

**“Just”** Language:

**Law, meet Linguistics**

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

California Book of Approved Jury Instructions (BAJI), 2.21.

Judicial Council of California Civil Jury Instruction (CACI, 2003)

[http://www.courts.ca.gov/partners/documents/caci\\_2012\\_edtion.pdf](http://www.courts.ca.gov/partners/documents/caci_2012_edtion.pdf)

Diamond (2005)

Marder (2006)

Tiersma (2006)

Shuy (2007)

Tiersma (2009)

Dumas (2012)

Diamond, Murphy & Rose (2012)

Randall & Graf (2014)

Broda-Bahm (2015)

L. Cheng, W. Cheng, & J. Li (2015)

Randall (2015)

Pollack (2017)

Broda-Bahm (2018)

...

**Jury instructions are not effective.**

**LAW**, meet

**LINGUISTICS**

## The movement to revise jury instructions

**1997:**

California started revising its jury instructions

**BUT** the movement has faced **barriers**

- inertia
- jury instructions are “sacred texts”
- jury instructions should inspire awe & respect for the court
- the empirical studies were wrong
- revising the instructions won't get jurors to listen anyway
- past decisions will be challenged
- **there's really no problem with them**

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 that

*a preponderance of the  
evidence*

meant either

**“a slow, careful, pondering of the evidence”**

or

**“looking at the exhibits in the jury room”**





**Plain English Jury Instruction  
Task Force**





**What** do jurors understand?

*Failure of recollection is common.*

*Innocent misrecollection is not uncommon.*



***Failure of recollection is common.***

***Innocent misrecollection is not uncommon.***

**Legalese?**

Not really.

**So what's the problem?**

# Syntax

Negatives

Nominals

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Wason (1972); Just & Carpenter (1976); Just & Clark (1973); Cutler (1983)



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Innocent **mis**recollection is **not un**common.

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Innocent misrecollection is [not [uncommon]].

# Nominals

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**Failure** of **recollection** is common.

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# Syntax

Negatives

Nominals

# Roadmap

- I. Some problems with jury instructions  
Negatives & nominals
- II. A closer look  
*Standard of Proof*: a linguistic analysis
- III. Our experiments  
Current instructions vs. Plain English  
Listening only vs. Reading along
- IV. Roll up your sleeves  
It's your turn
- V. A quick recap, the local scene & some take-aways

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# Standard of Proof



# Standard of Proof

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# Nominals

## Nominals

fail**ure**

recollection**ion**

misrecollection**ion**

proof**f**

belief**f**

weight**t**

doubt

## Verbs

fail

recollect

misrecollect

prove**ve**

believe**ve**

weigh

doubt

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- **Passives**

Ferreira (2003)

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# Passives

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

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

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# Interjected phrases

The jurors must agree on a decision.

, after having considered all of the evidence ,

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**[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.]]]]]]]** [5 clauses deep]

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(Klare 1973)

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# Embeddings

The jury must consider all of the evidence ~~that the plaintiff presents]~~ **bringing the case]**

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*civil v. criminal case  
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party, bearing, burden, meets*

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- **Legalese terms, defined too late**  
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*preponderance of the evidence*

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.

# Linguistic Factors

## Syntax

- Negatives
- Nominals
- Passive verbs
- Interjected phrases
- Multiple Embeddings

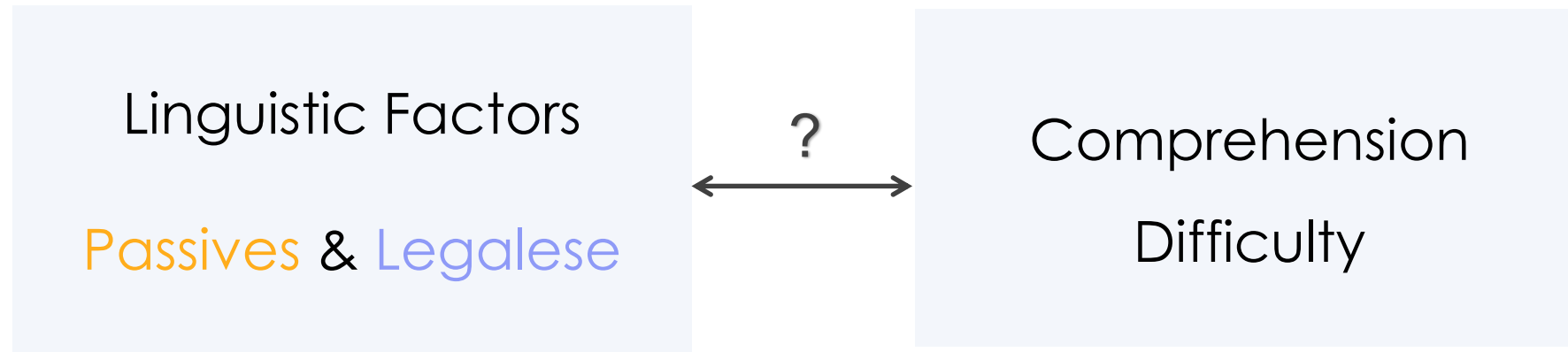
## Legalese

- Low-frequency words
- Legalese terms, not defined
- Legalese terms, defined too late



# Hypothesis 1

## Linguistic Factors

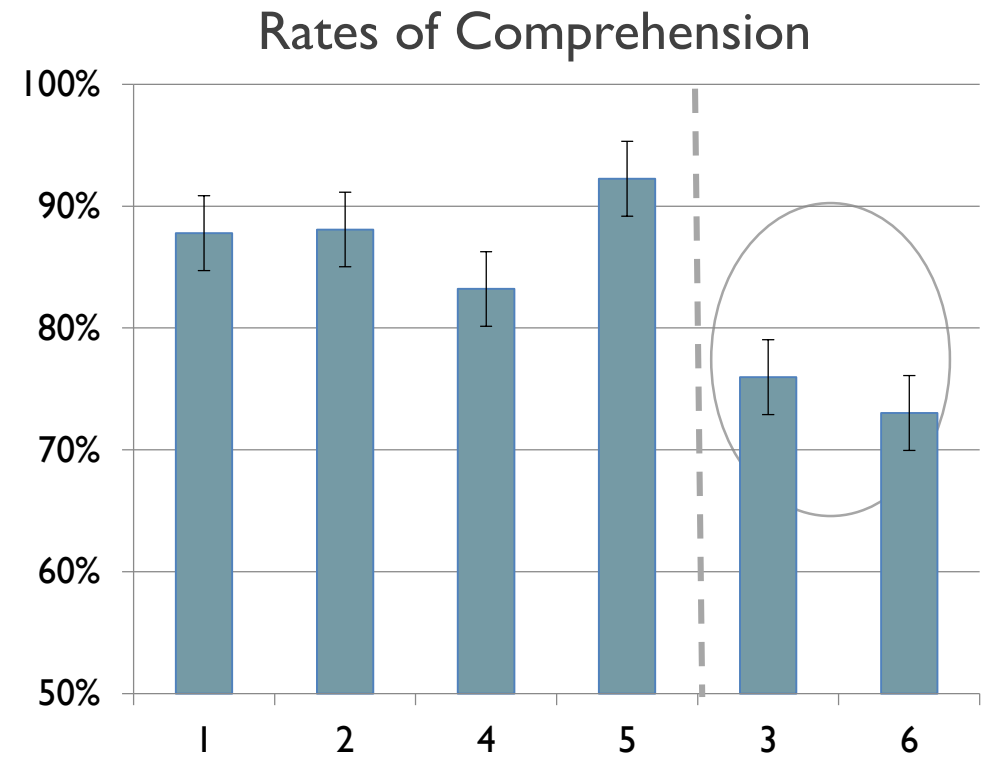
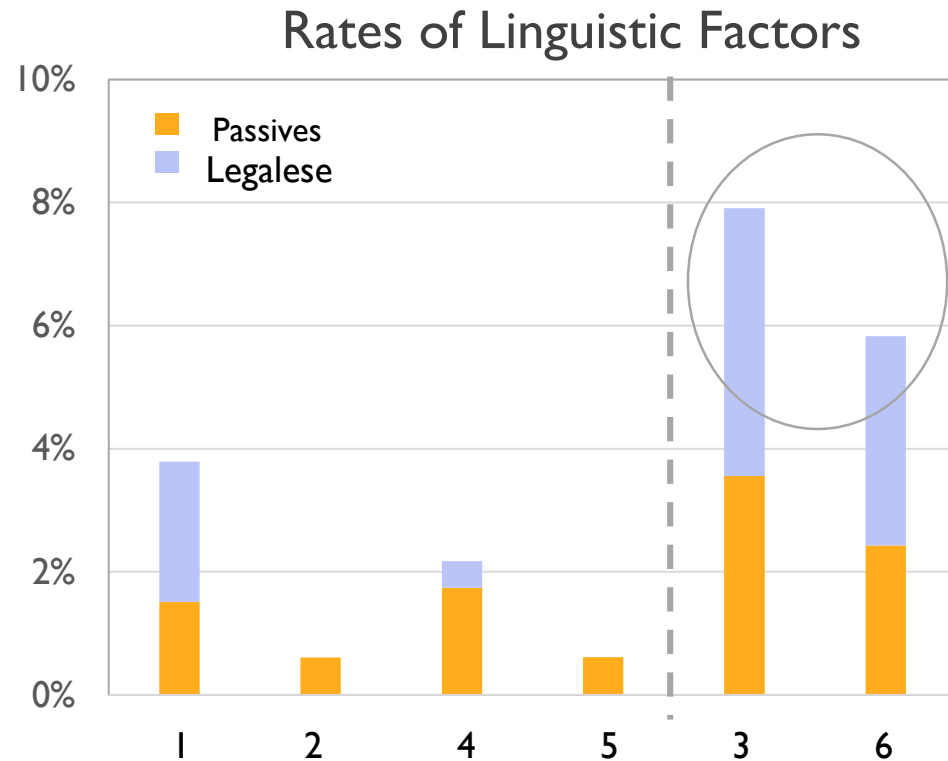


A comprehension test:

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

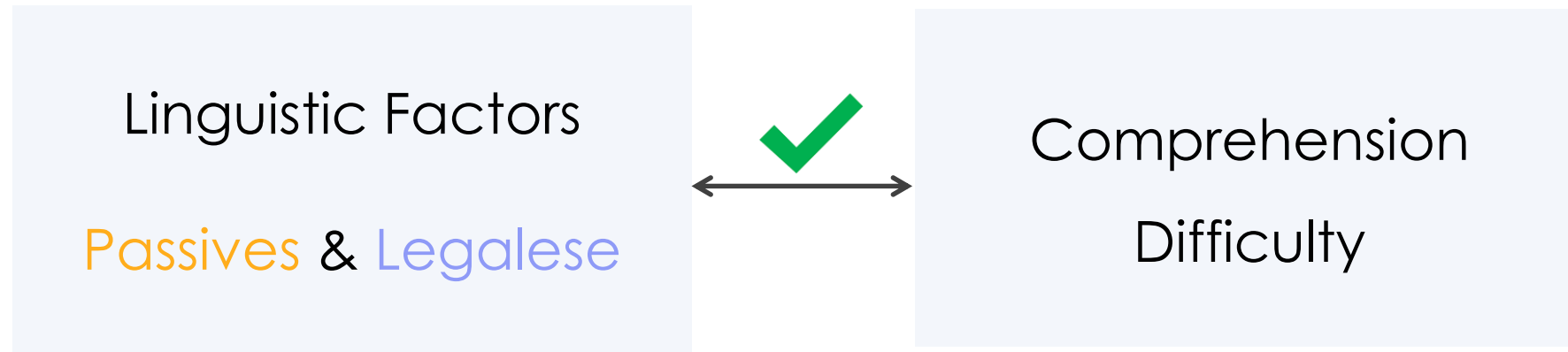
# Results

## Linguistic Factors & Comprehension



# Hypothesis 1

# Linguistic Factors



# Standard of Proof

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.

# Standard of Proof

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# Standard of Proof

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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.

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# Standard of Proof

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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.

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# Standard of Proof

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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.

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# Standard of Proof

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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.

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# Standard of Proof

## Syntax

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.

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# Standard of Proof

## Syntax

- **Negatives**
- Nominals
- Passives
- Interjected phrases
- Multiple embeddings

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.

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- **Negatives**
- Nominals
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- Multiple embeddings

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.

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- Negatives
- **Nominals**
- Passives
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- Multiple embeddings

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.

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- **Nominals**
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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.

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- Negatives
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- **Passives**
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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.

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- Negatives
- Nominals
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- **Interjected phrases**
- Multiple embeddings

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.

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# Standard of Proof

## Syntax

- Negatives
- Nominals
- Passives
- Interjected phrases
- **Multiple embeddings**

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” .]]** [2 clauses deeps]

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. [2 clauses deep]

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.

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# Standard of Proof

## Syntax

- Negatives
- Nominals
- Passives
- Interjected phrases
- Multiple embeddings

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”].]** [2 clauses deeps]

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. [2 clauses deep]

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.

# Standard of Proof

## Legalese

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.

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# Standard of Proof

## Legalese

- **Low-frequency words**  
*stringent, such evidence, sought, notwithstanding*

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.

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# Standard of Proof

## Legalese

- **Low-frequency words**  
*stringent, such evidence, sought, notwithstanding*
- **Legalese terms, not defined**  
*civil v. criminal case*  
*plaintiff*  
*beyond a reasonable doubt*  
*party, bearing, burden, meets*

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.

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# Standard of Proof

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- **Low-frequency words**  
*stringent, such evidence, sought, notwithstanding*
- **Legalese terms, not defined**  
*civil v. criminal case*  
*plaintiff*  
*beyond a reasonable doubt*  
*party, bearing, burden, meets*
- **Legalese terms, defined too late**  
*preponderance of the evidence*

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.

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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.

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## Legalese

- **Low-frequency words**  
*stringent, such evidence, sought, notwithstanding*
- **Legalese terms, not defined**  
*civil v. criminal case*  
*plaintiff*  
*beyond a reasonable doubt*  
*party, bearing, burden, meets*
- **Legalese terms, defined too late**  
*preponderance of the evidence*

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.

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



# Current 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 **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 Instruction

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.

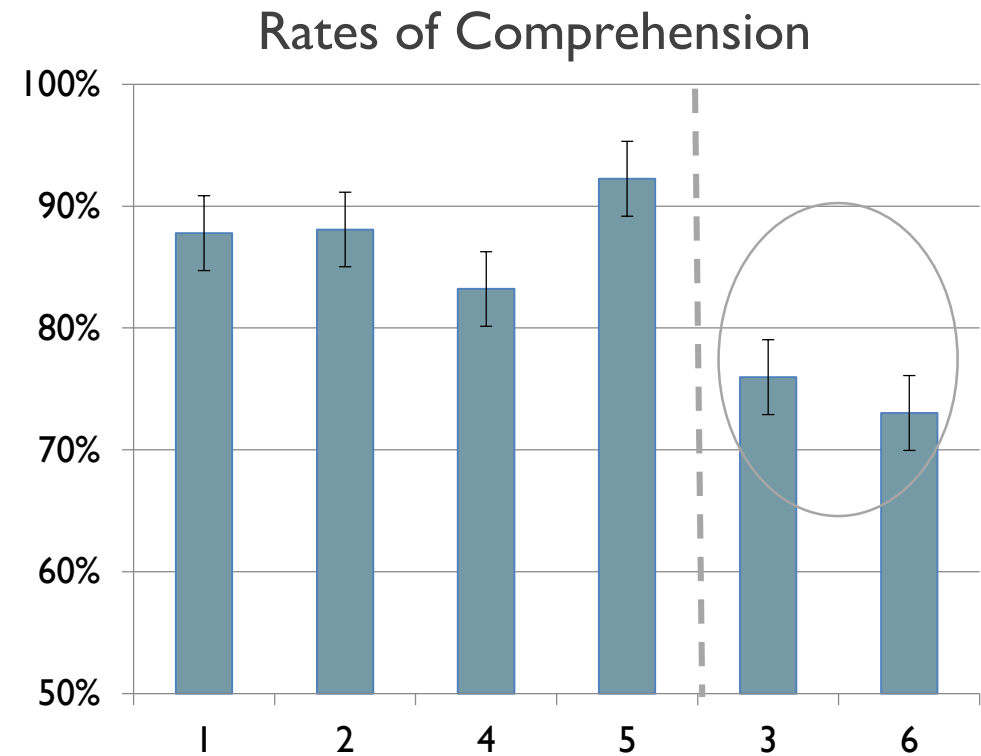
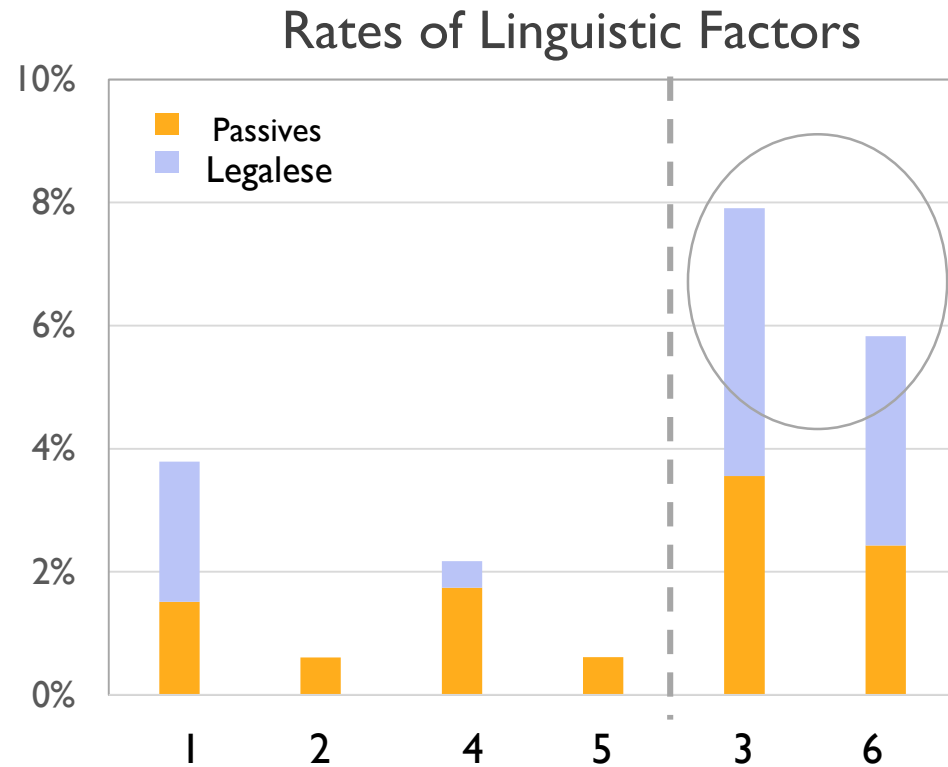
Now, you may have heard that in some cases, the evidence must convince you "beyond a reasonable doubt". That's only true for criminal cases.

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.

# Results

## Linguistic Factors & Comprehension An inverse correlation



# Current 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 **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 Instruction

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.

**Will Plain English make a difference?**

# Roadmap

- I. Some problems with jury instructions  
Negatives & nominals
- II. A closer look  
*Standard of Proof*: a linguistic analysis
- III. **Our experiments**  
Current instructions vs. Plain English  
Listening only vs. Reading along
- IV. Roll up your sleeves  
It's your turn
- V. A quick recap, the local scene & some take-aways

# Roadmap

I. Some problems with jury instructions  
Negatives & nominals

II. A closer look  
*Standard of Proof*: a linguistic analysis

III. **Our experiments**

**Current instructions vs. Plain English**

Listening only vs. Reading along

IV. Roll up your sleeves  
It's your turn

V. A quick recap, the local scene & some take-aways

# Roadmap

I. Some problems with jury instructions  
Negatives & nominals

II. A closer look  
*Standard of Proof*: a linguistic analysis

III. **Our experiments**  
Current instructions vs. Plain English  
**Listening only vs. Reading along**

IV. Roll up your sleeves  
It's your turn

V. A quick recap, the local scene & some take-aways

# Hypothesis 2

Current instructions  
v.  
Plain English

Current

?  
<

Plain English

A comprehension test:

- 214 undergraduate students
- Listened to(/and read) 6 current or Plain English jury instructions
- Answered T/F questions after each instruction



# Hypothesis 3

Listening Only  
v.  
Reading Along

Listening Only

?

<

Reading Along

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.

# Method & Design

	<b>Current</b>	<b>Plain English</b>
<b>Listening Only</b>	?	?
<b>Reading Along</b>	?	?

# Method & Design

	<b>Current</b>	<b>Plain English</b>
<b>Listening Only</b>	?	?
<b>Reading Along</b>	?	?

# Method & Design

	<b>Current</b>	<b>Plain English</b>
<b>Listening Only</b>	?	?
<b>Reading Along</b>	?	?

# Method & Design

	<b>Current</b>	<b>Plain English</b>
<b>Listening Only</b>	✓	?
<b>Reading Along</b>	?	?

# Method & Design

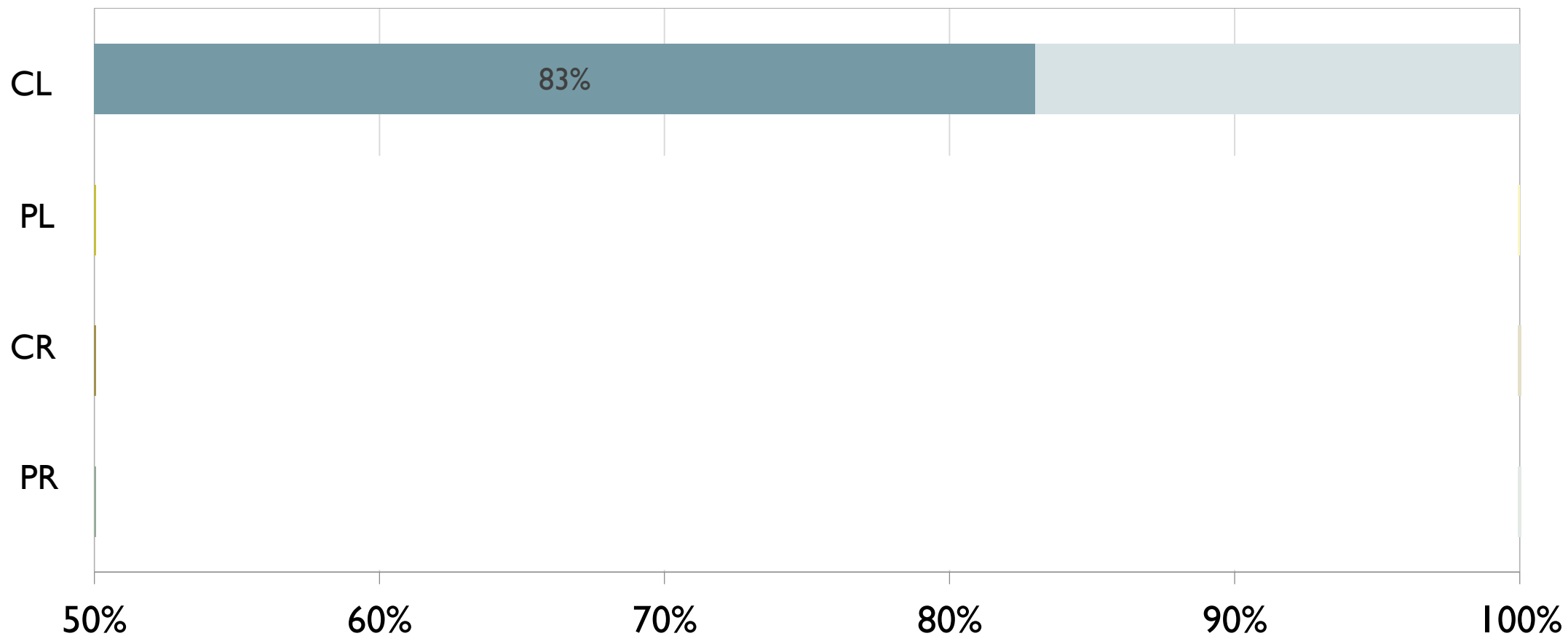
214 undergraduates

	<b>Current</b>	<b>Plain English</b>
<b>Listening Only</b>	43	86
<b>Reading Along</b>	36	49

# Results

n=214

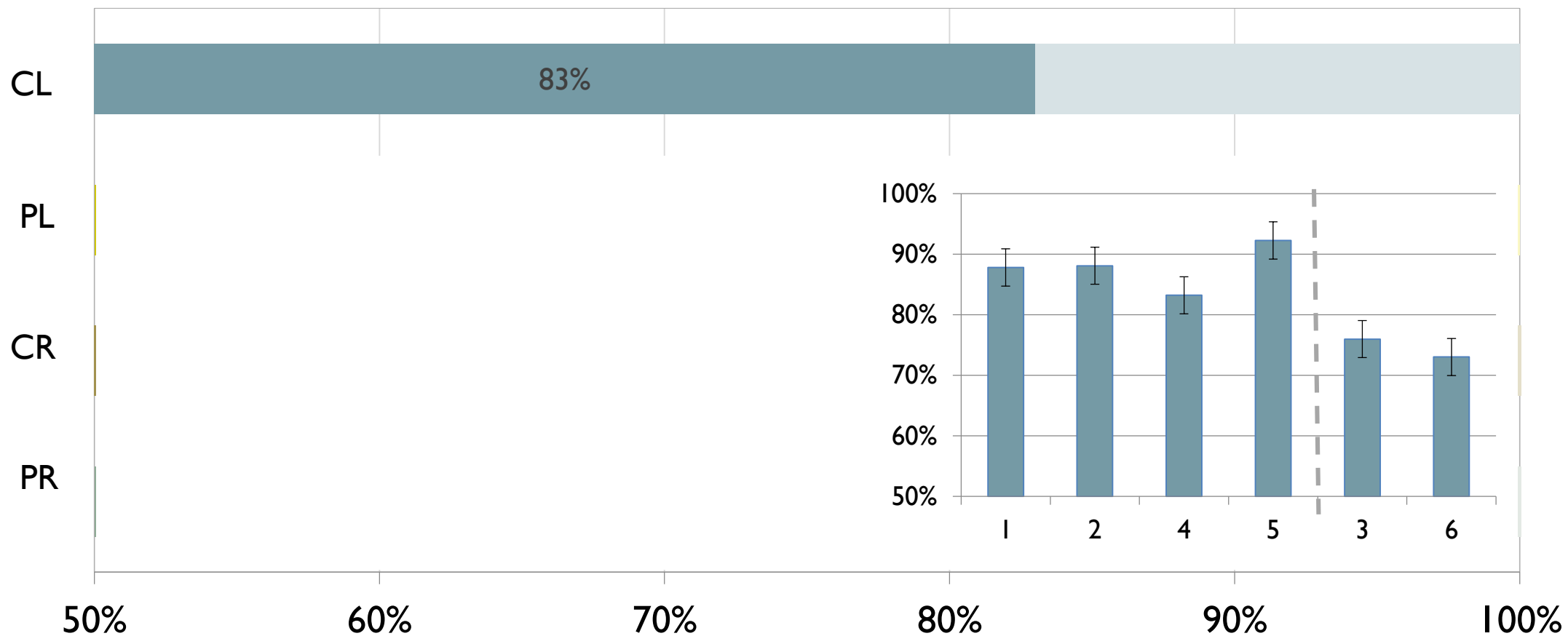
## Overall Comprehension Rates



# Results

n=214

## Overall Comprehension Rates

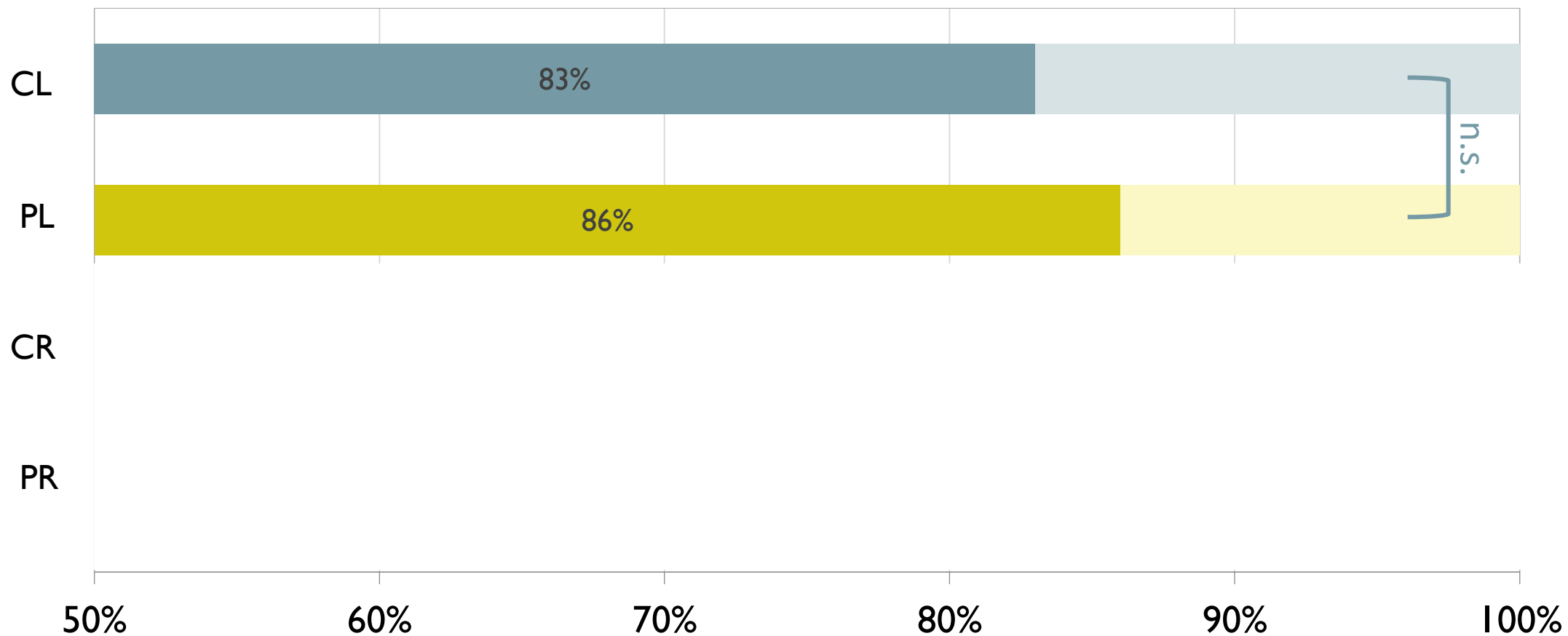




# Results

n=214

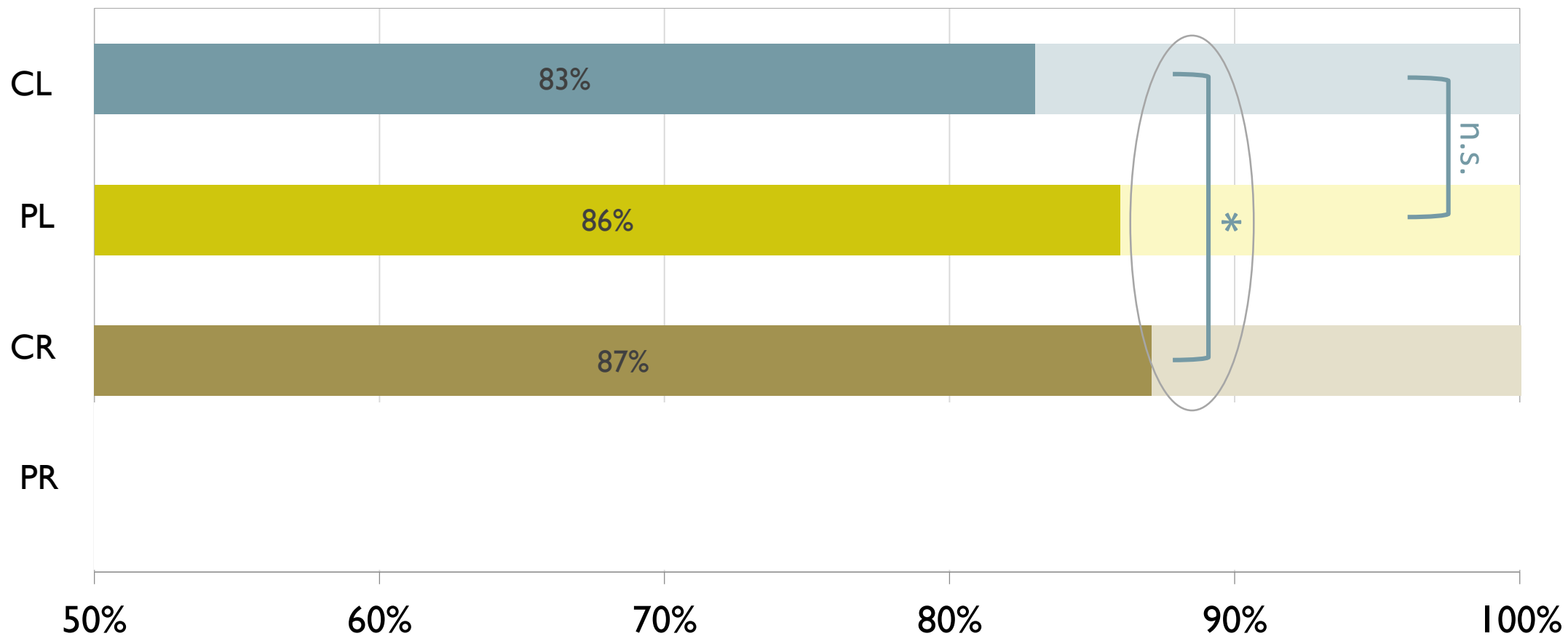
## Overall Comprehension Rates



# Results

n=214

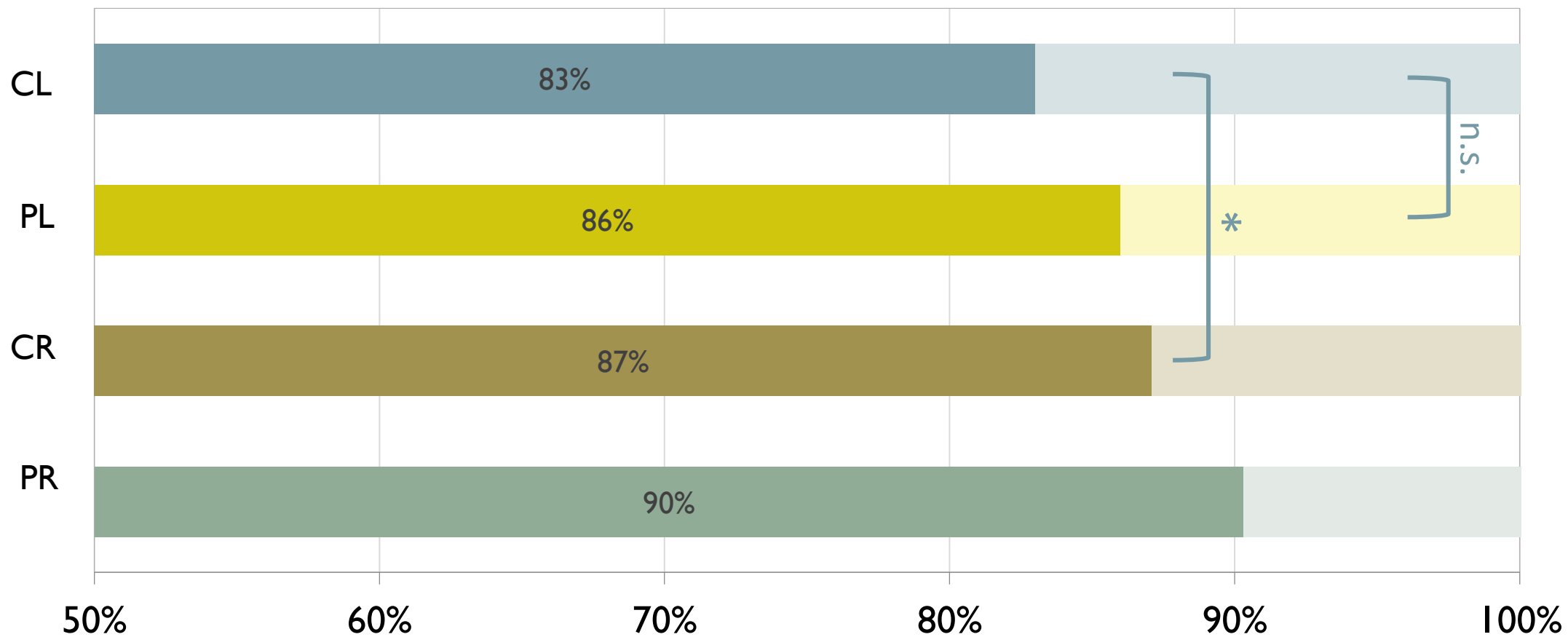
## Overall Comprehension Rates



# Results

n=214

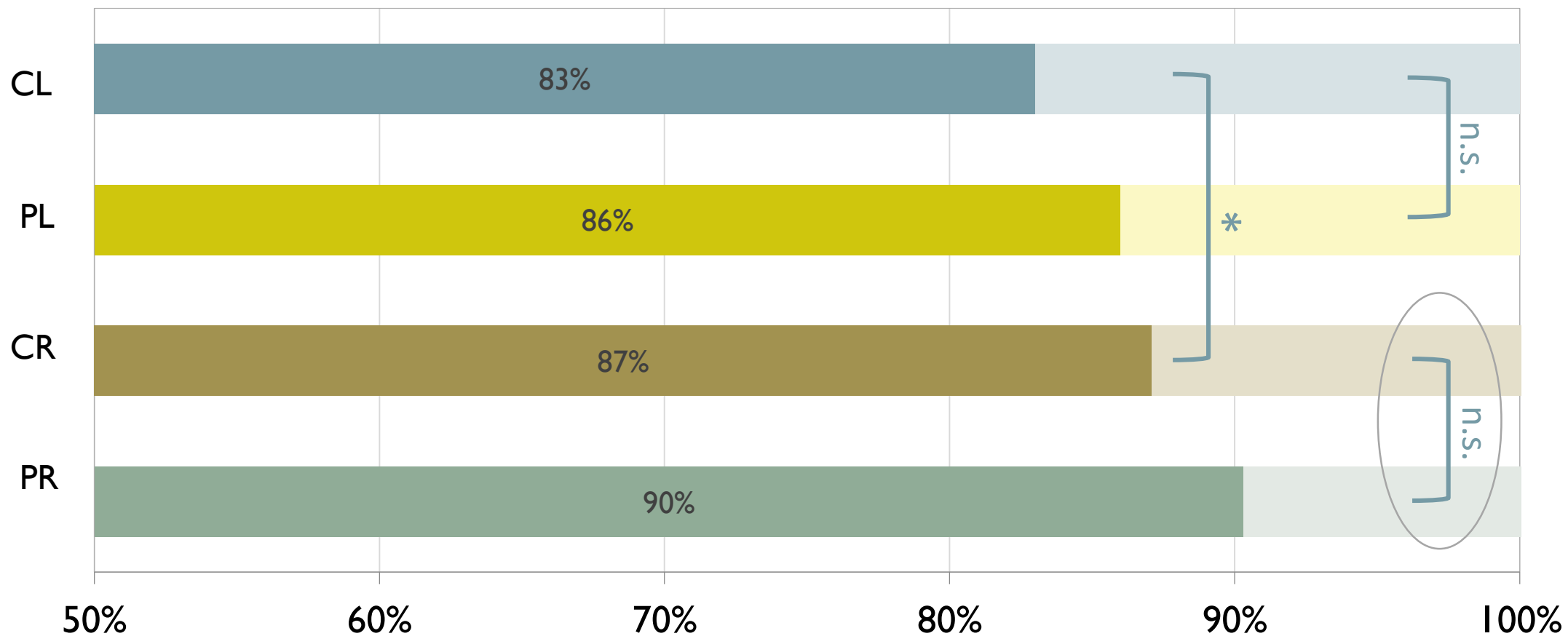
## Overall Comprehension Rates



# Results

n=214

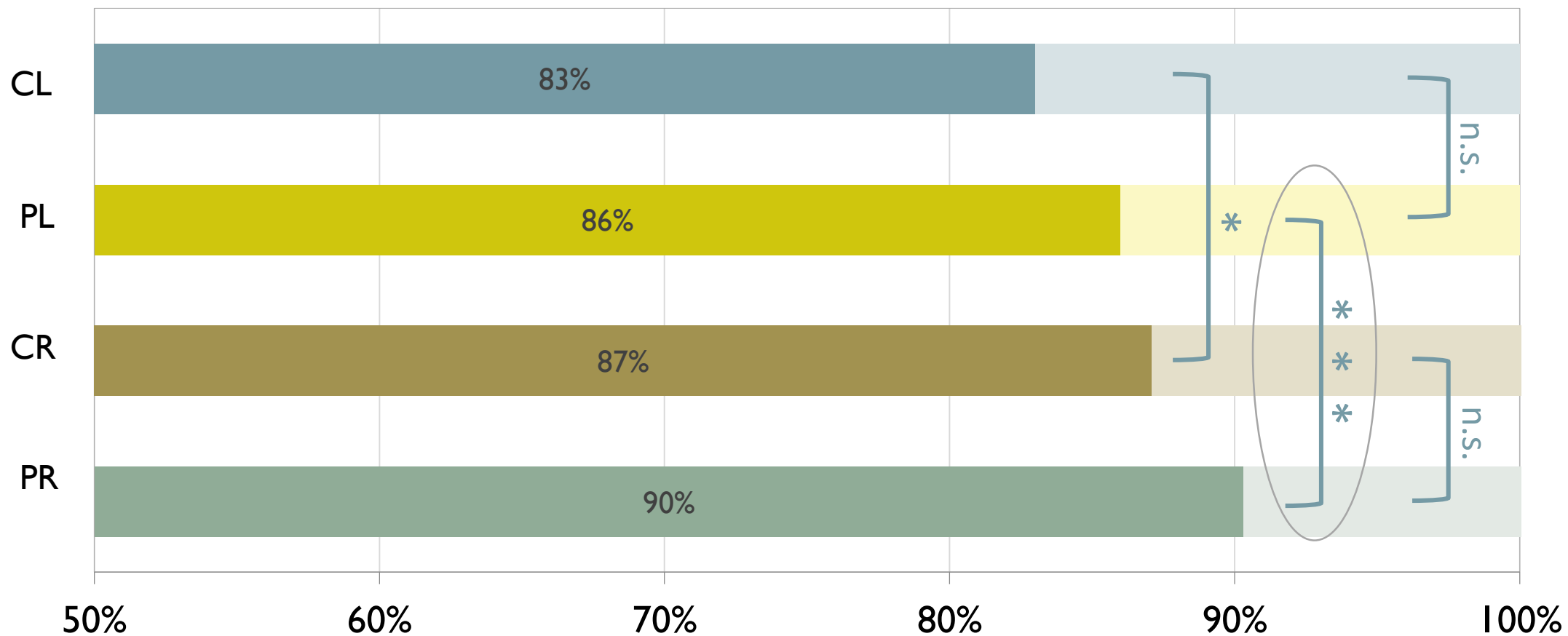
## Overall Comprehension Rates



# Results

n=214

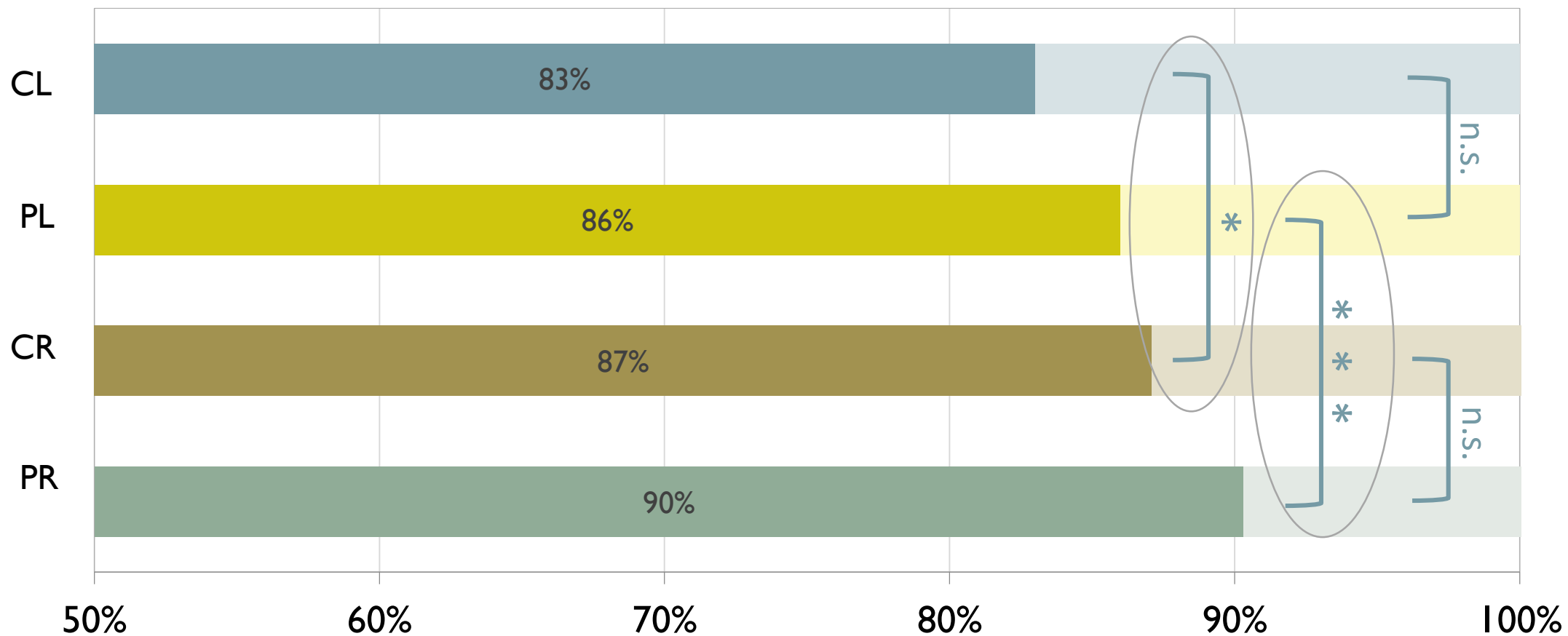
## Overall Comprehension Rates



# Results

n=214

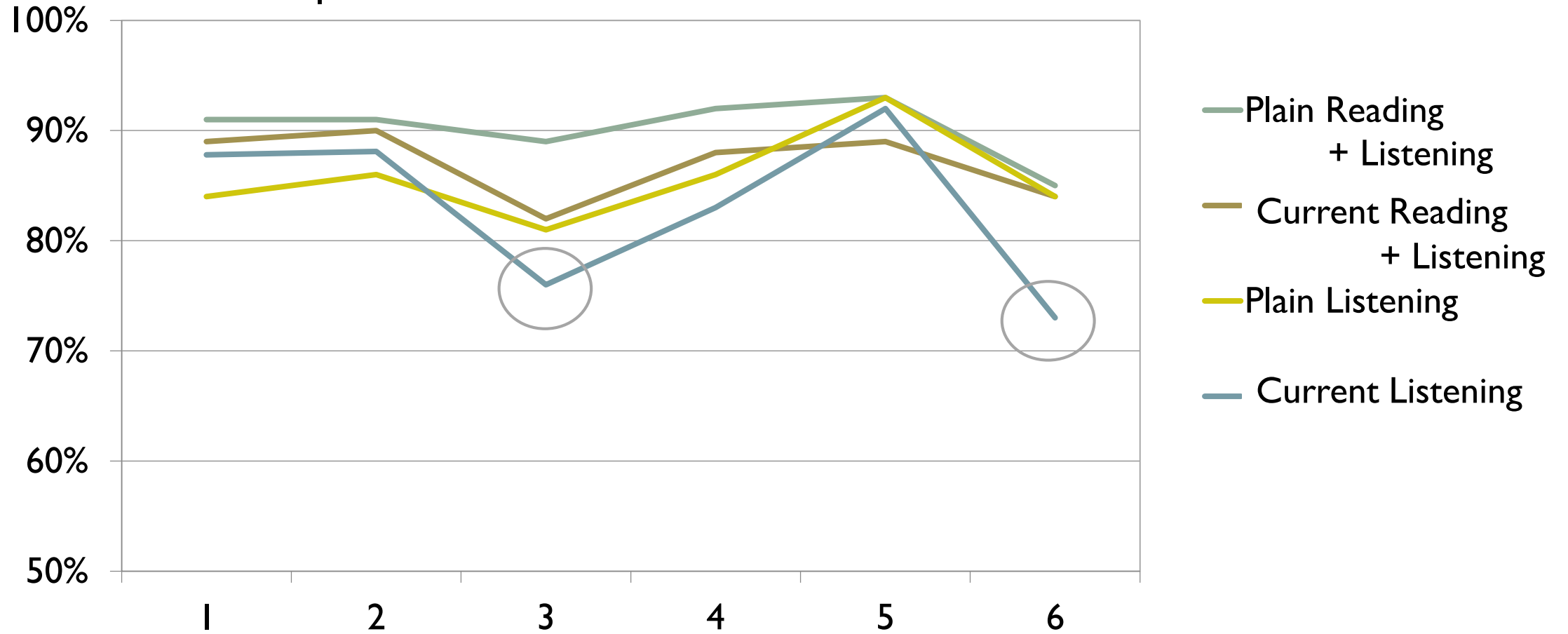
## Overall Comprehension Rates



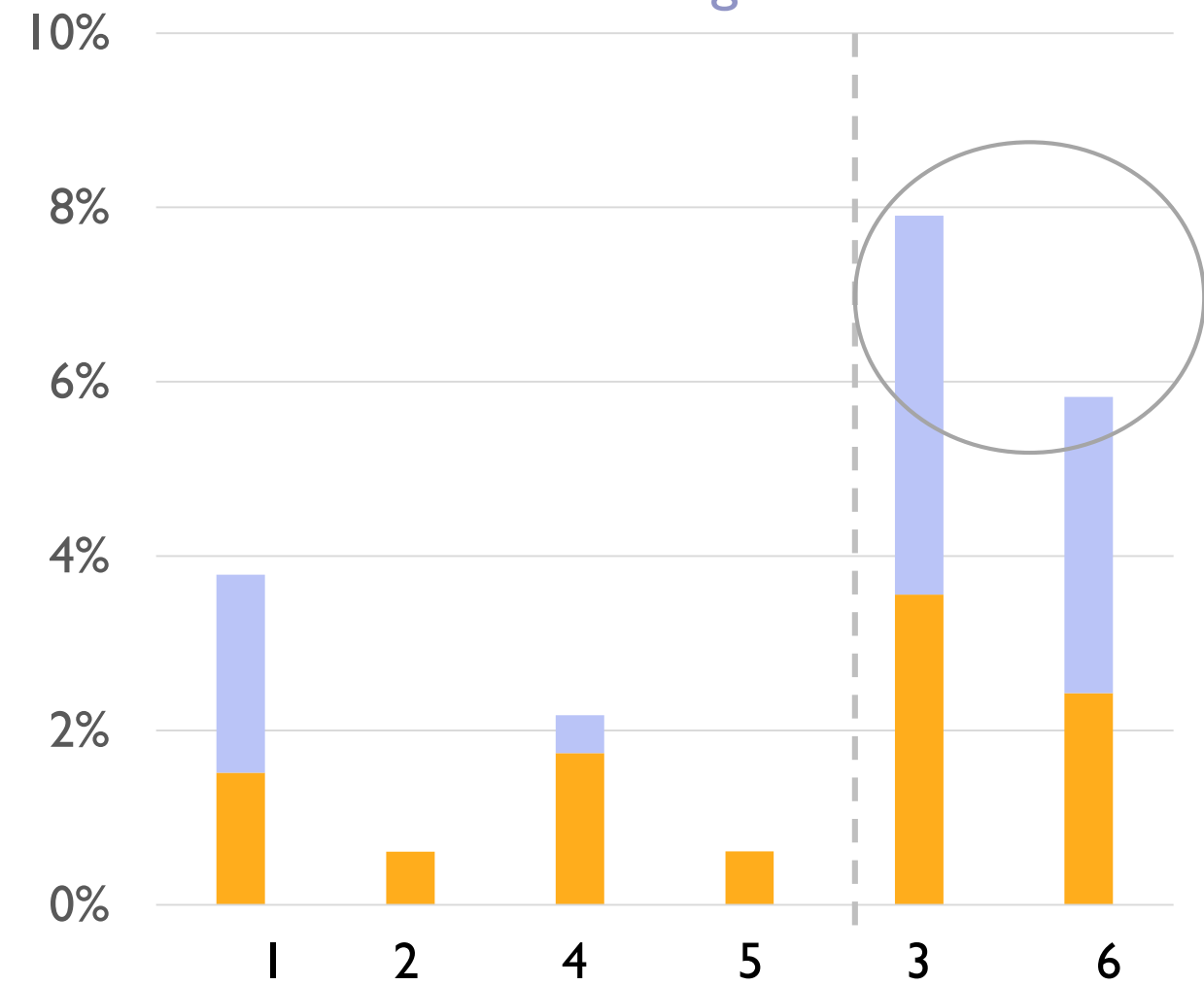
# Results

n=214

## Comprehension Rates across Six Instructions

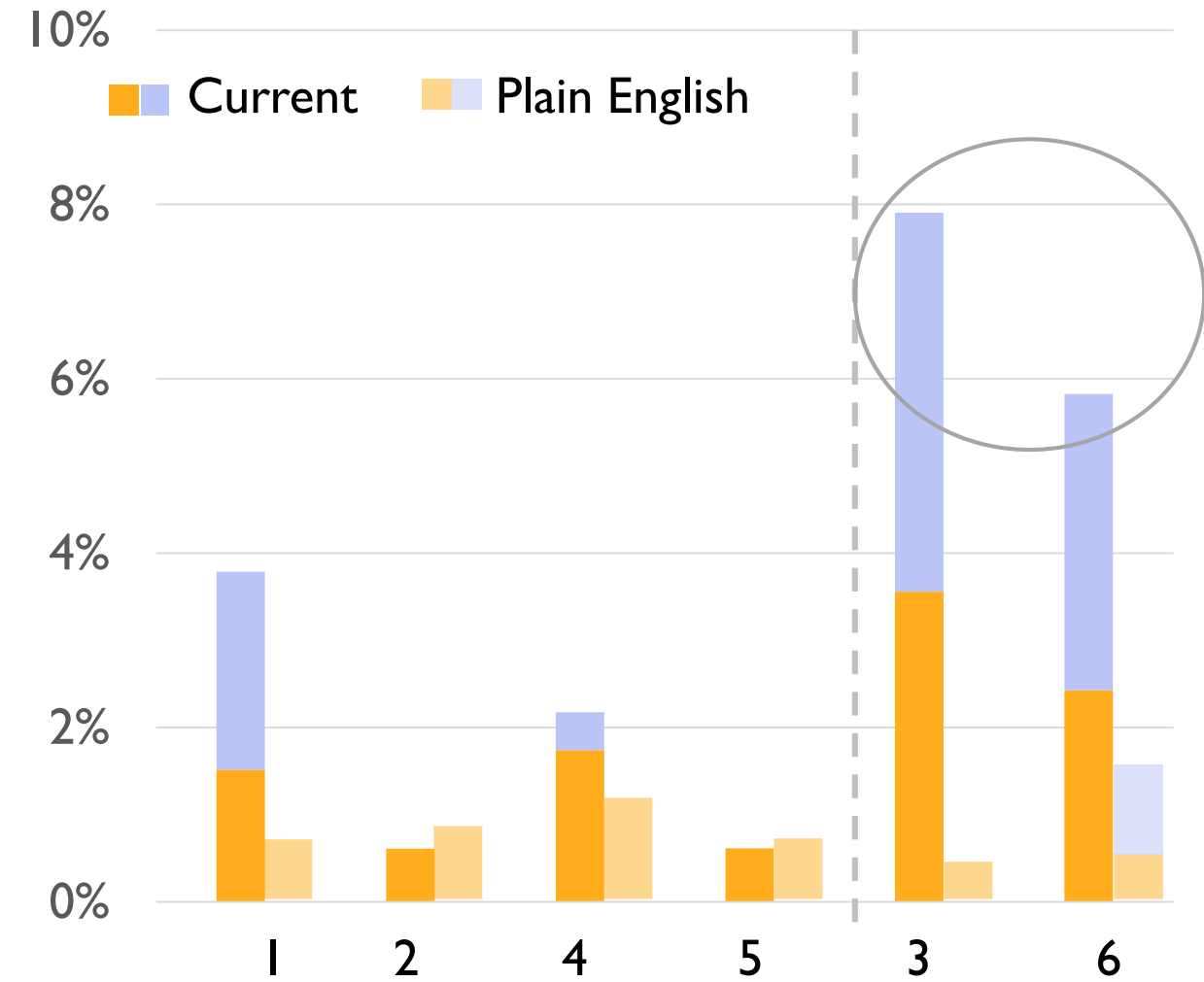


## Rates of Passives & Legalese

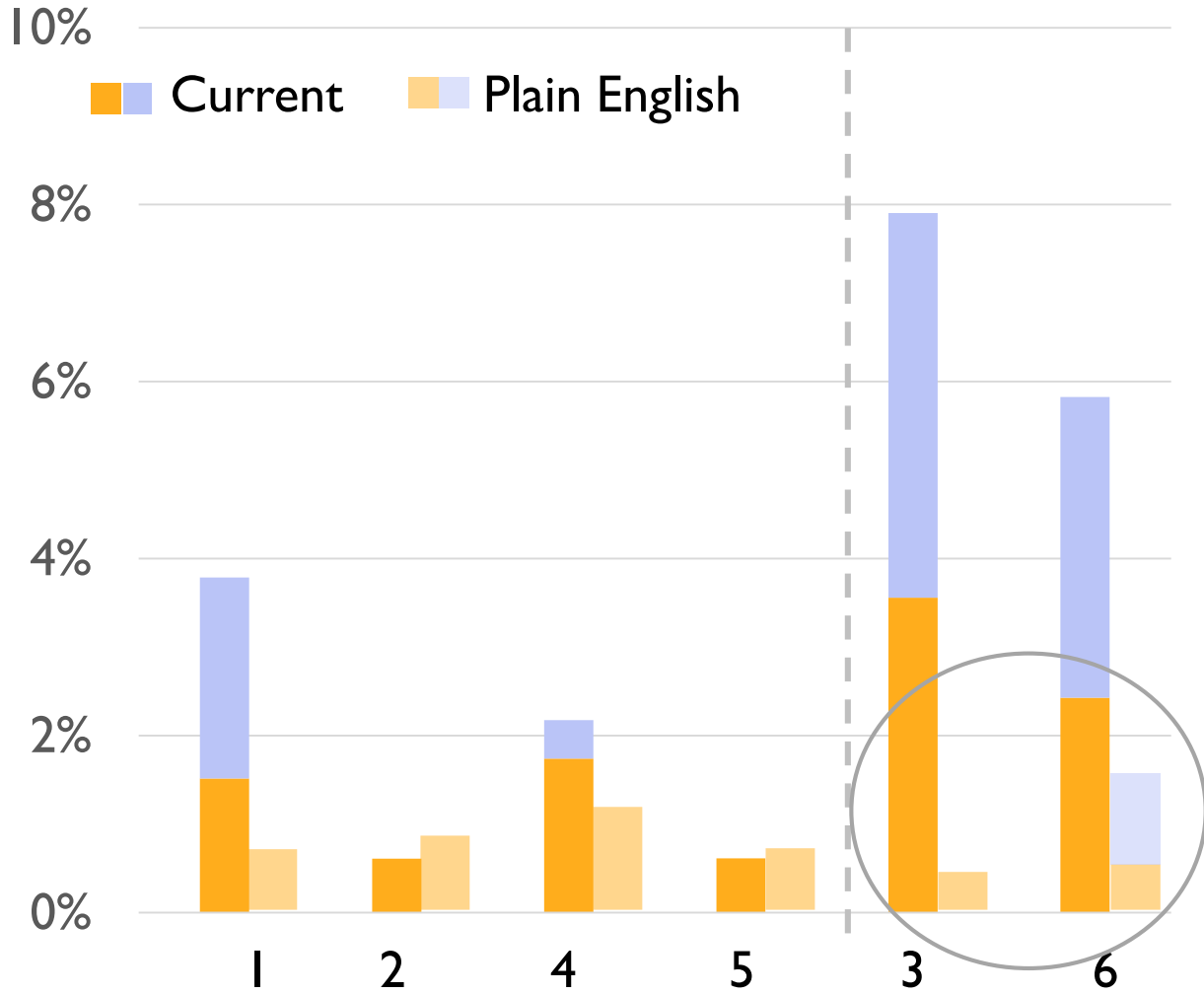




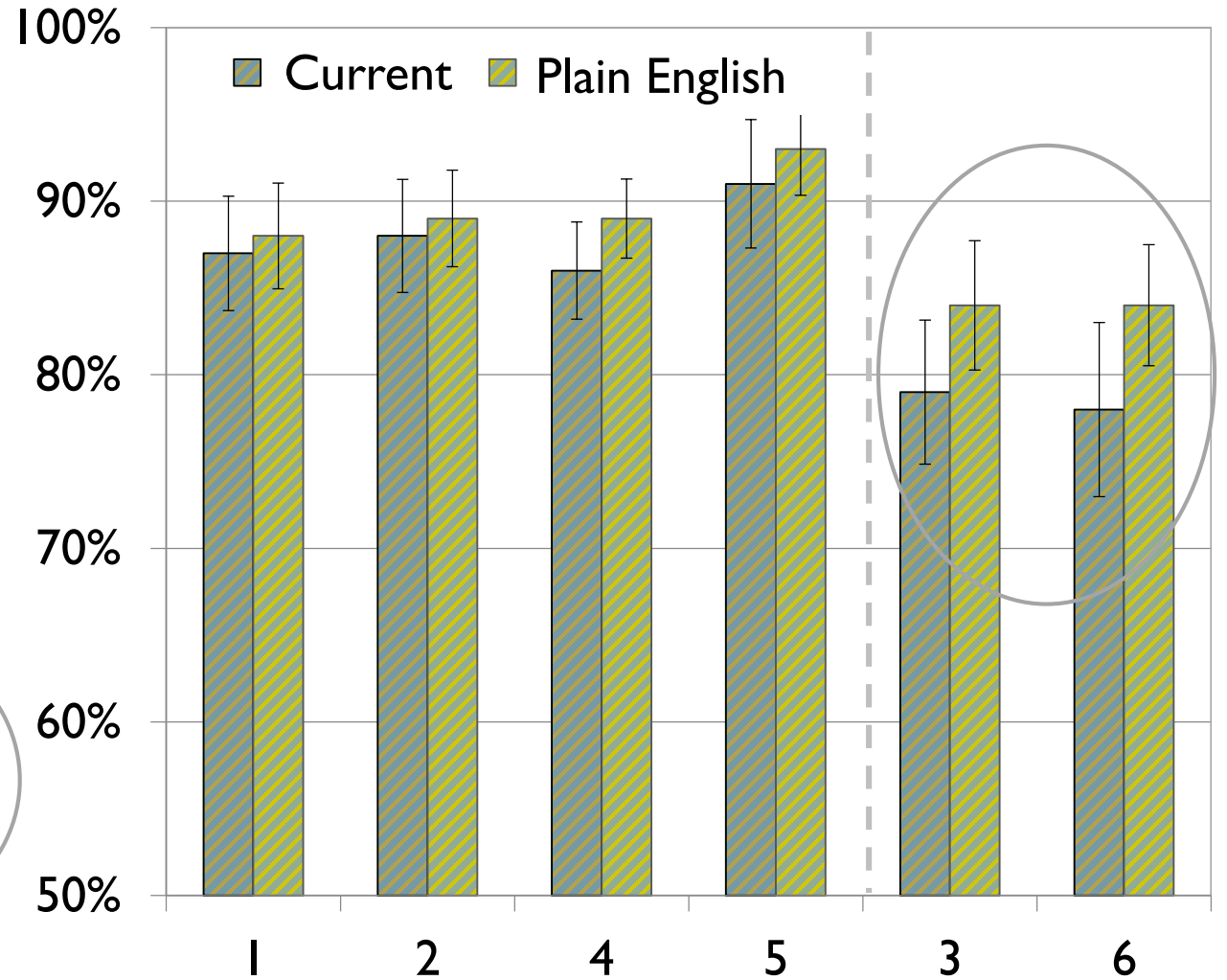
## Rates of Passives & Legalese



## Rates of Passives & Legalese



## All 4 conditions

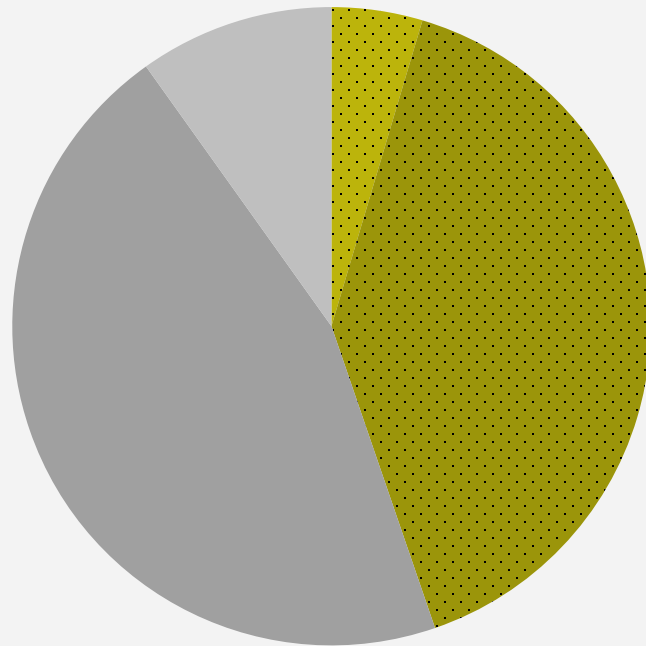


**But hang on a second.**







# Consider this:

## Education Levels in Massachusetts



## 2013 U.S. Census Data

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

**Will a new subject pool show  
different results?**



# Hypothesis 4

Undergraduates  
v.  
MTurk subjects

MTurk subjects

?

<

Undergraduates

# Hypothesis 4

Undergraduates  
v.  
MTurk subjects

MTurk subjects

?

<

Undergraduates

A comprehension test:

- 389 Amazon Mechanical Turk subjects
- Listened to (/and read) 6 current & Plain English jury instructions
- Answered T/F questions after each

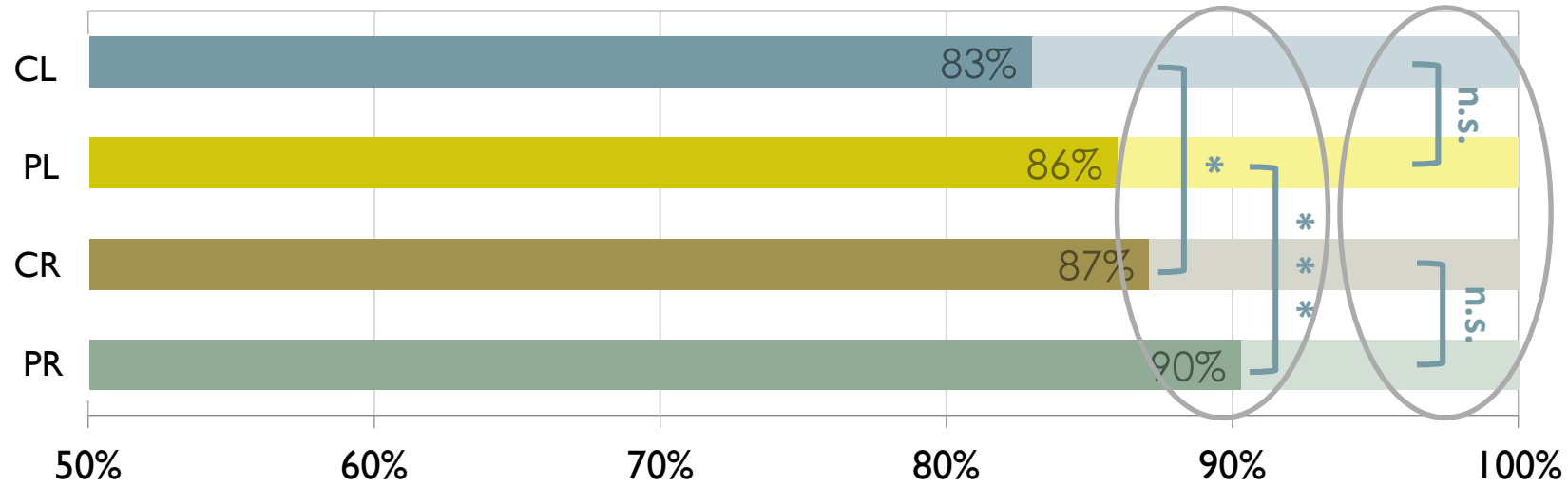


# Method & Design

389 MTurk subjects

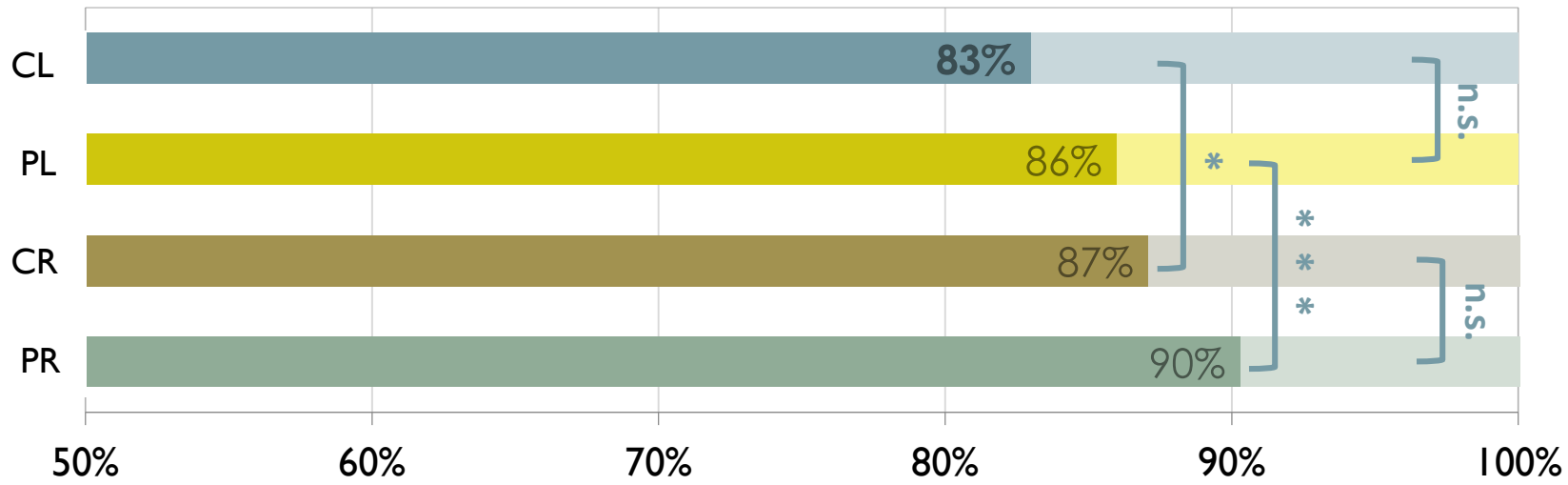
	<b>Current</b>	<b>Plain English</b>
<b>Listening Only</b>	125	99
<b>Reading Along</b>	66	99

# Results

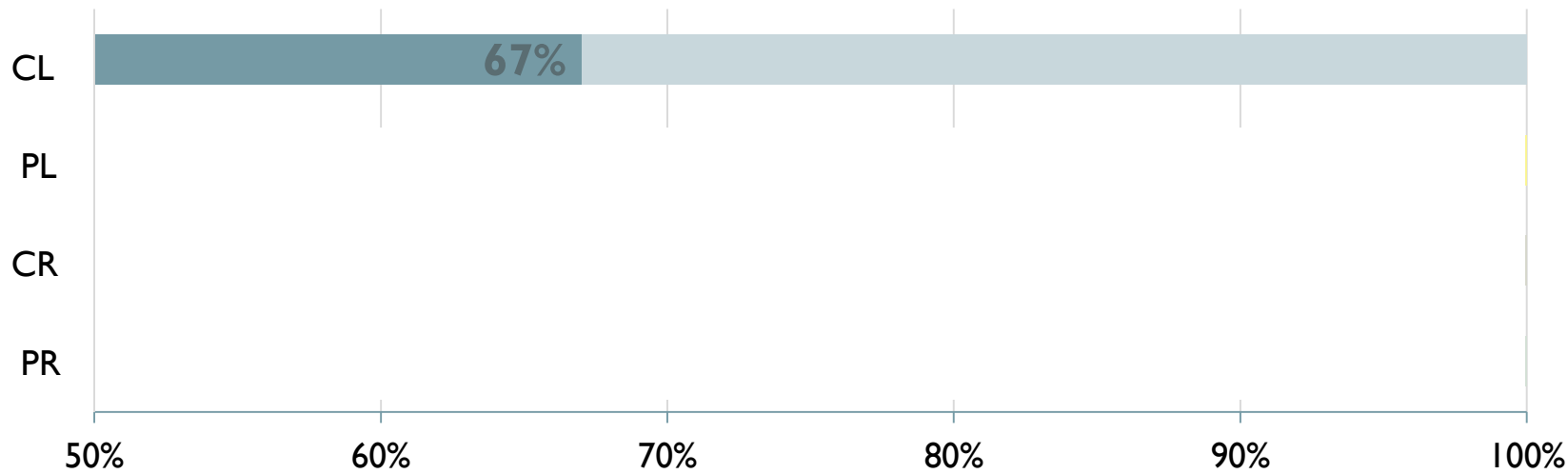


Undergraduate  
subjects

# Results

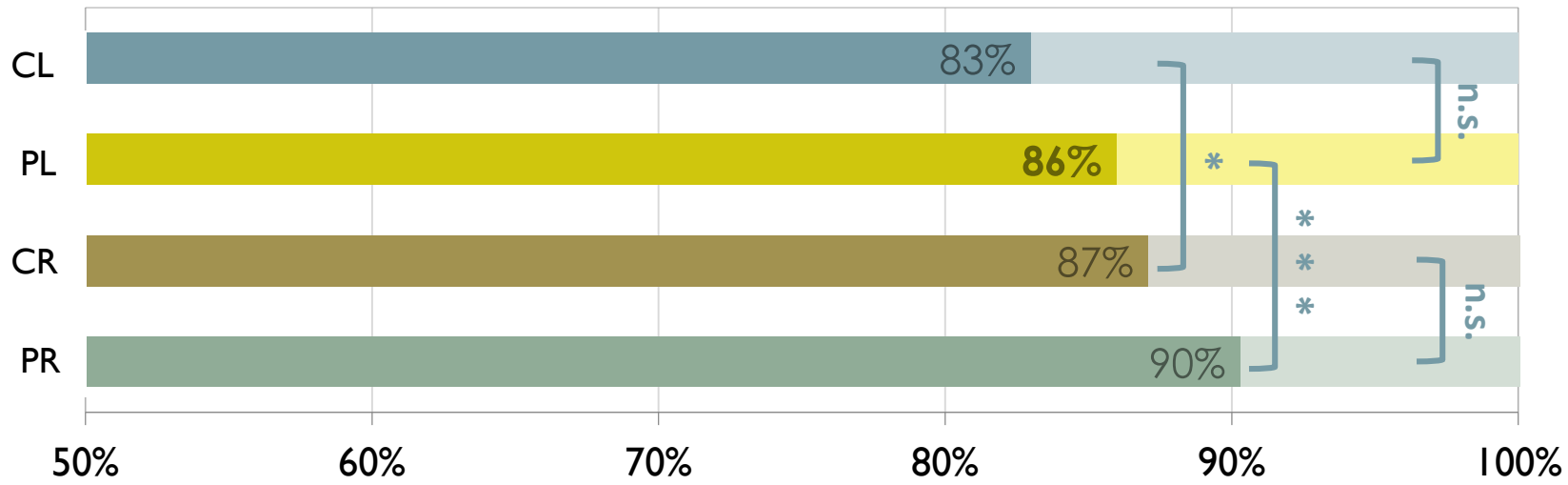


Undergraduate  
subjects

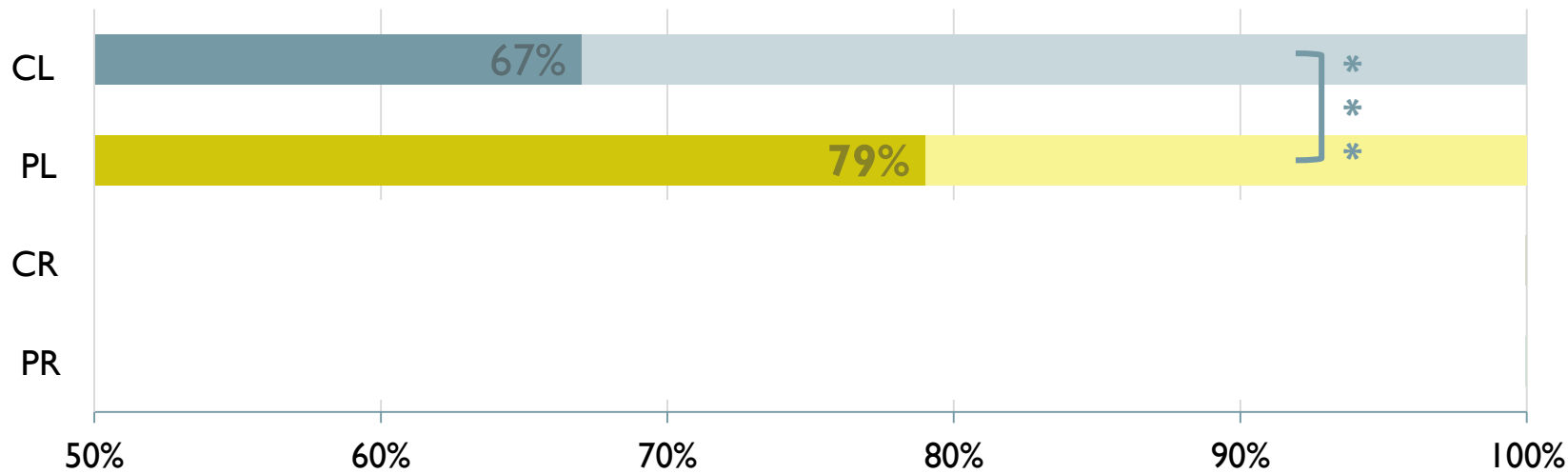


MTurk subjects

# Results

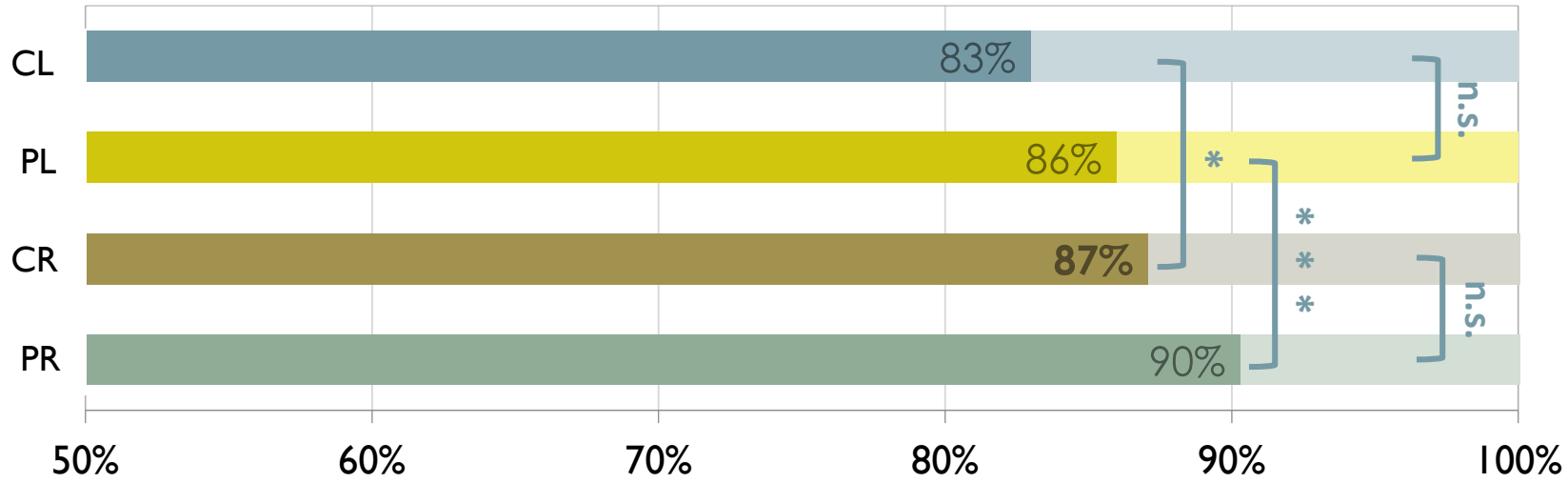


Undergraduate  
subjects

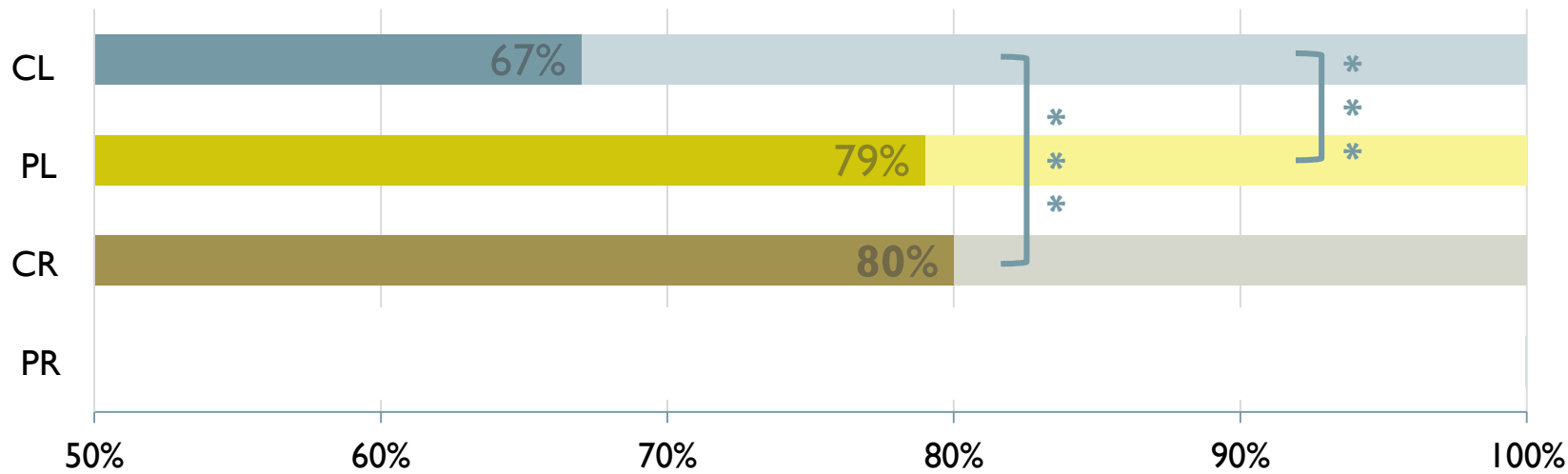


MTurk subjects

# Results

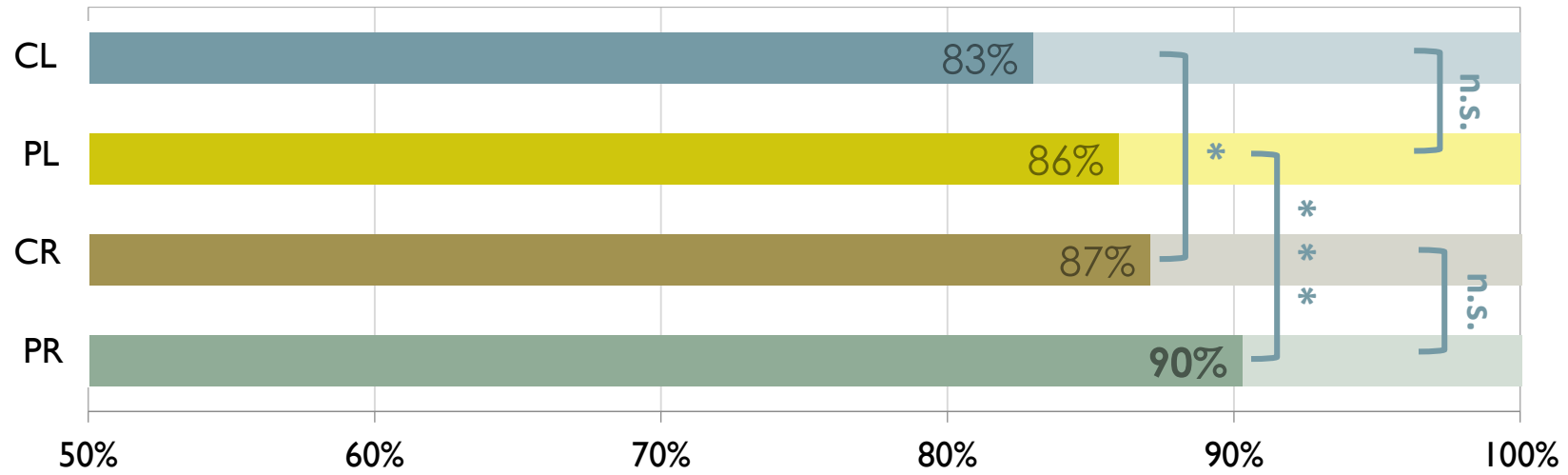


Undergraduate  
subjects

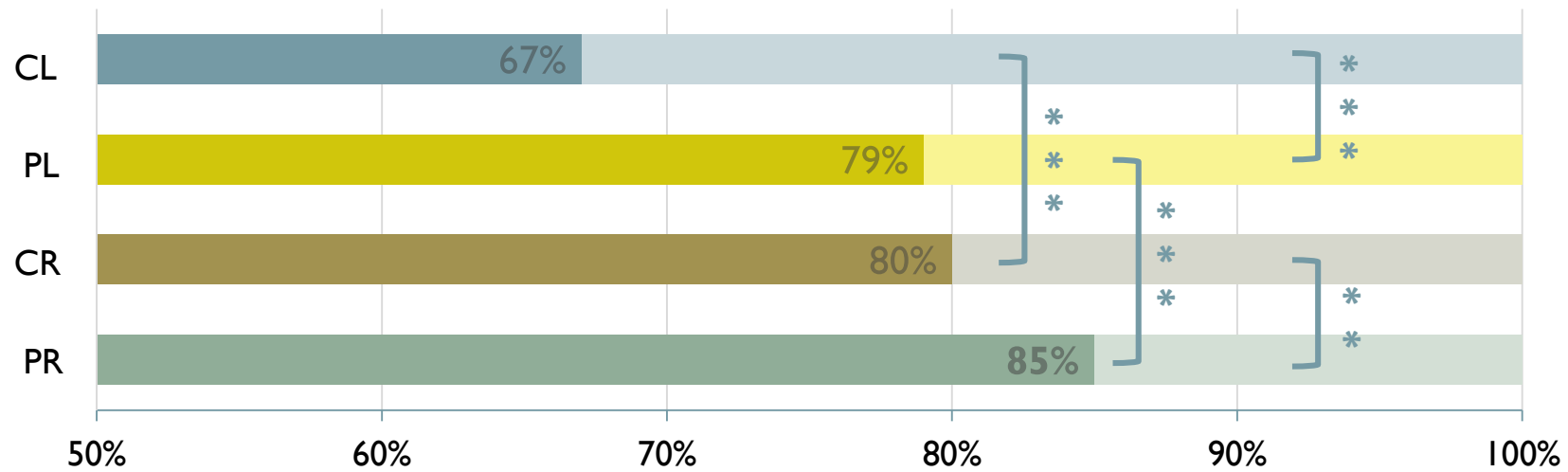


MTurk subjects

# Results

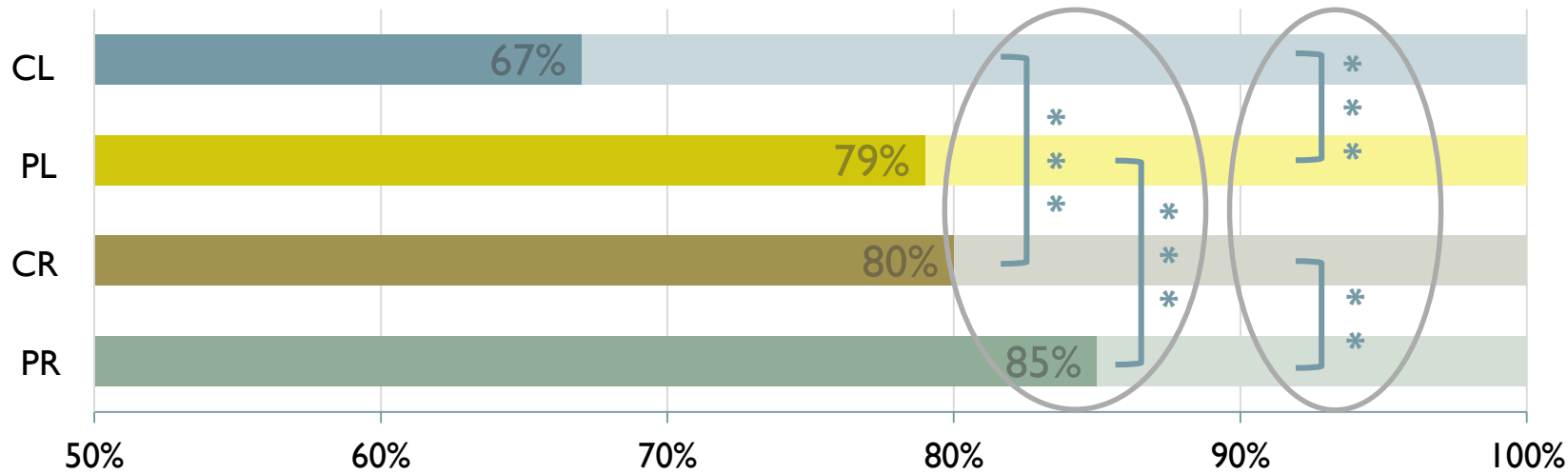
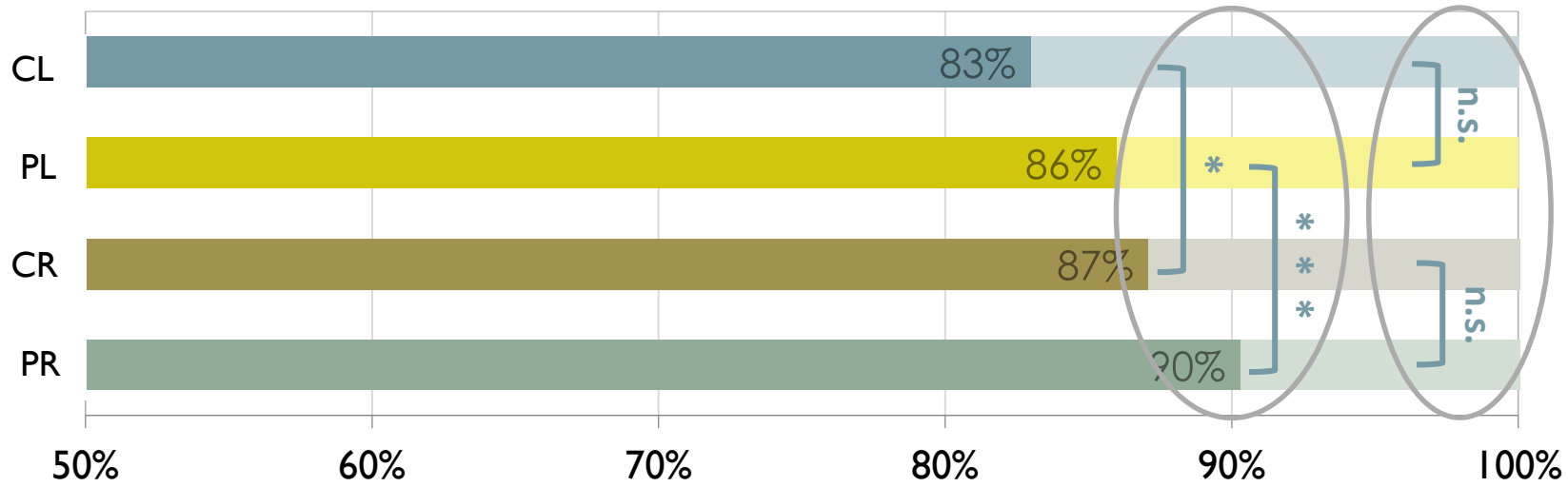


Undergraduate  
subjects



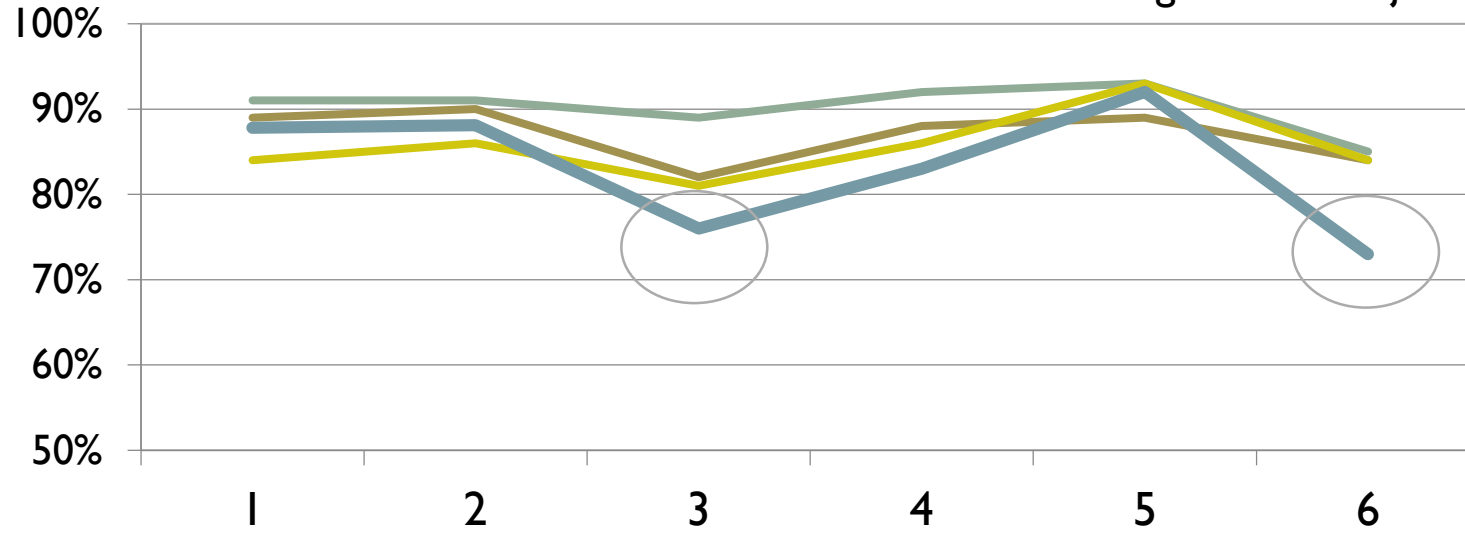
MTurk subjects

# Results

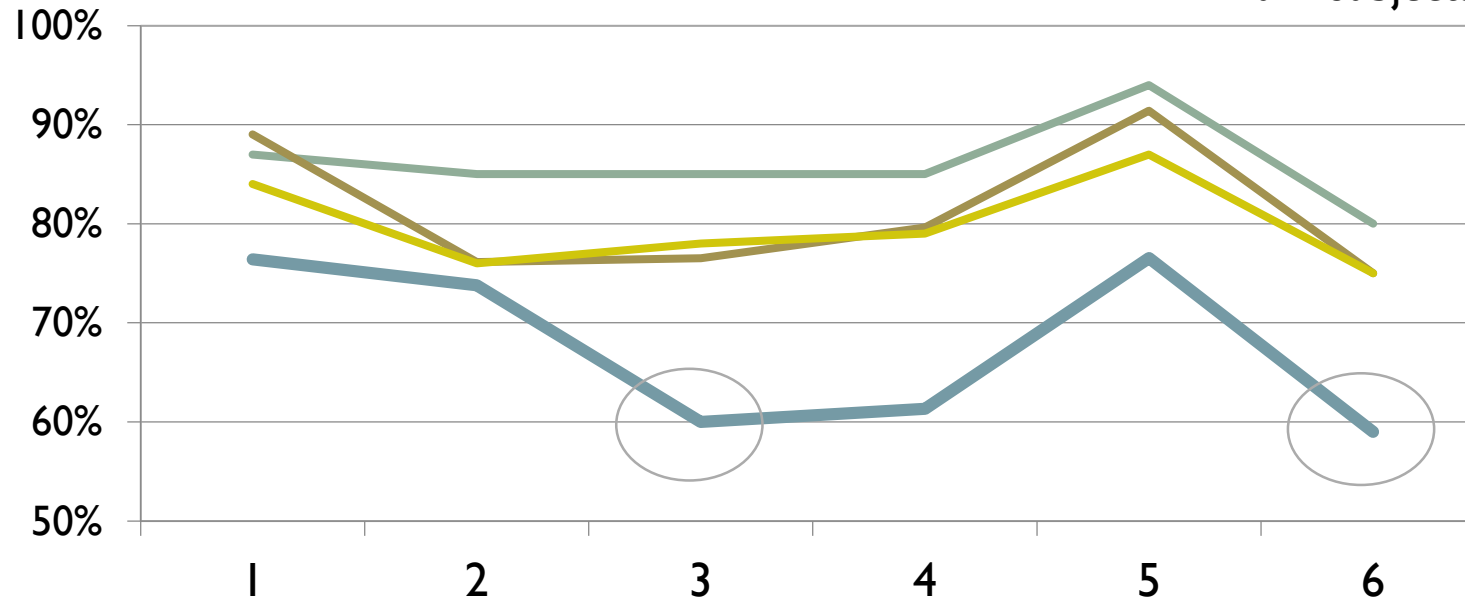


# Results

Undergraduate subjects



MTurk subjects

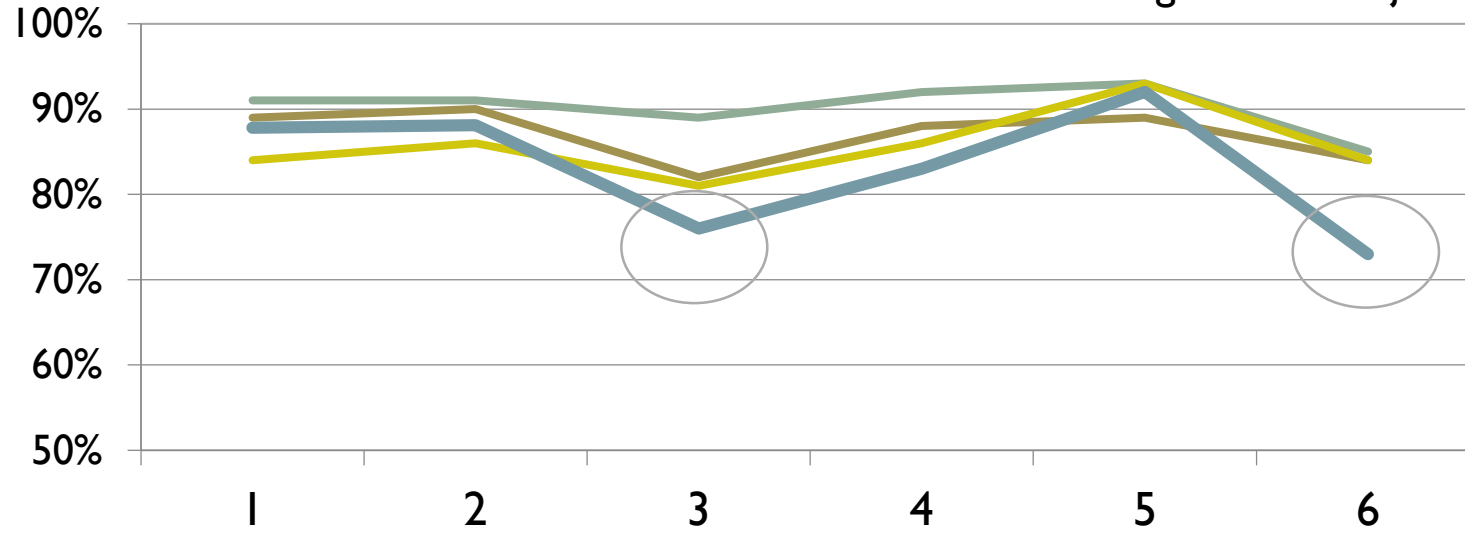


- Plain English + Reading
- Current + Reading
- Plain English + Listening
- Current + Listening

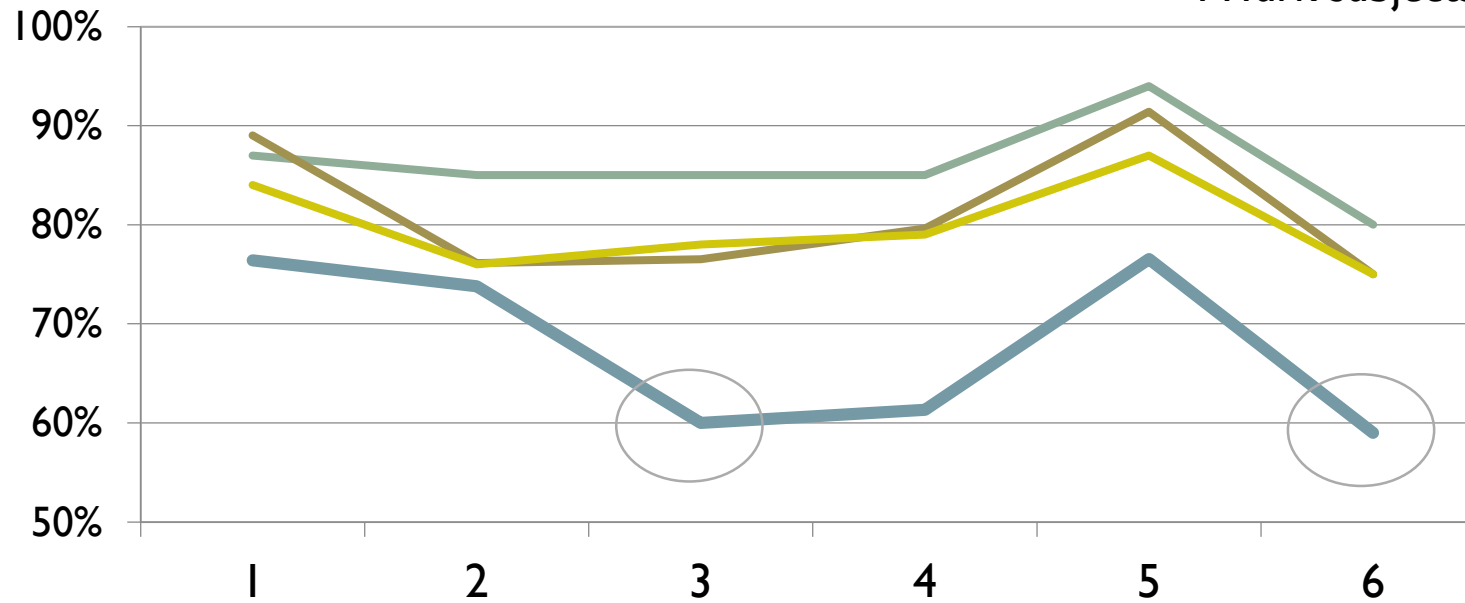


# Results

Undergraduate subjects



MTurk subjects



- Plain English + Reading
- Current + Reading
- Plain English + Listening
- Current + Listening

# Hypotheses

H2

Current



Plain English

H3

Listening Only



Reading Along

H4

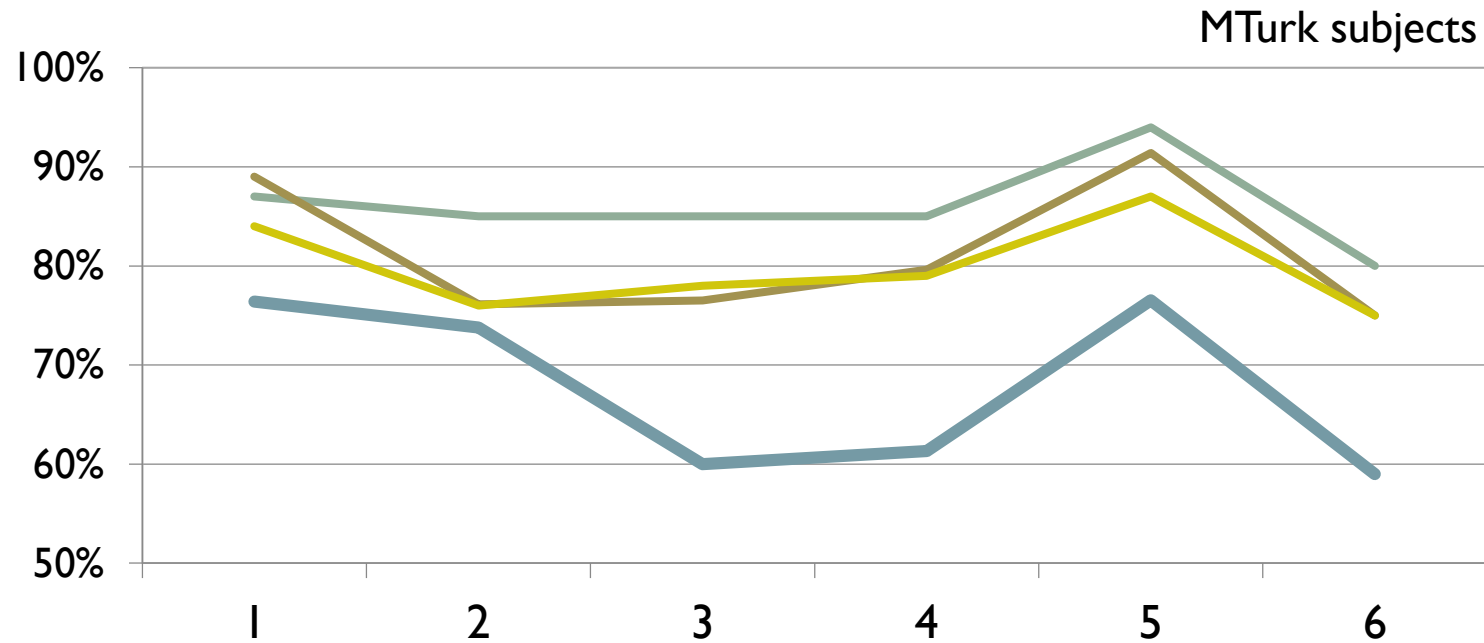
MTurk subjects



Undergraduates

**But wait one more second.**

# With our current procedure:



A comprehension test:

- 389 Amazon Mechanical Turk subjects
- Listened to (/and read) 6 current & Plain English jury instructions
- Answered T/F questions after each

**How can we better model the  
real juror experience?**

Our newest study (now underway)

# Hypothesis 5

Grouped Instructions  
v.  
Ungrouped Instructions

Grouped  
Instructions

?

<

Ungrouped  
Instructions

A comprehension test:

- 2 groups of subjects: undergraduates & MTurk
- Listen to (/and read) 6 current & Plain English jury instructions
- Instructions are now GROUPED, T/F questions at the end

# Hypothesis 5

Grouped Instructions  
v.  
Ungrouped Instructions

Grouped  
Instructions

?

<

Ungrouped  
Instructions

A comprehension test:

- 2 groups of subjects: undergraduates & MTurk
- Listen to (/and read) 6 current & Plain English jury instructions
- **Instructions are now GROUPED, T/F questions at the end**

# With our **new** procedure:



## A comprehension test:

- 2 groups of subjects: undergraduates & MTurk
- Listen to (/and read) 6 current & Plain English jury instructions
- Instructions are now GROUPED, T/F questions at the end



# Roadmap

- I. Some problems with jury instructions  
Negatives & nominals
- II. A closer look  
*Standard of Proof*: a linguistic analysis
- III. Our experiments  
Current instructions vs. Plain English  
Listening only vs. Reading along
- IV. Roll up your sleeves  
It's your turn
- V. A quick recap, the local scene & some take-aways



## 6. Direct & Circumstantial Evidence

There are two types of evidence that you may use to determine the facts of a case: direct evidence and circumstantial evidence.

You have direct evidence where a witness testifies directly about the fact that is to be proved, based on what he or she claims to have seen or heard or felt with his or her own senses, and the only question is whether you believe the witness.

You have circumstantial evidence where no witness can testify directly about the fact that is to be proved, but you are presented with evidence of other facts and then asked to draw reasonable inferences from them about the fact that is to be proved. There is no difference in probative value between direct and circumstantial evidence.

Let me give you an example. Your daughter might tell you one morning that she sees the mailman at your mailbox. That is *direct* evidence that the mailman has been to your house. On the other hand, she might tell you only that she sees mail in the mailbox. That is *circumstantial* evidence that the mailman has been there; no one has seen him, but you can reasonably infer that he has been there because there is mail in the box.

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Nominals	Verbs
be in violation of	violate
provide an illustration of	illustrate
conduct an examination of	examine
make provision for	provide for
make a contribution to	contribute to
provide a description of	describe
submit an application	apply
take into consideration	consider
be in preparation for	prepare for
have a discussion about	discuss
conduct an examination of	examine
is a result of	results from

# Translating Unclear Writing into Plain English

legal & academic

Original	Plain English
A [re-examination of] the evidence led prosecutors to [a reconsideration of] the defendant's guilt.	Prosecutors [re-examined] the evidence and [reconsidered] the defendant's guilt.
A [reduction] in employee [compensation] for teaching and research was the [result] of [failure] in [stimulation] of [legislation] for [support] for the University.	The administration [cut] faculty [salaries] because legislators [failed] [to support] the University.
Participants read [assertions] whose veracity was either affirmed or denied by the subsequent [presentation] of an [assessment] word.	We [presented] participants with a [sentence], followed by the word TRUE or FALSE.

from:

Garner, Bryan\* (2013) *Legal Writing in Plain English: a text with exercises*. U. of Chicago Press, Chicago.

Pinker, Steven (2014) *The Sense of Style*. Viking, N.Y.

\*Bryan Garner is Editor in Chief of Black's Law Dictionary

# Linguistic challenges

## Syntax

- Negatives
- Nominals
- Passive verbs
- Interjected phrases
- Multiple embeddings

## Legalese

- Low-frequency words
- Undefined words
- Words defined too late



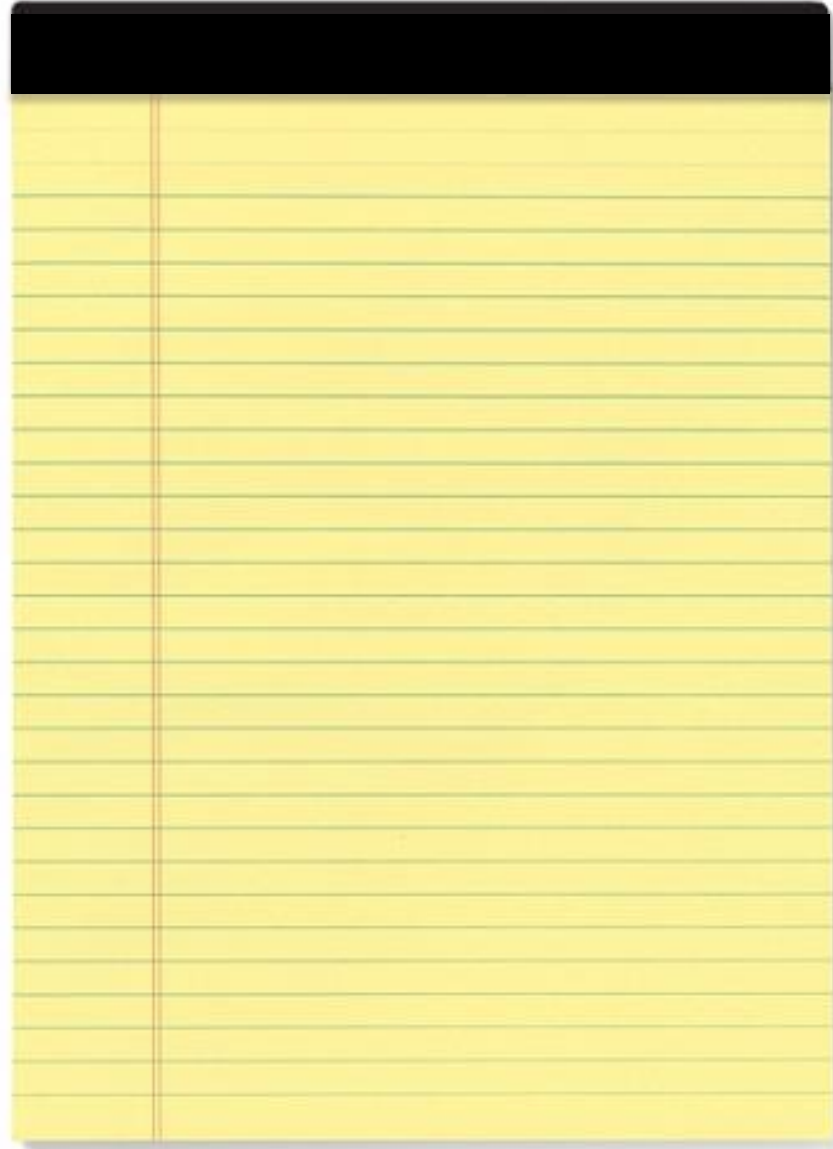
# Direct & Circumstantial Evidence

There are two types of evidence that you may use to determine the facts of a case: direct evidence and **circumstantial** evidence.

You have direct evidence [where a witness **testifies** directly about the fact [that is **to be proved**, -- based on [what he or she claims [to have seen or heard or felt with his or her own senses, ]] --]] and the only question is whether you believe the witness. [4 levels]

You have **circumstantial** evidence where **no witness** can testify directly about the fact that is **to be proved**, but you **are presented** with evidence of other facts and then **asked** to draw reasonable inferences from them about the fact that is **to be proved**. There is **no difference** in **probative value** between direct and **circumstantial** evidence.

Let me give you an example. Your daughter might tell you one morning that she sees the mailman at your mailbox. That is *direct* evidence that the mailman has been to your house. On the other hand, she might tell you only that she sees mail in the mailbox. That is **circumstantial** evidence that the mailman has been there; no one has seen him, but you can reasonably infer that he has been there because there is mail in the box.



# Direct & Circumstantial Evidence

## Plain English



There are two types of evidence. One type is called direct evidence. When a witness testifies about something that he or she saw or heard or smelled, he or she is giving direct evidence. For example, if a witness says that she saw a mailman put mail into her mailbox, this is direct evidence that the mailman delivered her mail.

The other type of evidence is called indirect or “circumstantial” evidence. If a witness says that she saw her mailbox empty when she left the house and full of mail when she came home, this is indirect evidence that the mailman delivered her mail. It's indirect because she didn't actually see or hear him deliver it. You have to infer that the mailman came.

With indirect evidence, you can reach the same conclusion as with direct evidence, but you have to make an inference to get there.

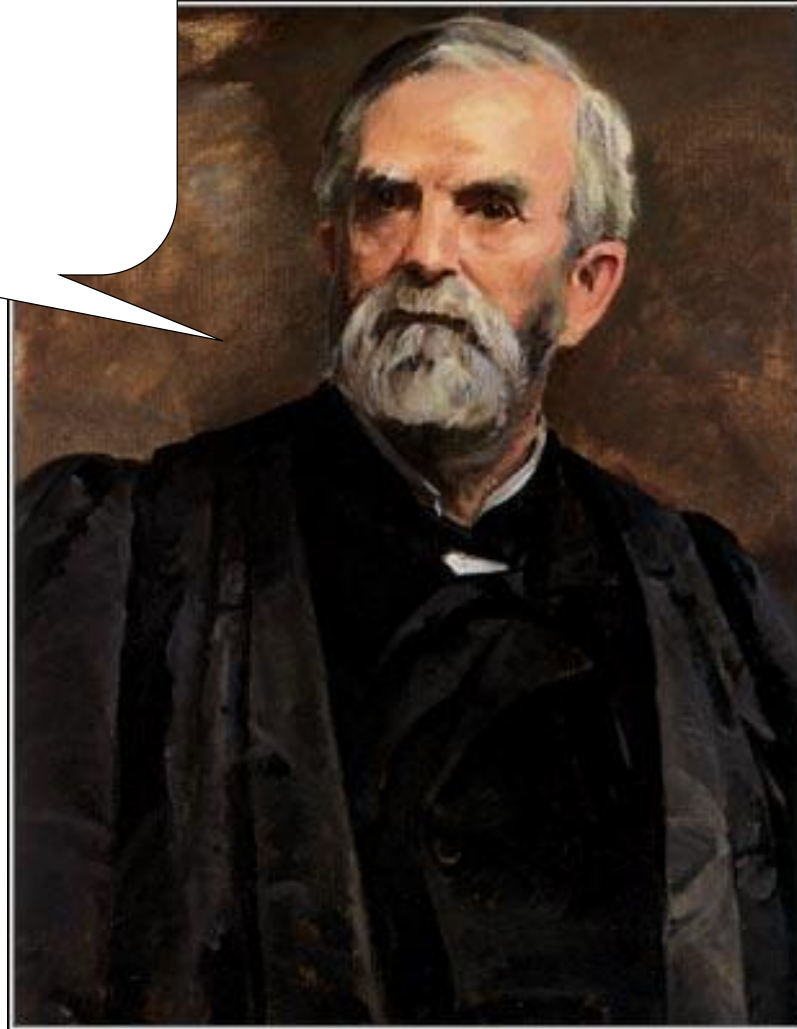
Many people think that indirect evidence is weaker than direct evidence. This is not true. It makes no difference whether evidence is direct or indirect for establishing the facts of a case. Both types of evidence can be used to prove a fact and you should consider them as equal.

# Roadmap

- I. Some problems with jury instructions  
Negatives & nominals
- II. A closer look  
*Standard of Proof*: a linguistic analysis
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Current instructions vs. Plain English  
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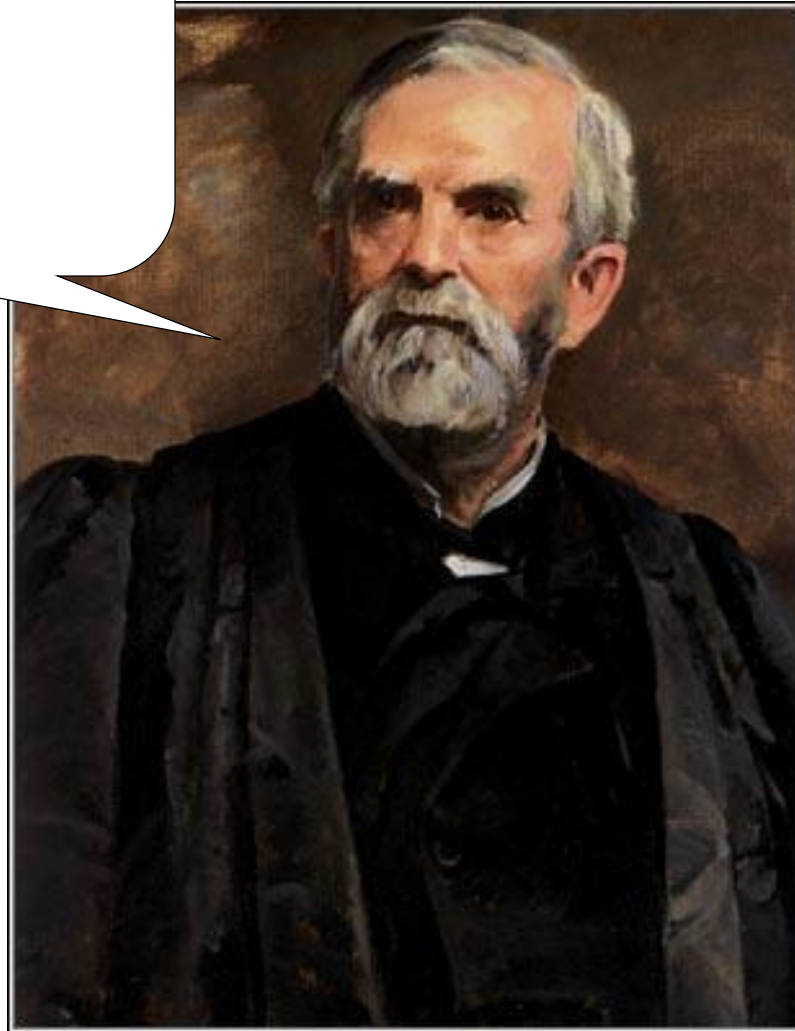
Innocent  
misrecollection is  
not uncommon



Innocent

**misrecollection** is

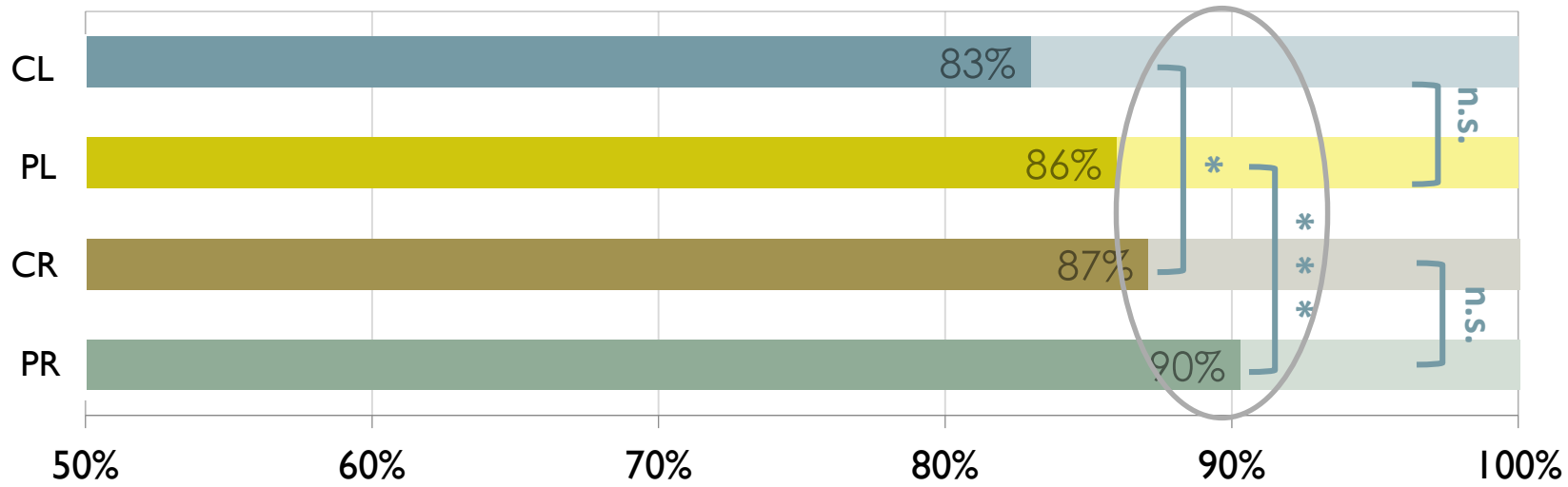
[**not** [**un** common] ]



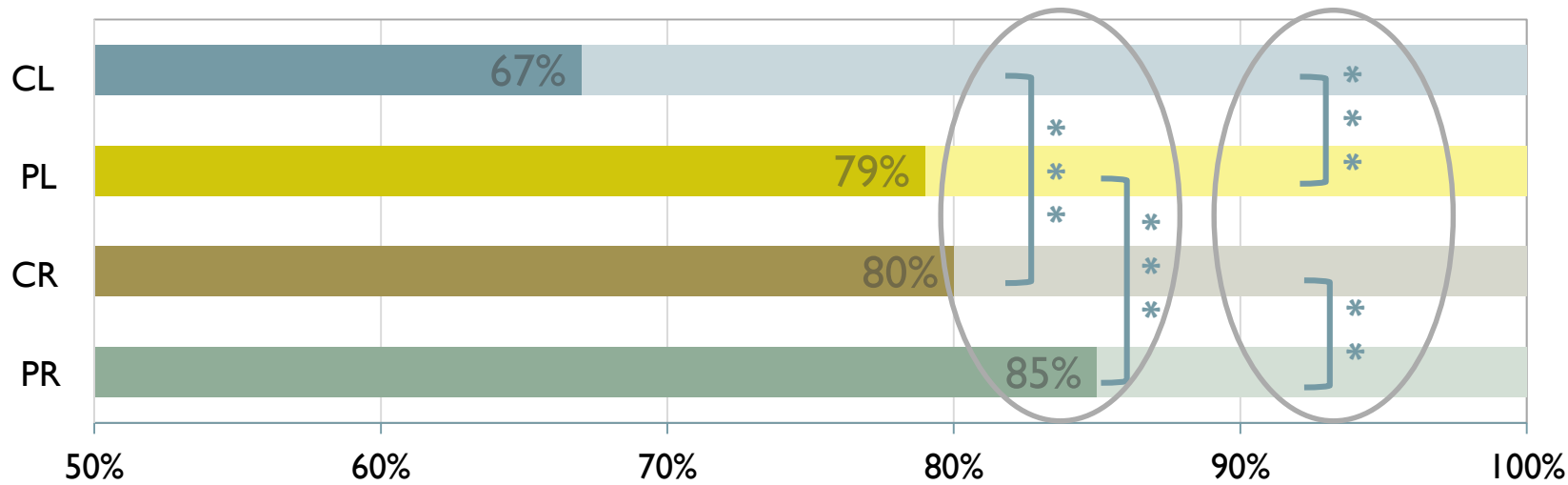
**People  
often  
forget things ...**



# Comprehension Rates



Undergraduate subjects



MTurk subjects



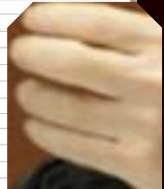
Direct & Circumstantial Evidence

There are two types of evidence that you may use to determine the facts of a case: direct evidence and circumstantial evidence.

You have direct evidence when a witness tells you directly about the fact that is to be proved, based on what he or she claims to have seen or heard or felt with his or her own senses, and the only question is whether you believe the witness.

You have circumstantial evidence when no witness can testify directly about the fact that is to be proved, but you are presented with evidence of other facts and then asked to draw reasonable inferences from them about the fact that is to be proved. There is no difference in probative value between direct and circumstantial evidence.

Let me give you an example. Your daughter might tell you one morning that she saw the defendant at your window. That is direct evidence that the defendant has been to your house. On the other hand, she might tell you only that she saw mail in the mailbox. That is circumstantial evidence that the defendant has been there; no one has seen him, but you can reasonably infer that he has been there because there is mail in the box.



And as for the **local scene,**

# In **Hong Kong**, juror comprehension is a bigger issue

**90%** of the population is

**Cantonese-speaking** with a bilingual knowledge of English\*

Yet, as of 2014,

**75%** of the criminal trials were conducted in **English**\*\*

So most Hong Kong jurors have **two** problems:

- the **legal** language
- the **English** language

Ng (2016)

\*Census & Statistics Department (2012)

\*\*Department of Justice (2015)

The Law Reform Commission of Hong Kong (2008)

The Law Reform Commission of Hong Kong (2012)

Ng (2016)



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**January 2008**

The Law Reform Commission of **Hong Kong**  
Juries Sub-committee Consultation Paper  
**Criteria for Service as Jurors.** *<http://www.hkreform.gov.hk> Accessed 6.7.2018*

**5.33**

Since the original reason for applying an educational standard of Form 7 (ie, to ensure jurors were sufficiently competent in the English language) no longer applies to all proceedings, but only to those trials conducted in English, there may be grounds for lowering the educational standard or removing it altogether. **The fitness of a juror to serve may be assessed at the time the jury is formed, when parties to the proceedings may accept or reject the appointment of individual jurors.**

**The court has power** under section 4(2) of the Jury Ordinance (Cap 3) **to discharge any person if the court is not satisfied that the person's knowledge of the relevant language is sufficient to enable the person to understand the proceedings.** Removing or lowering the education requirement would have the advantage of widening the jury pool and would include more members of the community in the administration of justice.

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## 2012 Update

### Recommendation 4

We recommend that the existing administrative practice of requiring a potential juror to have attained an education standard of Form 7 (being the minimum entrance requirement for entry to a university in Hong Kong), or an equivalent standard, should be stipulated in legislation. However, this should be **amended in 2012 to require a person to have completed Secondary Six and achieved Level 3 in both English and Chinese in the HKDSE or the equivalent.**

# Consequences

(Ng, 2016)

A lack of randomness

A lack of representativeness of the community

**And now for some take-aways.**

**Well, maybe just one.**

The **moral** of the story:

wherever there is **technical language**

aimed at an audience of **non-experts**

look at the language from a **linguistic** point of view.

**The End**

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**Thank you.**

# Our Team



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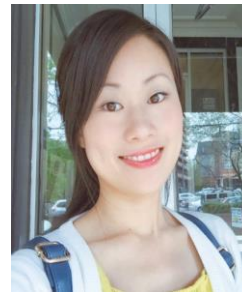
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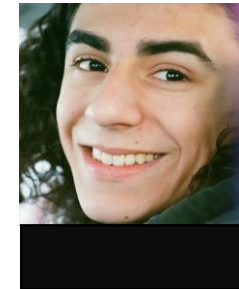
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**Questions?**

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**Comments?**

**Thank you.**

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**Thank you.**

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