

Improving juror comprehension: reading while listening

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The standard of proof in a civil case is that a plaintiff must prove his or her case by a preponderance of the evidence. This is a less stringent standard that is applied in a criminal case, where the prosecution must prove its case beyond a reasonable doubt. By contrast in a civil case such as this one,

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Abstract

"Failure of recollection is common. Innocent mis-recollection is not uncommon."

A growing problem confronts US courtrooms: though all citizens over 18 qualify as jurors, jury instructions are often incomprehensible, especially to those with little education or rudimentary English (Charrow & Charrow 1979; Elwork, et. al. 1982; Diamond 2003; Diamond, et. al. 2012; Tiersma 2009). This excludes many jurors from equal participation but, worse, has led to misinformed verdicts (Benson 1985; Marder 2006). Many states are now taking action and a Massachusetts Bar Association Task Force – aided by linguists – is joining them. The current study investigates the difficulties posed by jury instructions and possible solutions. Replicating our earlier study (Randall & Graf 2014), we test the hypotheses that: [1] Massachusetts' current jury instructions are harder to comprehend than "Plain English" versions, and [2] the difficulties relate to linguistic features of the instructions. And, here, we add a third hypothesis: [3] reading while listening will improve comprehension over listening-only.

Previous Findings: Study 1 (Randall & Graf, LSA 2014)

Hypotheses

1. Current Jury instructions are more difficult to understand than Plain English Jury Instructions.
2. Two linguistic factors that significantly contribute to processing difficulty are: **passive verbs** and **presupposed terms**.

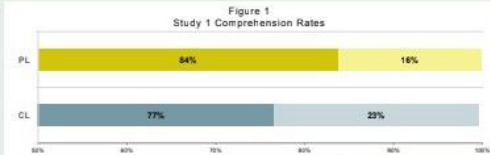
Method

Subjects
58 total subjects: 29 Current-Listening (CL), 29 Plain English-Listening (PL)

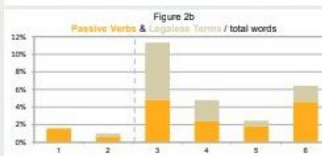
Materials & Procedure
Subjects listened to a judge (audio-recorded) read six current or Plain English instructions one at a time, beginning with a practice instruction. After hearing each one, subjects answered a set of true/false questions about it. The questions were the same in both the Current-Listening (CL) and Plain English-Listening (PL) conditions. Each session ran for about 25-30 minutes.

Results

Finding 1:
Current instructions had significantly lower comprehension rates than Plain English instructions, 77% vs. 84% ($p < .05$).



Finding 2:
Validating Hypothesis 2, comprehension varied across the instructions (Fig. 2a), inversely correlating with two linguistic factors (Fig. 2b): **passive verbs** and **legalese**. Results clustered in two groups: "easy" instructions 1 & 2 contained lower rates of these two factors; "difficult" instructions 3-6 contained higher rates.



New Findings: Study 2

Hypotheses

1. Current Jury Instructions are more difficult to understand than Plain English Jury Instructions.
2. Two linguistic factors that significantly contribute to processing difficulty are: **passive verbs** and **presupposed terms**.
3. Reading while listening enhances comprehension over listening-only.

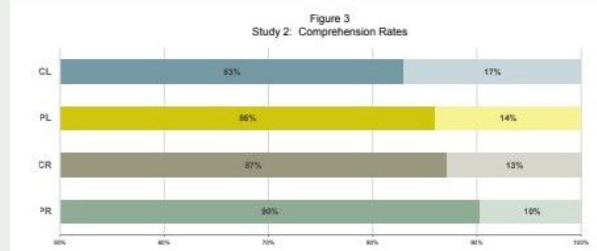
Method

Subjects
214 total subjects:
43 CL (Current Listening), 86 PL (Plain English Listening), 36 CR (Current Reading+Listening), 49 PR (Plain English Reading+Listening)

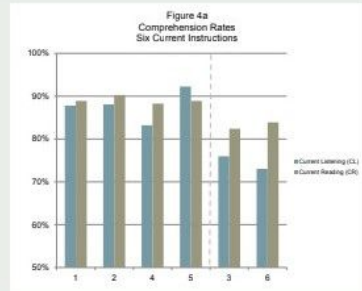
Materials & Procedure

- Audio recordings of Current and Plain English instructions.
- Four test booklets, containing the same t/f questions about the instructions, and for the CR and PR conditions copies of the instructions.
- The procedure replicated that of Study 1, but the CR and PR subjects were allowed to read each instruction as they listened to it.

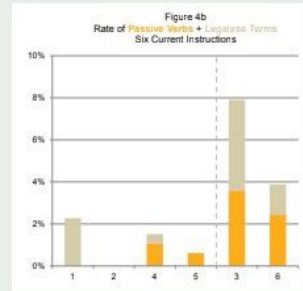
Results



Our new results (Fig. 3) reconfirm Hypothesis 1: Plain English jury Instructions show numerically higher comprehension rates than Current Instructions ($p > .1$), for listening-only [86% PL > 83% CL], and also for reading+listening [90% PR > 87% CR]. The new results also confirm Hypothesis 3: reading numerically increases comprehension over listening-only ($p > .1$), for both Current [87% CR > 83% CL] and Plain English [90% PR > 86% PL].



Our new results also reconfirm Hypothesis 2: comprehension across the six instructions inversely correlated with the rates of the two linguistic factors, **passives** and **legalese**, clustering in two groups. "Easy" instructions (1, 2, 4, 5 in Figure 4a) had lower rates of **passives** and **legalese** (Figure 4b) than "difficult" instructions (3, 6).



Discussion

Though comprehension improved for both (1) Plain English over Current Instructions and (2) reading+listening over listening-only, the improvement was small, probably because the comprehension of current instructions was high overall (over 80%), leaving little room for improvement. This may come from our subject pool of Northeastern University undergraduates, who have higher educational levels than a typical jury; according to 2013 U.S. Census Bureau data, 42% of US residents over 18 have not gone beyond high school. We are now running a follow-up study using subjects with no college experience. If the new group shows greater differences in comprehension, we would have even more compelling evidence for the Plain English Jury Instruction Task Force's claim that current Massachusetts jury instructions are not understandable and need to be rewritten.

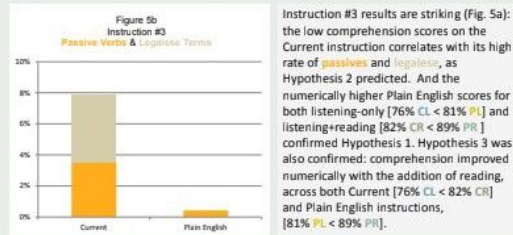
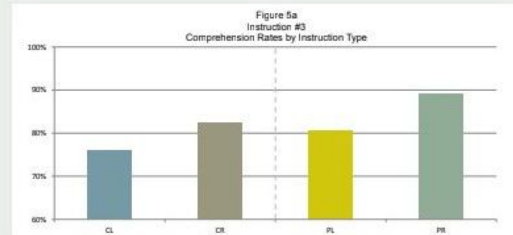
Acknowledgements

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Case Study: Jury Instruction 3, Standard of Proof

Current	Plain English
The standard of proof in a civil case is that a plaintiff must prove his or her case by a preponderance of the evidence. This is a less stringent standard than is applied in a criminal case, where the prosecution must prove its case beyond a reasonable doubt. By contrast, in a civil case such as this one, the plaintiff is not required to prove his or her case beyond a reasonable doubt. In a civil case, the party bearing the burden of proof meets the burden when he or she shows it to be true by a preponderance of the evidence. The standard of a preponderance of the evidence means the greater weight of the evidence – also called "the preponderance of the evidence" – supports the plaintiff's side. But if you find that the evidence supporting the defendant is stronger – or that the evidence on the two sides is equally strong – 50/50 – then you must decide in favor of the defendant. ...	This is a civil case. As in all civil cases, there is a "plaintiff" and a "defendant". The plaintiff is the party who brings the case against the defendant. And it is the plaintiff who "bears the burden of proof." This means that the plaintiff must present enough evidence to convince you of his or her case. What counts as enough evidence? In order for you to support the plaintiff, when you weigh all the evidence, you must find that the greater weight of the evidence – also called "the preponderance of the evidence" – supports the plaintiff's side. But if you find that the evidence supporting the defendant is stronger – or that the evidence on the two sides is equally strong – 50/50 – then you must decide in favor of the defendant. ...



Instruction #3 results are striking (Fig. 5a): the low comprehension scores on the Current instruction correlates with its high rate of **passives** and **legalese**, as Hypothesis 2 predicted. And the numerically higher Plain English scores for both listening-only [76% CL < 81% PL] and listening+reading [82% CR < 89% PR] confirmed Hypothesis 1. Hypothesis 3 was also confirmed: comprehension improved numerically with the addition of reading, across both Current [76% CL < 82% CR] and Plain English instructions, [81% PL < 89% PR].

Conclusions

Our three hypotheses were confirmed:

- Legal language can be made more comprehensible:
 - Hypothesis 1: if it is rewritten in Plain English.
 - Hypothesis 2: if complex linguistic factors – specifically, passives and legalese – are minimized.
 - Hypothesis 3: if subjects can read and listen at the same time.

Though our student subjects showed only modest comprehension improvements, we hypothesize greater improvements for jurors with less formal education and fewer language skills.

Our data provide support for Plain English efforts to reform legal language. Rewriting jury instructions into Plain English would improve justice by helping jurors to better understand the law and reach more reliable, and ultimately fairer, verdicts.