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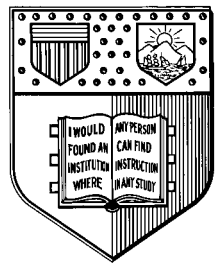

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Criminal case complexity persists as a central tenet in many academic and public critiques of our legal system even though little is known about two critical questions. One question is whether key actors (juries, attorneys, and judges) view case complexity similarly. In other words, do juries, attorneys, and judges agree on whether a case is complex? A second question involves the determinants of case complexity for each group. That is, what factors make a case more (or less) complex for juries, attorneys, and judges. This article explores both questions from an empirical perspective with the benefit of recent data from four jurisdictions. The data are important because, within the context of criminal cases, they permit analyses of agreement levels among the three key actors. Results suggest that the three sets of actors possess slightly different views on whether cases are complex. Judges reported the lowest levels of case complexity; jurors the highest. Moreover, important variation exists in terms of what made cases complex for each group. The results implicate legal reform efforts. No clear consensus exists among the critical actors on complexity perceptions. Many of the variables that influence case complexity fall outside of reformers' reach. Variables within the reach of policy do not appear to systematically reduce case complexity.

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I. INTRODUCTION

A jury's capacity to mete out justice fairly and responsibly in complex criminal trials has been on trial for more than a decade.[1] Two distinct though related trends fuel questions about jury capacity and position case complexity on important law reform terrain. First, prevailing wisdom holds that cases coming to trial for resolution are increasingly complex.[2] Second, a general and growing unease persists regarding a jury's ability to render fair and responsible decisions in complex cases.[3] Because these two trends intersect with regularity, legal reformers increasingly advance case complexity as one rationale for reducing the justice system's reliance on juries and for considering alternative adjudicative models.[4]

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[1]See, e.g., David E. Bernstein, Junk Science in the United States and the Commonwealth, 21 Yale J. Int'l L. 123, 181 (1996) (noting the need for broad reforms for complex criminal trials); Neil Vidmar et al., Should We Rush to Reform the Criminal Jury?, 80 Judicature 286 (1997) (arguing that any criminal jury reforms should not rest on misperceptions of jury acquittal rates). For more general discussions of civil and criminal cases, see Richard Lempert, Civil Juries and Complex Cases: Taking Stock After Twelve Years, in Verdict: Assessing the Civil Jury System 181, 235 (Robert E. Litan ed., 1993) (noting the enduring call for jury reform); Peter H. Schuck, Mapping the Debate on Jury Reform, in Verdict: Assessing the Civil Jury System 306 (Robert E. Litan ed., 1993) ("Calls to reform the jury abound."); Jeffrey Abramson, We, The Jury 3 (1994) (describing how the gap between the complexity of modern litigation and jurors' qualifications "has widened to frightening proportions"); Larry Heuer & Steven D. Penrod, Trial Complexity: A Field Investigation of its Meaning and its Effects, 18 L. & Hum. Behav. 29, 29 (1994) (noting that the "jury has been accused of being unfit to render fair and rational decisions in complex litigation"). Others advance even broader critiques against civil juries that include noncomplex cases. See, e.g., Cass R. Sunstein et al., Punitive Damages: How Juries Decide 241 (2002) (arguing that jurors produce "unreliable, erratic, and unpredictable" results).

[2]See Joe S. Cecil et al., Citizen Comprehension of Difficult Issues: Lessons from Civil Jury Trials, 40 Am. U. L. Rev. 727, 728–29 (1991) (noting "increased complexity of issues presented for adjudication"); Graham C. Lilly, The Decline of the American Jury, 72 U. Colo. L. Rev. 53, 66 (2001) (same). See also Judicial Conference of the United States, Report of the Federal Courts Study Committee 97 (April 2, 1990) (recommending a review of how courts handle increased scientific and technological complexity in litigation).

[3]See sources cited supra note 1. Concerns about jury capacity extend into popular American culture. Mark Twain once remarked that a trial by jury "would prove the most ingenious and infallible agency for *defeating* justice that human wisdom could contrive." Mark Twain, 2 Roughing It 320 (Harriet E. Smith & Edgar M. Branch eds., 1993) (emphasis in original).

[4]Schuck, supra note 1, at 327–28 (discussing diverting more civil cases to nonjury forums).

Criminal case complexity persists as a central tenet in many academic and public critiques of the American legal system in general and its reliance on juries in particular, even though little is known about two critical questions. One question is whether the key actors view case complexity similarly. More specifically, do juries, attorneys, and judges agree on which cases they find complex? A second question involves the determinants of case complexity for each group. That is, what are the factors that make a case complicated for a jury, an attorney, or a judge? This article explores both questions from an empirical perspective with the benefit of recent data. Although findings from this study do not provide dispositive conclusions on how the American legal system should adjust—if at all—to complex cases, data-driven analyses of these questions should inform legal and policy discussions.

Two general findings emerge from this study. First, even when assessing the same case, different participants in a legal trial viewed case complexity differently. In general, judges reported the lowest levels of complexity, jurors the highest, and attorneys' perceptions of case complexity typically fell somewhere in the middle of the continuum. Second, different factors made cases complex for different groups. Both of these general findings have important implications for policymakers endeavoring to improve the quality of justice by making adjustments to the jury system for especially complicated cases. The absence of a consensus of perceptions about case complexity impedes reform efforts, which typically assume that all participants view case complexity similarly. Moreover, most variables that influence complexity are outside policymakers' reach. Further, the efficacy of those variables amenable to policy manipulation—such as jury-assistance measures—remains uncertain.

Part II of this article considers the sources for the persistent concern over case complexity, with particular attention to case complexity's role in a general critique of the American jury system. Part III describes the hypotheses and the data and methodology used to test them. Part IV assesses case complexity perceptions and agreement levels among juries, attorneys, and judges. Part V presents the results of analyses of the different groups' views of case complexity. Part VI discusses the major themes that emerge from the analyses as well as their implications for legal reform. A concluding section identifies possible lines of future research.

II. Concerns about Case Complexity

Concerns continue to mount about complex cases' implications for the administration of justice. After initially describing the main sources of anxiety over complex cases, I briefly describe the major reform efforts designed to blunt complexity's ill effects.

A. Sources of Anxiety

Cases typically become complex either because the evidence required is technical or difficult to obtain, because the procedural context or relevant legal rules are muddled, or because aspects of the trial itself generate difficulties.[5] Regardless of the precise reasons for complex cases, two factors help explain persistent concerns about problems flowing from them. One factor involves the widely shared perception that case complexity has increased over time.[6] Commentators note in particular that the "absolute number of hard cases has increased."[7] In the criminal context, the use of forensic evidence contributes to this increase.[8] Because "hard" (or complex) cases frequently involve mass torts and are tried in federal courts, they often attract public attention. The disproportionate public attention to complex cases helps explain the public perception that courts increasingly confront more complicated cases. Whether public perceptions about case complexity trends are correct is an empirical question that warrants careful study.[9] Current support for the public perceptions about case complexity trends is largely impressionistic because existing evidence precludes firm conclusions about whether case complexity has indeed increased over time.

A comparison of two independent data sets involving criminal trials offers one clue—albeit limited and indirect—about complexity trends over

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[5]Theodore Eisenberg & Geoffrey P. Miller, Attorney Fees in Class Action Settlements: An Empirical Study, 1 J. Empirical Legal Stud. 27, 37 (2004).

[6]See supra note 2 and accompanying text.

[7]See Joseph Sanders, Scientifically Complex Cases, Trial by Jury, and the Erosion of Adversarial Processes, 48 DePaul L. Rev. 355, 358–59 (1998) (noting that the veritable explosion in the use of experts implicitly suggests that cases are increasingly complex).

[8]See Bernstein, supra note 1, at 124–25.

[9]Such an investigation is beyond the scope of this study.

Table 1: Case Complexity Trends Over Time: Judges' Perceptions (Percentage)

	1 *Kalven & Zeisel*	*2* *NCSC*
Easy to comprehend	86	49.3
Somewhat complex	12	43.1
Very complex	2	7.6
N	1,191	355

NOTE: To facilitate comparisons across the Kalven and Zeisel (Column 1) and NCSC (Column 2) data sets, responses in the NCSC data set were recoded from their original seven-point Likert scale to the three-point Kalven and Zeisel scale.

SOURCES: Column 1 is based on the Kalven and Zeisel data (Sample II) covering trials in 1954–1955 and 1958. Column 2 is based on NCSC data covering trials at four sites in 2000–2001.

time. In their influential study of criminal trials during the 1950s, Professors Kalven and Zeisel surveyed judges' perceptions of case complexity (or "difficulty").[10] A more recent data set generated by the National Center for State Courts (NCSC) similarly surveyed judges in criminal cases that concluded during 2000–2001.[11] A comparison of findings from both studies, presented in Table 1, suggests two salient points.

First, Kalven and Zeisel observed that "the great bulk of [criminal] cases are routine as to comprehension and hence unlikely to be misunderstood."[12] The Kalven and Zeisel data in Column 1 of Table 1 support their observation. Judges in the vast majority of cases (86 percent) described the cases as "easy to comprehend."[13] With the Kalven and Zeisel findings serving as a crude baseline, a comparison with the NCSC data reveals a shift to a perception of more complex criminal cases between the 1950s and 2000. Although prudent inferences from this comparative snapshot of judges' case complexity perceptions are limited, the shift's magnitude and direction are probative and comport with prevailing wisdom.

Second, despite hinting at a trend toward more complex criminal cases over time, the Kalven and Zeisel and the NCSC data sets share one trait.

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[10]Harry Kalven, Jr. & Hans Zeisel, The American Jury 154 (1966).

[11]For a description of these data, see discussion infra Part III.B.

[12]Kalven & Zeisel, supra note 10, at 154.

[13]Id. at 153–54.

Specifically, as Column 2 of Table 1 demonstrates, judges in 2000 and 2001—similar to their counterparts in the 1950s—perceived the highest number of criminal cases as "easy to comprehend" and the lowest number of cases as "very complex." More importantly, however, is that after approximately 50 years, judges characterized more cases overall as "very complex."

A second concern about increasingly complex cases is how they interact with certain structural components of the American legal system, which might aggravate the risks posed by case complexity. Procedural mechanisms designed to facilitate fair trials may concomitantly increase the probability that a jury might not fully understand a complicated case. Voir dire can operate in a way that helps ensure that potential jurors wholly unaware of a particular case stand a better chance of empanelment than potential jurors with some understanding of the case (as well as excluding any juror with an interest or opinion about the case).[14] In addition to juries' general lack of experience, expertise, or specialization, Professor Schuck notes other problems that flow from systematically denying juries information about decisions made by prior juries in similar cases.[15]

B. Case Complexity Reforms

Growing perceptions that cases are increasingly complex and that the American legal system structurally tilts in a direction that favors juries with comparatively less case-specific expertise shape recommendations for legal reforms. Although much of the scholarly attention focuses on civil trials, criminal trial reforms receive ample attention as well. Much of the related scholarship dwells on how to help juries assimilate complex evidence and does not distinguish between the civil and criminal settings. Although the intellectual literature that frames this study sometimes conflates civil and criminal contexts, the data in this study flow from and, therefore, speak to only criminal trials.

The Federal Rules of Evidence provide one important framework that structures the form and substance of information flowing to juries in

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[14]Stephen J. Krause, Punishing the Press: Using Contempt of Court to Secure the Right to a Fair Trial, 76 B.U. L. Rev. 537, 567–68 (1996) (noting that jury critics argue that voir dire helps ensure that jurors finally selected by the court generally lack the capacity to deal with complicated criminal cases); Newton N. Minow & Fred H. Cate, Who Is an Impartial Juror in an Age of Mass Media?, 40 Am. U. L. Rev. 631, 632–35 (1991) (same).

[15]For a discussion of these problems, see Schuck, supra note 1, at 311–12.

trials.[16] First, Rule 702 permits a qualified expert to testify at trials to help explain complex evidence.[17] Second, Rule 403 allows a judge to exclude otherwise relevant evidence if its threat of unfair prejudice or confusion for the jury substantially outweighs its probative value.[18] Both rules shape what information juries receive and how they receive it in a criminal trial. At a more practical level, various jurisdictions now experiment with jury-assistance mechanisms, including permitting jurors to take written notes throughout a trial.[19]

At a more general level, another common reform theme is to direct more cases away from juries and toward either judges or specialized juries for resolution. Within this theme, two discrete suggestions predominate. One suggestion retains the jury system but incorporates a "complexity exception," relieving juries from especially complex cases on a judge-determined ad hoc basis. A second method formally predetermines discrete areas of complicated litigation and develops alternative mechanisms to handle such cases.

1. Case Complexity Exception

Circuit courts split on whether judges possess the discretionary authority to disallow jury trials where a presiding judge determines that the case is simply too complicated to be entrusted to a jury. In *In re Japanese Electronic Products Antitrust Litigation*,[20] the Third Circuit concluded that due process concerns stemming from an exceptionally complex antitrust case can justify a judge's

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[16]The Federal Rules of Evidence only bind federal trials and have done so since 1975. Act of Jan. 2, 1975, Pub. L. No. 93-595, 88 Stat. 1926. A number of states, however, have voluntarily adopted the Federal Rules. See Bernstein, supra note 1, at 128 n.19.

[17]Fed. R. Evid. 702.

[18]Fed. R. Evid. 403.

[19]See Steven D. Penrod & Larry Heuer, Tweaking Commonsense: Assessing Aids to Jury Decision Making, 3 Psychol. Pub. Pol'y & L. 259 (1997) (discussing jury note-taking proposals). Justice Sandra Day O'Connor has advocated juror note taking as a key component of effective reform. Sandra Day O'Connor, Juries: They May Be Broken, But We Can Fix Them, 44 Fed. Law. 20, 24 (Jun. 1997).

[20]631 F.2d 1069 (3d Cir. 1980).

decision to override a litigant's right to a jury trial.[21] The court construed due process requirements to include a reasonable expectation that the jury will be able to understand the facts and to apply the relevant legal principles.[22] More abstractly, the Third Circuit concluded that the Seventh Amendment[23] must give way to the Fifth Amendment[24] where a direct conflict arises.[25]

Other circuit courts rejected the complexity exception. The Ninth Circuit, in *In re U.S. Financial Securities Litigation*,[26] declined to interpret the Seventh Amendment to permit exceptions, even in complicated cases. Instead, the court's language made clear its sentiment that lawyers and judges carry the burden to assist lay jurors in complex cases.[27]

The U.S. Supreme Court has only glided by the complexity exception debate. The third of a three-prong test endeavoring to help courts divine whether an issue is "legal" or equitable references the "practical abilities and limitations of juries."[28] Although obviously not dispositive, the dicta hint at the possibility of the Court finding some limitations on the right to a civil jury trial.

2. Specialized Courts

The creation of specialized courts represents a second reform option aimed at minimizing problems posed by complex cases. Arguments for

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[21]Id. at 1079, 1084–89.

[22]Id. (concluding that such an assumption fails when a jury cannot understand evidence and legal rules).

[23]The Seventh Amendment reads, in pertinent part: "In [s]uits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." U.S. Const. amend. VII.

[24]Specifically, the due process clause. U.S. Const. amend. V.

[25]In re Japanese Elec. Prods., 631 F.2d at 1084–85.

[26]609 F.2d 411, 431–32 (9th Cir. 1979).

[27]Id. at 429–30. Interestingly, the court acknowledged a critical comparative point when it expressly rejected the implicit point that "a single judge is brighter than the jurors collectively functioning together." Id at 431.

[28]Ross v. Bernhard, 396 U.S. 531, 538 n.10 (1970).

specialized courts to hear complex cases (frequently cast in terms of scientific complexity) have been made for over a century.[29] Momentum for the development of specialized courts increased during the 20th century. Efficiency- and expertise-based arguments helped justify the creation of the Court of Appeals for the Federal Circuit in 1982.[30] For some commentators, however, even this specialized appeals court is not enough to handle patent cases. Recent arguments, focusing on the particularly complicated fact finding required in the patent area (frequently involving scientific or engineering facts), advance a case for a specialized trial court for patent issues.[31]

Various discussions about how to modify the legal system to accommodate increasingly complex cases coalesce around an impulse to reduce the jury's role. The tendency to focus on juries has some empirical foundation as one study found that increased case complexity increased the probability of a hung jury.[32] On balance, however, this impulse runs against the weight of existing (though incomplete) empirical evidence suggesting that what is known about juries' ability to handle complex cases is, in general, reassuring. Importantly, judges and juries typically agree on the outcome of

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[29]See, e.g., Learned Hand, Historical and Practical Considerations Regarding Expert Testimony, 15 Harv. L. Rev. 40, 55–58 (1901) (arguing that specialized adjudicators are better equipped to decide specialized cases).

[30]See Federal Courts Improvement Act of 1982, Pub. L. No. 97-164, 96 Stat. 25 (relevant provisions codified as amended in various sections of 28 U.S.C.). See also Kimberly A. Moore, Forum Shopping in Patent Cases: Does Geographic Choice Affect Innovation?, 79 N.C. L. Rev. 889, 932–34 (2000); John B. Pegram, Should There Be a U.S. Trial Court with a Specialization in Patent Litigation?, 82 J. Pat. & Trademark Off. Soc'y 765, 787–88 (2000); Arti K. Rai, Specialized Trial Courts: Concentrating Expertise on Fact, 17 Berkeley Tech. L.J. 877, 878 (2002). It bears noting, however, that the Federal Circuit bench hears an array of nonpatent cases. For a description of its peculiar jurisdiction, see Rochelle C. Dreyfuss, The Federal Circuit: A Case Study in Specialized Courts, 64 N.Y.U. L. Rev. 1, 4 (1989). For a discussion of patent and nonpatent caseloads, see Craig A. Nard, Toward a Cautious Approach to Obeisance: The Role of Scholarship in Federal Circuit Patent Law Jurisprudence, 39 Houston L. Rev. 667, 678–81 (2002).

[31]See, e.g., Rai, supra note 30, at 878–80 (arguing on efficiency grounds for the creation of a patent trial court with fact-finding responsibilities); Moore, supra note 30, at 932–34 (same).

[32]See Paula L. Hannaford-Agor et al., National Institute of Justice, Are Hung Juries a Problem? 45 (Sept. 30, 2002) (unpublished manuscript), available at <http://www.ncesonline.org/wc/publications/res_juries_hungjuriespub.pdf>.

cases.[33] Where they disagree, case complexity does not increase the probability of disagreement.[34] (Of course, the mere existence of judge-jury disagreement does not necessarily mean that jurors were wrong and judges were right.[35]) Also notable is that the resolutions of complex cases are not skewed in a direction favoring plaintiffs or defendants.[36] Complementing the empirical studies are qualitative studies that echo the proposition that jury decisions, even in complex cases, do not systematically violate litigants' due process rights.[37] Ironically, the group dynamics of jury deliberations and the leadership exerted by more knowledgeable jurors helped reduce problems flowing from less knowledgeable jurors.[38]

An often overlooked aspect in many debates about jury capacity in complex trials is that assessments of jury competence are necessarily comparative in nature. Even if juries are unable to consistently mete out justice in a rational, coherent fashion in complicated cases, a conclusion to move

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[33]See Kalven & Zeisel, supra note 10, at 58–64 & tbls. 12, 16 (noting judge-jury agreement in criminal and civil cases). See also Valerie P. Hans & Neil Vidmar, Judging the Jury 117, 129 (1986) (discussing jury efficacy).

[34]See Philip G. Peters, Jr., The Role of the Jury in Modern Malpractice Law, 87 Iowa L. Rev. 909, 924–26 (2002) (summarizing empirical literature on judge-jury agreement rates in complex cases). See generally Sanders, supra note 7, at 360–67 (reviewing studies of jury competence); Theodore Eisenberg et al., Judge-Jury Agreement in Criminal Cases: A Partial Replication of Kalven & Zeisel's The American Jury (unpublished manuscript on file with the author) (June 1, 2003).

[35]See Hans & Vidmar, supra note 33, at 129 (concluding that judge-jury disagreement does not necessarily indicate jury incompetence).

[36]See Gary L. Wells, Naked Statistical Evidence of Liability: Is Subjective Probability Enough?, 62 J. Personality & Soc. Psychol. 739, 748 (1992) (finding that jurors in experimental simulations are reluctant to favor plaintiffs who rely exclusively on probabilistic evidence). But see Kevin M. Clermont & Theodore Eisenberg, Trial by Jury or Judge: Transcending Empiricism, 77 Cornell L. Rev. 1124, 1137, 1174 (1992) (finding that trials jurors were harder on plaintiffs than judges were).

[37]See Lempert, Civil Juries and Complex Cases, in Verdict, supra note 1, 85–88, 205 & tbl. 6-1. Professor Lempert appropriately cautions readers against drawing firm conclusions from his nonrandom, qualitative study of 13 civil and criminal cases. Id. at 205.

[38]Peters, supra note 34, at 928. But cf. Franklin Strier, The Educated Jury: A Proposal for Complex Litigation, 47 DePaul L. Rev. 49, 55 (1997) (summarizing studies finding jury confusion in complex cases).

away from jury and to bench trials makes sense only if judges can decide complicated cases more rationally, consistently, and coherently than can juries.[39] Clearly, some—if not many—judges feel they are better equipped than lay juries to decide complex cases fairly.[40]

Not all agree, however, that judges are comparatively superior adjudicators of complex cases. As Professor Lempert notes, not all judges are "bright and diligent," and, unlike juries, they do not benefit from collective recall.[41] Despite some judges' confidence in their comparative superiority, firm answers to this and other empirical questions are not known. Indeed, surprisingly little is known about what makes a case complex in the eyes of juries, attorneys, and judges.

III. Hypotheses, Data, and Methodology

I begin this part by describing my research hypotheses and then the data and methodology used to test them.

A. Hypotheses

Two general questions shape the research hypotheses. I first consider whether the three groups of key actors in a trial—juries, attorneys, and judges—perceive criminal case complexity differently. I then turn to actor-specific complexity models to assess how three types of factors influence case complexity for each group.

1. Conventional wisdom suggests that juries are less equipped than judges (or other specialists) to navigate through complex legal

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[39]Lempert, Civil Juries and Complex Cases, in Verdict, supra note 1, at 214; Schuck, supra note 1, at 309–10 (noting that judges possess biases as well); Sanders, supra note 7, at 361 (noting that jury competence studies do not make clear whether other factfinders would perform better).

[40]For example, Judge Jerome Frank wrote in a judicial opinion that "the jury . . . has infinite capacity for mischief, for twelve men can easily misunderstand more law in a minute than the judge can explain in an hour." See Skidmore v. Baltimore & O.R. Co., 167 F.2d 54, 60 (2d Cir. 1948). See also Jerome Frank, Courts on Trial 108–25 (1949).

[41]Richard O. Lempert, Civil Juries and Complex Cases: Let's Not Rush to Judgment, 80 Mich. L. Rev. 68, 90–91 (1981). See also Phoebe C. Ellsworth, Are Twelve Heads Better Than One?, Law & Contemp. Probs., Autumn 1989, at 205 (noting that the jury system's advantages over bench trials include its number and its interaction).

cases.[42] The prevailing sentiment that judges and juries disagree on complexity perceptions persists even though judges and juries substantially agree on case outcomes.[43] Consistent with the received thought, I hypothesize that juries will report higher complexity levels than their legally trained counterparts (judges and attorneys). Further, as between judges and attorneys, I expect that judges will report lower levels of case complexity due to their greater exposure to and familiarity with the criminal justice system.

2. The three different types of factors analyzed in this study are either designed or presumed to influence case complexity differently or are included as control variables. I hypothesize that individual-level factors will not significantly influence case complexity. In contrast, I expect that certain case- and reform-level factors will influence case complexity, though in different directions. For example, such case-level factors as trial length and more difficult evidence will increase complexity. I anticipate that reform-level factors, including juries' ability to submit written questions and to use notebooks, will accomplish what reformers set out to achieve—case complexity reduction. Finally, I hypothesize that the three types of factors will influence juries, attorneys, and judges similarly.

B. Data and Methodology

This study draws on the NCSC data set developed for its study on hung juries. The NCSC report, *Are Hung Juries A Problem?*[44] and other publications[45] contain thorough descriptions of the data. What follows is a brief summary.

Data on criminal trials in four sites (Los Angeles, Phoenix, the Bronx, and the District of Columbia) were gathered during 2000 and 2001. These

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[42]See Neil Vidmar, Are Juries Competent to Decide Liability in Tort Cases Involving Scientific/Medical Issues?: Some Data from Medical Malpractice, 43 Emory L.J. 885, 885–88 (1994) (describing various critiques of the jury system).

[43]Eisenberg et al., Judge-Jury Agreement, supra note 34, at 1. Interestingly, where disagreement exists, it distributes asymmetrically. Id.

[44]See Hannaford-Agor et al., supra note 32, at 36.

[45]See, e.g., Stephen P. Garvey et al., Juror First Votes in Criminal Trials in Four Major Metropolitan Jurisdictions, 1 J. Empirical Legal Stud. (forthcoming 2004); Eisenberg et al., Judge-Jury Agreement, supra note 34.

Table 2: Summary of Participant Data*

	Bronx	*DC*	*LA*	*Phoenix*	*N*
Jury	91	94	101	96	382
Judge	93	92	82	88	355
Defense attorney	73	72	62	72	279
Prosecutor	72	63	65	74	274
N	329	321	310	330	1,290

*Twenty-eight cases involved more than one defendant. In those rare instances, to minimize data coding complexity issues, I excluded consideration of all but the first-named defendant. The exclusion did not materially influence the results. It does explain, however, why, in a few instances, slight variations exist between cell counts in my Table 1 and Table 3.1 in the NCSC report. Compare Hannaford-Agor et al., supra note 32, at 33 tbl. 3.1.

NOTE: The number of juries indicates those cases in which information from at least one member of the jury was received. The 382 juries included 3,428 individual jurors.

SOURCE: NCSC data covering trials at four sites in 2000–2001.

sites were selected due to their relatively high volume of felony criminal jury trials and willingness to devote court personnel to data-gathering tasks.[46] Many of the questions—including those involving case complexity—asked participants to give ratings on a standard seven-point Likert scale. In response, 91 percent of the judges surveyed returned the questionnaire. At least one attorney responded in 88 percent of the cases; the lead prosecutor and defense lawyer both responded in 64 percent of the cases. After slight adjustments owing to the different jurisdictions' jury sizes, the overall juror response rate was 80 percent.[47] Those few respondents in each category who failed to report information on the dependent variable of interest—case complexity—were excluded from the sample.[48] Table 2 summarizes final usable responses, by site and respondent group.

Survey instruments administered to the participating jurors, judges, and attorneys collected a range of information in three discrete areas. An array of individual-level data, including standard demographic information,

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[46]Some site-specific aspects played a role as well. Two sites (Los Angeles and Washington, DC) were selected due to reported concerns about hung juries. Arizona's procedure that permits further evidence and argument where a jury reports that it is deadlocked made Phoenix especially attractive. See Hannaford-Agor et al., supra note 32, at 29.

[47]See Hannaford-Agor et al., supra note 32, at 32.

[48]For example, three of the 358 responding judges failed to report information on case complexity. Id. at 32–33.

Table 3: Summary of Case Complexity by Participant

	Mean	*SD*	*N*
Jury	3.71	1.24	367
Judge	2.87	1.57	355
Defense attorney	3.24	1.58	273
Prosecutor	3.22	1.51	273

NOTE: Respondents were asked to rank case complexity on a seven-point Likert scale, with 1 representing "Not at all complex" and 7 representing "Very complex."
SOURCE: NCSC data covering trials at four sites in 2000–2001.

experience, and perceptions of other actors' performance or skill levels, were gathered from juries, attorneys, and judges. Also, case-level data containing information on case and trial characteristics, including location and case types, were gathered from participating courts. Finally, additional case-level information relating to jury reform efforts—specifically, jury-assistance mechanisms—were collected. Matching individual- and case-level data permitted analyses across all three groups of actors within individual cases.

Descriptive summary data, presented in Table 3, hint at two major themes. First, judges perceived the cases as the least complex; juries as the most complex. Second, the two groups of attorneys—defense attorneys and prosecutors—perceived case complexity almost identically.

The NCSC data possess considerable strengths. Notably, they are perhaps the only major, large-scale collection of cross-sectional data for case complexity studies. Unlike the Kalven and Zeisel study, which gathered case complexity perceptions only from judges, the NCSC data include case complexity reports from all the critical legal actors: juries, attorneys, and judges. Consequently, the NCSC data permit rich comparisons among juries, attorneys, and judges, as well as possible variations among these groups within a specific case. The result is a more textured picture of case complexity.

Notwithstanding their many virtues, the NCSC data contain important limitations. One potential problem is that how respondents' construed the term "case complexity" likely varied not only across the three groups but within each group as well.[49] Where some respondents may have construed as "complex" cases that involved substantively complicated subject matter (e.g., murder cases involving contested expert testimony on the interpreta-

[49]See, e.g., Heuer & Penrod, Trial Complexity, supra note 1, at 35 (noting that judges construe case complexity in terms of evidentiary and legal complexity); Nicole L. Mott, How Civil Jurors Cope with Complexity: Defining the Issues 18–21 (2001) (unpublished Ph.D. dissertation, Univ. of Delaware) (on file with author).

tion of DNA results) or procedural issues, other respondents, in contrast, may have characterized as "complex" a straightforward assault case that involved an exceptionally "close" decision about facts or law. Still others may have construed complexity in terms of the sheer volume of information presented or trial length.

Although variation in how juries, attorneys, and judges understand case complexity poses obvious analytical challenges, such variation might be expected. After all, each of the three groups performs a distinct, though complementary, role in a criminal trial. Judges, typically the most experienced participants in most criminal trials, assume responsibility for overseeing and managing trials and resolving questions of law. Juries, by contrast, although usually inexperienced with criminal processes and unlikely to have received formal legal training, handle critical fact-finding duties. Finally, the attorneys are obligated to pursue their clients' legal interests zealously. These distinct roles shape juries', judges', and attorneys' perspectives. These distinct perspectives might generate different understandings and interpretations of case complexity.

Whether case complexity perceptions systematically varied among the four sites raises further questions. Moreover, as Professor Eisenberg and his co-authors note, the NCSC data were gathered from a legal environment that continues to evolve over time.[50] Compared to the influential Kalven and Zeisel study of the 1950s, by 2000, juries had become more representative of the communities they served. Although the composition of the judiciary similarly evolved over time, changes in the jury composition are likely to have been far greater. Finally, while the list of relevant independent variables for juries is ample, the list for judges and attorneys is comparatively less so.

IV. Criminal Case Complexity: Perceptions and Agreement

The initial task is to examine whether criminal case complexity perceptions varied as predicted among juries, attorneys, and judges. The analysis includes three parts. I first explore aggregate case complexity reports across all cases. I then examine case complexity variations within individual cases. To accomplish this I match various pairs of actors within a case, assess whether their complexity reports about the same case differ, compute the

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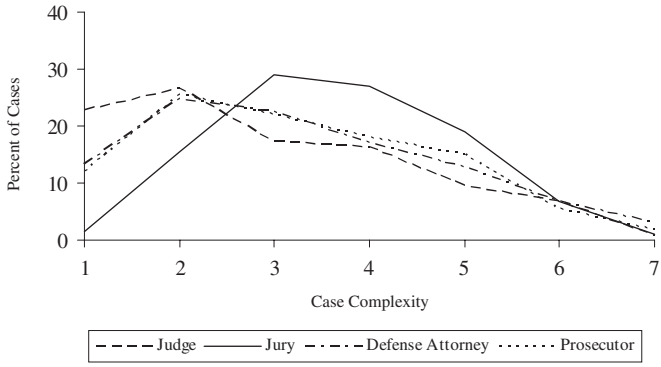
[50]See, e.g., Eisenberg et al., Judge-Jury Agreement, supra note 34, at 5.

Figure 1: Case complexity, by party and percent of cases.



NOTE: Respondents were asked to rank case complexity on a seven-point Likert scale, with 1 representing "Not at all complex" and 7 representing "Very complex." Judge $N = 355$; Jury $N = 367$; Defense Attorney $N = 273$; and Prosecutor $N = 273$.

SOURCE: NCSC data covering trials at four sites in 2000–2001.

differences, if any, and present the resulting distributions. Finally, I analyze whether these distributions systematically vary from one another.

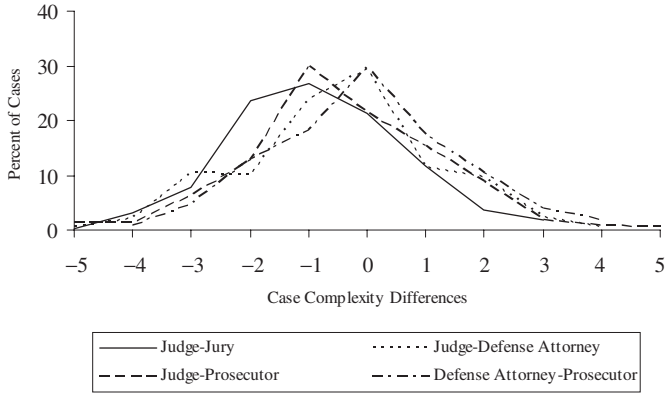
A. Aggregate Case Complexity Reports

Aggregate case complexity reports, presented in Figure 1, map the initial contours of how juries, attorneys, and judges perceived complexity. The horizontal axis, presenting the seven-point Likert scale (where 1 is "not at all complex" and 7 is "very complex"), illustrates a convergence on one extreme (few perceived cases as "very complex"), but not on the other. The comparatively few juries that perceived cases as "not at all complex" contrasts sharply with the high number of judges and attorneys who perceived more than 20 percent and more than 10 percent of the cases as "not at all complex," respectively. Although disagreements exist on the "not at all complex" side of the Likert scale, the "very complex" side conveys general agreement. That is to say, very few juries, attorneys, and judges rated cases as "very complex."

B. Differences in Case Complexity Reports Within Individual Cases

One critical question is whether juries, attorneys, and judges perceive case complexity similarly when viewing the same case. To assess this, complexity

Figure 2: Differences in complexity perceptions, by pairs of parties.



NOTE: Respondents were asked to rank case complexity on a seven-point Likert scale, with 1 representing "Not at all complex" and 7 representing "Very complex." Case complexity differences were computed by subtracting paired differences for each case. Judge $N = 355$; Jury $N = 367$; Defense Attorney $N = 273$; and Prosecutor $N = 273$. A difference of "0" would indicate that the respondents viewed case complexity identically.

SOURCE: NCSC data covering trials at four sites in 2000–2001.

perception agreement scores were computed for various pairs of actors. The resulting scores, presented in Figure 2, comport with the findings in Figure 1. Although the means for all four distributions are negative, the judge-jury difference mean is the most pronounced (–0.87).[51] Means for the judge-prosecutor difference and judge-defense attorney difference are –0.41 and –0.46, respectively. The defense attorney-prosecutor mean difference is the least pronounced and, indeed, just barely negative (–0.06).

The paired-differences distributional means show how judge-jury differences are distinct from differences between the judges and attorneys as well as differences between the opposing attorneys. Moreover, judge-attorney differences exceed defense attorney-prosecutor differences but fall far short of the judge-jury difference. Also notable is the general similarity in how judges, defense attorneys, and prosecutors perceive case complexity. Finally, prosecutors and defense attorneys virtually agreed in their assessments of case complexity.

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[51]The expected difference is negative because I computed the difference by subtracting a jury's reported complexity level from a judge's. The overall negative tilt in Figure 2 emerges because judges typically perceived a case as less complex than the jury did. See Figure 1.

Table 4: Differences in Complexity Perceptions, by Pairs

	A Judge-Defense Attorney	*B Judge-Prosecutor*	*C Defense Attorney-Jury*	*D Prosecutor-Jury*	*E Defense Attorney-Prosecutor*
1. Judge-jury	–5.05**	–4.18**	–4.25**	–4.40**	–5.66**
2. Judge-defense attorney	—	–0.45	–0.40	–0.28	–1.98*
3. Judge-prosecutor		—	–0.28	–0.22	–3.81**
4. Defense attorney-jury			—	–0.79	–3.54**
5. Prosecutor-jury				—	–1.66

*$p < 0.05$; **$p < 0.01$.

NOTE: This table presents a matrix of the various paired-difference combinations. The nonparametric two-sample Wilcoxon test was used due to concerns about whether the paired differences distributed normally.

SOURCE: NCSC data covering trials at four sites in 2000–2001.

C. Variation in Perception Differences

A related question is whether the paired-differences distributions, presented in Figure 2, systematically vary from one another.[52] Additional summary statistics supply further evidence. Table 4 presents results from a nonparametric two-sample Wilcoxon test and suggests three main findings. First, and most importantly, the distribution of the judge-jury differences (Row 1) systematically differs from the distributions of all other paired combinations.[53] This finding reflects the magnitude of the difference in case complexity perceptions between judges and juries. Second, the distribution of defense attorney-prosecutor differences (Column E) also systematically departs from almost every other pairing. In contrast to the judge-jury finding, the defense attorney-prosecutor finding emerges due to a comparative *absence* of sharp disagreement. That is, unlike other pairings, defense attorneys and prose-

[52]Despite the distributions' symmetric appearance, benign skewness and kurtosis analyses, and plots that are at least suggestive that the groups distribute normally, results from the Kolmogorov-Smirnov (K-S) test preclude rejecting the possibility that they are not normally distributed. Therefore, to be cautious, I used a nonparametric test, specifically, the nonparametric two-sample Wilcoxon test, rather than the *t*-test.

[53]In an effort to ease interprability, reduce figure "clutter," and increase focus on the critical relations, Figure 2 presents data from a nonexhaustive list of possible pairings. In an effort to be thorough, Table 4 presents a results matrix that includes all potential pairings. The general trend hinted at in Figure 2 comes through with more force (and complexity) in Table 4.

cutors perceived case complexity similarly and that absence of difference distinguishes them from other pairs. Third, and predictably flowing from the second finding, the distributional differences between judge-prosecutor and judge-defense attorneys do not systematically differ. Overall, the findings presented in Table 4 comport with and refine the patterns suggested in Figures 1 and 2.

Cumulatively, these paired-difference distributional findings supplement the contours of a case complexity continuum. The continuum supports my hypothesis and likely reflects the parties' relative experiences with and exposure to the criminal justice system.[54] Judges occupy one end of the case complexity continuum (perceiving the least case complexity), juries the other end (perceiving the most case complexity), and defense attorneys and prosecutors stake out something resembling a middle ground. Notably, defense attorneys and prosecutors—who presumably resemble one another in terms of experience with and exposure to the criminal justice system—perceived case complexity similarly.

D. Possible Explanations for Complexity Perceptions Differences

Although it is clear that juries, attorneys, and judges perceived case complexity somewhat differently, reasons for these differences and what to make of them—if anything—are not as clear. The possibility of a scaling effect, the three sets of actors' different experience levels with the criminal justice system, and that juries, attorneys, and judges are structurally designed to accomplish different—albeit complementary—tasks might account for some of the perception differences and potentially dampen their interpretative importance.

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[54]Although for purposes of this analysis I assume away the possibility that some jurors might be legally trained, it is almost certain that some of the 3,428 jurors in the sample benefited from formal legal training. A precise count is not possible due to data limitations. What the data do provide, however, is a basis for informed guesses. Among those jurors who provided current occupation information, 28.4 percent described their positions as "professional." Within the range of options, those jurors practicing law (and, to be clear, only a subset of those with formal legal training would be practicing law) would likely select that outcome. Of course, this label is assuredly both over- and underinclusive. It is overinclusive in that plenty of jurors who described their occupational status as "professional" are not practicing law and do not possess formal legal training. The proxy is underinclusive because not everyone with legal training practices law or, for that matter, engages in a formal "professional" occupation. These limitations notwithstanding, it is fair to assume that although almost every attorney and judge in the sample benefits from formal legal training, it is difficult to imagine that more than one-quarter of the jurors are legally trained.

The use of the seven-point Likert survey measure introduces the possibility of scaling differences. That is, an objectively complex case might rate a 7 from a jury (denoting "very complex") yet only a 6 from a judge due to different applications of the seven-point Likert scale rather than to real differences in complexity perceptions. Moreover, juries', attorneys', and judges' varying experience with criminal trials and exposure to formal legal training might inform their respective complexity perceptions. Finally, as previously discussed, juries, attorneys, and judges perform, by design, distinct tasks in criminal trials. Given their different roles and functions, one might expect case complexity perceptions to vary among the three groups.

Further analyses call into some question the importance of observed case complexity perception differences. I previously hypothesized that comparative experience with and exposure to the legal system helps account for the finding that juries reported more case complexity than lawyers and that lawyers reported more case complexity than judges. To use judges' perceptions as a baseline, it follows that attorneys' complexity perceptions should explain more judicial complexity than jury complexity. To test this hypothesis, judge case complexity was modeled as a function of jury, defense attorney, and prosecutor case complexity reports.

Results from Table 5, however, do not support this hypothesis. In every model variant except one (Column 2), juries did a better job than attorneys in explaining judge complexity, even though judge-jury differences exceeded judge-attorney differences. This suggests that, while the distributions of judge, attorney, and jury complexity reports varied, coherent explanations of why they varied elude. Standing alone, these findings cast some question on whether the observed complexity differences flow from objectively different perceptions of case complexity or, rather, because different groups internalized the seven-point Likert scale differently. Consequently, inferences drawn from the observed distributional differences must be drawn cautiously.

V. Modeling Criminal Case Complexity

Part IV indicates that the three major actors in the criminal trial context—juries, attorneys, and judges—perceived case complexity somewhat differently, although what to make of the differences is unclear. Independent of questions about case complexity agreement levels are questions about what makes cases complicated for each group. An array of variables further influ-

Table 5: Regression Models of Judge Case Complexity

	1 *Evidentiary Complexity*	*2* *Evidentiary Complexity*	*3* *Legal Complexity*	*4* *Legal Complexity*	*5* *Overall Case Complexity*	*6* *Overall Case Complexity*
Jury	0.35**	0.27**	0.53**	0.46**	0.47**	0.41**
	(0.08)	(0.07)	(0.08)	(0.08)	(0.07)	(0.07)
Defense attorney	0.27**	—	0.27**	—	0.28**	—
	(0.06)		(0.06)		(0.06)	
Prosecutor	—	0.34**	—	0.30**	—	0.32**
		(0.06)		(0.07)		(0.06)
Constant	0.22	0.37	–0.08	0.14	0.07	0.25
	(0.29)	(0.26)	(0.29)	(0.28)	(0.27)	(0.25)
R^2	0.23	0.24	0.32	0.29	0.33	0.32
N	235	246	235	246	235	246

*$p < 0.05$; **$p < 0.01$.

NOTE: Dependant variable = judge case complexity ranks using a seven-point Likert scale, with 1 representing "Not at all complex" and 7 representing "Very complex." Reanalyzing of all six model variants using ordered logit generated materially similar results.

SOURCE: NCSC data covering trials at four sites in 2000–2001.

ences case complexity perceptions and the variables explored in this study fall into one of three broad groups: individual-, case-, and reform-level variables.[55] Shifting from univariate to multivariate analyses, my objective in this part is two-fold. I first examine which factors influence case complexity for each of the three groups and then assess whether differences emerge among the groups.

Tables 6–8 report the results. Alternative model specifications for each of the three groups are helpful and contribute additional texture and clarity to an emerging picture of case complexity. As well, comparing findings from the various model specifications illustrates the overall robustness and stability of the core findings within each group and, in some instances, across groups.

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[55]The variables do not have multicollinearity problems. For a general discussion of multicollinearity, see William D. Berry, Understanding Regression Assumptions (1993). Also, the maximum variance inflation score (VIF) for any of the independent variables is well below 5.00, the value that most conservative statisticians use to detect problems associated with multicollinearity. See David Jacobs & Jason T. Carmichael, The Political Sociology of the Death Penalty: A Pooled Time-Series Analysis, 67 Am. Soc. Rev. 109, 121–22 n.12 (2002); see also John Fox, Regression Diagnostics 10–13 & tbl. 3.1 (1991) (arguing that VIF scores need to exceed anywhere from 5.0 to 10.0 before much damage is done to the precision of the estimate by multicollinearity).

A. Jury

Predictable and unpredictable findings, presented in Table 6, emerge from jury case complexity models and provide mixed support for my hypotheses. Predictably, cases involving death as well as cases involving difficult evidence increased case complexity for juries. Also expected is that longer trials (Column 2)[56] correlated with increased complexity. The influence of trial length makes sense in that more complex cases would typically involve more witnesses—especially expert witnesses—needed to generate the factual foundation for the judge and jury.

Less predictable was the influence of certain individual- and case-level factors. African-American and lower-income juries perceived cases as less complex; juries with prior experience perceived cases as more complex. The influence of these jury background factors, however, is sensitive to trial length (Column 2). Aside from the jury characteristic findings, other findings in Table 6 are generally robust. Somewhat inexplicably, trials in the District of Columbia as well as trials where prosecutors were viewed as especially skilled increased case complexity for juries. That skillful prosecutors increased complexity surprises, because prosecutors typically try to convince juries how "clear and easy" a case is against a defendant.

The jury complexity models are also notable for factors—particularly reform-level factors—that did *not* emerge as significant. Although the coefficients for two of the three jury-assistance variables point in the hypothesized direction (negative), none achieve statistical significance. To be sure, precious little can properly be inferred from the absence of statistical significance.[57] The prominence, however, that jury-assistance devices (such as

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[56]I report two separate models due to trial days' interaction with other variables.

[57]A further technical word of caution is warranted with respect to interpreting a statistically insignificant finding. The power of a statistical test is the likelihood of detecting an effect of a specific size at a specified significance level (here, the $p < 0.05$ level). If the test used is not very powerful, the likelihood of detecting a statistical effect is diminished. Thus, perfectly designed and executed studies may fail to detect socially important differences simply because the sample sizes are too small to give the procedure enough power to detect the effect. Stanton A. Glantz, Primer of Biostatistics 165 (5th ed. 2002). Therefore, it is important to consider a test's power when one claims that no significant effect has been detected. Here, however, my sample size is large enough to reduce the potential that it accounts for the insignificant findings regarding the jury-assistance variables. See also John Blume & Theodore Eisenberg, Judicial Politics, Death Penalty Appeals, and Case Selection: An Empirical Study, 72 S. Cal. L. Rev. 465, 491 n.83 (1999).

Table 6: Regression Models of Jury Case Complexity Perceptions

	1	*2*
Jury background		
Age	–0.03	0.01
	(0.11)	(0.11)
Experience	0.63*	0.52
	(0.29)	(0.30)
Income	–0.16*	–0.10
	(0.08)	(0.08)
Female	0.10	–0.18
	(0.25)	(0.27)
African-American	–0.85*	–0.54
	(0.33)	(0.35)
Hispanic	–0.01	0.24
	(0.34)	(0.34)
Religious	–0.06	–0.23
	(0.12)	(0.13)
Skill levels		
Prosecutor skill	0.15*	0.13*
	(0.05)	(0.05)
Defense attorney skill	0.08	0.06
	(0.05)	(0.05)
Understood experts	–0.02	–0.03
	(0.08)	(0.09)
Understood judge	0.04	0.10
	(0.07)	(0.07)
Trial background		
Number of defendants	–0.19	–0.12
	(0.34)	(0.36)
Number of victims	0.09	0.07
	(0.05)	(0.05)
Number of expert witnesses	0.05	0.02
	(0.04)	(0.04)
Prior hung trial	–0.09	–0.08
	(0.24)	(0.24)
Number of trial days	—	0.07**
		(0.03)
Case type		
Death	0.61*	0.57*
	(0.26)	(0.26)
Rape/sex offense	0.52	0.30
	(0.31)	(0.31)
Assault	0.13	–0.01
	(0.24)	(0.24)
Theft	–0.06	–0.04
	(0.23)	(0.22)
DUI	–0.19	–0.16
	(0.33)	(0.32)

Table 6: Continued

	1	*2*
Drugs	–0.26	–0.15
	(0.23)	(0.22)
Weapons	–0.19	0.01
	(0.29)	(0.29)
Location		
Bronx	0.29	0.32
	(0.24)	(0.25)
DC	0.43*	0.44*
	(0.19)	(0.20)
Phoenix	0.13	0.25
	(0.20)	(0.21)
Evidence and law		
Difficult evidence	0.66**	0.69**
	(0.08)	(0.08)
Law fair in this case	0.00	–0.04
	(0.07)	(0.07)
Jury assistance		
Notebook	–0.04	–0.03
	(0.14)	(0.14)
Written jury instructions	0.04	0.04
	(0.18)	(0.18)
Jury permitted to submit written questions	–0.13	–0.12
	(0.16)	(0.16)
Constant	1.23	0.98
	(1.15)	(1.17)
R^2	0.57	0.61
N	280	256

*$p < 0.05$; **$p < 0.01$.

NOTE: Dependent variable = jury case complexity ranks using a seven-point Likert scale, with 1 representing "Not at all complex" and 7 representing "Very complex." Standard errors in parentheses. Los Angeles is the reference category for the location dummy variables.

SOURCE: NCSC data covering trials at four sites in 2000–2001.

the allowance of notebooks and written questions from jurors) play in current reform debates[58] enhances the potential importance of this negative finding.

[58]See Part II.B.

B. Attorney

Certain case-level factors influenced attorney case complexity perceptions. As Table 7 makes clear, attorneys consistently found longer trials more complicated. Closely related to the number of trial days, the total number of expert witnesses presenting also corresponded with a trial's complexity. Retrying previously hung trials assisted prosecutors, who found such trials less complex. The benefit of hindsight (as well as, perhaps, information gleaned from juror polling[59] and posttrial interviews) likely helped reduce prosecutors' perceptions of case complexity—presumably by helping identify reasons why the jury in the prior trial hung.

With two important exceptions, neither background nor location variables exerted much independent influence on attorneys' perceptions of case complexity. The two exceptions include attorney age and skill level. Specifically, older prosecutors reported less case complexity as did, though to a lesser extent, all attorneys (Column 2). Notably, the influence of attorney age emerged independent of prior criminal case experience.

Variations in attorney skill levels influenced defense attorney case complexity perceptions. Defense attorneys noted that especially skillful prosecutors reduced case complexity (Columns 3 and 4), and, though to a lesser extent (Column 3), skillful defense attorneys increased case complexity. These findings cohere with conventional wisdom as well as defense attorneys' and prosecutors' dueling incentives. A defense attorney—seeking to serve the defendant by gaining an acquittal (or hung jury)—need only persuade a jury that the "beyond a reasonable doubt" standard is not met. One tactic designed to achieve that goal is to impress a case's complicating factors upon a jury. Prosecutors, in contrast, need to demonstrate that no reasonable doubt exists regarding a defendant's guilt. To advance the state's interests, a prosecutor usually emphasizes a case's clarity and simplicity, at least as it bears on the defendant's guilt. Taken together, this suggests that defense attorneys are inclined to complicate a case; prosecutors to simplify. If so, one would expect to find that, in defense attorneys' eyes, skillful opposing counsel (prosecutors) reduced case complexity where skillful defense

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[59]For example, federal criminal procedure rules permit jury polling. See Fed. R. Crim. P. 31(d) (noting that after a verdict is returned, but before the jury is dismissed, either party has the right to request that the court poll the jurors).

Table 7: Regression Models of Attorney Case Complexity Perceptions

	1 *All*	*2* *All*	*3* *Defense Attorneys*	*4* *Defense Attorneys*	*5* *Prosecutors*	*6* *Prosecutors*
Attorney background						
Age	–0.11	–0.19*	0.04	–0.03	–0.35*	–0.40**
	(0.08)	(0.08)	(0.11)	(0.11)	(0.15)	(0.15)
Female	–0.02	–0.09	–0.32	–0.43	0.25	0.15
	(0.15)	(0.15)	(0.24)	(0.24)	(0.20)	(0.20)
Experience	0.00	0.00	0.00	0.00	0.00	0.00
	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)
Own skill	0.11	0.06	0.20*	0.14	–0.02	–0.09
	(0.07)	(0.07)	(0.10)	(0.10)	(0.10)	(0.11)
Opposing attorney skill	–0.06	–0.09	–0.21*	–0.22**	–0.01	–0.04
	(0.05)	(0.05)	(0.08)	(0.08)	(0.07)	(0.07)
Trial background						
Number of defendants	0.42	0.25	0.28	0.01	0.40	0.29
	(0.27)	(0.27)	(0.39)	(0.41)	(0.39)	(0.38)
Number of victims	0.20**	0.14*	0.20	0.08	0.17	0.16
	(0.07)	(0.07)	(0.12)	(0.12)	(0.10)	(0.09)
Number of expert witnesses	0.22**	0.14**	0.18**	0.12	0.20**	0.12
	(0.05)	(0.05)	(0.07)	(0.07)	(0.06)	(0.07)
Prior hung trial	–0.74*	–0.63	–0.36	–0.33	–1.11*	–1.01*
	(0.34)	(0.34)	(0.51)	(0.53)	(0.47)	(0.46)
Number of trial days	—	0.17**	—	0.19**	—	0.14**
		(0.03)		(0.04)		(0.04)
Case type						
Death	0.77*	0.35	0.60	0.14	1.00*	0.66
	(0.33)	(0.33)	(0.47)	(0.47)	(0.48)	(0.48)
Rape/sex offense	0.62	0.41	0.69	0.74	0.80	0.50
	(0.41)	(0.40)	(0.64)	(0.62)	(0.55)	(0.55)
Assault	0.98**	0.95**	1.13*	1.08*	0.73	0.83
	(0.32)	(0.31)	(0.46)	(0.45)	(0.45)	(0.45)
Theft	0.35	0.44	0.14	0.34	0.30	0.29
	(0.31)	(0.30)	(0.44)	(0.43)	(0.44)	(0.43)
DUI	0.90*	0.92*	0.54	0.62	1.06	1.04
	(0.42)	(0.41)	(0.60)	(0.58)	(0.60)	(0.58)
Drugs	–0.42	–0.21	–0.54	–0.30	–0.54	–0.38
	(0.31)	(0.30)	(0.44)	(0.43)	(0.43)	(0.42)
Weapons	0.11	0.31	–0.16	0.12	0.08	0.19
	(0.40)	(0.40)	(0.59)	(0.58)	(0.57)	(0.57)
Location						
Bronx	0.34	0.21	–0.18	–0.41	0.63	0.50
	(0.26)	(0.26)	(0.42)	(0.44)	(0.35)	(0.35)
DC	0.25	0.31	0.15	0.26	0.39	0.37
	(0.20)	(0.20)	(0.32)	(0.32)	(0.27)	(0.27)
Phoenix	–0.19	0.05	–0.24	0.01	–0.23	–0.06
	(0.24)	(0.23)	(0.35)	(0.35)	(0.32)	(0.32)

Table 7: Continued

	1 *All*	*2* *All*	*3* *Defense Attorneys*	*4* *Defense Attorneys*	*5* *Prosecutors*	*6* *Prosecutors*
Jury assistance						
Notebook	0.17	0.12	0.29	0.17	0.10	0.13
	(0.17)	(0.17)	(0.26)	(0.26)	(0.25)	(0.24)
Written jury instructions	–0.25	–0.08	–0.64	–0.39	0.23	0.25
	(0.22)	(0.23)	(0.35)	(0.36)	(0.30)	(0.30)
Jury permitted to submit written questions	–0.08	–0.08	–0.02	–0.07	–0.20	–0.11
	(0.22)	(0.21)	(0.33)	(0.33)	(0.28)	(0.28)
Constant	2.07**	2.09**	2.53**	2.57*	2.76**	3.00**
	(0.63)	(0.63)	(0.94)	(0.99)	(0.93)	(0.92)
R^2	0.29	0.35	0.36	0.42	0.33	0.38
N	414	392	200	188	208	198

*$p < 0.05$; **$p < .01$.

NOTE: Dependent variable = jury case complexity ranks using a seven-point Likert scale, with 1 representing "Not at all complex" and 7 representing "Very complex." Standard errors in parentheses. Los Angeles is the reference category for the location dummy variables.

SOURCE: NCSC data covering trials at four sites in 2000–2001.

attorneys increased case complexity.[60] The findings involving defense attorneys generally support this logic.

If, as I argue above, defense attorneys are inclined to increase case complexity and prosecutors are inclined to decrease case complexity, it would follow that attorney skill levels should influence prosecutors just as they influenced defense lawyers. Interestingly, however, unlike the findings involving defense attorneys, attorney-skill-level variables did not significantly influence prosecutors (Columns 5 and 6). What might explain these seemingly asymmetrical findings? One possibility is that the findings involving defense attorneys might be anomalistic, unreliable, or little more than a statistical artifact. Although plausible, an alternative explanation suggests why we might not expect to observe symmetrical findings for defense attorneys and prosecutors.

[60]Whether the opposite is also true—that is, from the perspective of a prosecutor, a skillful prosecutor will reduce and a skilled defense attorney will increase case complexity—is a point I discuss below.

Unlike defense attorneys, prosecutors represent public constituencies and, therefore, possess a broader set of interests when they decide to bring and to try cases.[61] Prosecutorial discretion also informs prosecutors' actions. These and other considerations reduce the likelihood that prosecutors will move forward in cases where the underlying facts supporting guilt are not reasonably strong. Consequently, prosecutors' comparatively greater preoccupation with a case's underlying factual basis might inform their perceptions about a case's complexity far more than prosecutors' perceptions about their counterparts' lawyering skills. To be sure, I do not suggest that either defense attorneys or prosecutors do anything but zealously defend their clients' interests. Rather, my smaller point is simply that their respective interests as advocates are not the exact reciprocal of one another. Thus, the different contexts in which defense attorneys and prosecutors operate might account for the finding that lawyers' skill levels influenced case complexity perceptions for defense attorneys but not necessarily for prosecutors.

Other case-level factors also influenced attorneys' case complexity perceptions. Not surprisingly, an increase in the number of expert witnesses increased perceived case complexity. Notably, this influence persisted even after including the trial length variable (Column 2). As well, attorneys found certain types of cases—assault and drunk driving cases and, to a lesser extent, cases involving death—more complicated than others. A closer examination of the two subgroups of attorneys reveals important nuances and a less robust influence of case types. For example, while defense attorneys found assault cases especially complicated, prosecutors were more likely to identify death cases as complex.

C. Judge

Unlike the survey instrument presented to jurors and attorneys, judges were asked about their perceptions of complexity on two specific dimensions—evidentiary and legal complexity. To facilitate comparisons across all three groups of actors, I constructed an "overall" case complexity measure for judges that blended the evidentiary and legal complexity measures. Table 8 presents results for all three measures. Results for both models for the three dependent variables evidence substantial robustness and consistency.

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[61]See generally Charles W. Wolfram, Modern Legal Ethics § 13.10.4, at 765 (1986) ("The most striking difference between a prosecutor and a defense lawyer or any non-governmental lawyer is that a prosecutor is much more constrained as an advocate.").

Table 8: Regression Models of Judge Case Complexity Perceptions

	1 *Evidence*	*2* *Evidence*	*3* *Legal*	*4* *Legal*	*5* *Case*	*6* *Case*
Judge						
Judge experience	–0.03	–0.02	0.08	0.09	0.06	0.07
	(0.09)	(0.09)	(0.09)	(0.09)	(0.16)	(0.16)
Prosecutor skill	0.08	0.10	0.03	0.03	0.11	0.13
	(0.06)	(0.06)	(0.06)	(0.06)	(0.10)	(0.11)
Defense attorney skill	0.10	0.10	0.09	0.09	0.19	0.20
	(0.06)	(0.06)	(0.06)	(0.06)	(0.11)	(0.11)
Trial background						
Number of defendants	0.71*	0.54	1.15**	1.16**	1.87**	1.70**
	(0.29)	(0.31)	(0.29)	(0.31)	(0.52)	(0.54)
Number of victims	0.19*	0.06	0.03	–0.06	0.22	–0.00
	(0.08)	(0.08)	(0.08)	(0.08)	(0.14)	(0.12)
Number of expert witnesses	0.18**	0.12	0.13*	0.08	0.32**	0.20
	(0.06)	(0.06)	(0.06)	(0.06)	(0.11)	(0.11)
Prior hung trial	0.07	0.25	–0.08	0.27	–0.01	0.52
	(0.38)	(0.40)	(0.38)	(0.40)	(0.68)	(0.70)
Number of trial days	—	0.20**	—	0.15**	—	0.35**
		(0.04)		(0.04)		(0.07)
Case type						
Death	1.31**	0.84*	2.00**	1.68**	3.31**	2.51**
	(0.40)	(0.40)	(0.41)	(0.41)	(0.72)	(0.72)
Rape/sex offense	1.29**	1.03*	1.08*	0.82	2.37**	1.85*
	(0.46)	(0.46)	(0.46)	(0.46)	(0.82)	(0.81)
Assault	0.76*	0.66	0.95*	0.75	1.72*	1.40*
	(0.38)	(0.38)	(0.38)	(0.38)	(0.68)	(0.66)
Theft	0.05	0.21	–0.12	–0.08	–0.07	0.14
	(0.37)	(0.36)	(0.37)	(0.37)	(0.66)	(0.64)
DUI	0.65	0.59	2.04**	1.94**	2.69**	2.53**
	(0.54)	(0.52)	(0.54)	(0.53)	(0.96)	(0.93)
Drugs	0.19	0.36	–0.19	–0.07	–0.01	0.29
	(0.37)	(0.36)	(0.37)	(0.36)	(0.65)	(0.64)
Weapons	0.32	0.44	0.25	0.44	0.57	0.87
	(0.48)	(0.48)	(0.48)	(0.48)	(0.86)	(0.85)
Location						
Bronx	0.22	0.10	0.13	0.23	0.35	0.32
	(0.30)	(0.31)	(0.30)	(0.31)	(0.53)	(0.55)
DC	0.37	0.64**	0.04	0.22	0.41	0.86*
	(0.23)	(0.24)	(0.23)	(0.24)	(0.41)	(0.42)
Phoenix	0.43	0.86**	–0.10	0.27	0.32	1.13*
	(0.28)	(0.29)	(0.29)	(0.29)	(0.51)	(0.51)
Jury assistance						
Notebook	–0.01	0.05	–0.14	–0.02	–0.14	0.03
	(0.22)	(0.22)	(0.22)	(0.22)	(0.39)	(0.39)
Written jury instructions	0.12	0.15	–0.21	–0.11	–0.09	0.04
	(0.26)	(0.27)	(0.26)	(0.27)	(0.47)	(0.47)

Table 8: Continued

	1 Evidence	*2 Evidence*	*3 Legal*	*4 Legal*	*5 Case*	*6 Case*
Jury permitted to submit written questions	–0.66** (0.25)	–0.63* (0.24)	–0.16 (0.25)	–0.14 (0.25)	–0.82 (0.44)	–0.77 (0.43)
Constant	0.00 (0.65)	–0.82 (0.65)	0.34 (0.65)	–0.48 (0.66)	0.34 (1.16)	–1.30 (1.16)
R^2	0.31	0.38	0.39	0.44	0.39	0.46
N	308	282	308	282	308	282

*$p < 0.05$; **$p < 0.01$.

NOTE: Dependent variable = judge case complexity ranks using a seven-point Likert scale, with 1 representing "Not at all complex" and 7 representing "Very complex." Standard errors in parentheses. Los Angeles is the reference category for the location dummy variables.

SOURCE: NCSC data covering trials at four sites in 2000–2001.

Case-level factors, such as case type and location, influenced judges' perceptions of complexity. For the blended case complexity measure, cases involving death, drunk driving, rape, and assault were systematically more complicated for judges. Drunk driving, death, and, to a lesser extent, rape and assault cases increased legal complexity. (The influence of rape and assault cases, while important, was sensitive to the inclusion of the trial length variable.) Judges noted death and rape cases as especially complex from an evidentiary perspective. Overall, death and rape case types consistently correlated with all three case complexity measures. Location's influence emerged as significant, though inconsistently. Judges reported increased evidentiary and overall case complexity in Washington, DC and Phoenix.

Other case-level characteristics—especially those relating to the number of case participants—also informed judges' perceptions of case complexity. Case complexity increased with the total number of defendants, trial length, and number of expert witnesses, though the expert witness influence disappeared when the trial days variable was included. In all but one instance (Column 2), the influence of the total number of defendants retained its significance even where the number of trials days was included in the analysis. The number of case participants implicates case complexity for judges in at least two ways. First, the number of case participants might simply reflect a case's underlying complexity. As well, a high number of participants might independently contribute to case complexity. Second, insofar

as judges help manage trials, increases in the number of participants presumably increased judges' case management burdens.

None of the individual-level factors achieved statistical significance. Similarly, most (but not all) of the jury-assistance variables also did not reduce case complexity, at least in the eyes of the presiding judges. Notably, judges' assessments of evidentiary (but not legal) complexity declined where the jury was permitted to submit written questions.

VI. Discussion

Part V summarizes results from case complexity models for juries, attorneys, and judges. This part considers important themes that emerge across all three actors at the individual, case, and reform levels, along with the themes' implications for legal reform.

A. Individual-Level Factors

The findings support my hypothesis that individual-level factors generally would not influence case complexity. To the extent that demographic background characteristics were thought to inform case complexity perceptions, results from this study provide—at best—tepid support. Although a few traditional demographic characteristics emerged as significant for juries and attorneys, none are especially robust. Moreover, in two of the three instances, the coefficient's direction was unexpected.[62]

Perceptions of lawyering skills generally did not influence complexity levels in a consistent or robust manner. Defense attorneys reported that especially skilled prosecutors reduced case complexity and that highly skilled defense lawyers increased case complexity. Juries noted only that especially skilled prosecutors made cases more complex. Prosecutors and judges were immune to the influence of variation in attorney skill levels.

B. Case-Level Factors

As predicted, certain case-level factors consistently influenced case complexity perceptions. One such case variable, trial length, achieved statistical

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[62]For example, prior jury experience unexpectedly increased jury case complexity. See Table 6 (Column 1).

significance in every model and for every actor. The trial length variable no doubt captured an array of factors. Although it is possible to conclude that trial length itself might make a trial more complicated, a more likely explanation is that complicated criminal cases take longer to litigate.

Complexity levels also varied across case types. Some case types are more difficult and complicated to litigate than others. Because certain case types influence, among other outcomes, case disposition time,[63] it is plausible to assume that case types would similarly influence complexity levels. At one level, the range of case types in this study is bounded because the sample is limited to criminal cases. Within the subuniverse of criminal cases, however, important variations exist among case types. Due to the comparatively severe penalties involved and, in some instances, problematic proof problems,[64] cases involving death and rape (and sexual assault) should be more complex than other case types. Indeed, juries, judges, and, to a lesser extent, attorneys found cases involving death more complex. Despite this one common thread, other case types affected different actors differently.

When explaining case complexity for juries, difficult evidence matters, even more than difficult law. Difficult evidence's salience for juries has been noted elsewhere and helps explain why some juries hang cases and other juries reach a verdict.[65] Variation in evidentiary difficulty also explains variation in juror first votes.[66] Thus, the hypothesized link between complex evidence and jurors' perceptions of case complexity is easily understood and possesses intuitive appeal.

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[63]Michael Heise, Justice Delayed?, An Empirical Analysis of Civil Case Disposition Time, 50 Case W. Res. L. Rev. 813, 842 tbl. 6 (2000) (finding case type influences civil case disposition time).

[64]The massive publicity of the forthcoming rape trial involving NBA basketball star Kobe Bryant suggests that the prosecution confronts a classic "he said, she said" scenario that will place a premium on the value of key circumstantial evidence. See, e.g., Linda Chavez, Editorial, Questionable Evidence, Morality in Bryant Case, Baltimore Sun, Oct. 23, 2003, at 19A; T.R. Reid, Bryant Faces Tough Law in Colorado Rape Case; Severe Penalties, Sympathetic Juries, Washington Post, July 26, 2003, at A1; T.R. Reid, Judge Closes Part of Bryant Hearing; Accuser's Medical History at Issue, Washington Post, Jan. 23, 2004, at A3.

[65]See Hannaford-Agor et al., supra note 32, at 4.

[66]See Garvey, supra note 45 (finding that the stronger the evidence against the defendant, the more likely jurors are to vote guilty in the first vote).

One consistent critique leveled against the jury system focuses on juries' growing inability to navigate through increasingly complicated cases.[67] Results from this study only speak to (and comport with) the foundation for such a critique. That is to say, results from this study illustrate that juries reported higher levels of case complexity than attorneys and judges when viewing the same case. Moreover, for juries, more complicated evidence made for more complicated cases. Indeed, evidentiary complexity was among the strongest correlates of jury perceptions of case complexity. At a descriptive level, then, concerns about juries and complex cases are not misplaced. On the other hand, as previously discussed, observed perception variations might only reflect a scaling effect or, in the alternative, expected perception differences that reflect the distinctive roles assumed by juries, attorneys, and judges.[68] As well, the results do not speak to whether juries experienced more difficulty deciding cases they rated as complex.

For juries, the influence of difficult evidence persists despite reform efforts. The finding implicates the relevant Federal Rules of Evidence in three ways. First, despite Rule 403,[69] difficult evidence continues to reach juries and to increase jury perceptions of case complexity. Obviously, in certain circumstances, the probative value of difficult evidence can outweigh its propensity to confuse. Second, the use of expert testimony, permitted under Rule 702[70] partly to assist juries in understanding difficult evidence, might not achieve this goal. Third, an increase in the number of experts surely increases trial length. And juries found longer trials more complex.

The findings also reveal a geographic effect on case complexity, likely owing to salient differences among the four sites included in this study. Three of the four sampled districts (Los Angeles, the Bronx, and Washington, DC) have substantial or dominant minority populations. It is conceivable to imagine that minority communities may differ in their makeup and attitudes in ways that bear on jury perceptions about case complexity. As

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[67]See supra note 1 and accompanying text.

[68]See Part IV.D.

[69]Fed. R. Evid. 403 (granting judges discretion to exclude otherwise relevant evidence due to prejudice, confusion, or other potential problems).

[70]Fed. R. Evid. 702.

well, case type compositions varied among the four sites. Owing perhaps to underlying differences across the four jurisdictions in terms of criminal conduct and enforcement and prosecutorial policies, courts in the various sites heard a slightly different mix of cases.[71]

Scholars increasingly debate the potential influence of geography (or "locale") in such other areas as case disposition time, trial outcomes, and awards.[72] Among seasoned litigators, something like a "Bronx effect" is considered received wisdom.[73] Thus, it is not implausible to imagine that geography may exert a similar influence on case complexity perceptions. Unlike for verdicts and damages, however, there is little to be gained from a geographic tilt in case complexity perceptions. Consequently, a more persuasive assumption is that nothing systematically distinguishes the four sites in ways that relate to case complexity perceptions and that location should not exert a systematic influence.

The findings provide mixed support for the assumption that geography does not influence case complexity. On balance, geography's influence on case complexity, while present, is neither consistent nor coherent. Juries reported cases from Washington, DC as more complicated; judges found cases in Phoenix and Washington, DC more complex. Geography did not significantly influence attorneys' perceptions. Overall, a smaller and more precise point is perhaps more apt: scant evidence emerged that supports anything resembling a discernable "Bronx effect." Whatever influence geography exerts on jury decisions, awards, or other outcomes,[74] no clear, consistent, pronounced effect emerged as it relates to case complexity perceptions held by jurors, attorneys, and judges.

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[71]See Hannaford-Agor et al., supra note 32, at 36 tbl. 3.3.

[72]See, e.g., Heise, supra note 63, at 839; Arthur S. Hayes, Inner City Jurors Tend to Rebuff Prosecutors and to Back Plaintiffs, Wall St. J., Mar. 24, 1994, at A1 (finding geography influences trial outcomes); Eisenberg et al., Judge-Jury Agreement, supra note 34, at 26 (noting locale's influence on judge-jury agreement). But see Theodore Eisenberg & Martin T. Wells, Trial Outcomes and Demographics: Is There a Bronx Effect?, 80 Tex. L. Rev. 1839 (2002) (finding little consistent robust evidence linking demographic factors—including geography—on state trial outcomes); Mary R. Rose & Neil Vidmar, The Bronx "Bronx Jury": A Profile of Civil Jury Awards in New York Counties, 80 Tex. L. Rev. 1889 (2002) (finding Bronx awards not to be extreme).

[73]See, e.g., Roy Grutman et al., Lawyers and Thieves 122–23 (1990); Hayes, supra note 72.

[74]See sources cited supra note 72.

C. Reform-Level Factors

Increased attention to juries' perceived weaknesses and inabilities to deal with increasingly complicated litigation[75] as well as reform experiments designed to assist juries in navigating through complicated cases fuel perceptions that juries require assistance. That jury case complexity was found to increase the likelihood of a hung jury comports with common perceptions.[76] As a consequence, in addition to the filtering mechanisms already in place in evidence rules, various jurisdictions experiment with an array of jury-assistance mechanisms. These mechanisms are designed, in part, to reduce case complexity for juries.[77] I hypothesized that the jury-assistance mechanisms would achieve their goals and systematically reduce case complexity for juries as well as (though to a lesser extent) for attorneys and judges.

The findings do not support my hypothesis. Surprisingly, a loose consensus emerged on the general absence of jury-assistance measures' influence (reducing) on jury case complexity.[78] None of the assistance efforts altered either juries' or attorneys' perceptions of case complexity. For judges, the picture is slightly different. Judges perceived a benefit—reducing complexity—from one practice—allowing jurors to submit written questions—that reduced their perceptions of evidentiary (but not overall case) complexity.

D. Legal Training

A comparison of attorneys and judges to juries across all three types of variables suggests that formal legal training may influence case complexity perceptions.[79] The effect of formal legal training on case complexity

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[75]See supra note 1 and accompanying text.

[76]See Hannaford-Agor et al., supra note 32, at 45.

[77]See, e.g., Penrod & Heuer, Tweaking Commonsense, supra note 19.

[78]With respect to the efficacy of jury note taking, my findings are consistent with prior empirical work. See id. at 280. The empirical findings on this point are not uniform, however. See, e.g., Lynne Forster-Lee et al., Effects of Notetaking on Verdicts and Evidence Processing in a Civil Trial, 18 Law & Hum. Behav. 567, 576 (1994) (finding "enhancing qualities" flowing from jury note taking).

[79]See Figure 1.

perceptions has been detected in other related contexts. Notably, the NCSC study of hung jury trials founds that "judges and attorneys do not share the juries' perception that the hung jury trials are more complex."[80] Jurors in cases that hung described those cases as more complicated than cases where a jury verdict was reached.[81] In contrast, attorneys' and judges' perceptions of case complexity did not distinguish cases that hung from cases that reached a verdict.[82]

Case complexity models for attorneys and judges more closely resembled each other than either resembled the juries' case complexity model. For example, with the sole exception of trial length, none of the trial background factors informed jury complexity perceptions. In contrast, the numbers of defendants, victims, and expert witnesses exerted varying levels of influence on those actors with legal training. Findings on case types distributed similarly. Only cases that involved death increased complexity for juries. In contrast, those with legal training (attorneys and judges) reported that other case types in addition to death cases increased complexity.

E. Implications for Reform

The resulting implications for possible reforms are tentative and indirect, at best. Although most reforms pivot on an assumption that jurors do not *handle* complex cases as well as judges or experts, as previously discussed, these data speak only to how juries *perceive* case complexity. Whether and, if so, how juries handle complex cases differently due partly to differences in how they perceive case complexity is a critical question not addressed by these data.

Insofar as some relation exists between differences in juries' capacity to handle complex cases and differences in how they perceive case complexity, findings from this study suggest that reforms seeking to blunt threats to the administration of justice posed by case complexity confront obstacles. First, the absence of a clear definition of case complexity hinders reform

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[80]See Hannaford-Agor et al., supra note 32, at 45.

[81]Id. at tbl. 4.4. This finding emerges in cases where the jury hangs on any count. Notably, however, in cases where the jury hangs on all counts, jurors did not perceive the cases as any less complicated than did attorneys and judges. Id. at 46.

[82]Id. at 45–46 & tbl. 4.4.

measures.[83] For example, if case complexity refers to complicated evidence, reform measures might dwell on such jury-assistance factors as permitting jurors to pose questions and receive written instructions from judges. If, however, case complexity means lengthy trials or trials involving large quantities of material, reform measures might focus on jury note taking. Also, if juries construe case complexity in terms of processing difficult evidence, judges might more aggressively exclude such evidence. Put simply, definitional differences may exist among members within each of the three groups. Further difficulties arise from group differences in case complexity definitions. Indeed, as previously discussed, juries, attorneys, and judges perceived case complexity differently even when assessing the same case. To be sure, all three groups, however, share some—albeit limited—common ground regarding case complexity that might support certain policy measures. Competing definitions of case complexity, however, render reform efforts more difficult because different definitions might call for different reform measures.

Second, many of the factors common to the three groups and correlating with case complexity fall outside of policymakers' control. For example, there is little that can effectively reduce the increasingly complicated evidence brought to bear in cases.[84] Cases that involve a death, however complicated they might be for a jury, will still require adjudication and legal resolution. Further, the background characteristics of individual jurors are factors that policymakers cannot manipulate without significant constitutional concerns.

Third, factors thought to reduce case complexity that are amenable to policy manipulation did not significantly ease case complexity. For example, jury-assistance mechanisms, prompted by reform measures and designed to reduce case complexity for juries (e.g., permitting jurors to access notebooks, receive written instructions, and submit written questions), did not reduce complexity for those juries sampled. Indeed, the juries' assessment of these mechanisms' inefficacy was echoed by the attorneys. Only judges

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[83]See, e.g., Heuer & Penrod, Trial Complexity, supra note 1, at 31 (noting that trial reforms aimed at easing burdens from complex cases would benefit from a clear definition of case complexity).

[84]It may be possible, however, for judges contemplating whether to admit evidence to increase their attention to the evidence's potential to confuse. See supra notes 16–18 and accompanying text.

perceived that one measure, enabling jurors to submit written questions, reduced case complexity.

These findings do not support the strong conclusion that such jury-assistance mechanisms are inefficacious. The results leave intact the possibility that the jury-assistance mechanisms performed as desired, but that their effect on juries simply failed to cross the significance threshold. Another possibility is that the mechanisms may have materially reduced jury complexity, but that, for juries, the cases remained complicated (only less so due to the assistance mechanisms). Without the benefit of measures of the juries' ex ante baseline level of case complexity absent jury-assistance mechanisms, it is impossible to know whether—and if so, to what degree—the jury-assistance mechanisms performed as desired. What these findings do support, however, are calls for further careful study of jury-assistance measures.

Despite considerable challenges, the news is not all bad. Some steps might be taken in an effort to reduce case complexity for all involved. For example, juries, attorneys, and judges all reported longer trials as more complicated. The influence of trial length on case complexity is perhaps the most consistent and robust finding. Thus, for those judges not already disposed, renewed efforts to ensure that trial time is efficiently spent might reduce complexity. Even here, however, causal questions add to the uncertainty. Are criminal cases complex because they drag on or, in contrast, do intrinsically more difficult cases simply require more days to present fully? Although it is likely a combination of both, notably trial length achieved statistical significance for juries *independent* of their perceptions of evidentiary complexity. Thus, it remains at least a possibility that protracted criminal trials serve as a unique source of case complexity.

VII. Conclusion

Although jurors and judges may agree much of the time on the outcome of cases,[85] legal actors (that is, juries, attorneys, and judges) do *not* agree on what makes criminal cases complex. Not only is this disagreement itself important, but *why* they disagree informs as well.

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[85]See supra notes 33–34 and accompanying text.

Despite persisting attention to case complexity—particularly as it bears on jury capacity—little is known about what makes cases complex for the major actors in criminal trials. Findings from this study reveal two broad points. First, juries, attorneys, and judges perceived case complexity slightly differently, even when assessing the same case. Judges perceived the least amount of case complexity; juries reported the highest levels. It bears repeating, however, that what these observed differences imply from a policy perspective is far from clear. These differences might mask scaling differences or how the different actors perceive their different, though complementary, roles in a criminal trial. Second, also important is that what made cases complex varied for each group. In general, individual-level factors did not substantially and consistently influence case complexity. However, certain case-level factors did correlate, many in the expected direction. Finally, although it remains possible that reform-level factors—jury-assistance mechanisms—may have aided juries, the mechanisms did not systematically reduce case complexity.

Many of the factors that influenced case complexity are not easily manipulated. As well, the effectiveness of existing reform measures is unclear. Jury findings underscore these themes. For juries—the usual focal point of concerns about case complexity—one case type (death cases), trial length, difficult evidence, and skillful prosecutors consistently increased jury perceptions of case complexity. Aside from the dramatic gesture of routing such case types away from juries and to bench trials (or specialized courts), these factors are not readily amenable to standard jury reform efforts.

These conclusions are, of course, tentative because the results support only the most cautious of inferences. Additional empirical research, particularly efforts that explore the construct of criminal case complexity with more precision and rigor, would be useful. Researchers will be better positioned to examine the implications of case complexity once a clearer understanding is achieved regarding what the three major groups mean when they define a case as complex. Insofar as the different groups perceive case complexity differently, reform efforts designed to minimize complexity need to account for and, perhaps, adjust to, such variation. Findings from this study supplement a growing empirical foundation that can inform future analyses of and discussions about case complexity. The findings also suggest that case complexity is itself more complex than many policymakers assume.