

Research on jury instructions

An experimental test of the novel NJ instruction



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Nat. Acad. Comm. On Eyewitness ID
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Collaborators

thanks!

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Outline

NJ jury instructions an experimental test

- ~~Background~~
- Experiment
 - Design
 - Results
- Moving forward
 - Research
 - Policy

Background

the psychological problem

1. IDs notoriously error-prone . . .
2. . . . yet remain highly persuasive to jurors.

Background

the legal response

1. Admissibility rules
2. Instruct jurors

“We now have enough empirical evidence . . . to insist that jurors should be informed about the proneness to error of whatever [identification] procedure is used.”¹

¹ Larry Laudan, Eye Witness Identifications: One More Lesson on Costs of Excluding Relevant Evidence, 7 PERSPECTIVES ON PSYCHOLOGICAL SCIENCE 3, 272-274, at 274 (2012).

NJ Instruction

State v. Henderson



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For immediate release: July 19, 2012
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Supreme Court Releases Eyewitness Identification Criteria for Criminal Cases

The New Jersey Supreme Court today released **expanded jury instructions**, a **new court rule**, and a **revised court rule** relating to eyewitness identifications in criminal cases.

On Aug. 24, 2011, the Supreme Court issued a unanimous decision in ***State v. Larry R. Henderson***. The opinion, authored by Chief Justice Stuart Rabner, revised the legal framework for evaluating and admitting eyewitness identification evidence and directed that revised jury charges be prepared to help jurors evaluate such evidence. Henderson drew on an extensive review of reliable scientific evidence on human memory and the various factors that can affect the reliability of eyewitness identifications.

"Today's new jury charges and court rule mark a critical step in the court system's treatment of eyewitness identification evidence," said Chief Justice Rabner.

NJ Instruction

state-of-the-art

- “relie[s] on, and receives strong support from, decades of research from cognitive psychology” – Loftus & Schacter

NJ Instruction

state-of-the-art

- “[e]yewitness identification evidence must be scrutinized carefully”
- “research has shown that there are risks of making mistaken identifications.”
 - “not like a video recording”
 - “affected by a variety of factors”
 - [factors . . .]

NJ Instruction

factors (estimator)

1. Opportunity to view / Attention
 - a. Stress
 - b. Duration
 - c. Weapon focus
 - d. Distance
 - e. Lighting
 - f. Disguises/changed appearance
2. Prior description
3. Confidence
4. Time elapsed

NJ Instruction

factors (estimator)

Time Elapsed: Memories fade with time. As a result, delays between the commission of a crime and the time an identification is made can affect the reliability of the identification. In other words, the more time that passes, the greater the possibility that a witness's memory of a perpetrator will weaken.

NJ Instruction

factors (system)

1. Line-up composition
2. Fillers
3. Multiple viewings
4. Double-blind
5. Instructions
6. Feedback

NJ Instruction

factors (system)

Fillers: Lineups should include a number of possible choices for the witness, commonly referred to as “fillers.” The greater the number of choices, the more likely the procedure will serve as a reliable test of the witness’s memory. A minimum of six persons or photos should be included in the lineup.

NJ Instruction

factors (system)

Instructions: You should consider what was or what was not said to the witness prior to viewing a photo array. Identification procedures should begin with instructions to the witness that the perpetrator may or may not be in the array and that the witness should not feel compelled to make an identification. The failure to give this instruction can increase the risk of misidentification. If you find that the police [did/did not] give this instruction to the witness, you may take this factor into account when evaluating the identification evidence.

NJ Instruction

factors (system)

Feedback: Feedback occurs when police officers, or witnesses to an event who are not law enforcement officials, signal to eyewitnesses that they correctly identified the suspect. That confirmation may reduce doubt and engender or produce a false sense of confidence in a witness. Feedback may also falsely enhance a witness's recollection of the quality of his or her view of an event. It is for you to determine whether or not a witness's recollection in this case was affected by feedback or whether the recollection instead reflects the witness's accurate perception of the event.

Standard Instructions

Florida

It is up to you to decide what evidence is reliable. Some things you should consider are: Did the witness seem to have an opportunity to see and know the things about which the witness testified? Did the witness seem to have an accurate memory? Was the witness honest and straightforward in answering the attorneys' questions? Did the witness have some interest in how the case should be decided? A juror may believe or disbelieve all of or any part of the evidence or testimony of any witness.

NJ Instruction

aims

- “designed to minimize the risk of wrongful convictions” – NJ Chief Justice Rabner
- “**should** greatly reduce the likelihood of wrongful convictions” – Innocence Project

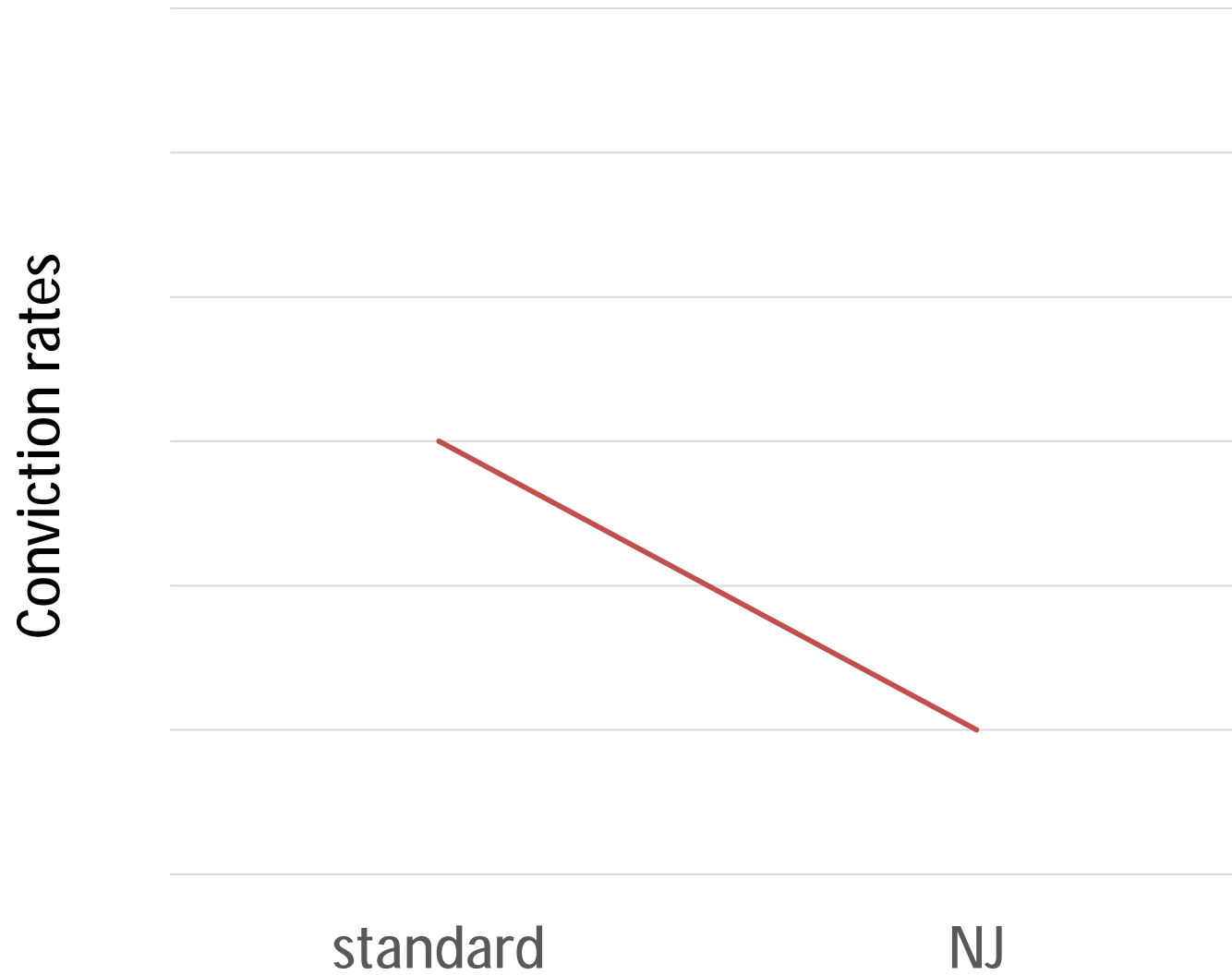
NJ Instruction

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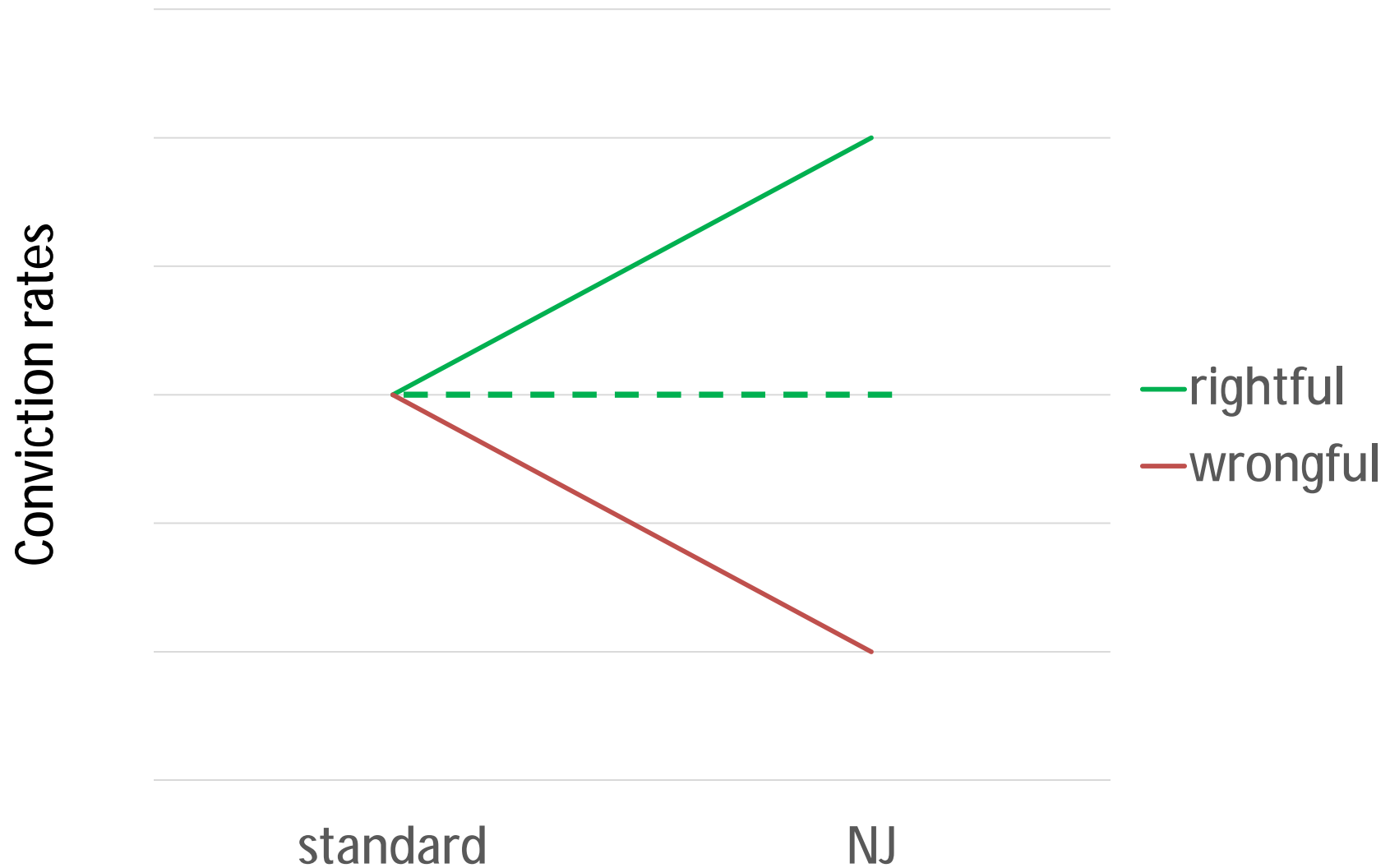
NJ Instruction

does it work?



NJ Instruction

does it work?



Methodology



Design

2 × 2 between-subjects

Instruction

standard

NJ

weak

strong

ID Quality

Case

robbery/murder trial



Stimuli

30-40 min. trial video



Stimuli

30-40 min. trial video



ID quality

operationalization

	weak	strong

Sample

$N = 335$ mturkers

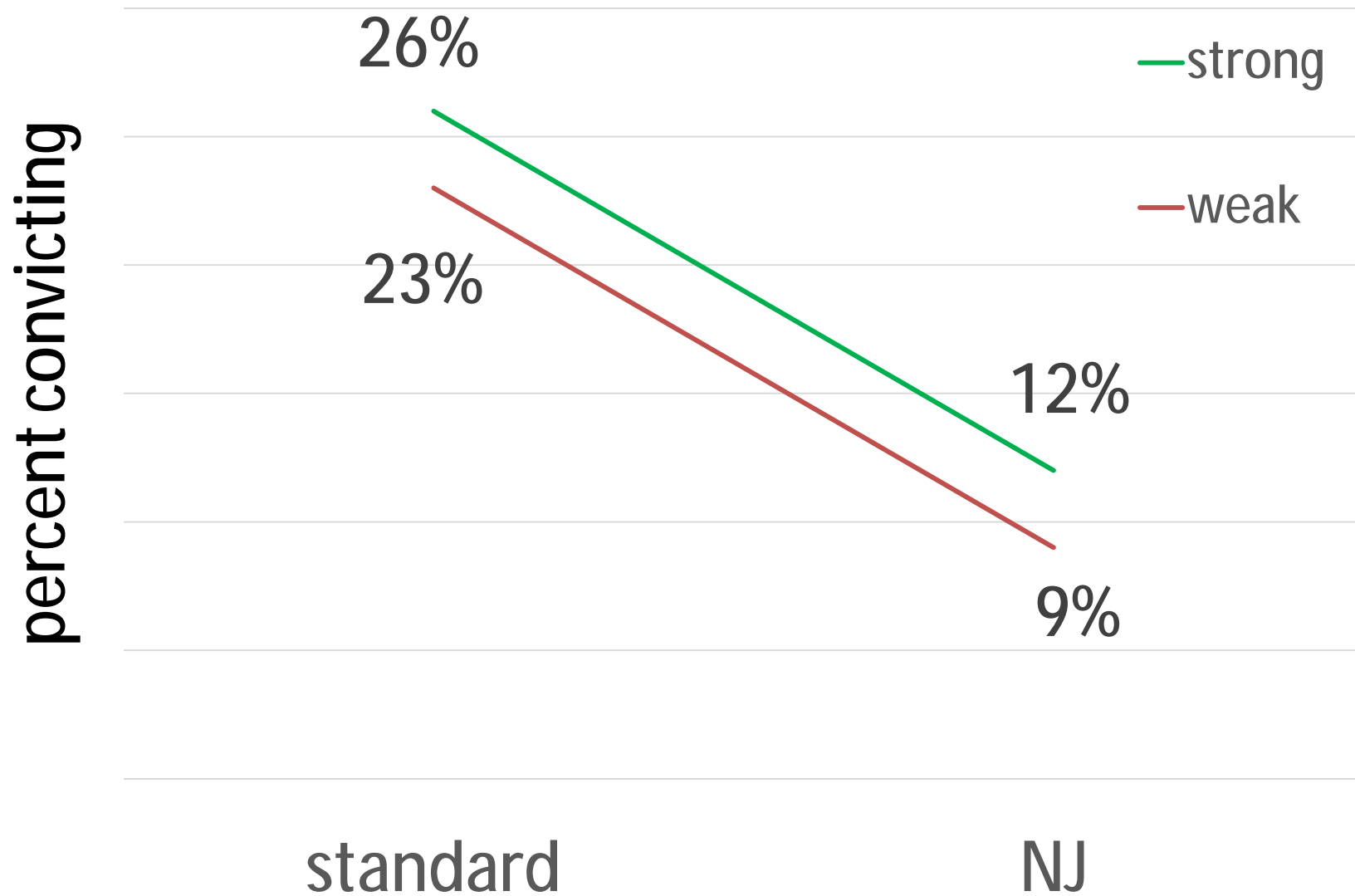
- Predominantly white (80%), tended to be female (57%), and was about 35 years old (SD =12). Most (83%) had at least some college credit.

Results



Results

verdict
N = 335 mturkers



Results

verdict

N = 335 mturkers

^o $p < .10$, * $p < .05$, ** $p < .01$, *** $p < .001$.

	Model 1	Model 2	Model 3
	β (S.E.)	β (S.E.)	β (S.E.)
Intercept	-2.04 (.29)	-1.99 (.33)	-2.59 (.55)
<u>Instruction_Standard</u>	1.02 (.31) **	0.95 (.42) *	0.94 (.32) **
<u>ID Quality Weak</u>	-0.24 (.31)	-0.69 (.49)	-0.22 (.29)
<u>Instruction_Standard</u> × <u>ID Quality Weak</u>	-	0.17 (.63)	-
Male	-	-	-0.13 (.31)
Minority	-	-	0.65 (.35) ^o
College	-	-	0.72 (.32) *
Age_10	-	-	0.02 (.12)
Null deviance (df)	311.86 (334)	311.86 (334)	311.86 (334)
Residual deviance (df)	299.54 (332)	299.47 (311)	290.19 (328)

OR = 2.55
CI = 1.37-4.89
 $p < .001$

Moving forward

research

- Should we trust this result?

replication

- $N = 368$ jury-eligible community members, compensated \$30.
- 90 min video trial.
- 3 (None | pre-NJ | post-NJ after) \times 2 (System Quality) \times 2 (Estimator Quality).
- Skepticism effect again found.

Moving forward

research

- Why the indiscriminate discounting?
 - Difficulty understanding criteria?
 - Difficulty *applying* criteria?
 - Read beforehand?
 - More extensive training?

Intense Aids

I-I-Eye PowerPoint

N = 293 intro psych undergrads

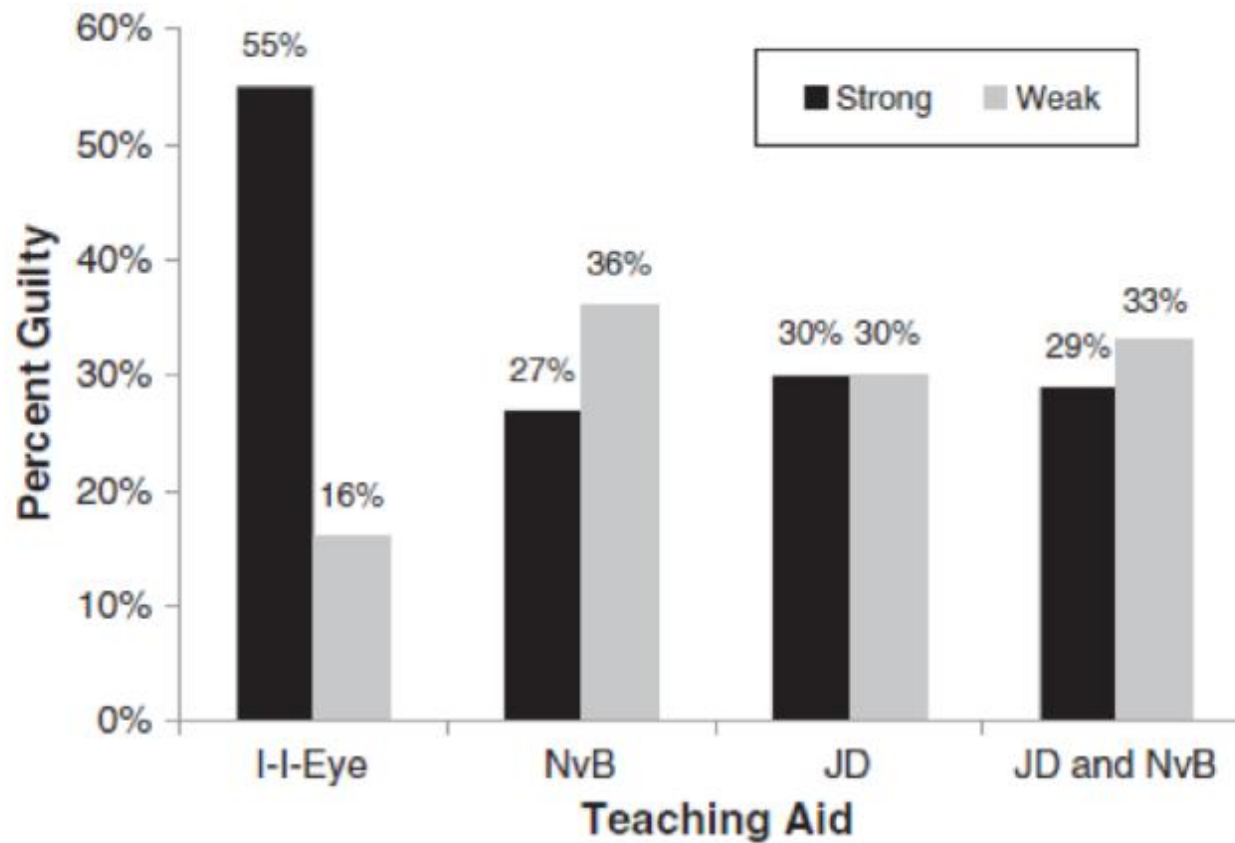


Figure 1. Percentage of guilty verdicts by case type among the three teaching aid groups and the combined control groups

Results

other DVs
N = 335 mturkers

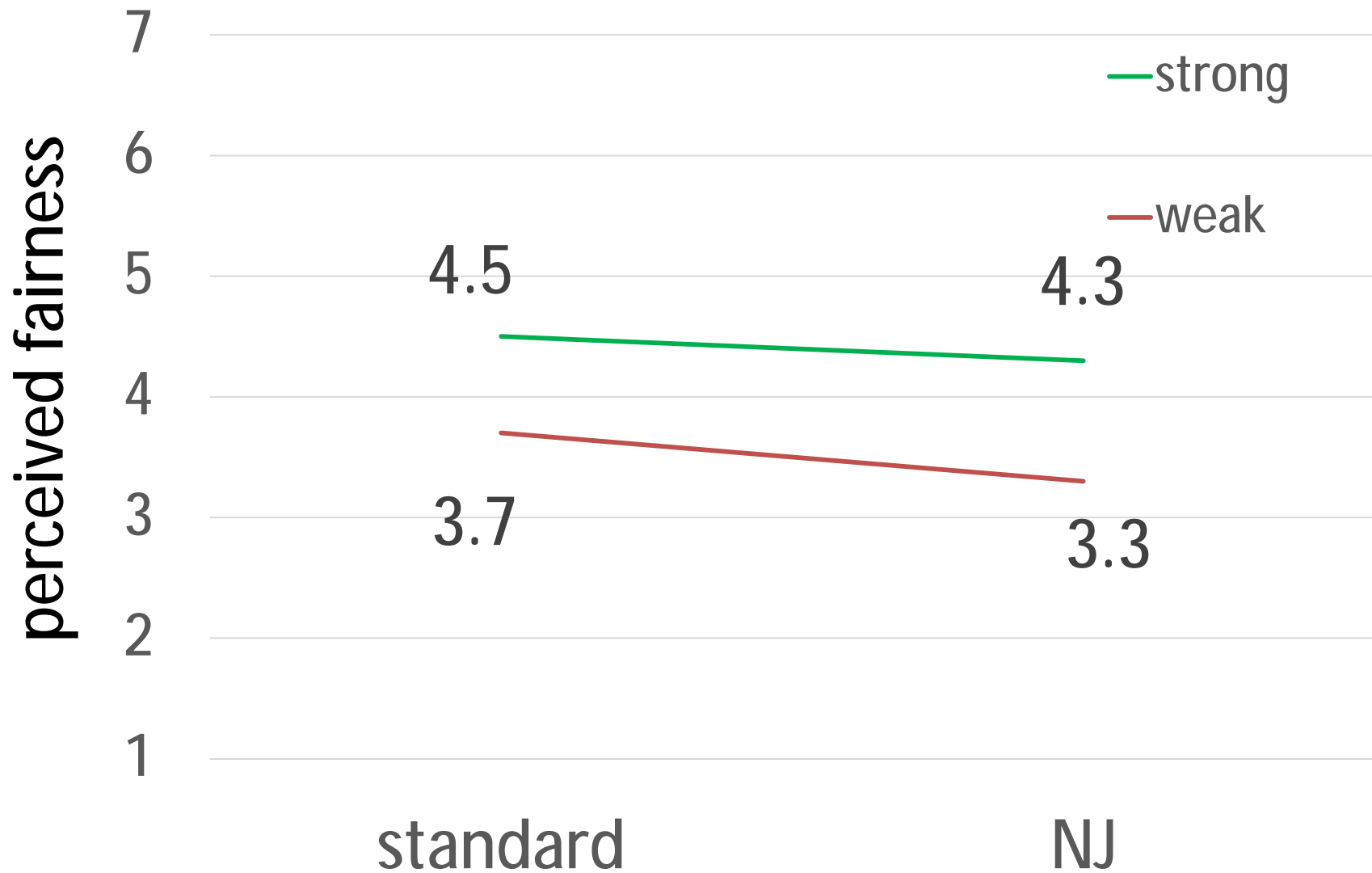
(note: self-reports)

<i>ID Quality</i>	<i>Instruction</i>	<i>n</i>	Comprehension of Instruction	Confidence in Verdict	Influence of Testimony
Strong	Enhanced	83	5.51 (0.85)	4.61 (1.17)	4.12 (1.38)
	Standard	88	5.61 (0.56)	4.77 (1.13)	4.43 (1.31)
Weak	Enhanced	80	5.56 (0.61)	4.66 (1.08)	4.15 (1.34)
	Standard	84	5.61 (0.62)	4.65 (1.19)	4.40 (1.14)

But. . .

my jurors recognized bad lineup

N = 335 mturkers



Moving forward

research

- Why the indiscriminate discounting?
 - Difficulty understanding criteria?
 - Difficulty *applying* criteria?
 - Inference about judge's preference?

Moving forward

policy

- Wary of increasing false negatives
 - “better that ten guilty persons escape than that one innocent suffer” – Blackstone
- More active judicial role (selective reading)?
 - Can they do this accurately? (empirical)
 - Invade province of jury? (legal)

Moving forward

policy

- More active judicial role (selective reading)?
 - Can they do this accurately? (empirical)
 - Invade province of jury? (legal)

Thank you! Discussion?



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