

# Improving Jury Instructions:

## The Effect of Linguistic & Procedural Factors

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Janet Randall

Yian Xu

Katherine Fiallo

Haley Emerson

Professor • Linguistics Program & English Department

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B.A., 2018



Northeastern University



**MASSBAR**  
ASSOCIATION

**Plain English Jury  
Instruction Task Force**

- *Failure of recollection is common.  
Innocent misrecollection is not uncommon.*
- *People often forget things or make mistakes  
in what they remember.*

# Prior Research

- Charrow & Charrow, (1979)  
*Making Legal Language Understandable: A Psycholinguistic Study of Jury Instructions*, 79 Columbia Law Review 1306.
- Elwork, Sales & Alfini, (1982)  
*Making Jury Instructions Understandable*.
- Reifman, Gusick & Ellsworth, (1992)  
*Real Jurors' Understanding of the Law in Real Cases*,  
16:5 Law and Human Behavior 539.
- Saxton, (1998)  
*How Well Do Jurors Understand Jury Instructions?*  
*A Field Test Using Real Juries and Real Trials in Wyoming*,  
33 Land and Water Law Review 59.



# A Preview

## I. Are jurors confused? If so, Why?

- Linguistic factors
- Procedural factors

## II. Experimental evidence

- Current instructions v. "Plain English"
- Listening only v. Reading along

## III. A new subject pool

# I. Jurors are confused. Why?

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Linguistic factors

Procedural factors

# *Standard of Proof*





## Linguistic factors: “Legalese”

In one study of jurors who had served on a trial:

more than 25% couldn't define

*admissible evidence*  
*impeach*  
*burden of proof*  
*inference*

more than 50% thought

*a preponderance of the evidence*

meant either  
or

“a slow, careful, pondering of the evidence”  
“looking at the exhibits in the jury room”

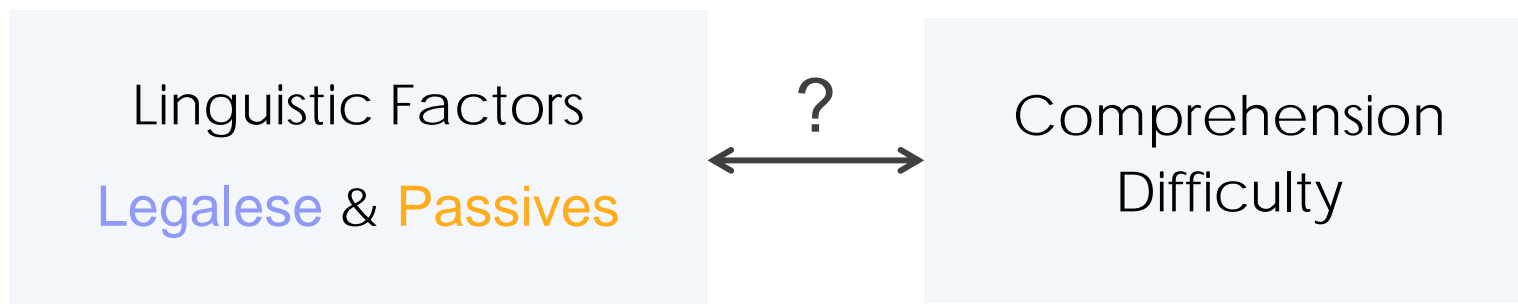
From Tiersma (1993). See also Diamond & Levi (1996); Diamond (2003); Tiersma (1999, 2001, 2009).  
Marder, N.S. (2006). *Bringing Jury Instructions Into the 21st Century*, Notre Dame L. Rev. 81:449-512.

## Linguistic factors: **Passives**

Active: **[The jury]** must consider **[all of the evidence]**.

Passive: **[All of the evidence]** must **be considered**  
**by [the jury]**.

# Hypothesis

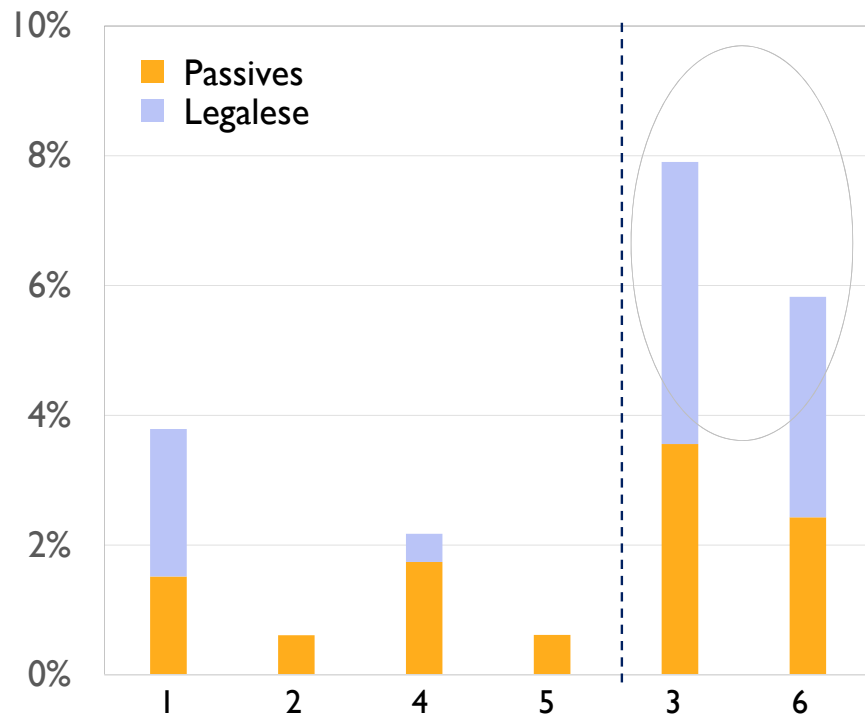


A comprehension test:

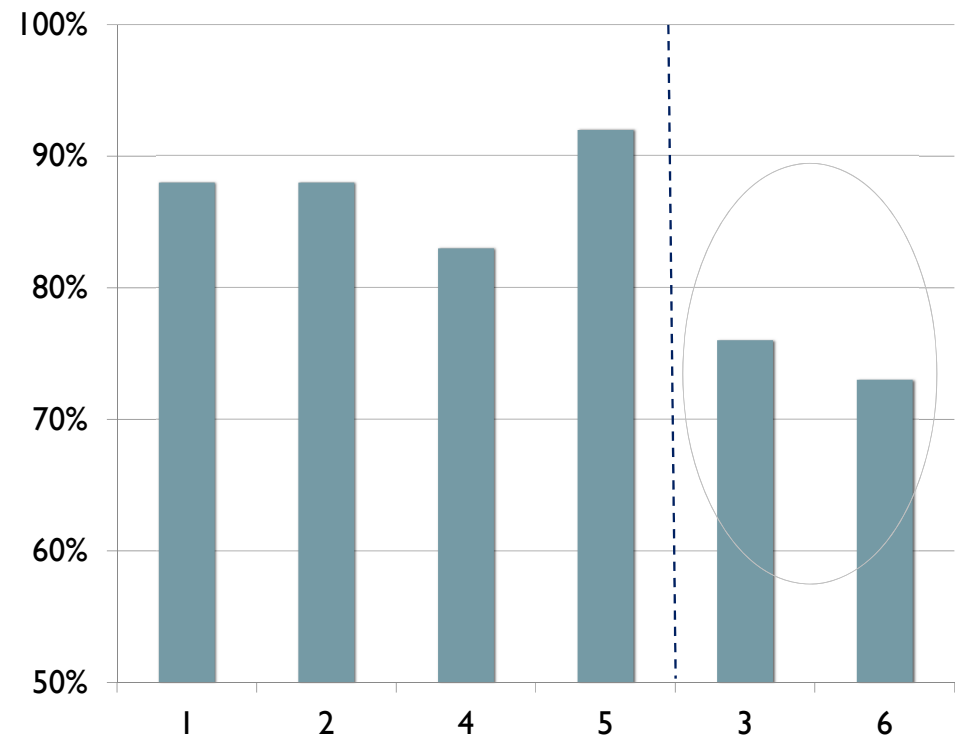
- 43 undergraduate students
- Listened to 6 current Massachusetts jury instructions
- Answered T/F questions after each

# Results: Linguistic factors & comprehension

## Rates of Linguistic Factors



## Rates of Comprehension



# How to improve comprehension

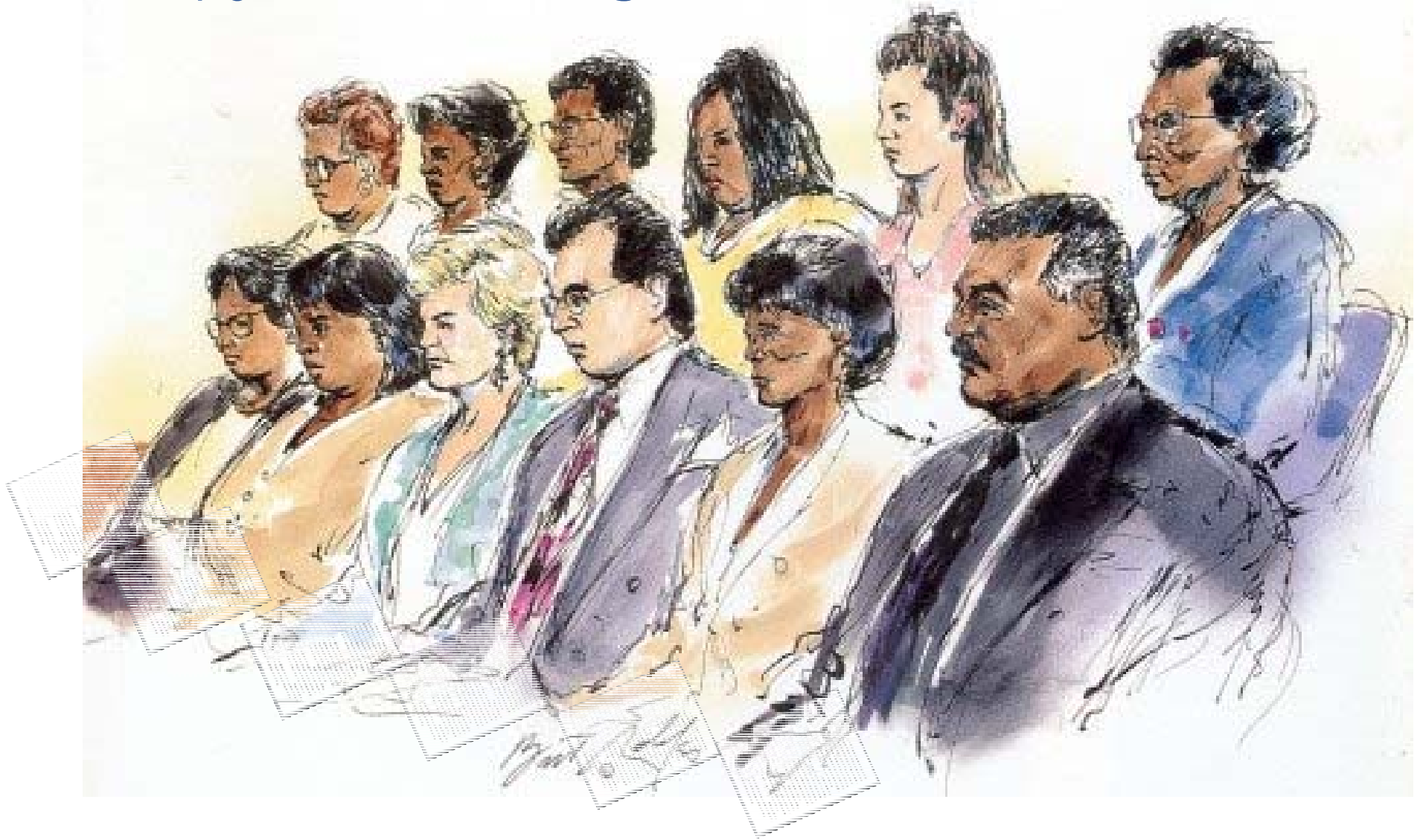
- less **Legalese**  
fewer **Passives** ] 'Plain English'

In addition,

Marder, N.S. (2006). *Bringing Jury Instructions Into the 21st Century*, Notre Dame L. Rev. 81:449-512.

Chang, Anna C. (2009). *Gains to L2 listeners from reading while listening vs. listening only in comprehending short stories*. Applied English Department, Hsing-Wu College.

## A copy to read along



## II. Will these changes help?

Experimental Evidence

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Original instructions v. **'Plain English'**

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Listening only v. **Reading along**

## II. Will these changes help?

Experimental Evidence

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	<b>Original</b>	<b>Plain English</b>
<b>Listening Only</b>	✓	?
<b>Reading + Listening</b>	?	?



# Standard of Proof

## Original

The standard of proof in a **civil case** is that a **plaintiff** must prove (his/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 **is not required** to prove (his/her) case **beyond a reasonable doubt**. In a **civil case**, the **party bearing the burden of proof meets the burden** when (he/she) shows it to be true by a **preponderance of the evidence**.

The standard of a **preponderance of the** means the greater weight of the evidence. A **preponderance of the evidence** is **such evidence** which, when **considered** and **compared** with any opposed to it, has more convincing force and produces in your minds a belief that what **is sought to be proved** is more probably **true than not true**.

A **proposition is proved** by a **preponderance of the evidence** if, after you have weighed the evidence, that **proposition is made** to appear more likely or probable in the sense that there exists in your minds an actual belief in the truth of that **proposition derived** from the evidence, **notwithstanding** any doubts that may still linger in your minds.

Simply stated, a matter **has been proved** by a **preponderance of the evidence** if you determine, after you have weighed all of the evidence, that that matter is more probably true than not true.

## Plain English

This is a civil case. In a civil case, there are two parties, the "plaintiff", and the "defendant". The plaintiff is the one who brings the case against the defendant. And it is the plaintiff who must convince you of his case with stronger, more believable evidence. In other words, it is the plaintiff who bears the "burden of proof".

After you hear all the evidence on both sides, if you find that the greater weight of the evidence -- also called "the preponderance of the evidence" -- is on the plaintiff's side, then you should decide in favor of the plaintiff.

But if you find that the evidence is stronger on the defendant's side, or the evidence on the two sides is equal, 50/50, then you must decide in favor of the defendant.

Now, you may have heard that in some cases, the evidence must convince you "beyond a reasonable doubt". That's only true for criminal cases. For civil cases like this one, you might still have some doubts after hearing the evidence, but even if you do, as long as one side's evidence is stronger -- even slightly stronger -- than the other's, you must decide in favor of that side.

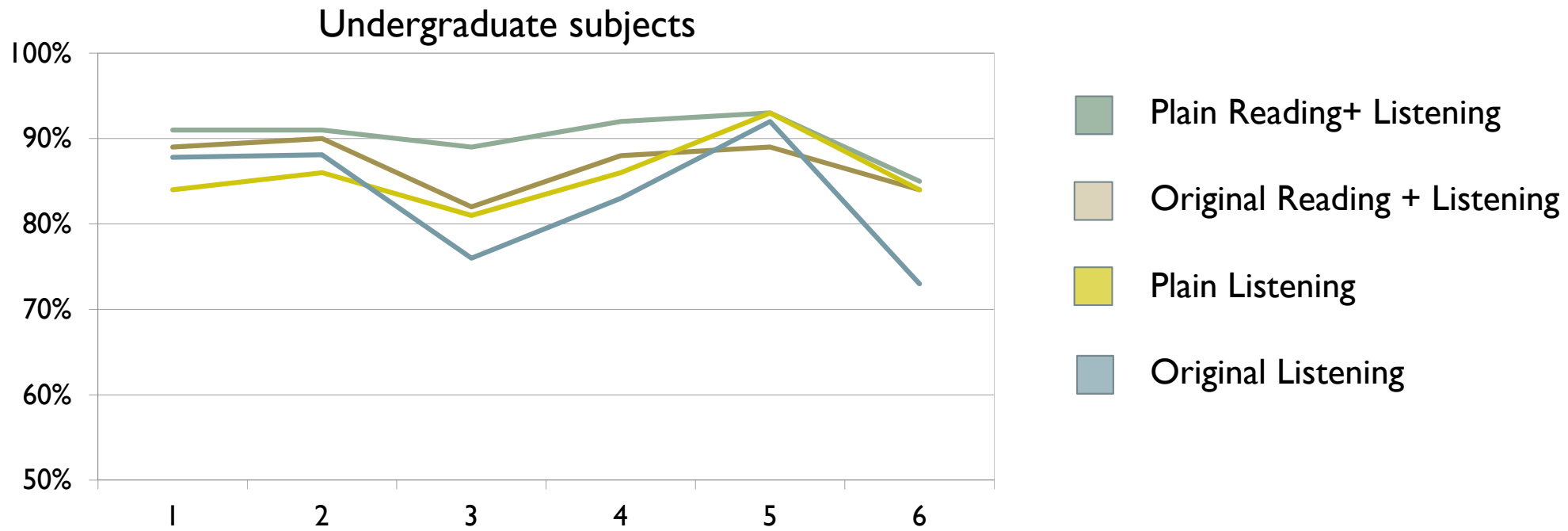
Stronger evidence does not mean more evidence. It is the quality or strength of the evidence, not the quantity or amount, that matters.

# Methods & Design

214 undergraduates

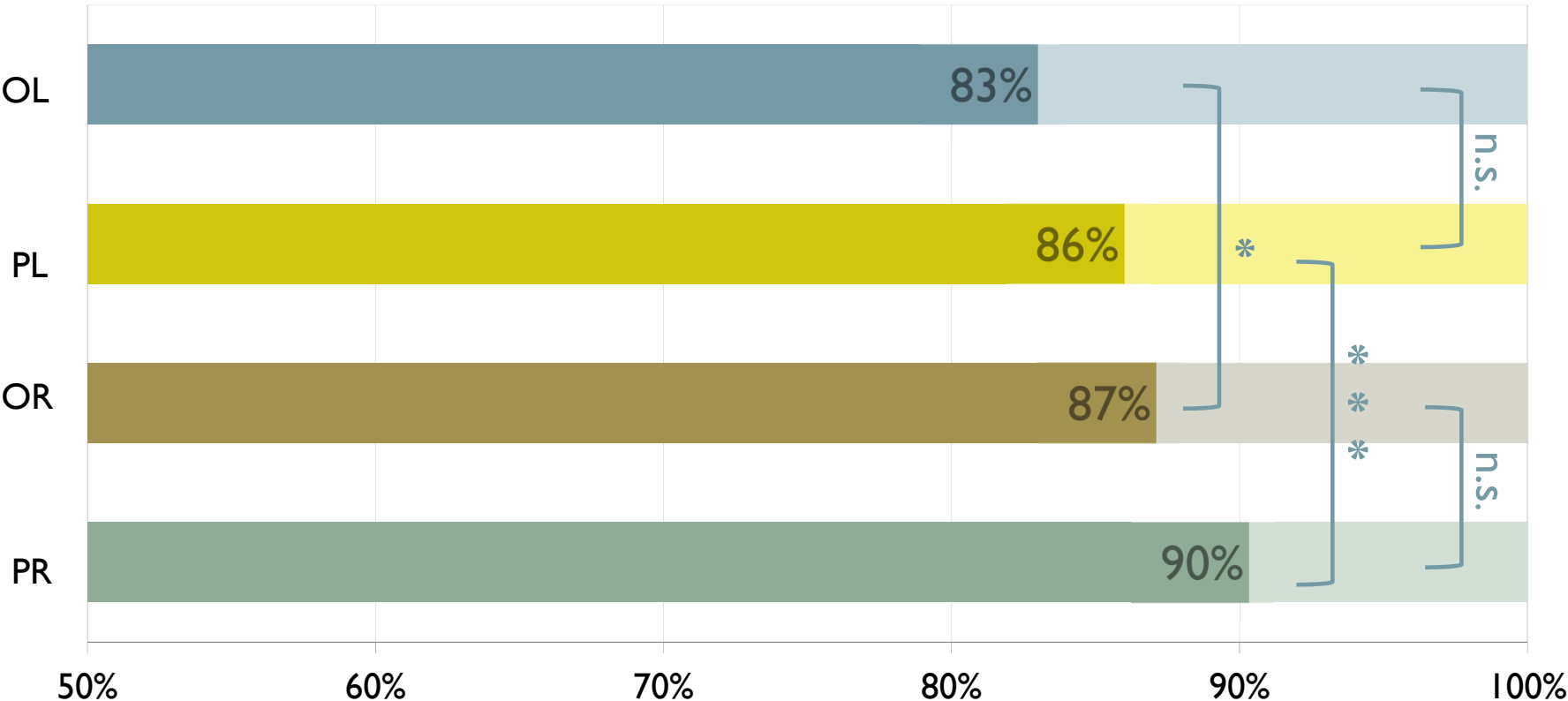
	<b>Original</b>	<b>Plain English</b>
<b>Listening Only</b>	43	86
<b>Reading +Listening</b>	36	49

# Results



# Results

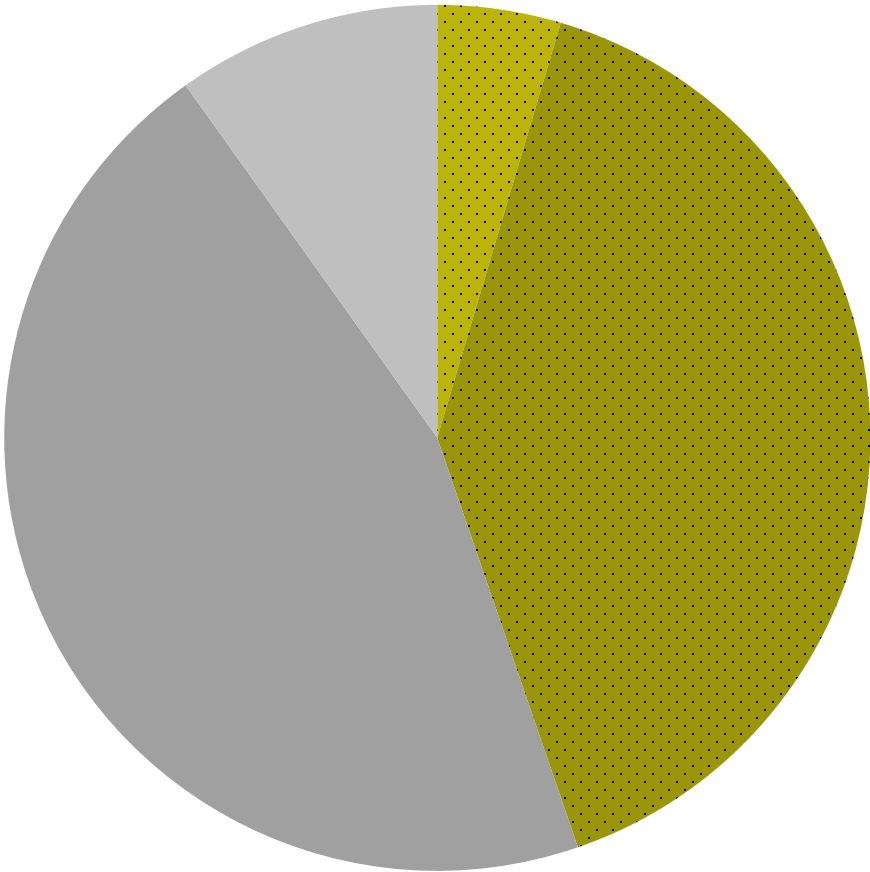
## Overall Comprehension Rates









Consider this:

# Education Levels in Massachusetts



2013 U.S. Census Data

-  K - 8th Grade
-  High School
-  College
-  Graduate School

### III. A New Subject Pool

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# Methods & Design

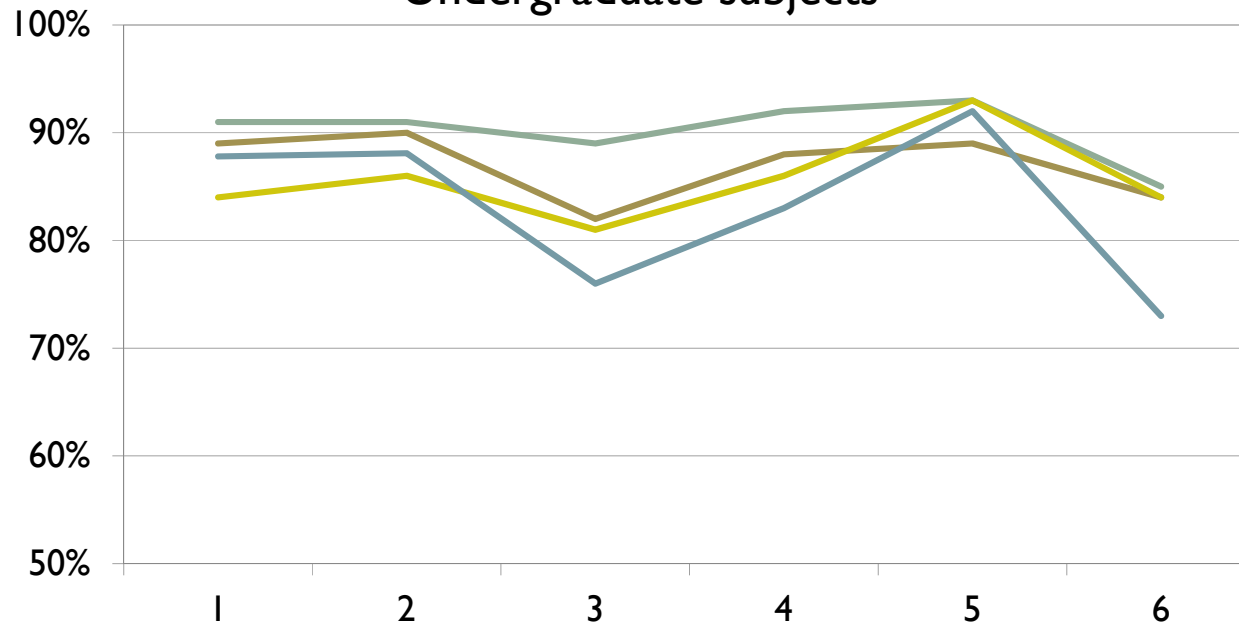
389 MTurk subjects

	<b>Original</b>	<b>Plain English</b>
<b>Listening Only</b>	125	99
<b>Reading +Listening</b>	66	99

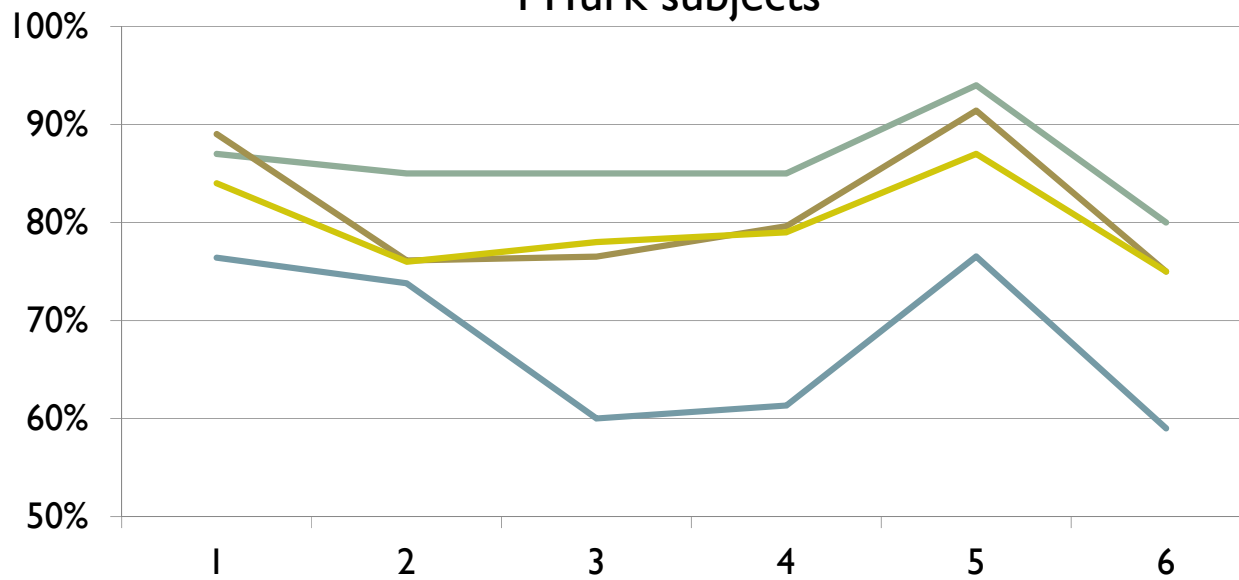


# Results

## Undergraduate subjects



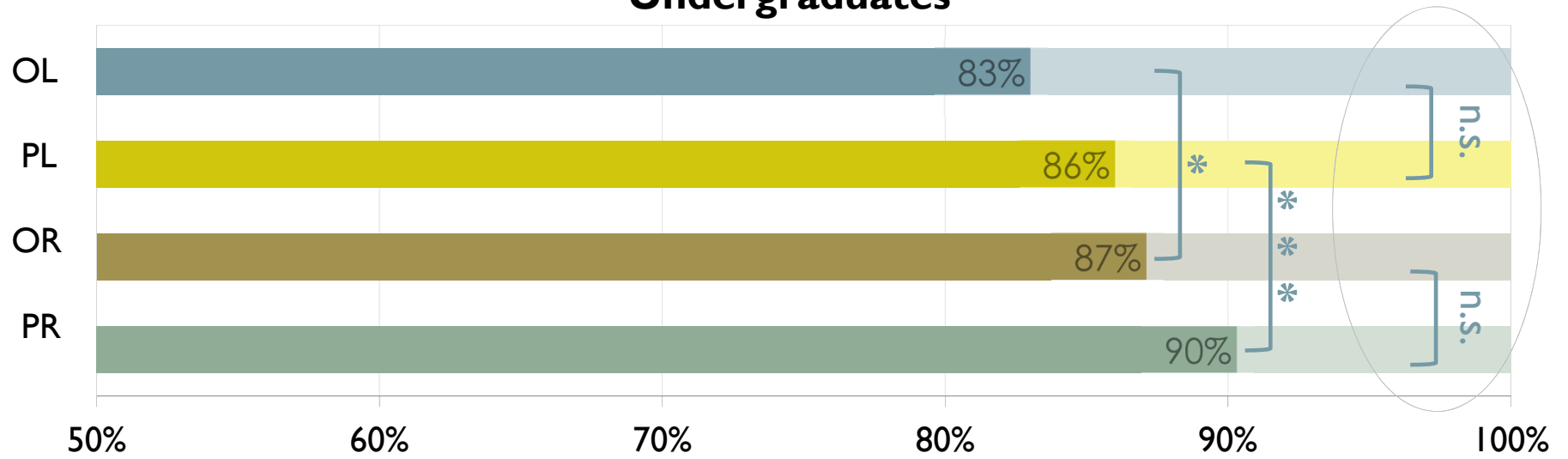
## MTurk subjects



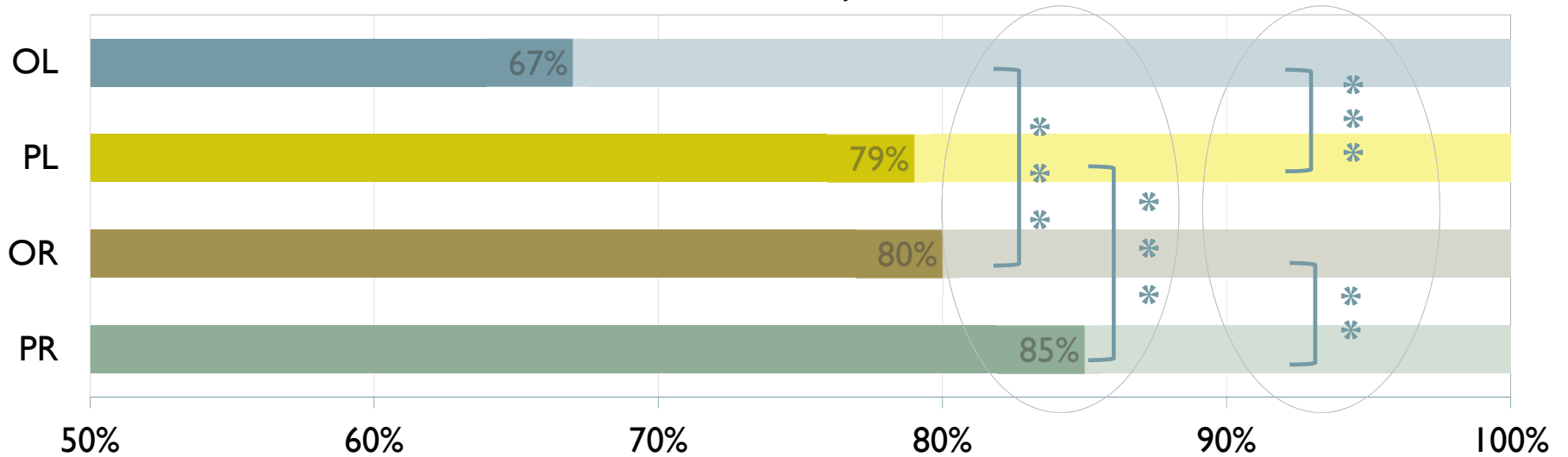
- Plain Reading+ Listening
- Original Reading + Listening
- Plain Listening
- Original Listening

# Comprehension Rates




## Undergraduates



## MTurk Subjects



## Summary & Conclusions

- **Plain English** instructions significantly improve comprehension over Original instructions 
- **Reading along** significantly improves comprehension over Listening-only 
- **MTurk subjects** showed worse performance and greater, significant, improvements compared with undergraduates 

## Take-Aways

For jurors to engage fully & reach informed verdicts:

- Jury instructions should be written in **Plain English**, taking into account **linguistic factors**
- Jurors should have a copy of the instructions to **read along**

The End

[randall@neu.edu](mailto:randall@neu.edu)

# Research Team



Janet Randall  
Principal Investigator  
*Linguistics*



Haley Emerson  
Project Manager  
*B.A., 2018*



Yian Xu  
Statistician  
*Ph.D 2019 (Psychology)*  
*Ed.M 2013, Juris Master 2012*



Katherine Fiallo  
Research Assistant  
*J.D., 2017*  
*B.A. International Affairs, 2014*

Special thanks also go to The Massachusetts Bar Association

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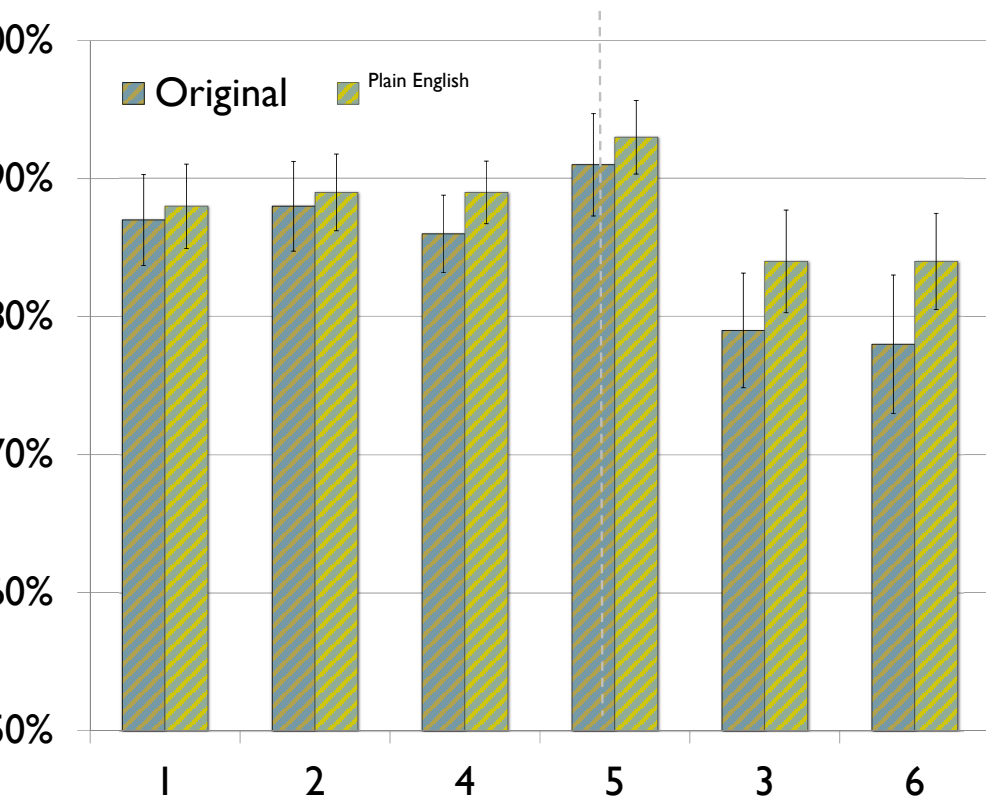
Questions?

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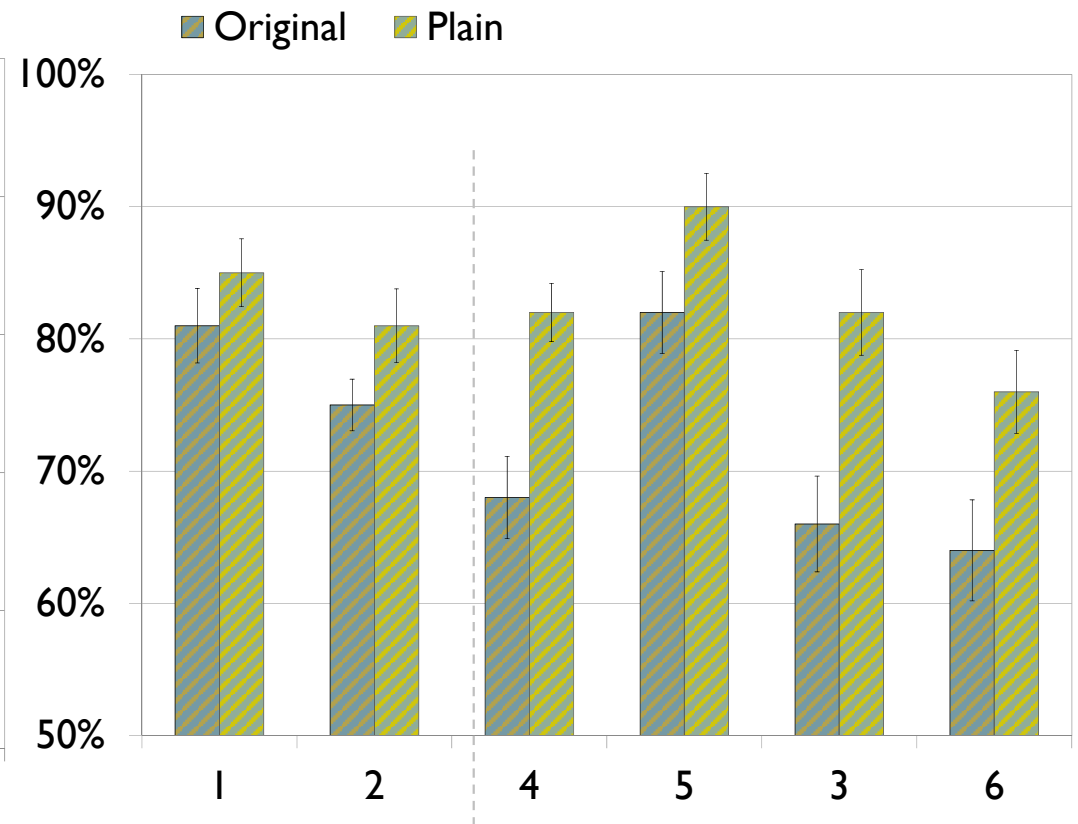
Comments?

# Stronger Correlation

## Undergrad Comprehension Rates



## MTurk Comprehension Rates



# Standard of Proof: Current

## Syntax

- **Passive verbs**

### Current Jury Instruction

The standard of proof in a civil case is that a plaintiff must prove (his/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/her) case beyond a reasonable doubt. In a civil case, the party bearing the burden of proof meets the burden when (he/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. A preponderance of the evidence is such evidence which, when **considered** and **compared** with any opposed to it, has more convincing force and produces in your minds a belief that what **is sought to be proved** is more probably true than not true.

A proposition **is proved** by a preponderance of the evidence if, after you have weighed the evidence, that proposition **is made** to appear more likely or probable in the sense that there exists in your minds an actual belief in the truth of that proposition **derived** from the evidence, notwithstanding any doubts that may still linger in your minds.

**Simply stated**, a matter **has been proved** by a preponderance of the evidence if you determine, after you have weighed all of the evidence, that that matter is more probably true than not true.



## II. Will these changes help?

Experimental Evidence

---

Original instructions v. 'Plain English'

Listening only v. Reading along

# Standard of Proof

## Original

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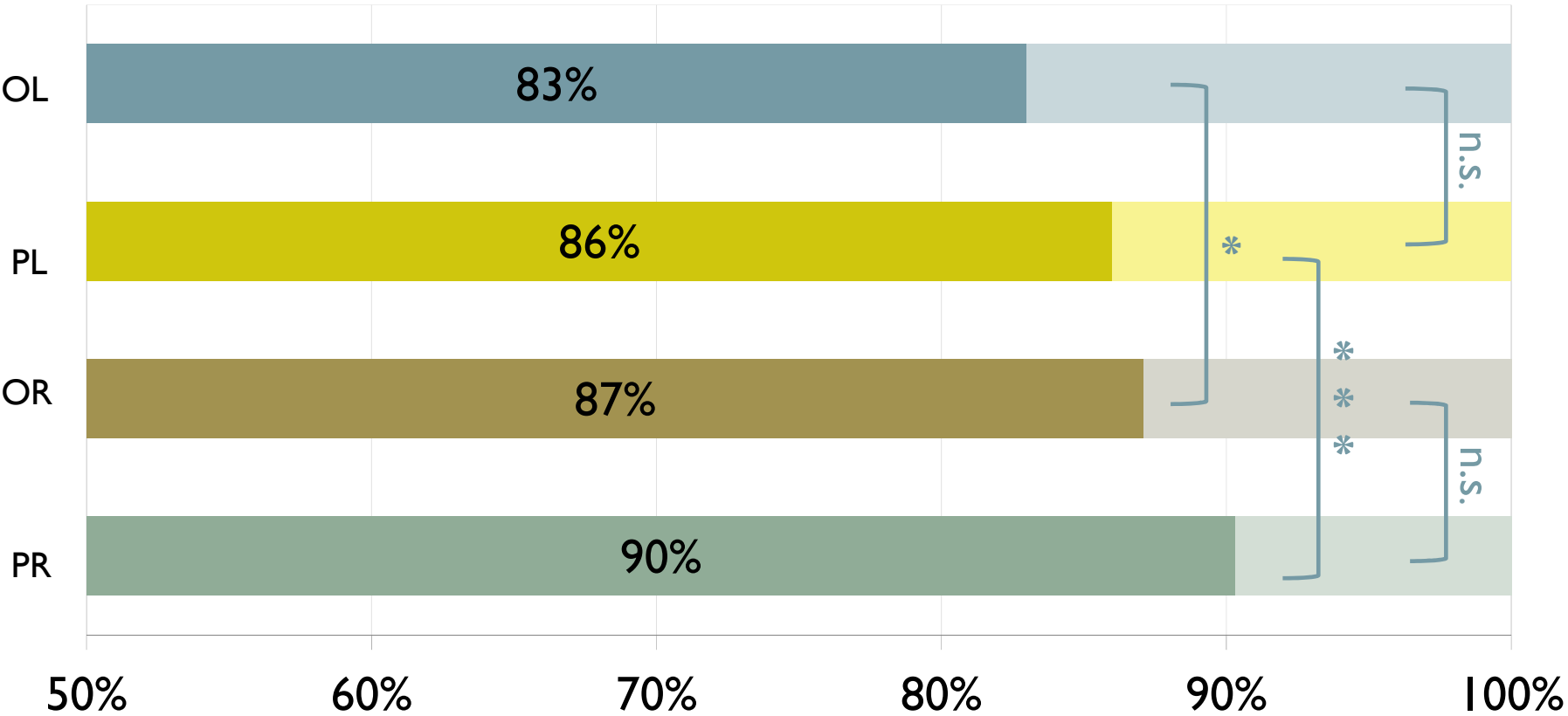
But if you find that the evidence is stronger on the defendant's side, or the evidence on the two sides is equal, 50/50, then you must decide in favor of the defendant.

Now, you may have heard that in some cases, the evidence must convince you "beyond a reasonable doubt". That's only true for criminal cases. For civil cases like this one, you might still have some doubts after hearing the evidence, but even if you do, as long as one side's evidence is stronger -- even slightly stronger -- than the other's, you must decide in favor of that side.

Stronger evidence does not mean more evidence. It is the quality or strength of the evidence, not the quantity or amount, that matters.

# Results

## Overall Comprehension Rates



# Hypotheses

1. **Plain English** instructions will improve comprehension over **Original** instructions.
2. **Reading along** will improve comprehension over **Listening only**.