

\$1.20 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, the plaintiff is not required to prove its case beyond a reasonable doubt.

Jargon and Justice: Using Linguistics to Improve Legal Language

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"A preponderance of the evidence is such evidence which, when considered and compared with any opposed to it..."*

Abstract
 Jury instructions are often misunderstood, a serious problem for justice (Charrow & Charrow 1979; Diamond et al. 2012; Benson 1984; Marder 2006). But can comprehension be improved? We hypothesized that two linguistic factors are related to the difficulty and that minimizing them can help. An earlier study (Randall et al., 2015), which tested undergraduate subjects' comprehension of Massachusetts civil jury instructions, found significant improvements (a) when instructions were rewritten in "Plain English" – with passive verbs (Ferreira 2003) and "legalese" (Diana & Reder 2006) minimized – and (b) when subjects could read as they listened. Our newest study changes our methodology to more closely model courtroom procedure and finds even stronger effects. Instead of presenting the six jury instructions one by one and asking comprehension questions after each, this study groups the six instructions together and then asks the questions. Our research demonstrates that linguistic research in legal contexts can lead the way to improvements in justice.

Our Earlier Study: Ungrouped instructions

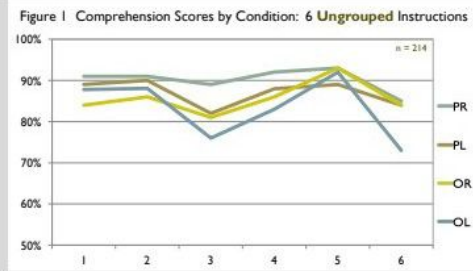
Hypotheses
Hypothesis 1: Plain English (P) jury instructions, with passive verbs & legalese minimized, will improve comprehension over Original (O) instructions.
Hypothesis 2: Reading+Listening (R) will improve comprehension over Listening Only (L).

Subjects, Materials, Design, & Procedure

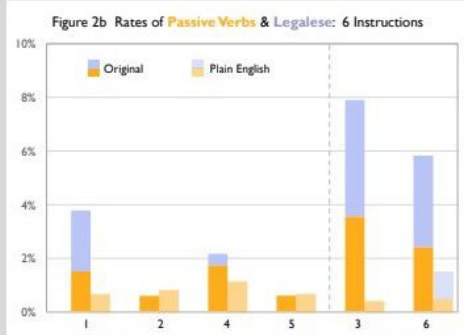
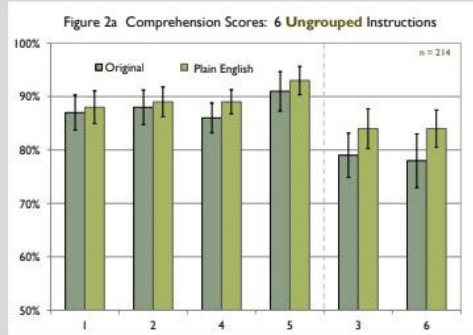
214 undergraduate subjects were divided into 4 conditions. Half heard recordings of six Original Massachusetts civil jury instructions. The other half heard six Plain English versions. Each of these two groups was further split into 2 conditions: Listening-Only (OL&PL), in which the instructions were only presented orally and Reading+Listening (OR&PR) in which the texts were also supplied. After each instruction, the subjects answered true/false questions about it.

n = 214	Original	Plain English
Listening-Only	43	86
Reading +Listening	36	49

Results



Both hypotheses (H1 & H2) were confirmed: Figure 1 shows lowest comprehension scores for the OL condition and highest for the PR condition with OR and PL in between, while Fig. 2a shows that the Original instructions (OL&OR, combined in the left bars) averaged lower comprehension scores than the Plain English (PL&PR, right bars). Moreover, Figures 2a&2b taken together show that comprehension scores inversely correlate with rates of passive verbs & legalese. The "easy" instructions (1, 2, 4 & 5; to the left of the dashed line) had strikingly lower scores than the "difficult" instructions (3 & 6). Finally, when the Original instructions (OL&OR, Fig. 2a left bars) were changed to Plain English (PL&PR, right bars), 3 & 6 improved more than the others since more of the challenging factors could be eliminated.



Consider this:
 In a courtroom setting, jurors hear the jury instructions all at once before using them in their deliberations. To mirror this procedure, our new study presents all six instructions grouped together and asks the true/false questions at the end.

Our New Study: Grouping the instructions

Hypothesis 3: Presenting the instructions grouped together, and then asking the true/false questions, will lower comprehension scores.

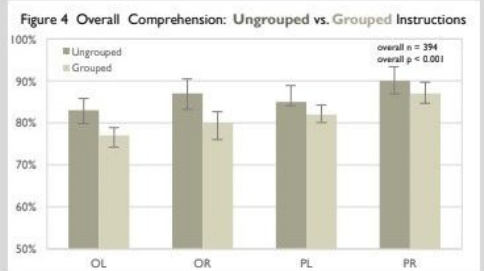
Subjects, Materials, Design & Procedure

Our new study (n=180) replicates the earlier study, using the same subject pool, design, and materials, but changes the procedure to simulate what jurors experience in the courtroom. Instead of presenting the six instructions one by one, each instruction followed by its corresponding questions, here, the instructions and the questions are separated. The instructions are presented first, in one group, and all of the questions follow, in another group, at the end.

n = 180	Original	Plain English
Listening-Only	41	52
Reading +Listening	44	43

Results

Hypotheses 1 & 2 are confirmed again. The two factors that improved comprehension in the earlier study – switching to Plain English and supplying the instruction texts so that subjects could read along – are still effective across the board. As Figure 3 shows, the OL condition shows the lowest comprehension scores, the PR condition, the highest, and OR and PL fall in between. Hypothesis 3 is also confirmed: Figure 4 shows that comprehension rates were lower in this new Grouped-instruction study than in the earlier Ungrouped-instruction study – across all four conditions. As we hypothesized, Grouped-instruction subjects are at a disadvantage compared to Ungrouped-instruction subjects.



Discussion & Conclusions

The results of these two studies confirm our hypotheses that comprehension of current jury instructions can be improved by making two changes: (1) rewording the instructions in Plain English, with fewer difficult linguistic factors (specifically, passive verbs & legalese) and (2) allowing jurors to read the instructions while listening to them. In our new study, which more closely models courtroom procedure, we present all of the instructions grouped together followed by all of the test questions, and comprehension rates drop across all conditions. These results provide even stronger evidence for our claim that current jury instructions are difficult for jurors to understand. Taken all together, our findings make a compelling argument that it is time for the Massachusetts judiciary to implement change.

Footnote & References

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