETAILS (GIVE DEGREE WHERE APPLICABLE)		
	Charge Filed	Information	Indictment	Appearance on Certification (859a P.C.)	
	First Plea	Guilty as Charged °	Guilty of °		
		Not Guilty	Nolo Contendere	Not Guilty by Reason of Insanity	
	Final Plea	Guilty as Charged °	Guilty of °		
		Not Guilty	Nolo Contendere	Not Guilty by Reason of Insanity	
	Trial Commenced	Jury	Court	Court—Submitted on Transcript	
	Verdict	Guilty as Charged °	Guilty of °		
		Not Guilty	Not Guilty by Reason of Insanity	Other	
	Insanity Dispo.	Sane at Commission	Insane at Commission	Insanity Plea Withdrawn	
	Dismissed	Lack of Evidence	Remanded to Lower Ct.	995 P.C. ☐ Other	
		Interest of Justice	Certified to Juvenile Ct.	Other Prosecution—Case No.	
	Other Dispo.	Calif. Rehab. Center—Addict (3051 W&I)	Indeterminate Commit. ☐ as M.D.S.O.	State Hospital as Presently Insane	B. W. Issued / Other
				☐ Declared a Misdemeanor per 17 P.C.	
	Sentence and Terms of Probation			Defense Counsel: 0 No Counsel Present; 1 Public Defender; 2 Court Appointed (987A); 3 Privately Retained; 4 Propria Persona	

REMARKS:

Sentencing Judge

eport of Criminal Proceeding

SUPERIOR COURT COUNTY OF

Tt Bureau of Criminal Statistics, P. O. Box 13427, Sacramento, California 95813

JUS 700 (REV. 2-73) Δ OSP

FORM JUS 8715

CALIFORNIA DEPARTMENT OF JUSTICE

No.

DISPOSITION OF ARREST AND COURT ACTION

A. LAW ENFORCEMENT INFORMATION

ARRESTING AGENCY

BOOKING NO. | LOC. BKD. | DR. LIC. NO. | STATE

ARRESTEE'S NAME (LAST, FIRST, MIDDLE) | MT.

ADDRESS | CITY | SEX

DESCENT | HAIR | EYES | HEIGHT | WEIGHT | BIRTHDATE | AGE

VEH. LIC. NO. | STATE | R.D. | AKA/NICKNAME

BIRTHPLACE (CITY & STATE) | PROB. INV. UNIT | JUV. DETAINED AT | AD CHG.

DIV. & DETAIL ARRESTING | DATE & TIME ARRESTED | TIME BKD.

LOCATION OF ARREST | TOTAL BAIL INC PA

TYPE CHARGE (SEC. CODE. DEF.) | WARRANT NO.

1.

ADDITIONAL CHARGES

2. 3. 4.

RELEASE DATE

REASON FOR RELEASE:

1.849B(1) ☐ 2.849B(2) ☐ 3.849B(3) ☐

If 849B(1) CHECK ONE: ADMISS. EVID. INSUFF. ☐

ASCERT. EVID. INSUFF. ☐ ARRESTEE EXON. ☐

COMPL. REFUSES TO PROS. ☐ FURTHER INVEST. ☐

REL. TO OTH. AGENCY ☐ _____

OTHER ☐

IDENTIFICATION NUMBERS

CII#

FBI#

SS#

LOCAL# (AS SUBMITTED ON FP CARDS)

B. COMPLAINT INFORMATION

DISTRICT ATTORNEY	CITY ATTORNEY
DATE _____ INVEST. AGENCY _____	DATE _____
COMP. # _____	C.A. IDENT. # _____
D.A. IDENT. # _____	

REJ./REF.	REASON	CUSTODY YES ☐ NO ☐	REJ.	REASON	CUSTODY YES ☐ NO ☐
1.		IF NO CHECK ONE	1		
2.		BAIL ☐	2		BAIL ☐
3.		O/R ☐	3		O/R ☐
4.		FUGITIVE ☐	4		FUGITIVE ☐

TRUE NAME (IF DIFFERENT FROM ABOVE) | FILE # | DEF #

C. LOWER COURT INFORMATION

DATE FILED | DATE DISPOSED | JUDICIAL DIST.

CHARGES (SEC., CODE, DEF.) AT FILING	FEL	MISD	DISPOSED OF BY: G/P	CRT	JURY	NOLO CONT	DISPOSITION: ACQ	DISM	CERT JUV	MISD	17(B)(5)	HTA	CERT SC	1385 PC	OTH	SECTION & CODE AT DISPOSITION	SENTENCE: JAIL	FINE	PROB	OTH.
1.	☐	☐																		
2.	☐	☐																		
3.	☐	☐																		
4.	☐	☐																		

REMARKS | NOTE REASON IN SECTION E | 1538.5 PC MOTION: SUSTAINED ☐ DENIED ☐ | PROS. ATTORNEY # _____ | TYPE OF DEFENSE ATTORNEY: PD ☐ CA ☐ PR ☐ N ☐ PP ☐

DEFENSE ATTORNEY # _____

D. SUPERIOR COURT INFORMATION

DISTRICT | JUDGE | FILE # | DEF. #

CHARGES | AMENDMENTS

ATTORNEY NUMBER (AT PRELIMINARY PROCEEDING) PROSECUTING _____ DEFENSE _____

(AT TRIAL OR FINAL DISPO.) PROSECUTING _____ DEFENSE _____

TYPE OF DEFENSE ATTORNEY: PD ☐ CA ☐ PR ☐ N ☐ PP ☐ | CONS. FILE#

DATE	PROCEEDING	DETAILS (GIVE DEGREE WHERE APPLICABLE)
	ORIGINAL FILING:	INFORMATION ☐ CERTIFICATION ☐ INDICTMENT ☐
	REOPEN OR RETRIAL AFTER	CRC ☐ MDSO ☐ APPEAL ☐ PROB ☐ 1168 PC ☐ BW ☐ MISTRIAL ☐ MOTION NEW TRIAL ☐ HUNG JURY ☐ STATE HOSP ☐ JUV. CRT. ☐ LOWER CRT. ☐ 1203.03 PC ☐ OTHER ☐
	PRELIMINARY PROCEEDINGS	995 PC ☐ 1538.5 PC ☐ SETTLEMENT CONF ☐ PRETRIAL CONF ☐ 1368 PC ☐

	GUILTY AS CHARGED	GUILTY OF	NOT GUILTY	NOLO CONT	NG INSANE	OTHER
FIRST PLEA	☐	* MISD. ☐ FEL. ☐	☐	☐	☐	
FINAL PLEA	☐	* MISD. ☐ FEL. ☐	☐	☐	☐	17 PC ☐
FINDING OR VERDICT	☐	* MISD. ☐ FEL. ☐	☐	☐	☐	1118 PC ☐

TYPE OF TRIAL	JURY ☐ COURT ☐ CRT TRANS. ☐ TRANS & TESTIMONY ☐ JURY SWORN YES ☐ NO ☐
INSANITY DISPO.	INSANE AT COMM. ☐ SANE AT COMM ☐ INSANITY PLEA W/DRAWN ☐ PRESENTLY INSANE ☐
PROCEEDINGS SUSPENDED	1203.03 PC ☐ MDSO ☐ CRC ☐ BW ☐ SH-INSANE ☐ OTHER ☐
DISMISSED (NOTE IN SEC. E)	INSUF. EVID. ☐ INT. OF JUS. ☐ 995 PC ☐ 1538.5 PC ☐ DEF. DECEASED ☐ REMAND. TO LOWER COURT ☐ CERT. JUV. CRT. ☐ OTHER ☐ OTHER PROS. ☐ (CASE NO.) _____
SENTENCE	DEATH ☐ PRISON ☐ CYA ☐ JAIL ☐ _____ DAYS FINE ☐ $ _____
PROBATION INFORMATION	PRISON SUSP. ☐ PROCEEDINGS SUSP. ☐ JAIL SUSP. ☐ _____ DAYS 17 PC ☐ SUPERVISION FORMAL ☐ SUMMARY WITH SUPV. ☐ SUMMARY WITHOUT SUPV. ☐ TERM _____ MOS. AND _____ DAYS JAIL FINE $ _____ REST TO CO. $ _____
SUBSEQUENT PROB ACTION	VIOLATED ☐ REVOKED ☐ SENTENCE CHANGED NO ☐ YES ☐ _____ BW ☐ PROB. TERM ☐

E. REASON DISMISSAL PER SUBSECTION 11116 PC

						REMARKS
LOWER COURT	COUNT 1 ☐	COUNT 2 ☐	COUNT 3 ☐	COUNT 4 ☐		
SUPERIOR COURT	COUNT 1 ☐	COUNT 2 ☐	COUNT 3 ☐	COUNT 4 ☐		

F. SUBSEQUENT ACTION

JUDGMENT OR ORDER SUPPLEMENTAL TO ANY DISPOSITION INFORMATION PREVIOUSLY REPORTED

DATE

DISMISSED 1203.4 PC ☐ 1772 W & IC ☐ RECORD SEALED 851.7 PC ☐ 781 W & IC ☐

1203.3 ☐ 1203.4A PC ☐ OTHER ☐ 1203.45 PC ☐ OTHER ☐

RECORD SEALING—ATTACH CERT. COURT ORDER

TO: BUREAU OF IDENTIFICATION, P. O. BOX 13417, SACRAMENTO, CA 95813

FULFILLS SECTION 11115 PC, 11116 PC, 11117 PC

JUS 8715 (3-72)

19258-552 11-73 280M QUAD (T) OSP

APPENDIX D

DATA COLLECTION INSTRUMENT

AND CODING INSTRUCTIONS (FINAL VERSION)

APPENDIX D

DATA COLLECTION INSTRUMENT

AND CODING INSTRUCTIONS (FINAL VERSION)

HUNG JURY DATA COLLECTION INSTRUMENT

SHEET 1

Completed by_____ Date_____

Hung Jury ID# [ ] [ ] [ ] [ ] Court # [ ] [ ] [ ] [ ] Case # [ ] [ ] [ ] [ ] [ ] [ ] [ ]

DEFENDANTS

First DF Name [ ]

DF #1 ID# [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ]

DF #1 Age	[ ] [ ]	Sex	[ ]	Race	[ ]	Occupation	[ ] [ ]
DF #2 Age	[ ] [ ]	Sex	[ ]	Race	[ ]	Occupation	[ ] [ ]
DF #3 Age	[ ] [ ]	Sex	[ ]	Race	[ ]	Occupation	[ ] [ ]
DF #4 Age	[ ] [ ]	Sex	[ ]	Race	[ ]	Occupation	[ ] [ ]
DF #5 Age	[ ] [ ]	Sex	[ ]	Race	[ ]	Occupation	[ ] [ ]
DF #6 Age	[ ] [ ]	Sex	[ ]	Race	[ ]	Occupation	[ ] [ ]
DF #7 Age	[ ] [ ]	Sex	[ ]	Race	[ ]	Occupation	[ ] [ ]
DF #8 Age	[ ] [ ]	Sex	[ ]	Race	[ ]	Occupation	[ ] [ ]
DF #9 Age	[ ] [ ]	Sex	[ ]	Race	[ ]	Occupation	[ ] [ ]
DF #10 Age	[ ] [ ]	Sex	[ ]	Race	[ ]	Occupation	[ ] [ ]

TOTAL NUMBER OF DEFENDANTS [ ] [ ] (Use additional Sheet #1 for more than 10.)

VICTIMS

No. of Victims [ ] [ ] DF Primary Victim Relationship [ ]

Primary Victim Age [ ] [ ] Sex [ ] Race [ ] Occupation [ ] [ ]

Other Victims Same Categories as Primary Victim? (1=Yes, 2=No)

Age Within 5 yrs. [ ] Sex [ ] Race [ ] Occupation [ ]

Estimated $ Property Loss [ ] [ ] [ ] [ ] [ ] [ ] [ ] Injury to Victim [ ]
1=Yes, 2=No, 3=Death

HUNG JURY DATA COLLECTION INSTRUMENTS -- SHEET 2

Hung Jury ID# |_|_|_|_| Case # |_|_|_|_|_|_|_|

CHARGES

DF #|_|_|

Primary Charge # at Arrest |_|_|_|_|_|_|_| Deg. |_| Code |_| BCS |_|_|_| HJ |_|_| #Cts. |_|_|

Primary Charge Muni. Ct. |_|_|_|_|_|_|_| Deg. |_| Code |_| BCS |_|_|_| HJ |_|_| #Cts. |_|_|

Primary Charge Superior Ct. |_|_|_|_|_|_|_| Deg. |_| Code |_| BCS |_|_|_| HJ |_|_| #Cts. |_|_|

If Convicted, Charges #1 |_|_|_|_|_|_|_| Deg. |_| Code |_| BCS |_|_|_| HJ |_|_| #Cts. |_|_|

#2 |_|_|_|_|_|_|_| Deg. |_| Code |_| BCS |_|_|_| HJ |_|_| #Cts. |_|_|

#3 |_|_|_|_|_|_|_| Deg. |_| Code |_| BCS |_|_|_| HJ |_|_| #Cts. |_|_|

#4 |_|_|_|_|_|_|_| Deg. |_| Code |_| BCS |_|_|_| HJ |_|_| #Cts. |_|_|

#5 |_|_|_|_|_|_|_| Deg. |_| Code |_| BCS |_|_|_| HJ |_|_| #Cts. |_|_|

Lesser Includeds? (1=Yes, 2=No) |_|

DF #|_|_|

Primary Charge # at Arrest |_|_|_|_|_|_|_| Deg. |_| Code |_| BCS |_|_|_| HJ |_|_| #Cts. |_|_|

Primary Charge Muni. Ct. |_|_|_|_|_|_|_| Deg. |_| Code |_| BCS |_|_|_| HJ |_|_| #Cts. |_|_|

Primary Charge Superior Ct. |_|_|_|_|_|_|_| Deg. |_| Code |_| BCS |_|_|_| HJ |_|_| #Cts. |_|_|

If Convicted, Charges #1 |_|_|_|_|_|_|_| Deg. |_| Code |_| BCS |_|_|_| HJ |_|_| #Cts. |_|_|

#2 |_|_|_|_|_|_|_| Deg. |_| Code |_| BCS |_|_|_| HJ |_|_| #Cts. |_|_|

#3 |_|_|_|_|_|_|_| Deg. |_| Code |_| BCS |_|_|_| HJ |_|_| #Cts. |_|_|

#4 |_|_|_|_|_|_|_| Deg. |_| Code |_| BCS |_|_|_| HJ |_|_| #Cts. |_|_|

#5 |_|_|_|_|_|_|_| Deg. |_| Code |_| BCS |_|_|_| HJ |_|_| #Cts. |_|_|

Lesser Includeds? (1=Yes, 2=No) |_|

HUNG JURY DATA COLLECTION INSTRUMENT -- SHEET 3

Hung Jury ID# [ ]   Case # [ ]

TRIAL

Superior Ct. Arraign Date ___/___/___

Superior Ct. Trial Day 1 ___/___/___

Date Jury Impaneled ___/___/___

Deliberation Day 1 ___/___/___

Hung Jury Date ___/___/___

Days of Jury Service [ ]

Written Instructions Given Jury (1=Yes, 2=No) [ ]

Jury Sequestered (1=Yes, 2=No) [ ]

Allen Instructions Given Jury (1=Yes, 2=No) [ ]

Jury Request Further Assistance (# of times) [ ]

D-3

HUNG JURY VOTES

DF #	[ ]	Charge	[ ]	Deg.	[ ]	Code	[ ]	BCS	[ ]	HJ	[ ]	Convict	[ ]	Acquit	[ ]	Vote ID	[ ]	Out-Come	[ ]
DF #	[ ]	Charge	[ ]	Deg.	[ ]	Code	[ ]	BCS	[ ]	HJ	[ ]	Convict	[ ]	Acquit	[ ]	Vote ID	[ ]	Out-Come	[ ]
DF #	[ ]	Charge	[ ]	Deg.	[ ]	Code	[ ]	BCS	[ ]	HJ	[ ]	Convict	[ ]	Acquit	[ ]	Vote ID	[ ]	Out-Come	[ ]
DF #	[ ]	Charge	[ ]	Deg.	[ ]	Code	[ ]	BCS	[ ]	HJ	[ ]	Convict	[ ]	Acquit	[ ]	Vote ID	[ ]	Out-Come	[ ]
DF #	[ ]	Charge	[ ]	Deg.	[ ]	Code	[ ]	BCS	[ ]	HJ	[ ]	Convict	[ ]	Acquit	[ ]	Vote ID	[ ]	Out-Come	[ ]

NOTE: For more entries, use additional Sheet 3.

Retrial Ending in Hung Jury, Ref HJ ID# (DF #) [ ] [ ]

COMMENTS: ______________________________

____

____

CODING INSTRUCTIONS

SHEET 1

Precoding

HUNG JURY ID# -- Enter the 4 character number. The first character is an alpha designation of County:

Alameda	= A	Sacramento	= G
Contra Costa	= B	San Bernardino	= H
Fresno	= C	San Diego	= I
Kern	= D	San Francisco	= J
Los Angeles	= E	San Mateo	= K
Orange	= F	Santa Clara	= L

The last 3 characters are numeric, sequential, and identify cases as they are recorded.

Example, F074 is the 74th Hung Jury case recorded on the PMCC DCIs for Orange County.

COURT # -- Enter "1" for all counties, except for San Bernardino: San Bernardino Court = 1, Ontario - 2, and for Los Angeles, where there are 8 courts.

Central	= 1	Long Beach (South)	= 5
Pomona (East Dist.)	= 2	Norwalk (SE)	= 6
Pasadena (NE Dist.)	= 3	Torrance (SW)	= 7
Van Nuys (NW Dist.)	= 4	Santa Monica (West)	= 8

Defendants

CASE NUMBER -- Enter superior court case # for this trial.

FIRST DF NAME -- Enter first cited defendant name (last, first, middle initial), starting in LH box.

Examples:

W	I	L	B	U	R	L	E	E				

O	D	D	O	N	E	B	A	R	B	A	R	A

DEFENDANT #1 AGE -- Enter age at last birthday; SEX -- Enter "1" for male, "2" for female; RACE -- indicate race of defendant by entering one of the following code numbers:

American Indian	= 1
Mexican American	= 2
Black	= 3
Oriental	= 4
White	= 5
Other	= 6
Unknown	= 7
Mexican-Latin	= 8

OCCUPATION -- Enter the code which best describes the principal defendant's occupation:

0 = Professional/Technical
1 = Official/Manager
2 = Clerical
3 = Sales (Store clerks, etc.)
4 = Operators and Craftsmen
5 = Unskilled Labor
6 = Service Worker
7 = Never Employed
8 = Student
9 = Housewife
10 = None, Unknown

DEFENDANTS #2-n--CHARACTERISTICS -- Repeat above steps for multiple defendants.

TOTAL NUMBER OF DEFENDANTS -- Enter actual number.

Victims

NO. OF VICTIMS -- Enter actual number; enter "0" if property crime; "x" if victimless crime.

DF PRIMARY VICTIM RELATIONSHIP -- Code:

1 = Relative
2 = Friend
3 = Casual Acquaintance
4 = None
5 = Police Officer
6 = Business

PRIMARY VICTIM AGE -- Enter age at last birthday; SEX, RACE, OCCUPATION -- Use same coding as for defendants.

OTHER VICTIMS SAME CHARACTERISTICS AS PRIMARY VICTIM? -- Enter 1-Yes, 2=No, for age (within 5 years), sex, race, and occupation.

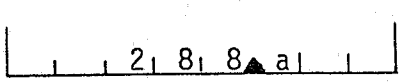
ESTIMATED $ PROPERTY LOSS -- Enter $

INJURY TO VICTIM -- Enter 1=Yes, 2=No, 3=Death. Leave blank for victimless crime.

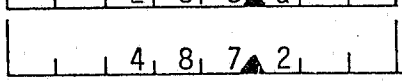
SHEET 2

Enter Hung Jury ID# and Case # from Sheet 1.

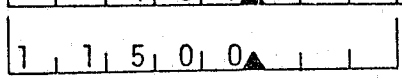
DEF # PRIMARY CHARGE AT ARREST -- Enter defendant no. and enter appropriate PC or H&S citation. The (▲) marks start of the subsection no. Examples: enter PC 288a



; and enter

PC 487.2 

; and enter

H&S 11500 

.

CODE -- Indicate Penal Code citation by "1", Health and Safety Code citation by "2".

BCS -- Enter BCS Code from Table 1 which corresponds to the PC or H&S Code.

HJ -- Enter 2-digit Hung Jury Code from Table 2 which corresponds to the offense described by the PC or H&S cited.

CTS -- Enter number of counts charged.

PRIMARY CHARGE MUNI. CT. -- Enter information [as in "Arrest charge" instructions].

PRIMARY CHARGE SUPERIOR CT. -- Enter information [as in "Arrest charge" instructions].

IF CONVICTED, CHARGES -- Enter information on any charges on which defendant was convicted [as in "Arrest charge" instructions].

LESSER INCLUDEDS? -- Enter 1=Yes, 2=No

Repeat for multiple defendants.

SHEET 3

Enter Hung Jury ID# and Case # from Sheets 1 and 2.

TRIAL

SUPERIOR COURT ARRAIGNMENT DATE)
SUPERIOR COURT TRIAL DAY 1)
DATE JURY IMPANELED) Enter month, day, year
DELIBERATION DAY 1)
HUNG JURY DATE)

DAYS OF JURY SERVICE -- Enter number of days of actual jury service.

WRITTEN INSTRUCTIONS GIVEN JURY? -- If the charge and instructions to the jury were given in written form, enter "1" ; for no, enter "2".

JURY SEQUESTERED? -- Yes=1, No=2

ALLEN INSTRUCTIONS TO JURY? -- (ref. p. 319, Benchbook, and p. 3, HJ memo #29) Enter 1=Yes, 2=No

JURY REQUEST FURTHER ASSISTANCE? -- Enter the number of times the jury requested assistance after beginning deliberation.

HUNG JURY VOTES -- This section applies to each charge on which the jury hung, by defendant

DE' # -- Enter defendant no. to correspond with number given that defendant on sheets 1 and 2.

CHARGE -- Enter charge on which jury hung

CODE -- Enter "1" for Penal Code citation; "2" for Health and Safety code citation

BCS -- Enter BCS Code from Table 1 which corresponds to the PC or H&S Code

HJ -- Enter 2-digit Hung Jury Code from Table 2 which corresponds to the offense discribed by the PC or H&S cited.

CONVICT -- ACQUIT -- Enter number of votes in each category
NOTE: Vote splits are not always identified, but 'convict' count usually comes first, so enter first number given as "convict"

VOTE ID -- If 'convict' and 'acquit' votes are identified clearly, enter "1", enter "2" if they are not.

OUTCOME -- Subsequent disposition on the charge which hung the jury. Enter the appropriate code:

1 = Case dropped or dismissed by court
2 = Case dropped on motion of D.A., or recommendation of D.A.
3 = Case dropped (or dismissed) on motion of defense
4 = Pled guilty to lesser or other
5 = Pled guilty as charged
6 = Retrial--Acquitted
7 = Retrial--Convicted of Lesser
8 = Retrial--Convicted Guilty as Charged
9 = Retrial--Hung Jury
10 = Retrial--Pending
11 = Information not available
12 = Other--Mistrial
13 = Other

Repeat as necessary for additional charges/defendants.

RETRIAL ENDING IN HUNG JURY, REF HJ ID# (DF #) -- Enter the HJ ID# for the subsequent hung jury and the defendant number to which the retrial applies.

APPENDIX E

SECURITY AND PRIVACY PLAN

APPENDIX E

SECURITY AND PRIVACY PLAN

The hung jury data base, as it was developed and implemented, involved the collection, storage, retrieval, processing, and reporting of information based upon hundreds of data elements about criminal defendants, judicial actions, arrests, charges, prosecutions, verdicts, and related matters. Given the scope of the data base, and particularly the intent to process the data by computer, special problems arose concerning the confidentiality of the data.

Criminal offender record information was entered into the data base which under no circumstances has been or should ever be disseminated beyond the small group on the PMCC staff responsible for execution of the study. A lapse in the security and privacy of this information, as required by California law, might cause serious damage to private citizens or compromise the criminal justice agencies which supplied the data.

For example, the security of the hung jury data base could have been seriously compromised (1) if unauthorized persons had gained access to offender-specific data, during either the data collection or data analysis phases of the study, (2) if authorized persons had made excerpts of criminal offender record information during either of the two phases for private motives or personal gain, or (3) if the contents of the data base or some portion of the contents had been made known to unauthorized persons or the public. In this context, security referred "to the protection of the data base itself against intended or accidential injury or intrusion."*

*National Advisory Commission on Criminal Justice Standards and Goals, REPORT ON THE CRIMINAL JUSTICE SYSTEM, p. 114, Washington: GPO (1973).

Like security, the protection of individual privacy also was a critical consideration in the development and implementation of the data base. Insuring privacy resulted in part from making certain that the data in the data base were valid; that is to say, there were no data entries save those which were justified and evaluated in every detail. But the principal protection derived from complete assurances (1) that the data in the hung jury data base were not and never will be distributed to anyone outside the PMCC study staff and (2) that the production of this report did not reflect data and information about either individual defendants or jurors. In this context, privacy referred to the protection of the interests of the people whose names appear for whatever reason in the contents of the data base.

Accordingly, to insure the security and privacy of the data base, the PMCC study staff adopted the following procedures:

1. Insofar as defendant names, identification numbers, and case numbers are required for purposes of capturing reliable data on the DCIs, no names, identification numbers, case numbers or other identification codes will be entered into the hung jury data base.

2. Upon completion of the study, PMCC recommends that the DCIs be destroyed by the Office of Criminal Justice Planning. In the meantime, PMCC has made provision for the security of the DCIs in its own corporate offices.

3. The DCI data deck, the BCS output reports, and the Judicial Council tabulations will be rendered into sufficiently aggregate form, if required, to render impossible identification of any defendant or any identification number, case, or code which permits tracing of a defendant's name.

5. It should be noted that the foregoing procedures will be implemented despite the fact that all of the data recorded on the DCIs, and received from the BCS and the Judicial Council, are matters of public record.

The above procedures are consistent with a California statute which is scheduled to take effect in 1978: PC 13202 [Providing Aggregated Criminal Offender Records for Study or Research]. Because of its applicability, the text of PC 13202 is recited in full:

> "Every public agency or research body immediately concerned with the prevention or control of crime, the quality of criminal justice, or the custody or correction of offenders shall be provided with such aggregated criminal offender record information as is required for the performance of its duties, or the execution of research projects relating to the activities of criminal justice agencies or changes in legislative or executive policies, insofar as the technical or financial resources of statistical agencies permit, provided that all material identifying individuals has been removed, and provided that such agency or body pays the cost of the processing of such data when necessary."*

This statute has served as the general security and privacy policy under which PMCC developed and implemented specific procedures. The procedures support the spirit as well as the letter of the law.

*The PMCC study staff followed all applicable provisions of this statute in obtaining the Extended Data about Superior Court dispositions from the BCS.

END