

Do Professional Adjudicators Make More Rational Legal Decision-makers than Laypeople?

How the Probability of Conviction is Biased by the Number of Verdicts Made Available

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Introduction

In virtually all jurisdictions, a criminal trial ends in one of two outcomes: conviction or acquittal. Scotland and Israel, however, constitute singular exceptions, as decision-makers have three verdicts at their disposal: in Scotland, jurors can select between 'guilty,' 'not guilty,' or 'not proven,' and, in Israel, judges can opt for 'guilty,' 'full acquittal,' or 'acquittal for the benefit of the doubt' (henceforth, 'ABD'). While the Scottish 'not proven' and Israeli ABD verdicts are each perceived as an intermediate alternative, in both cases, the defendant is acquitted and walks free without any criminal sanction.

Rationally, the availability of intermediate verdicts should not affect the probability of conviction, since the legal question remains the same: whether the evidence suffices to prove guilt 'beyond-reasonable-doubt.' Hence, if the number of verdicts available does influence conviction rates, then the decision-making is biased.

Our multiple studies tested whether, and to what extent, decision-makers—be they laypeople or legal professionals—are biased by the number of verdicts made available to them, and whether legal expertise attenuates this bias.

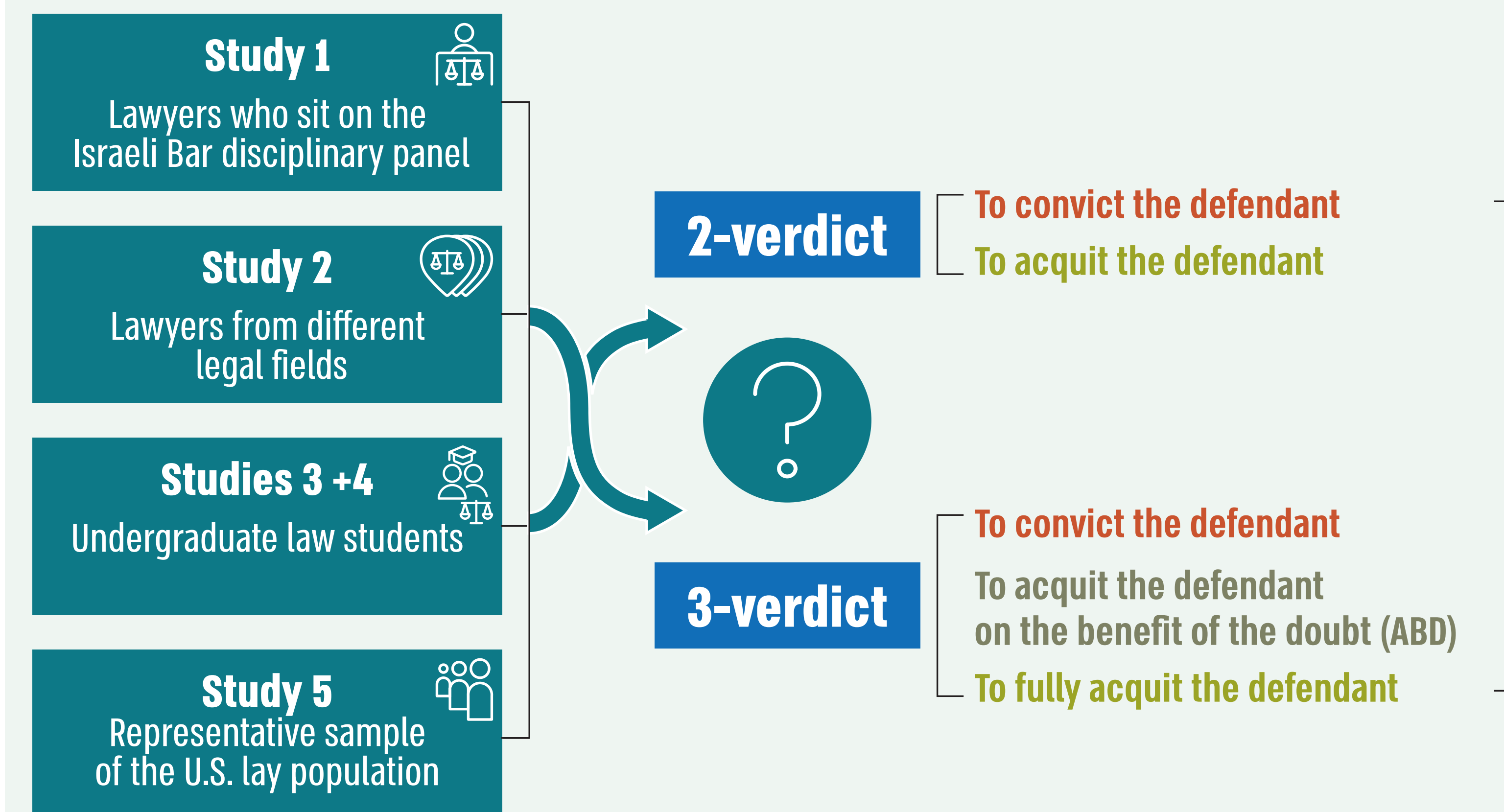
Methods

Five studies were conducted on N = 1,041 participants

A hypothetical case of a man accused of murder

Disputed fact: Perpetrator's identity (is the defendant the murderer?)

Undisputed facts
Available evidence
Prosecution and defense claims



Results

Study 1 | Table 1 - Results of Distribution (%) of Verdicts by Conditions

Condition	N	Conviction	Acquittal	ABD
2-verdict	16	37.50	62.50	-
3-verdict	13	7.69	23.08	69.23

Study 2 | Table 2 - Results of Distribution (%) of Verdicts by Conditions

Condition	N	Conviction	Acquittal	ABD
2-verdict	93	24.73	75.27	-
3-verdict	93	13.98	13.98	72.04

Study 3 | Table 3 - Results of Distribution (%) of Verdicts by Conditions

Condition	N	Conviction	Acquittal	ABD
2-verdict	80	65.00	35.00	-
3-verdict	81	46.91	3.70	49.38

Study 4 | Table 4 - Results of Distribution (%) of Verdicts by Conditions

Condition	N	Conviction	Acquittal	ABD
2-verdict	83	51.81	48.19	-
3-verdict	80	26.25	3.75	70.00

Study 5 | Table 5 - Results of Distribution (%) of Verdicts by Conditions

Condition	N	Conviction	Acquittal	ABD
2-verdict	261	63.98	36.02	-
3-verdict	240	55.00	3.33	41.67

Figure 1 - Conviction Rate in the 2 vs. 3-verdict Conditions

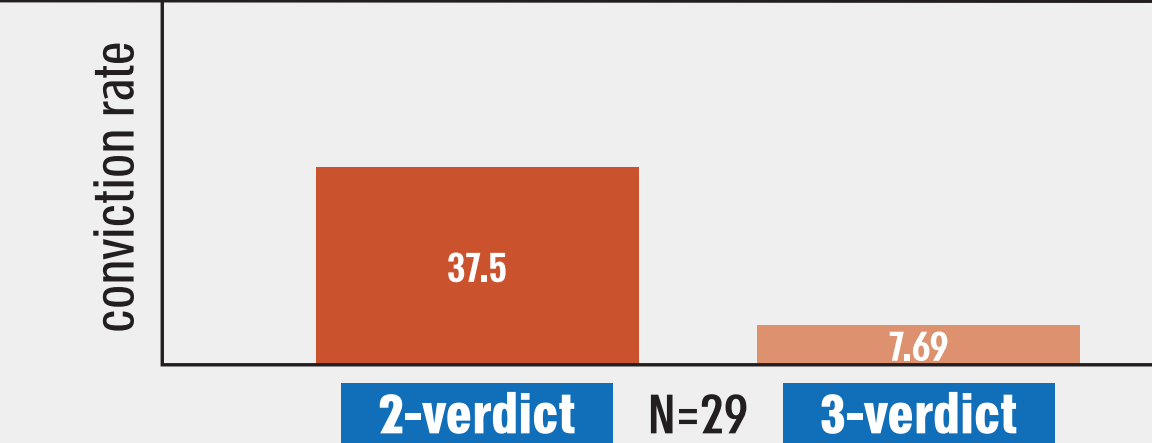


Figure 2 - Conviction Rate in the 2 vs. 3-verdict Conditions

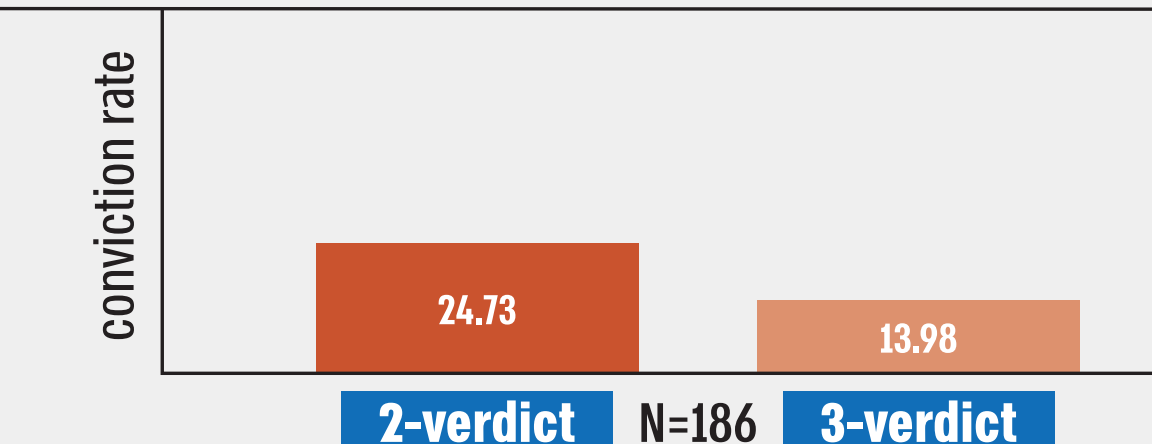


Figure 3 - Conviction Rate in the 2 vs. 3-verdict Conditions

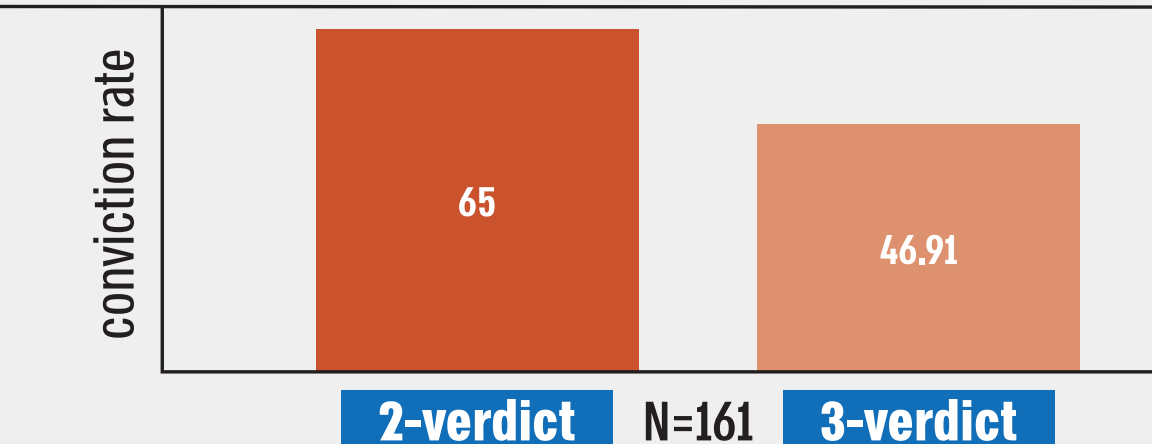


Figure 4 - Conviction Rate in the 2 vs. 3-verdict Conditions

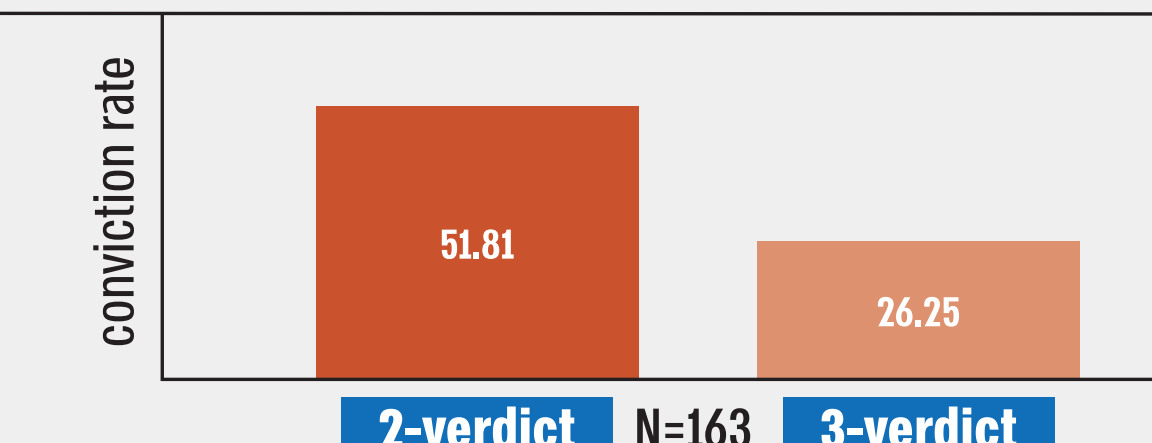
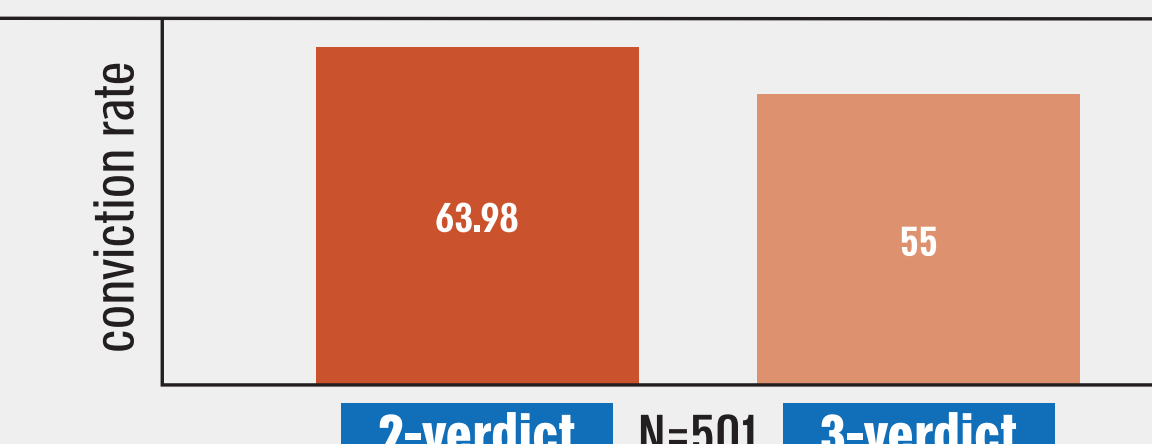


Figure 5 - Conviction Rate in the 2 vs. 3-verdict Conditions



Tables 1–5 present the percentage of participants selecting each type of verdict, by condition, for Studies 1–5, respectively.

Figures 1-5 show the conviction rate in the 2-verdict vs. the 3-verdict condition, across the five studies.

Analysis - 3 important findings:

- When the opportunity to select an intermediate verdict is available, a large portion of decision-makers seize it. As shown in Tables 1–5, in the 3-verdict condition, the intermediate option accounts for between 41.67% and 72.04% of the verdicts selected, across all populations—that is, among legal professionals (Studies 1–2), law students (Studies 3–4), and laypeople (Study 5). The effect of the number of verdicts on conviction rates therefore constitutes a bias.
- The ABD verdict was selected, at least partly, at the expense of a guilty verdict, thereby reducing the overall conviction rate and reflecting a bias created by the number of verdicts made available. Logistic regressions indicated that, in each study, conviction rates were lower in the 3-verdict than in the 2-verdict condition ($p < .045$).
- The level of expertise did not attenuate bias. We analyzed the data with a logistic regression, based on participants' degree of legal expertise (on a scale of 1–4), verdict condition (2 vs. 3), and the interaction. First, we found that the higher the degree of expertise, the lower the conviction rate ($p < .001$). Second, regardless of expertise, participants were generally less inclined to convict in the 3-verdict than in the 2-verdict condition ($p < .001$). Finally, interaction between degree of expertise and condition was not statistically significant ($p = .089$).

Conclusions

- Defendants are less likely to be convicted in 3-verdict than in 2-verdict systems.
- This effect constitutes a bias.
- The bias is not moderated by the degree of the legal expertise of legal decision-maker.
- Findings have important implications for any jurisdiction considering the abolition or introduction of intermediate verdicts, irrespective of whether legal decisions are made by lay people or professionals.

