

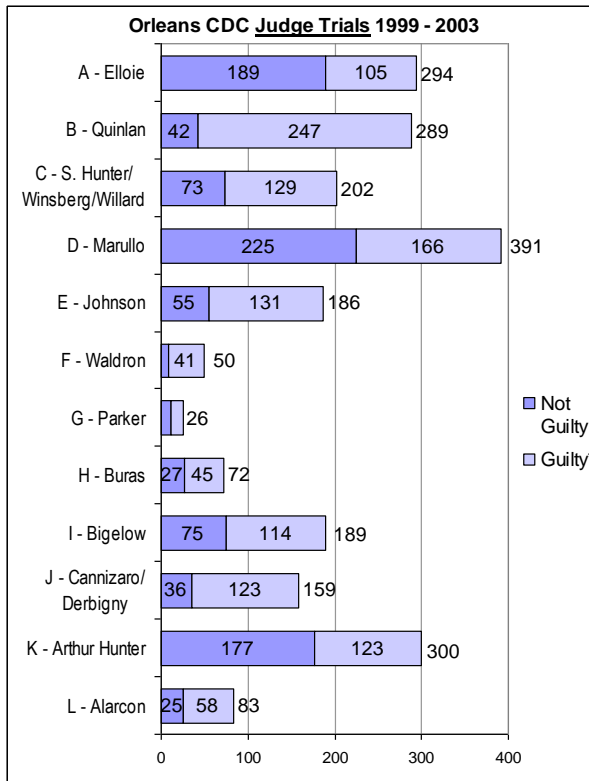


**Metropolitan Crime Commission**  
*Research in Brief*  
**An Analysis of Judge Trial Outcomes in Orleans Parish Criminal District Court: 1999-2003**

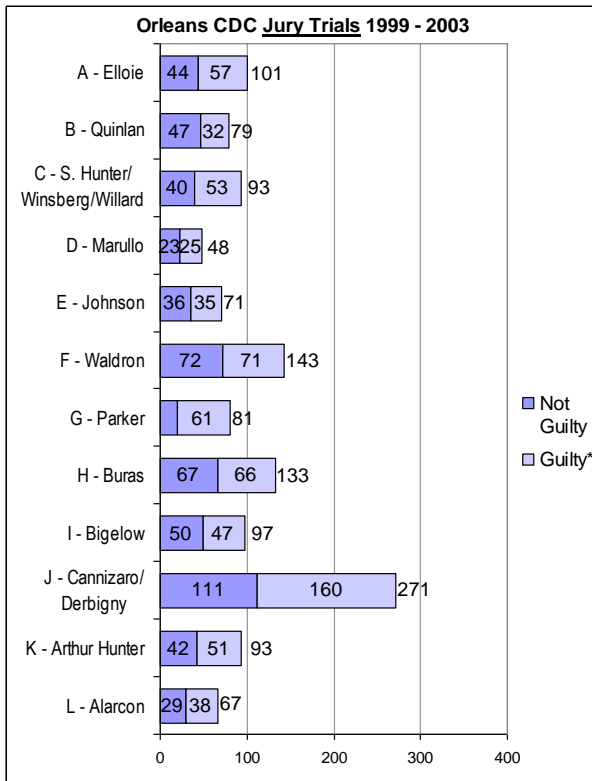
An analysis of the outcomes of the 2,241 felony (76%) and misdemeanor (24%) judge trials held in the 12 sections of Orleans Criminal District Court (CDC) from 1999 through 2003 finds that three judges – Judges Charles Elloie, Frank Marullo, and Arthur Hunter – presided over a disproportionately high 44% of all judge trials and acquitted 60% of the defendants. The remaining nine CDC judges had a combined acquittal rate of only 28%. Under Louisiana law, defendants charged with a felony offense (and some misdemeanor offenses) who plead not guilty to the charges against them have the option to choose either a judge or jury trial. Only when charged with a capital offense must a defendant be tried before a jury.

**Exhibits 1 and 2** below show the number of judge and jury trials held in each section of CDC as well as the number of guilty and not guilty verdicts by court section.<sup>1</sup> The study time frame of 1999 – 2003 includes data from the terms of both D.A. Harry Connick (1999 – 2002) and the current D.A. Eddie Jordan (2003).

**Exhibit 1**



**Exhibit 2**



\* Guilty rates include defendants found Guilty as Charged and Guilty of A Lesser Charge

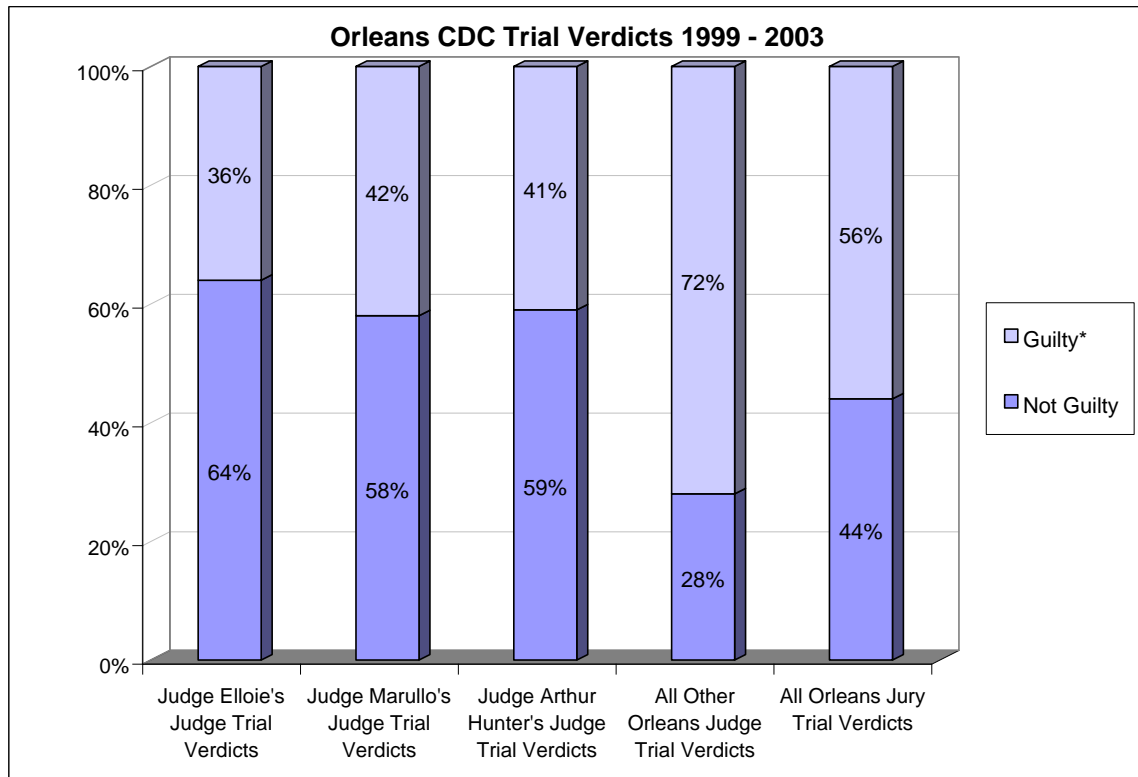
<sup>1</sup> The definition of a “trial” as used in this report is a trial proceeding that results in a finding of guilt or innocence by either a judge or a jury.



- **Exhibit 1** shows the wide disparity that exists in the total number of judge trials held in the twelve sections of CDC between 1999 and 2003, which ranges from a low of 26 in Section G (Parker) to a high of 391 presided over in Section D. Sections A (Elloie), D (Marullo), and K (Hunter) accounted for 44% of all judge trials held during the five-year period.
- By contrast, **Exhibit 2** shows a much more uniform distribution in the number of jury trials held in the twelve court sections. Across the five-year study period, most sections of court held between 50 and 100 jury trials.

**Exhibit 3** below contrasts the outcomes of the judge trials conducted by Judges Elloie, Marullo, and Hunter, with the combined judge trial outcomes in the nine other court sections. The acquittal rates of these three judges are also compared with the acquittal rate of all jury trials held during the five-year period. (Complete charts for each section’s judge and jury trials are provided as appendices to this report)

*Exhibit 3*



\* Guilty rates include defendants found Guilty as Charged and Guilty of A Lesser Charge

- Judges Elloie, Marullo, and Hunter have judge trial acquittal rates that are more than twice as high as the combined acquittal rate of the other nine CDC judges, and accounted for 63% (591 out of 945) of all judge trial acquittals during the five-year period (See Appendix C). As shown in **Exhibit 1**, these three judges also presided over more judge trials than any of the other CDC judges.
- **Exhibit 3** shows that the combined acquittal rate from “All Other Orleans Judge Trial Verdicts” (28%) is somewhat lower than the acquittal rate for all jury trials (44%). These outcomes are inline with the results of national research<sup>1</sup> that juries are more

<sup>1</sup> *Felony Defendants in Large Urban Counties, 2000*; Bureau of Justice Statistics; U.S. Dept. of Justice, 12/2003

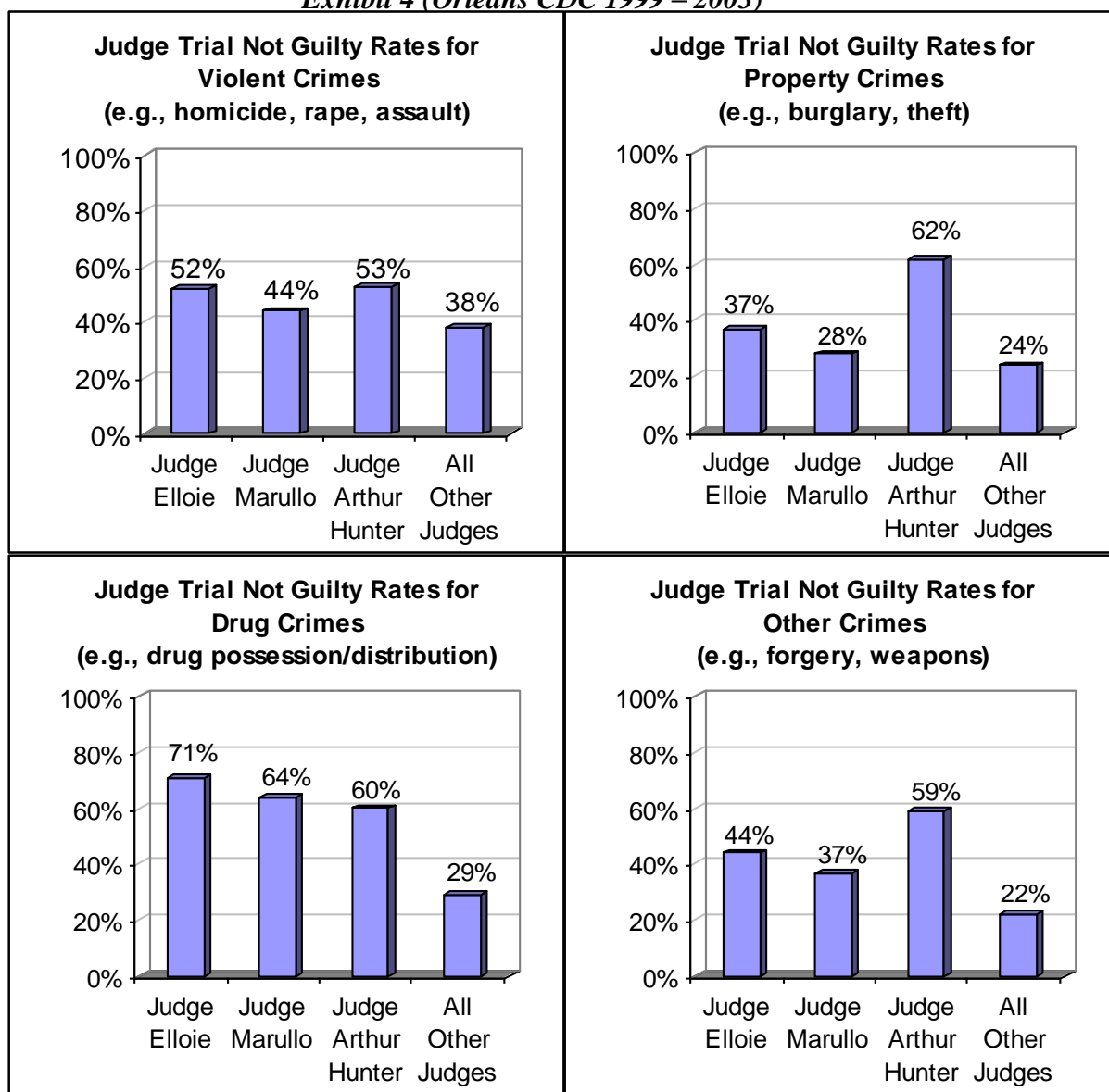


likely to acquit defendants than judges. In sharp contrast with outcomes nationally, Judges Elloie, Marullo, and Hunter have judge trial acquittal rates that *far exceed* CDC's jury trial acquittal rate.

It should be noted that cases at CDC are randomly allotted among the twelve sections of court. Thus, over the course of a five-year period it is statistically improbable that three judges, or for that matter any judge, would be allotted a sufficiently large number of cases that varied so greatly in charges and circumstances that these factors would explain the wide variance in case outcomes.

**Exhibit 4** compares the percentages of acquittals by offense type in cases presided over by Judges Elloie, Marullo, Arthur Hunter, and all other Orleans Parish CDC judges combined.

*Exhibit 4 (Orleans CDC 1999 – 2003)*





- Both Judge Elloie (53%) and Judge Hunter (55%) acquit more than half of all suspects who have trials before them for violent offenses, and Judge Marullo acquits 44% of all defendants charged with violent crimes. By comparison, the other nine judges combined acquit only 38% of defendants charged with violent crimes.
- Regarding property offenses, Judge Arthur Hunter has an extraordinarily high 62% judge trial acquittal rate. By contrast, “all other judges” had a 24% acquittal rate for property crimes.
- Judges Elloie (72%), Marullo (64%), and Hunter (60%) had acquittal rates for drug offenses that far exceeded the 29% acquittal rate of the other nine CDC judges.
- The “other crimes” category includes numerous offenses such as weapons charges, embezzlement, and crime against nature charges. Again, Judges Elloie (44%), Marullo (37%), and Hunter (59%) evidence acquittal rates that are strikingly higher than the 22% acquittal rate demonstrated by the balance of CDC judges.

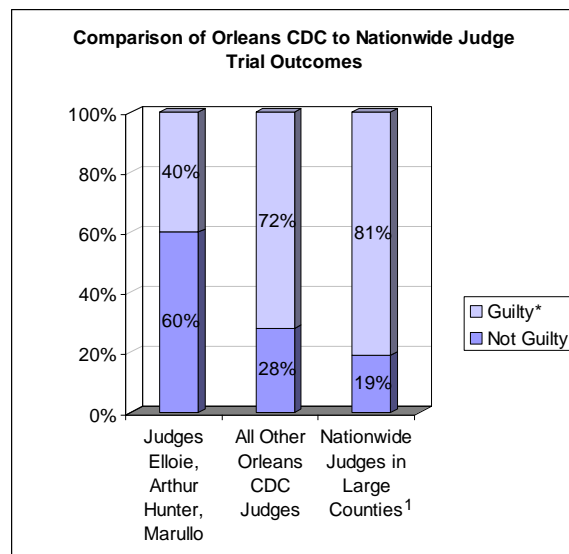
### Conclusions

Defendants facing criminal charges before Judges Charles Elloie, Frank Marullo, and Arthur Hunter of Orleans Criminal District Court, when given the choice between a judge or jury trial, choose a judge trial in disproportionate numbers when compared with the other nine sections of court. Over the five-year study period (1999-2003), 11.4% of defendants in Judges Elloie’s, Marullo’s, and Hunter’s sections of court opted for judge trials, twice the judge trial rate (5.7%) of the remaining court sections. In fact, these three court sections accounted for 44% of all judge trials held between 1999 and 2003.

A likely explanation for the high number of judge trials held by Judges Elloie, Marullo, and Hunter is that they have a combined judge trial acquittal rate of 60%, more than twice the 28% combined acquittal rate of the other nine CDC judges. Further, these three judges accounted for 63% (591 of 945) of all judge trial acquittals during the five-year study period. It appears evident that defendants and/or their defense attorneys are well aware of their greatly improved chances for acquittal when choosing a judge trial before Judges Elloie, Marullo, or Hunter.

These three judges’ extraordinarily high acquittal rates place them radically apart from both the overall outcomes demonstrated by the balance of the court and the judicial benchmarks established by state courts in large jurisdictions across the country. As shown in Exhibit 5 to the right, *the outcomes of judge trials held during 2000 in 40 of the country’s largest counties show that 81% of those trials ended in a guilty verdict<sup>1</sup> compared with a 40% guilty rate for Judges Elloie, Marullo, and Hunter.* The combined 72% judge trial guilty rate for the other nine sections of CDC is closely inline with national judge trial outcomes.

**Exhibit 5**



\* Guilty rates include defendants found Guilty as Charged and Guilty of A Lesser Charge

<sup>1</sup> *Felony Defendants in Large Urban Counties, 2000*; Bureau of Justice Statistics; U.S. Dept. of Justice, 12/2003



The explanations for the dramatically higher acquittal rates for Judges Elloie, Marullo, and Hunter versus that of the other judges of the CDC bench and the combined acquittal rates of state court judges nationally, are conjecturable. These three judges may discount the testimony of victims and witnesses, simply choose to disregard the facts in certain cases, have a distorted appreciation of the burden of proof requirements, or maintain a bias against the police and prosecutors which prevents them from fairly applying the law. What is not conjecturable, however, is that the disproportionately high acquittal rate of these judges *is not* the result of a variance in the types of cases they preside over. And, whatever the reasons for the outcomes of their judicial practices, their propensity for finding defendants innocent is excessive and well outside the judicial mainstream.

The MCC does not advocate for a justice system void of judicial discretion and disparity in case outcomes, nor do we believe in a system that either favors defendants or denies them their rights. What we do strive for is fairness and impartiality in the court system. The outcomes of judge trials presided over by Judges Elloie, Marullo, and Hunter give at least the appearance of a lack of impartiality and diminish the public's confidence in the court system. With these serious consequences for our community in mind, the MCC offers the following recommendations:

### **Recommendations**

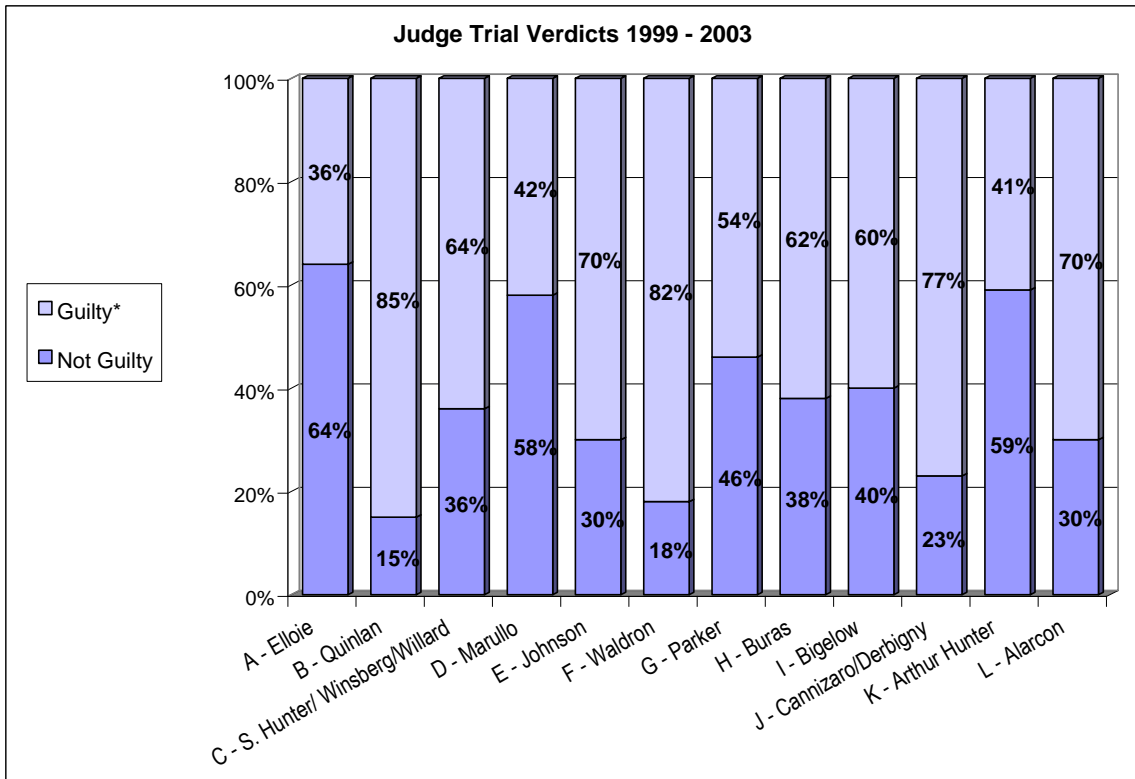
1. Revise Article 780 of the Louisiana Code of Criminal Procedures and Article I Section 17 (A) of the Louisiana Constitution to require the concurrence of the District Attorney's Office in order for defendants to waive their right to a jury and opt instead for a judge trial. This recommendation follows federal court jurisprudence, which requires that both the court and the prosecution must concur with a defendant's waiver of a jury trial, and the refusal by either the court or prosecution denies the defendant the right to waive a jury trial. Other states, including Arkansas, Tennessee, and Texas, already require the consent of the state prosecutor for a defendant to waive his right to a jury trial.
2. Enact legislation that establishes a merit system for the selection of judges. Some form of merit selection of judges exists in many states across the country. In fact, merit selection is currently working in thirty-four states and in the District of Columbia. Merit selection was first adopted in 1940 and no state using merit selection has voted to return to competitive elections.
3. Implement an ongoing public information program to keep citizens and public officials well informed regarding the performance of individual judges.

*Note: Data for this analysis were obtained from the Orleans Parish District Attorney's Office, the Orleans Parish Clerk of Court's Office, and the Orleans Parish Criminal Sheriff's Office online information system.*

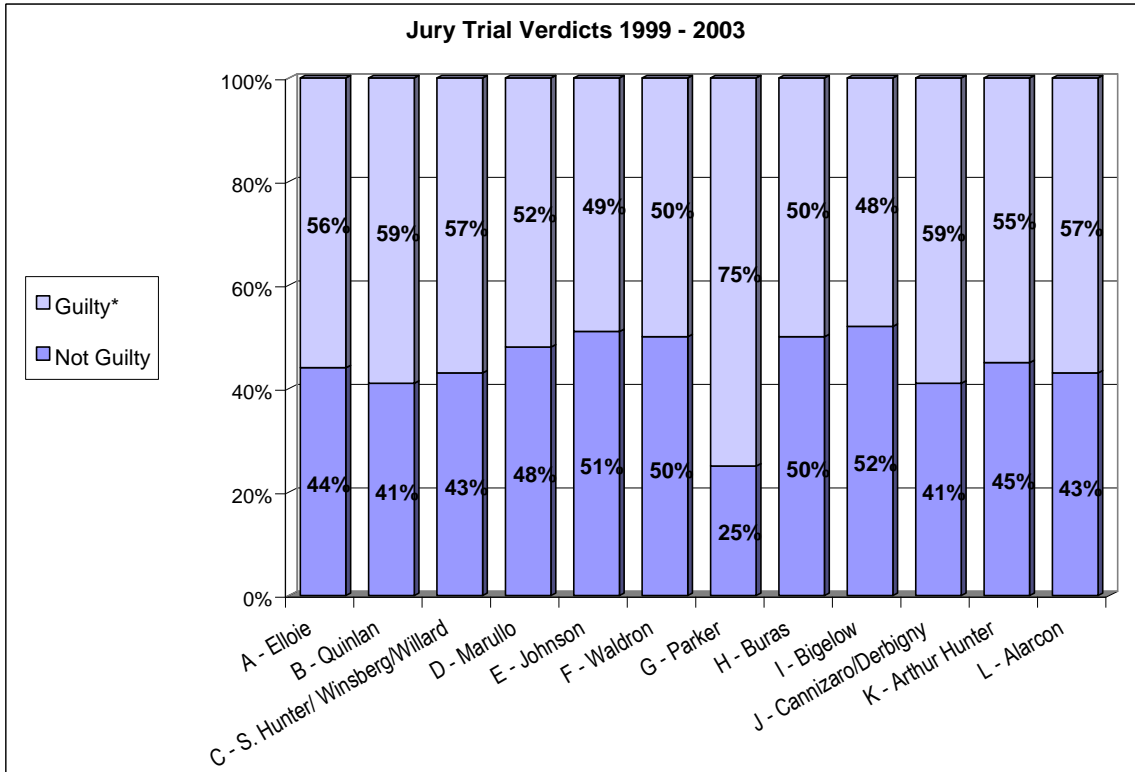


### Appendices

#### Appendix A: Judge Trial Outcomes for All Sections of Court



#### Appendix B: Jury Trial Outcomes for All Sections of Court



\* Guilty rates include defendants found Guilty as Charged and Guilty of A Lesser Charge



Appendix C: Distribution of Acquittals from Judge Trials

