



Reader's Comments on Dan Simon's *In Doubt:
The Psychology of the Criminal Justice System*

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Professor Simon's book

- Buy this book!
- Compelling and thoughtful analysis of the problems in our justice system at the investigative and adjudicative stages
- Integrates real world examples of wrongful conviction with basic and applied psychological research
- Carefully researched and documented
 - Text: 1-222; Footnotes: 225-385 (and in smaller type, no less)

Investigation phase

- Simons' book offers a powerful account of the way in which crime investigations can go wrong in so many ways
 - Spontaneous, nondirectional errors because of the documented fallibility of human perception, cognition and memory
 - Induced errors caused by investigation procedures, interactions with justice system personnel (faulty interviews, questioning, interrogation, identification procedures)
 - Forensic science errors; informants; snitches; false confessions
- Exoneration cases illustrate how error in one domain can infect the entire case in what Simon terms an "escalation of error"
 - Criminal record example

Simon's recommendations

- *“Law’s psychological sensibilities are mostly frozen at the state of the pre-experimental psychological knowledge that prevailed at the time these common-law rules were forged.”*

(In Doubt, p. 10)

- Therefore, we need to update & reform the legal system, taking into account contemporary psychological research.
 - Most importantly, record all encounters with witnesses and make available to all parties
 - Deters police misconduct; but would it decrease citizen willingness to speak to police; report crimes? Would policing itself change?

Adjudicative phase

- Adversary system creates bias.
 - Witness selection; witness preparation by adversarial lawyers; adversarial allegiance
- Simon's detailing of shortcomings "*focuses mostly on the performance of jurors*" although "*professional judges do not perform much differently from lay people...*" In Doubt, p. 145

Problems documented by Simon

- Jurors (and judges) find it difficult to separate accurate from inaccurate witnesses when basing judgment on in-court testimony.
- Jurors are influenced by confessions (which may be false), witness demeanor (which may be misleading), story narratives (which may overpower the facts), pretrial publicity, criminal record, and race (which may bias factfinding)
- Biasing effects are strongest in close cases.
- *“It is troubling to find that more than half of the variance in verdicts cannot be explained by the evidence.” In Doubt, p. 204*
- In other words, garbage in, garbage out.

Simon is pessimistic about remedies for these problems in the adjudicatory phase.

- *“Providing juries with more accurate and transparent evidence will go a long way to make their...verdicts more accurate.”*
- *“The adjudicatory process, with its deeply ingrained traditions and adversarial trappings, is a less amenable forum for reform.”*

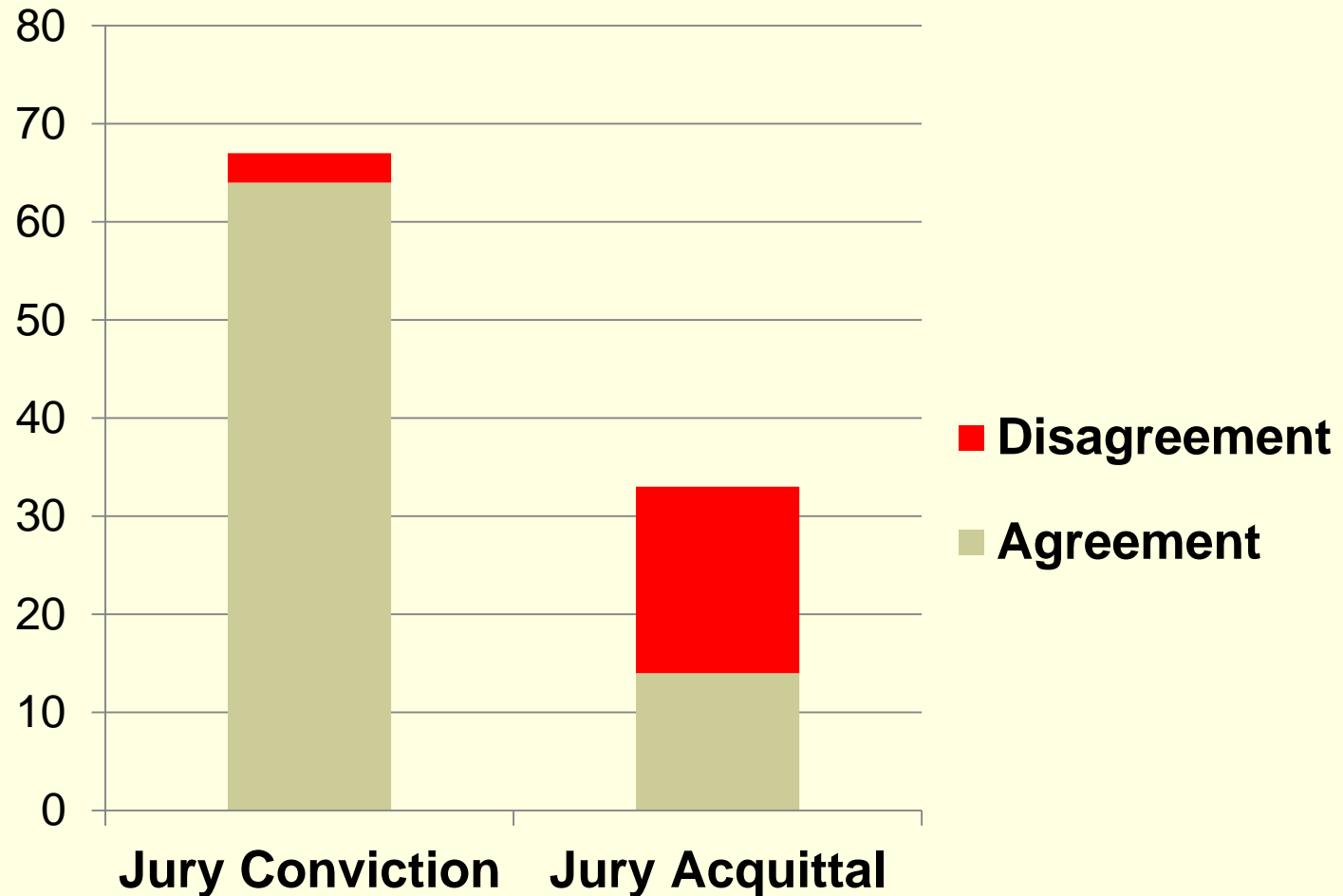
In Doubt, p. 177

- In other words, we can fix the “garbage in” adjudicatory phase, but the truck is beyond repair.

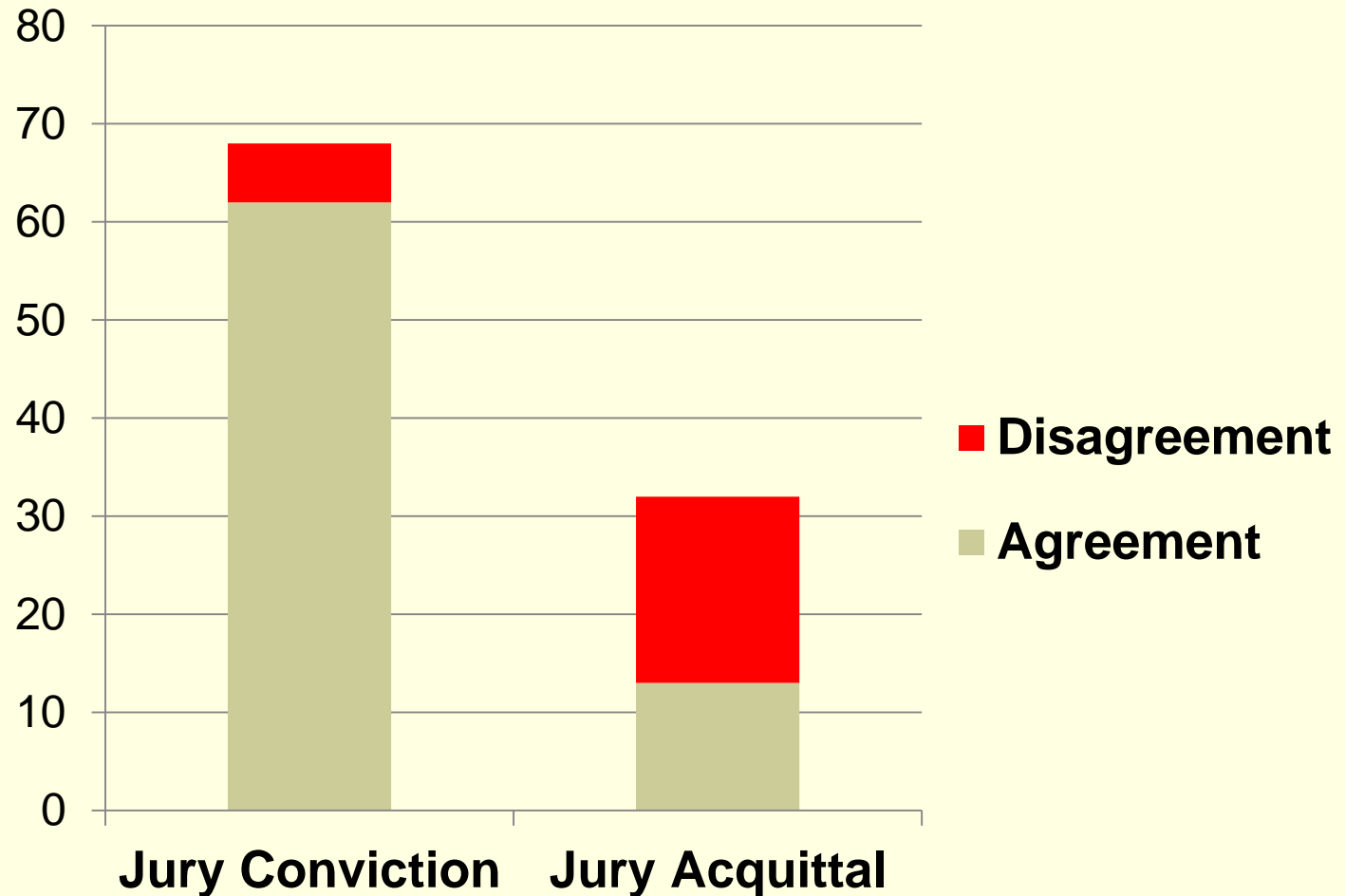
Some qualifications

- As Simon notes, research shows that legal experts (presiding judges) agree with jury verdicts in most cases.
- Evidence strength is major determinant of jury verdicts, whether the evidence is evaluated from the perspective of the judge or the jury.
 - Judges are more likely to convict on evidence juries see as weak.
 - Disagreement is not due to case complexity

Judge-Jury Agreement, Chicago Jury Project Study (USA, 1950s)



Judge-Jury Agreement, National Center for State Courts Project (USA, 2000-01)



Judge-Jury Agreement, Korean Advisory Jury *(Journal of Empirical Legal Studies, 2012)*

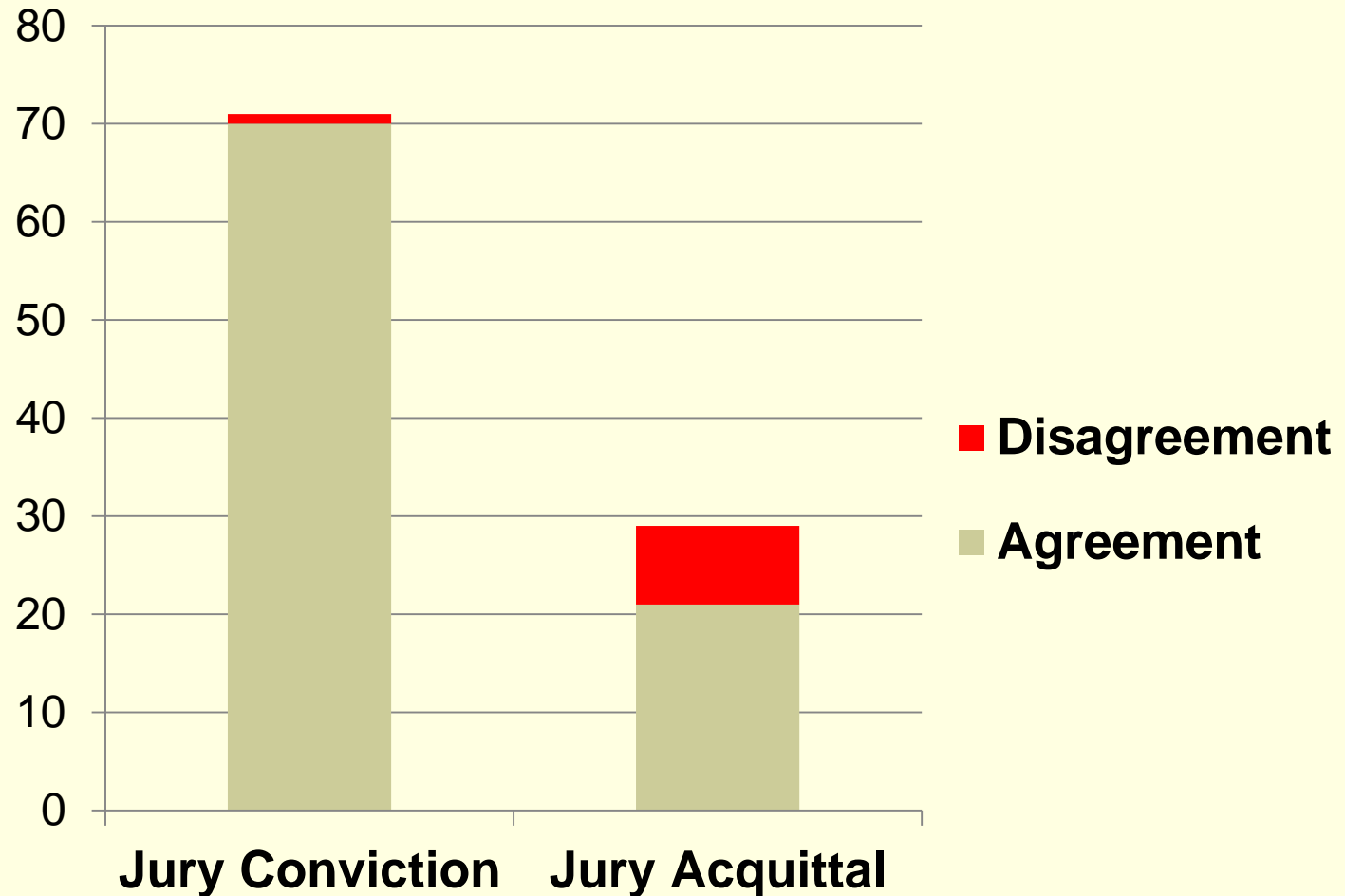
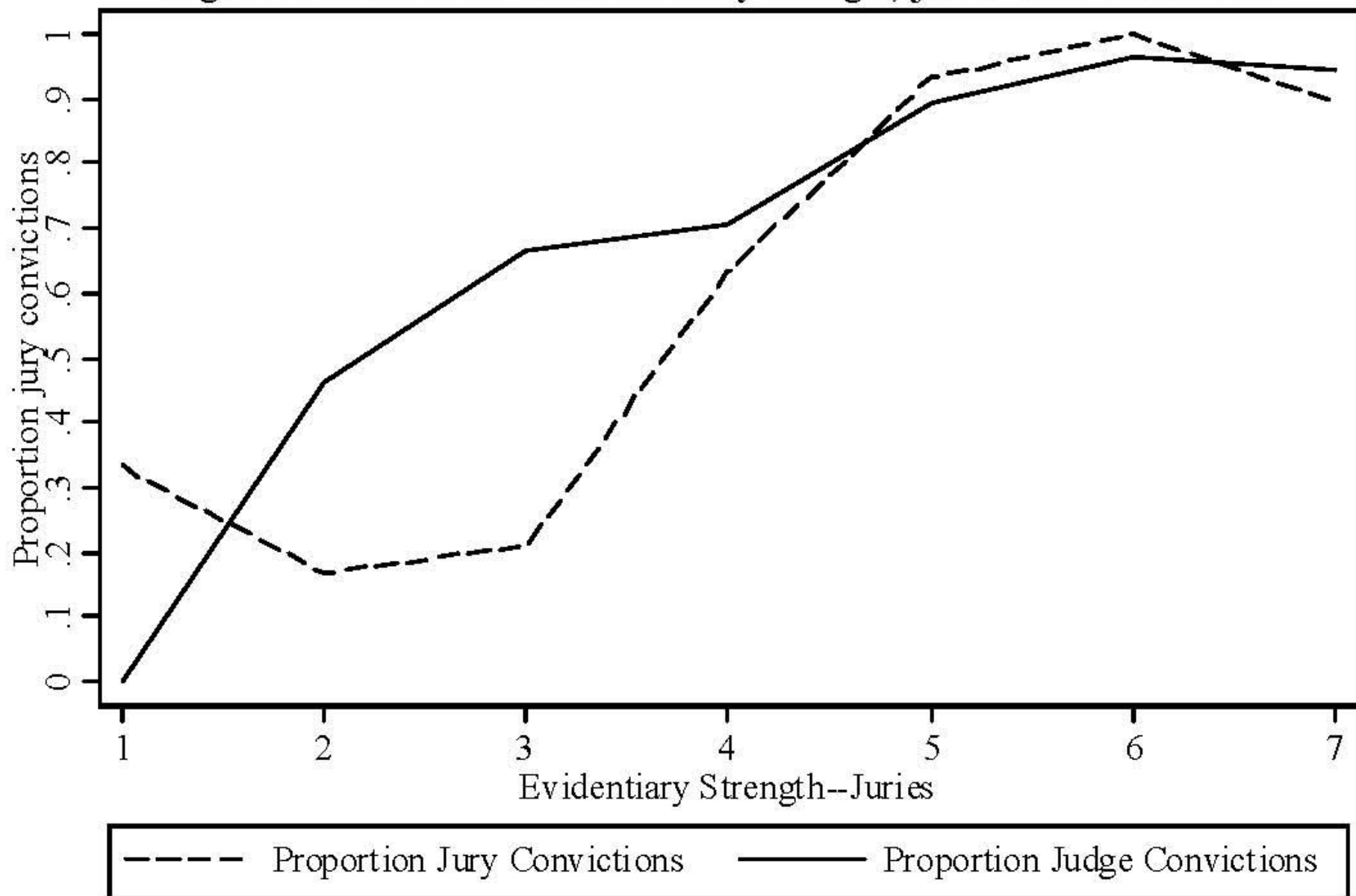
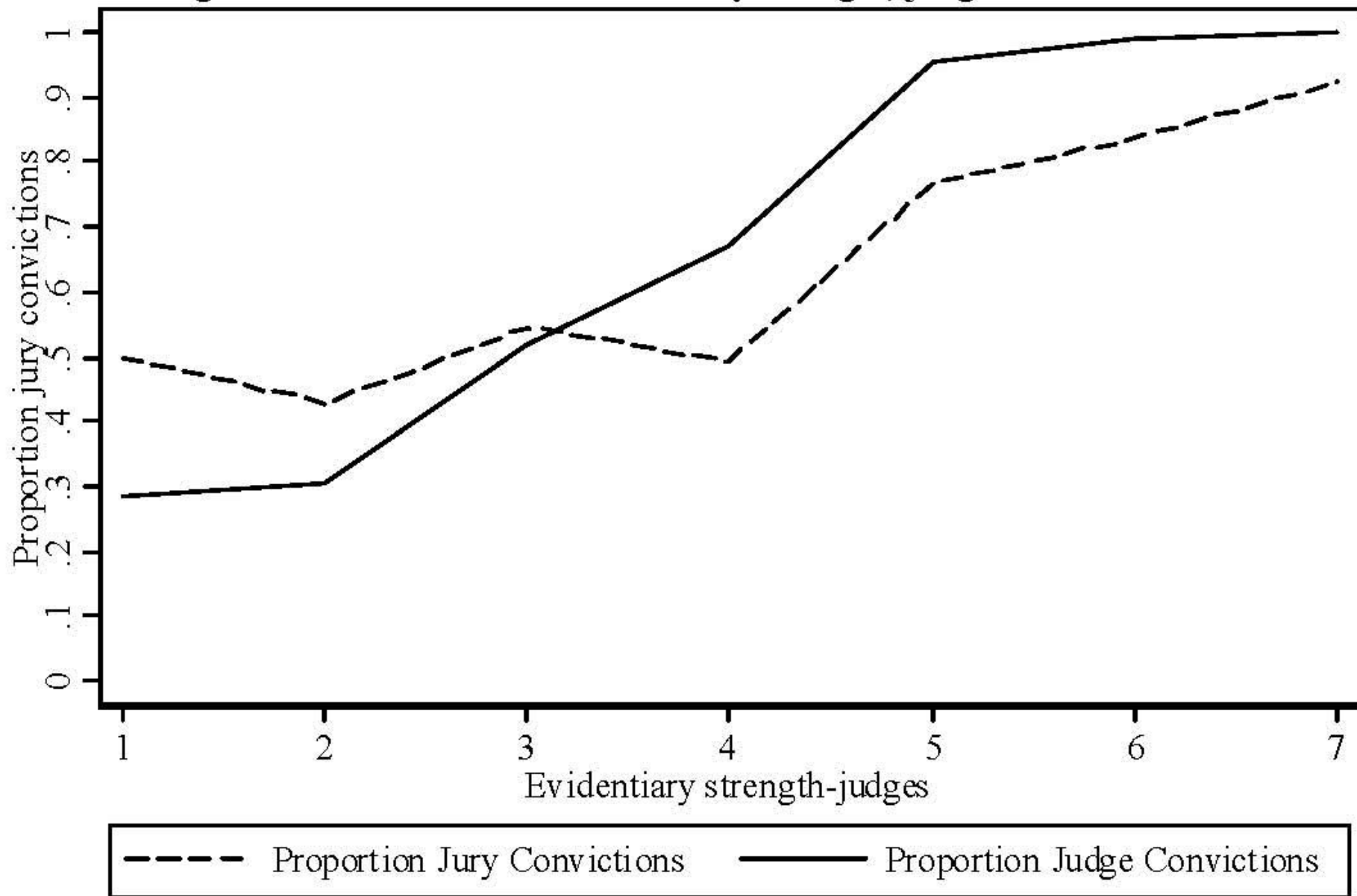


Figure 2. Convictions and evidentiary strength, juries' view of evidence.



Source: NCSC data covering trials at four sites in 2000-2001.

Figure 1: Convictions and evidentiary strength, judges' view of evidence.



Source: NCSC data covering trials at four sites in 2000-2001.

Countering pessimism

- Measurement error may help to explain why there is “only” a .5 correlation between factfinders’ assessments of the evidence and their verdicts.
- In my view, juries show some surprising strengths as factfinders, and their asymmetrical verdict disagreements with judges offer some protection for defendants.
- In addition to the plain language jury instructions and deliberation suggestions Simon offers, I suggest:
 - Use 12 person unanimous jury
 - Compose jury of diverse members from the community.
 - Employ “active jury” trial reforms.