



Quantifiers in the Law: The California Jury Instruction Pilot Study



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Background

California revised its jury instructions in 2003 because jurors found many of them incomprehensible and sometimes returned misinformed verdicts (Benson, 1984; Marder, 2006). The new version clearly explained that to find a defendant "guilty," the defendant must be found guilty **beyond a reasonable doubt** of "each element of the crime," not of the crime as a whole. In later revisions, the words "each element" were deleted, a change that might now tempt some jurors to incorrectly find a defendant "guilty" based on just a majority of the elements.

California is now the **only** state that leaves out "each element," and some attorneys suspect that this is the reason for the recent rise in guilty verdicts, many of which are unjust. (Mark Yanis, California attorney, 11.04.21, p.c.)

We believe that this suspicion is right, and our study tests the two versions of this California instruction on a kidnapping crime scenario. Will subjects who hear the "each element" version return fewer guilty verdicts than subjects who don't hear those words?

Hypothesis

The rate of guilty verdicts will be lower in the group of subjects who hear "each element" in their instruction than in the control group of subjects who do not.

Method

Subjects

- 27 subjects (friends and family of our lab assistants)
 - 15 heard "each element"
 - 12 did not (the control group)
- Subjects were jury-qualified: U.S. citizens of 18 years or older

Materials

Two versions of an on-line survey containing (a) a scenario of a crime, (b) the instruction, in one of the two versions, and (c) four questions (one optional):

- [1] Your verdict: ___ guilty / ___ not-guilty?
- [2] (optional) Explain how you reached your finding.
- [3] Check the box beside each element that you think the prosecution proved beyond a reasonable doubt. [list of the three elements here].
- [4] What if the instructions had said [the other version here], my verdict would have been: ___ guilty / ___ not-guilty?

Procedure

Subjects were randomly assigned to either the "each element" group or the control group. They read a series of slides, first a crime scenario, then the instruction (with or with "each element"), and then questions [1] - [4].

Acknowledgements

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Kidnapping Study

You Be the Juror

Imagine that you're a juror in a criminal case. Read the facts of the case, then the instructions on how to reach your verdict, and finally answer a set of questions.

The Facts:

The defendant is charged with "kidnapping in order to molest a child." At the trial, the evidence shows that the defendant approached a 10-year-old boy standing next to the slide at a local playground and offered to take him to his apartment to play video games. The child agreed but before they could go anywhere, a nearby police officer walked over and arrested the defendant.

At the trial, the jury sees a video of the incident. They hear the defendant's friend testify that the defendant had been planning to entice the boy to his apartment to molest him.

A defendant in a criminal case is presumed to be innocent. This presumption requires that the prosecution prove a defendant guilty of each element of the crime beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced that the charge is true.

To decide whether the prosecution has proved [each element of] the crime beyond a reasonable doubt, you must consider all the evidence.

The Instructions:

"Each element": For the crime of "kidnapping in order to molest a child," the prosecution must prove **each of** the following three elements beyond a reasonable doubt:

- [1] The defendant persuaded a child younger than 14 years old to go somewhere
- [2] The defendant did so in order to molest the child
- [3] As a result of the defendant's conduct, the child moved a substantial distance

If the evidence does not prove the defendant guilty of **each of** these elements beyond a reasonable doubt, you must find him not guilty.

Control: For the crime of "kidnapping in order to molest a child," the prosecution must prove the following three elements beyond a reasonable doubt:

- [1] The defendant persuaded a child younger than 14 years old to go somewhere
- [2] The defendant did so in order to molest the child
- [3] As a result of the defendant's conduct, the child moved a substantial distance

If the evidence does not prove the defendant guilty beyond a reasonable doubt, you must find him not guilty.



Results & Discussion

The results suggest that our hypothesis is correct: as Figure 1A shows, the "Each element" group had a lower rate of guilty verdicts than the Control group, 13% compared to 33%. In other words, the Control group chose a guilty verdict at nearly 3 times the rate as the "each element" group. But why were there any "guilty responses at all from the "Each element" subjects? Figure 1B shows why. The two subjects who chose guilty believed that all the elements of the crime (as they understood the elements) were proven beyond a reasonable doubt. Guilty is then the appropriate response. That was not the case in the control group., as Figure 1C shows. Only 1 of the 4 Control group subjects who chose "guilty" believed that all the elements were proven. The other 3 subjects returned a guilty verdict even though they did not believe that all three elements were proven. This demonstrates that without explicitly hearing the words "each element" in the instructions, subjects will find the defendant guilty even when not all elements of the crime are proven.

Our additional question, [4], asked the subjects to consider what verdict they would have returned had they heard the alternative instruction. As shown in Figure 2 below, of the 13 "each element" subjects who originally chose not guilty, 6 subjects would have switched their verdict to guilty if "each element" had been missing. This further supports our hypothesis that the absence of "each element" will result in more guilty verdicts. Of the 4 subjects who originally chose "guilty", none said that they would switch to "not guilty". For 3 of these 4, this is reasonable: they believed (though incorrectly) that all 3 elements were satisfied.

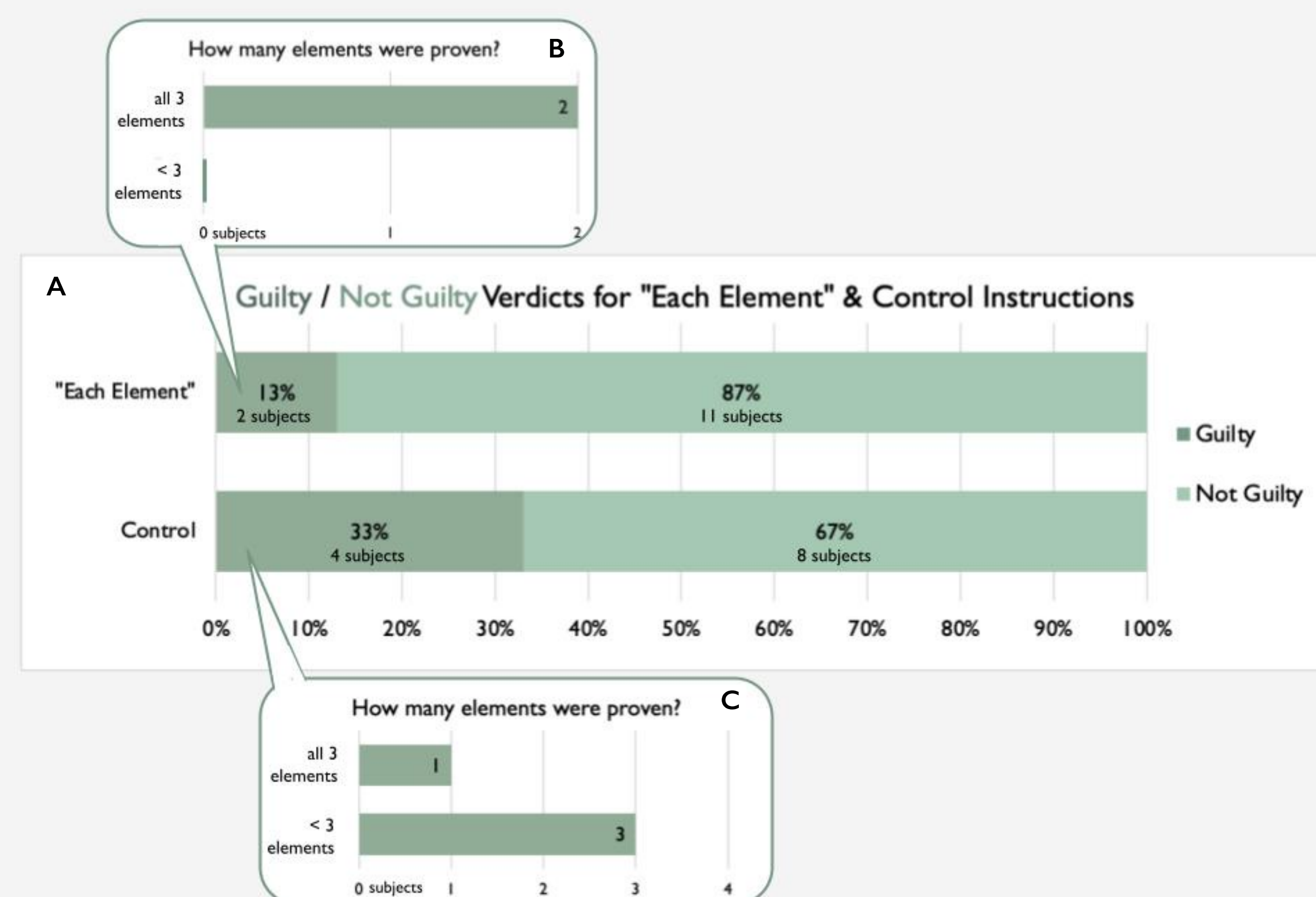


Figure 1

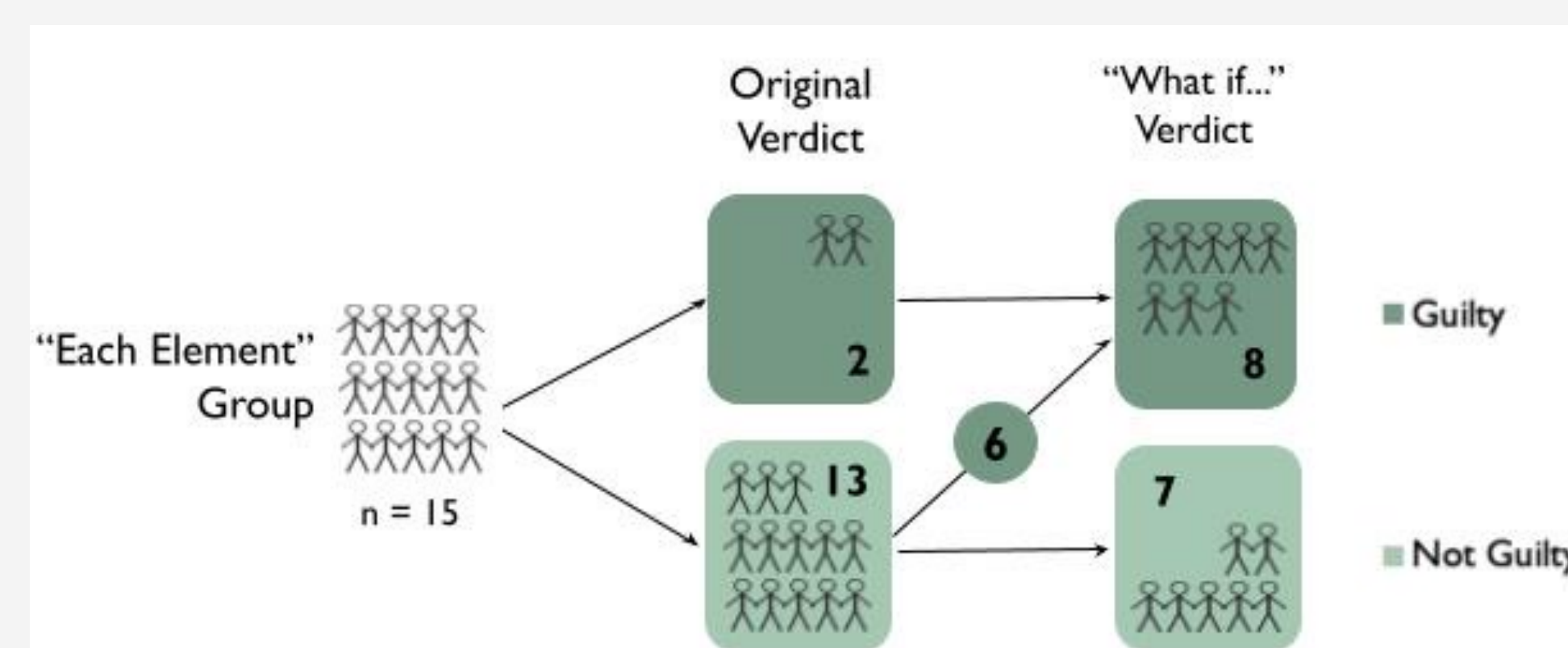


Figure 2

Next Steps

In this pilot Kidnapping study, the words "each element" guided readers to return a guilty verdict only when every element of a crime was proven beyond a reasonable doubt. We plan to run the study on a larger sample of subjects on a survey distribution platform, CloudResearch.

We also plan a follow-up study to ensure that our results were not influenced by the emotional nature of the crime. This study will simply state that the defendant is charged with "a crime" without specifying the type of crime. Will subjects convict to the same extent?

References

- Benson, R. (1984). The End of Legalese: the game is over. *NYU Review of Law and Social Change* 13, 519-574.
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