Collaborations in the Courthouse: Making Legal Language Accessible

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La linguistique à la croisées des sciences
Université Cadi Ayyad
11 March 2021

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Linguistics & Law

The American Judicial System

The Linguistics & Law Lab

A Recent Study

Other Projects

What We've Learned

The American Judicial System

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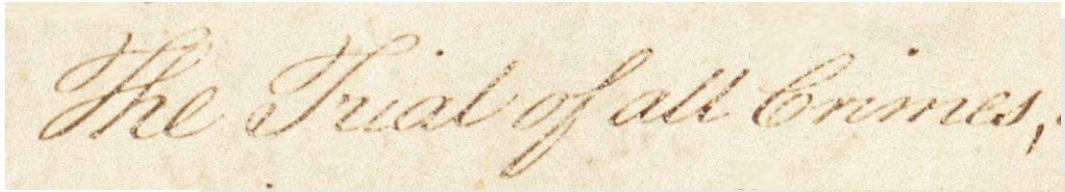
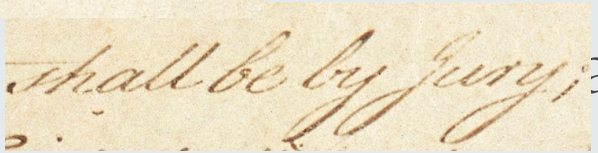
United States Constitution:



except in Cases of Impeachment,



and such Trial shall be held in the State where the said Crimes shall have been committed”

Duncan v. Louisiana, 1968

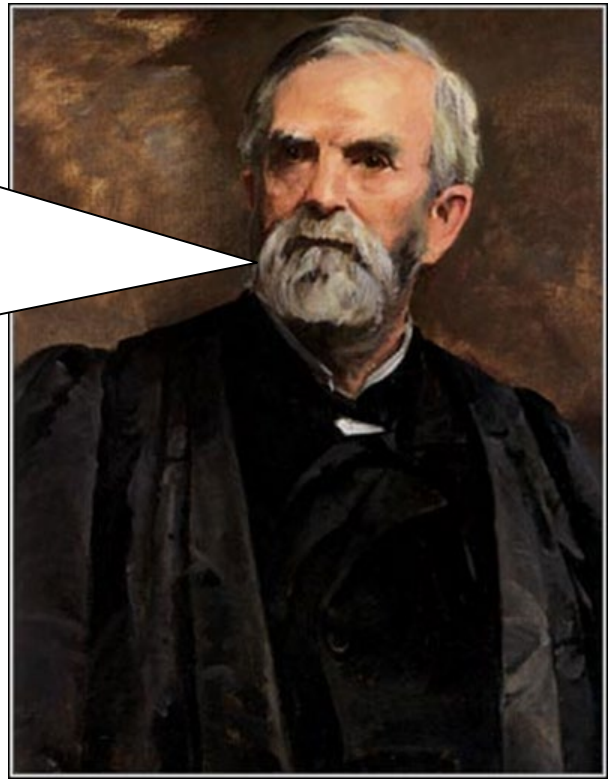
GUILTY

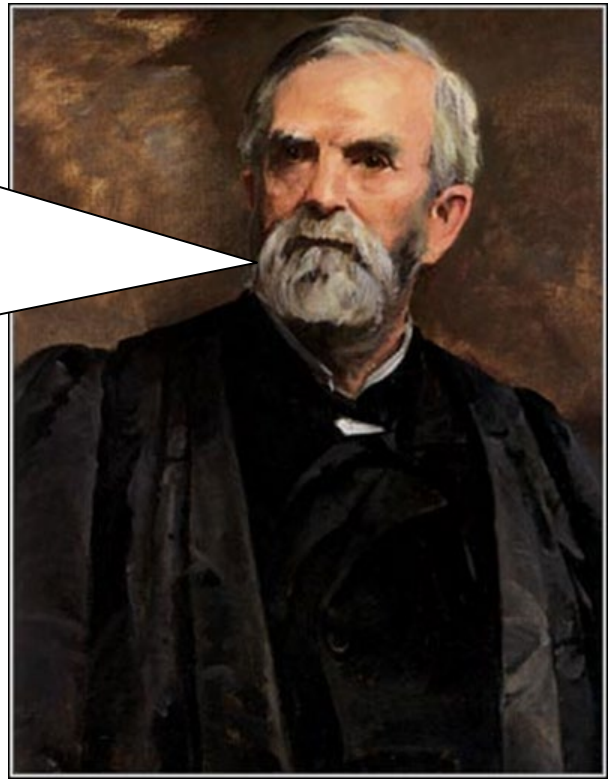
~~GUILTY~~ INNOCENT

The Supreme Court:

"Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge."

Duncan v. Louisiana, 1968





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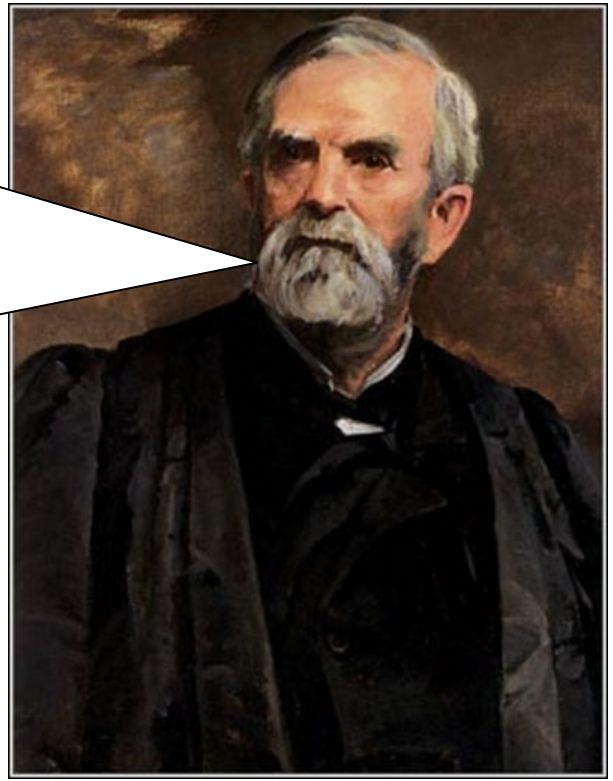
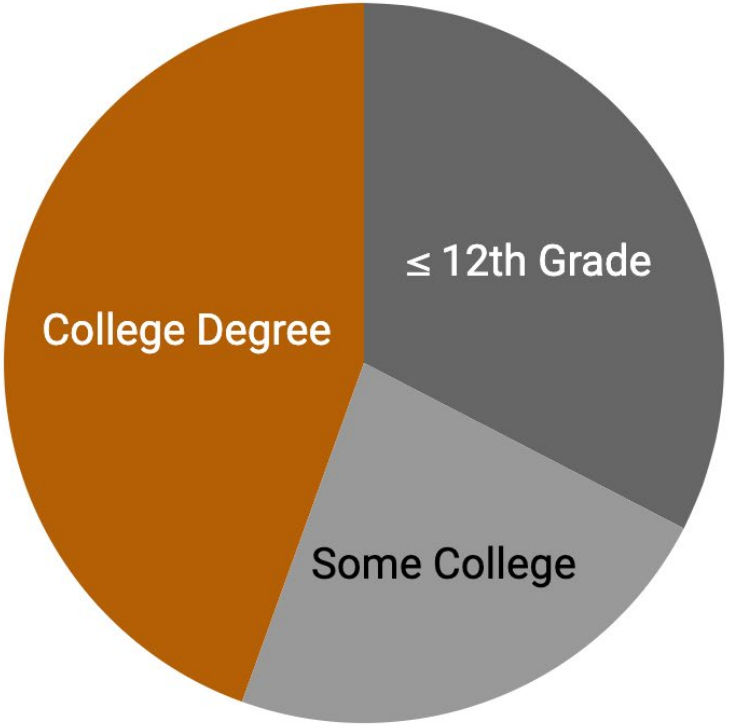


Massachusetts Educational Attainment, 2018



U.S. Census Bureau, 2018

The American Judicial System

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A Recent Study

Other Projects

What We've Learned

MASSBAR ASSOCIATION

Our Team

Linguistics

Linguistics
& Psychology

History

Linguistics
& Computer Science

Biology
& International Affairs

Linguistics
& English

Computer Science
& Philosophy

I ARE the instructions difficult to understand?

I ARE the instructions difficult to understand?

II If so, WHY?

I ARE the instructions difficult to understand?

II If so, WHY?

III Can we make them EASIER?

The American Judicial System

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What We've Learned

Standard of Proof (excerpt)

"... 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..."

Standard of Proof (excerpt)

… A preponderance of the evidence is such evidence which, 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. ...

Standard of Proof

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 prosecution 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. A preponderance of the evidence is such evidence which, 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.

Standard of Proof

"Legalese": 8

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 prosecution 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. A **preponderance of the evidence is such evidence** which, 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.

Standard of Proof

"Legalese": 8
Passive verbs: 11

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 prosecution **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. A **preponderance of the evidence is such evidence** which, **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.

I ARE the instructions difficult to understand?

“Plain English” Standard of Proof

“Legalese”: 0
Passive verbs: 1

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.

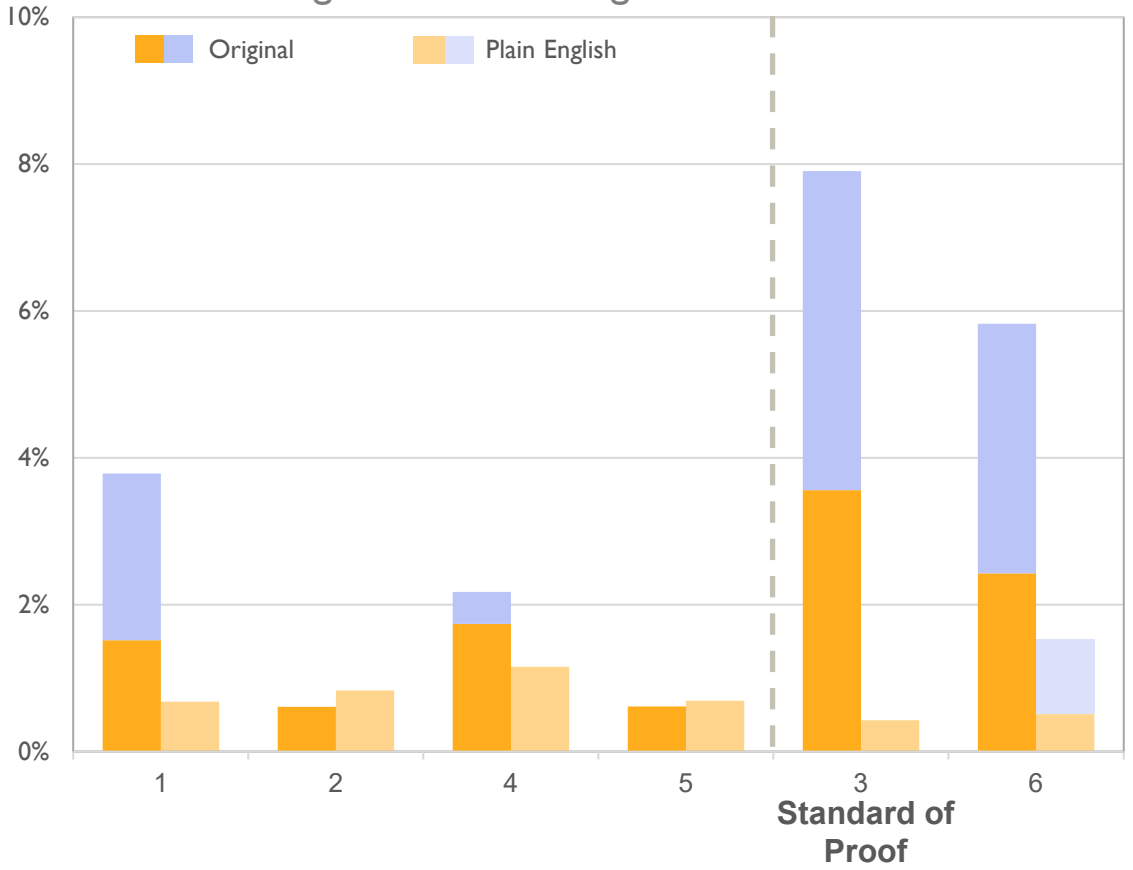
Now, you may have heard that in some cases, the evidence must convince you “beyond a reasonable doubt”. That’s only true for criminal cases.

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.

Rates of Legalese & Passive Verbs

Original and Plain English Instructions



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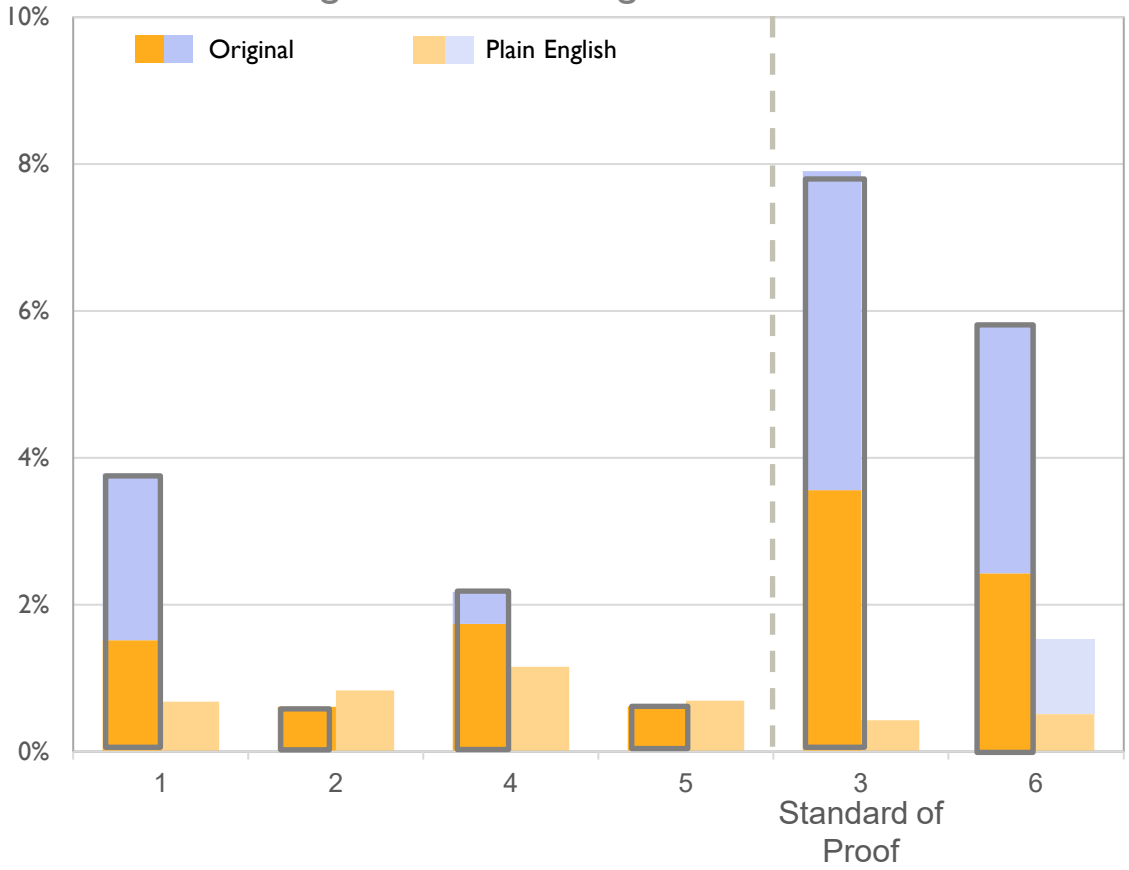

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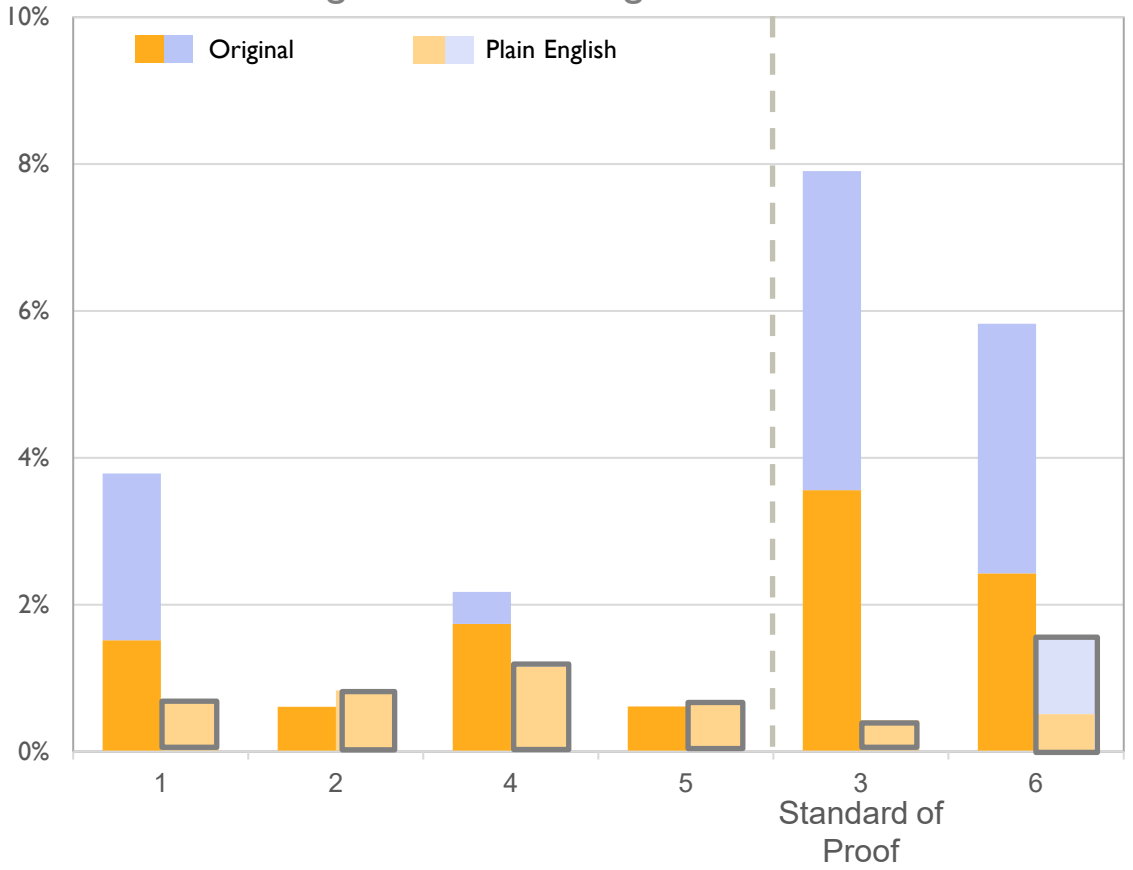

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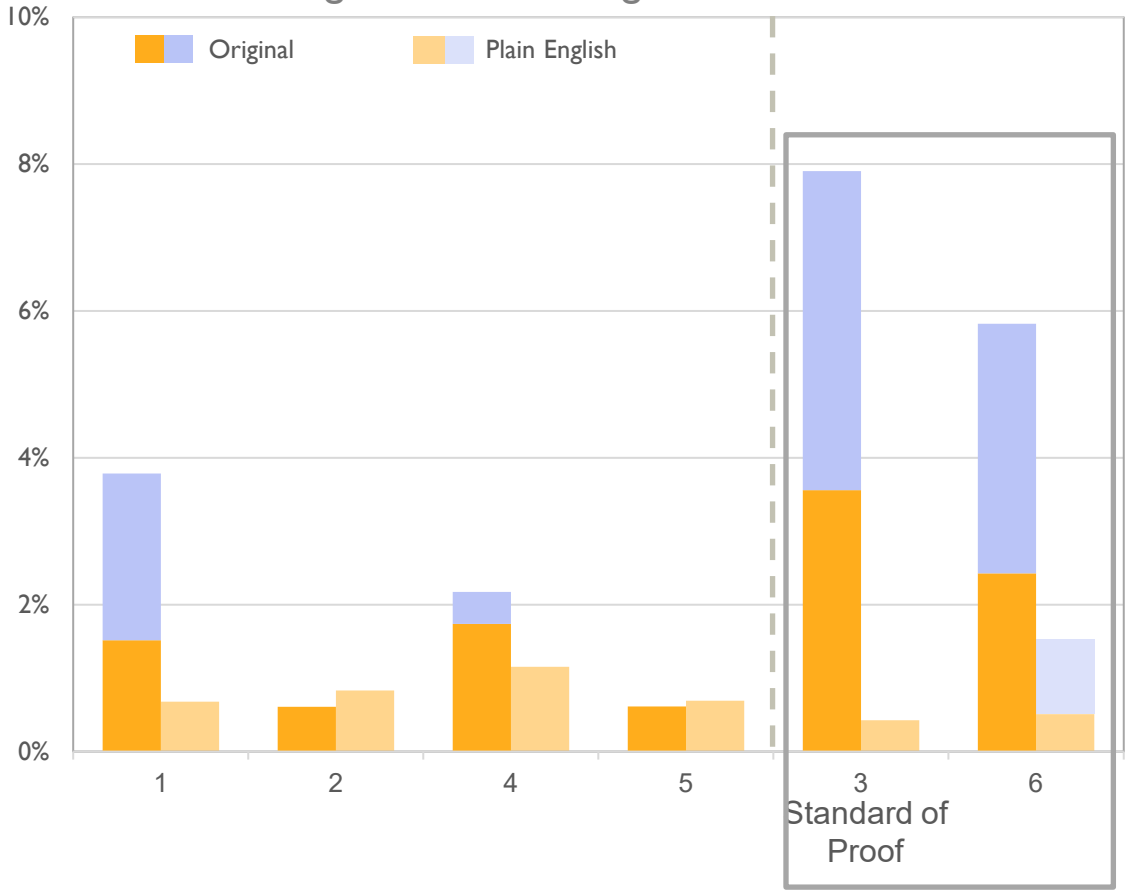

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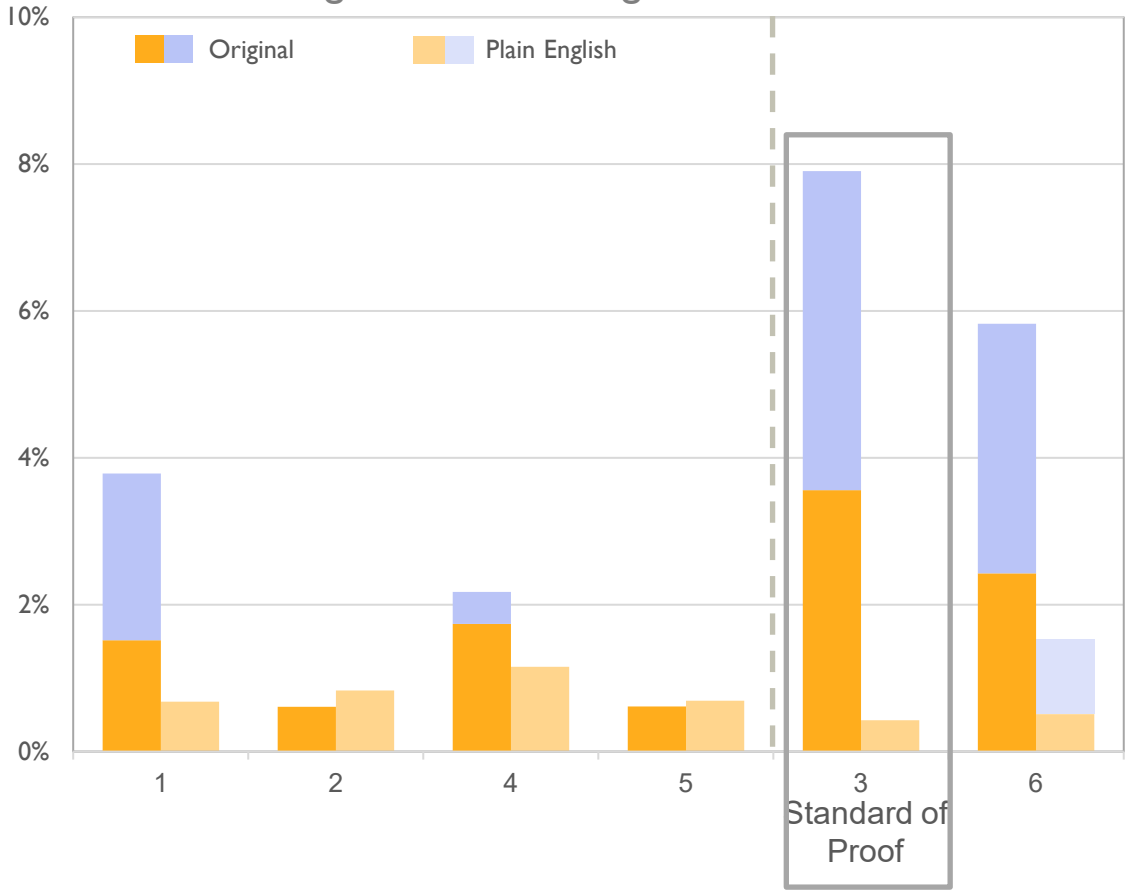

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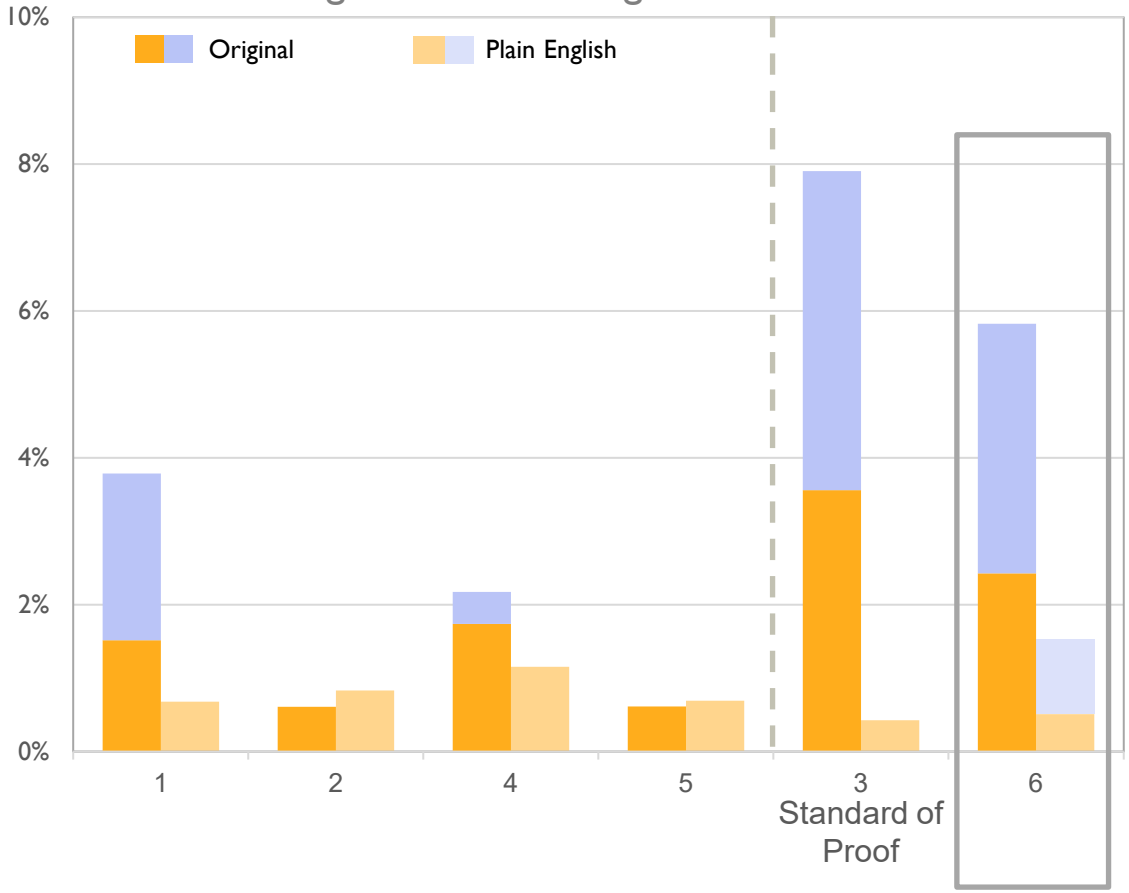


I ARE the instructions difficult to understand?

II If so, WHY?

III Can we make them EASIER?


Original
Plain English

Hypothesis 1

Plain English > Original Instructions

Hypothesis 1

Plain English > Original Instructions

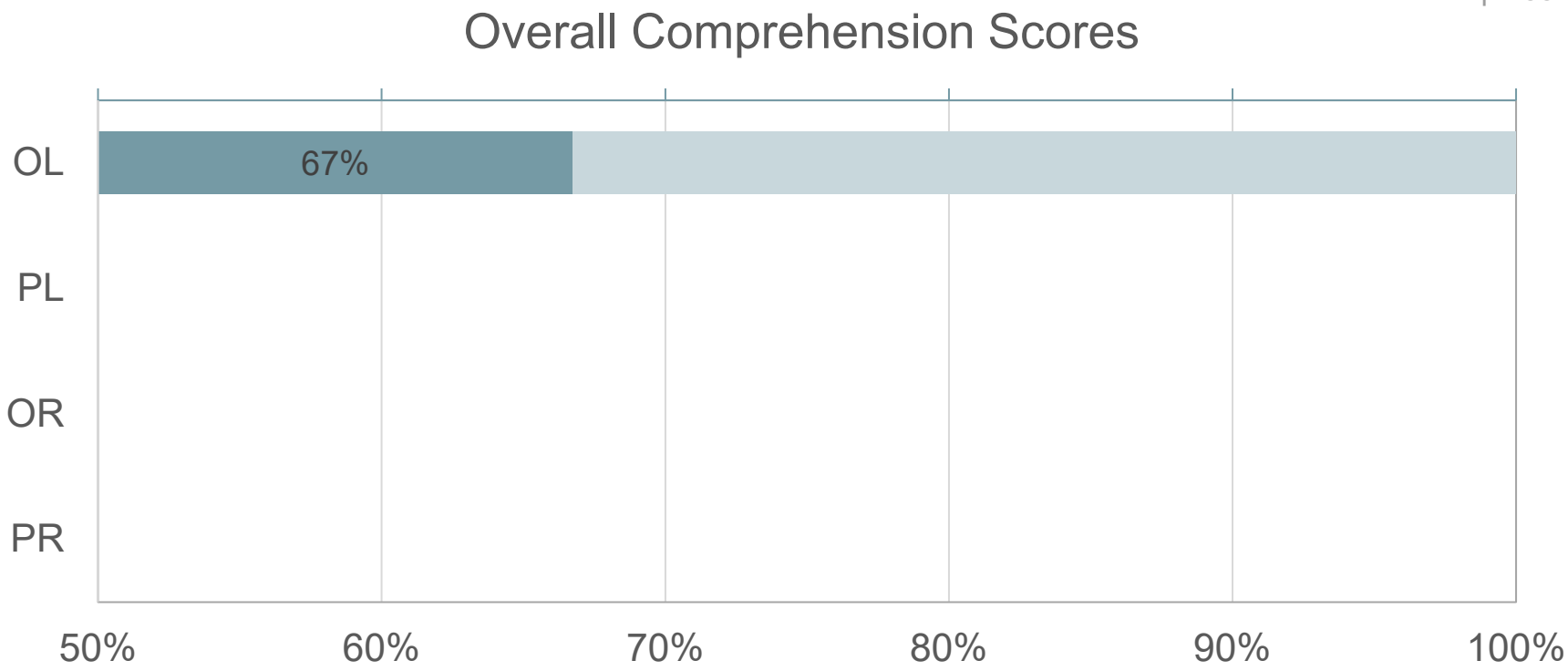
Hypothesis 2

Reading + Listening > Listening alone


Original
Plain English

	Original	Plain English
Listening Only	OL	PL
Reading + Listening	OR	PR

* p<.05
** p<.01
*** p<.001



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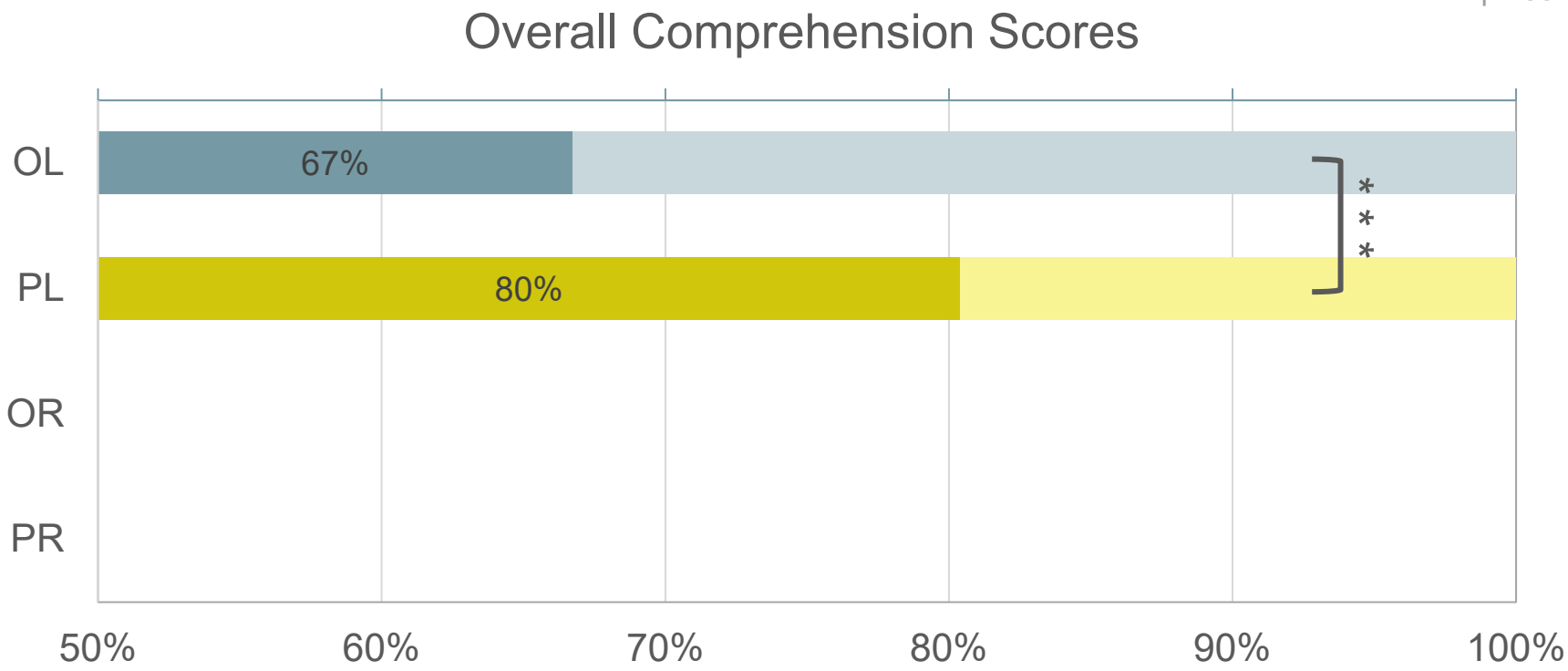
Overall Comprehension Scores
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OR
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* p<.05
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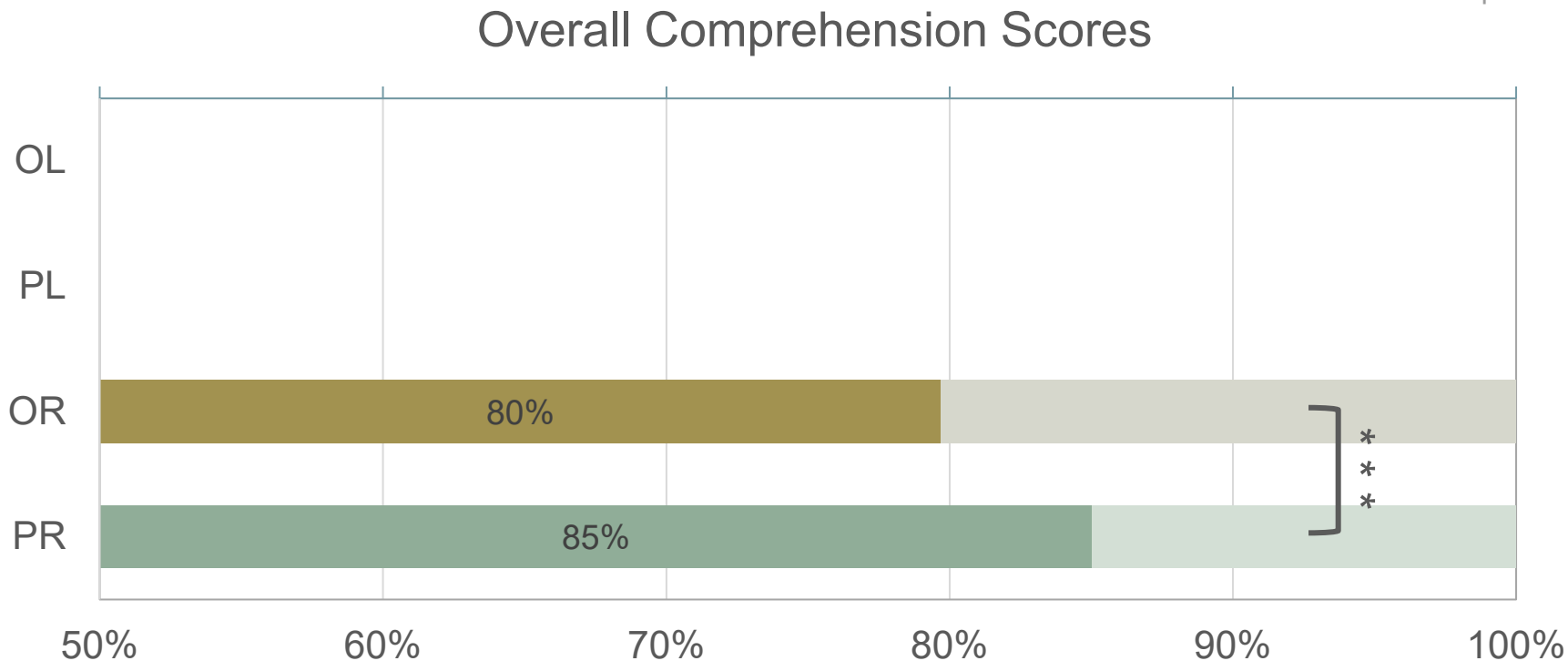
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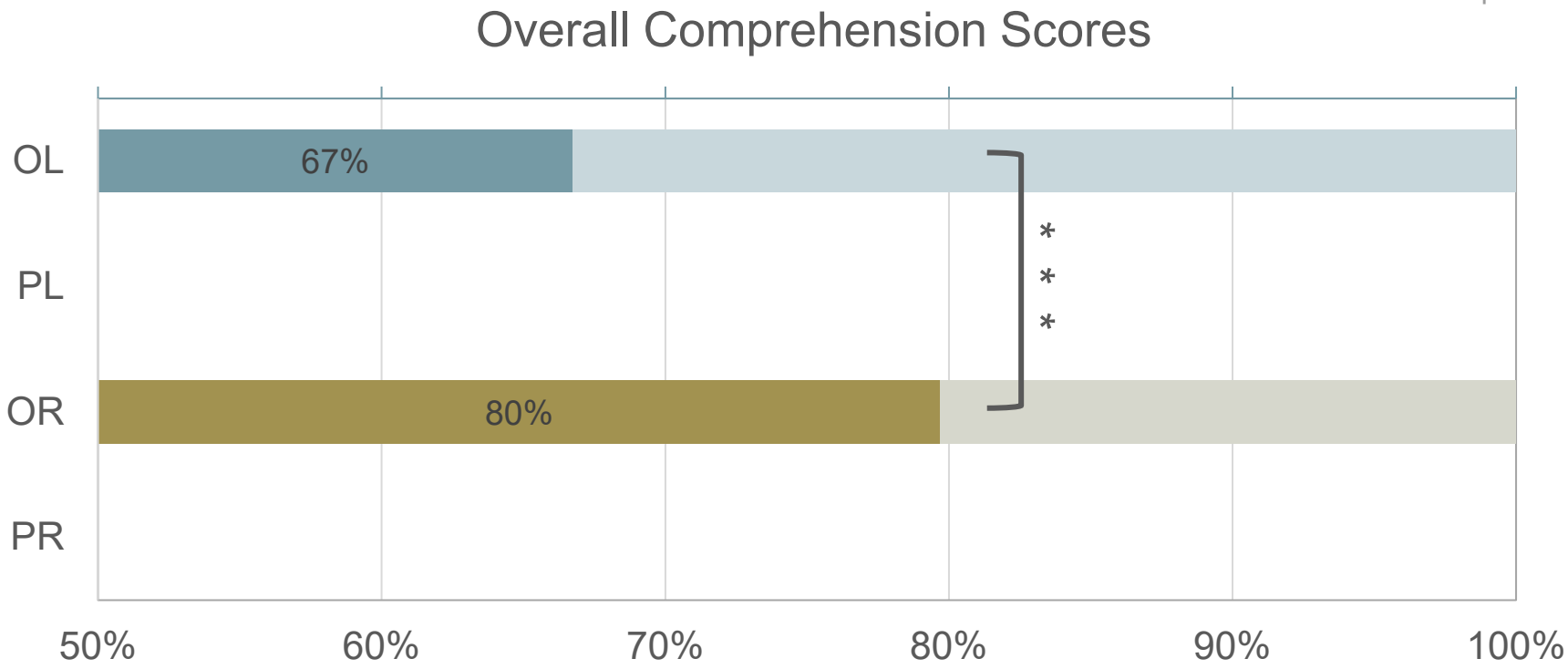
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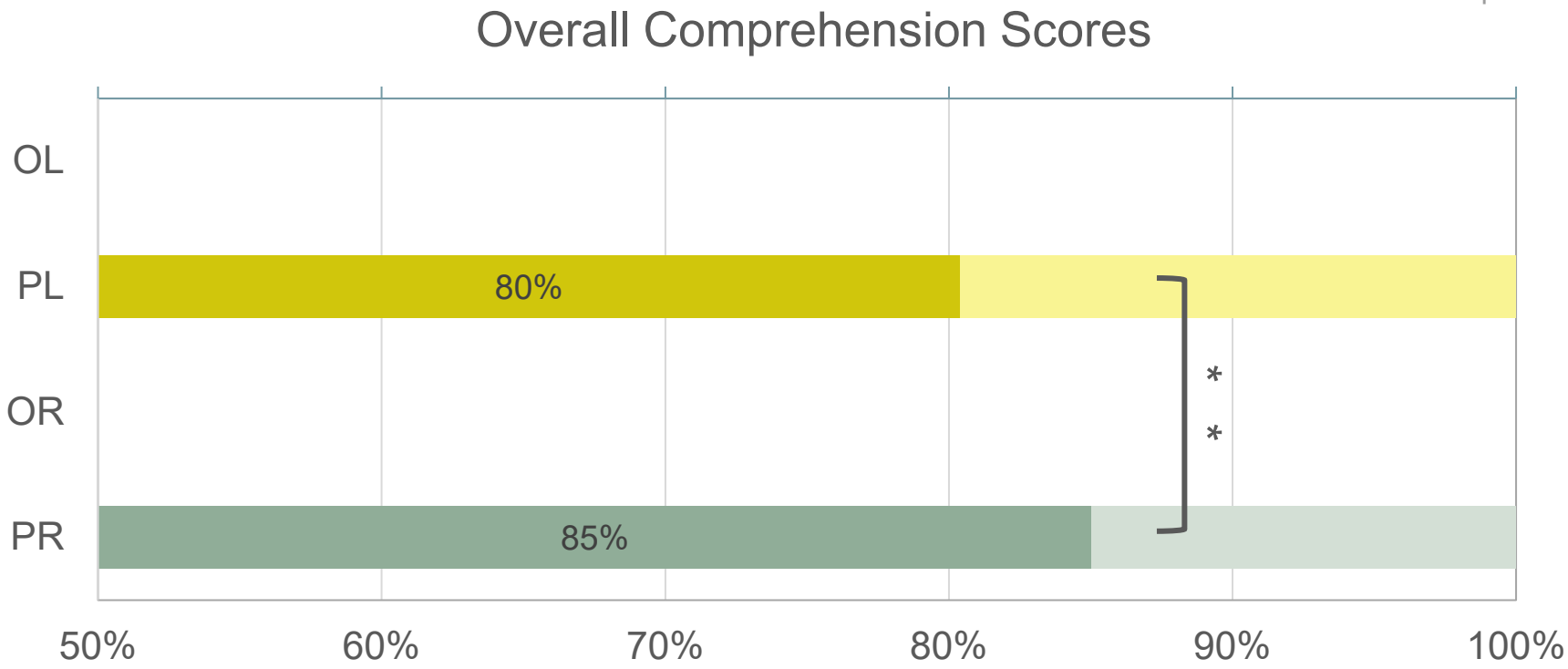
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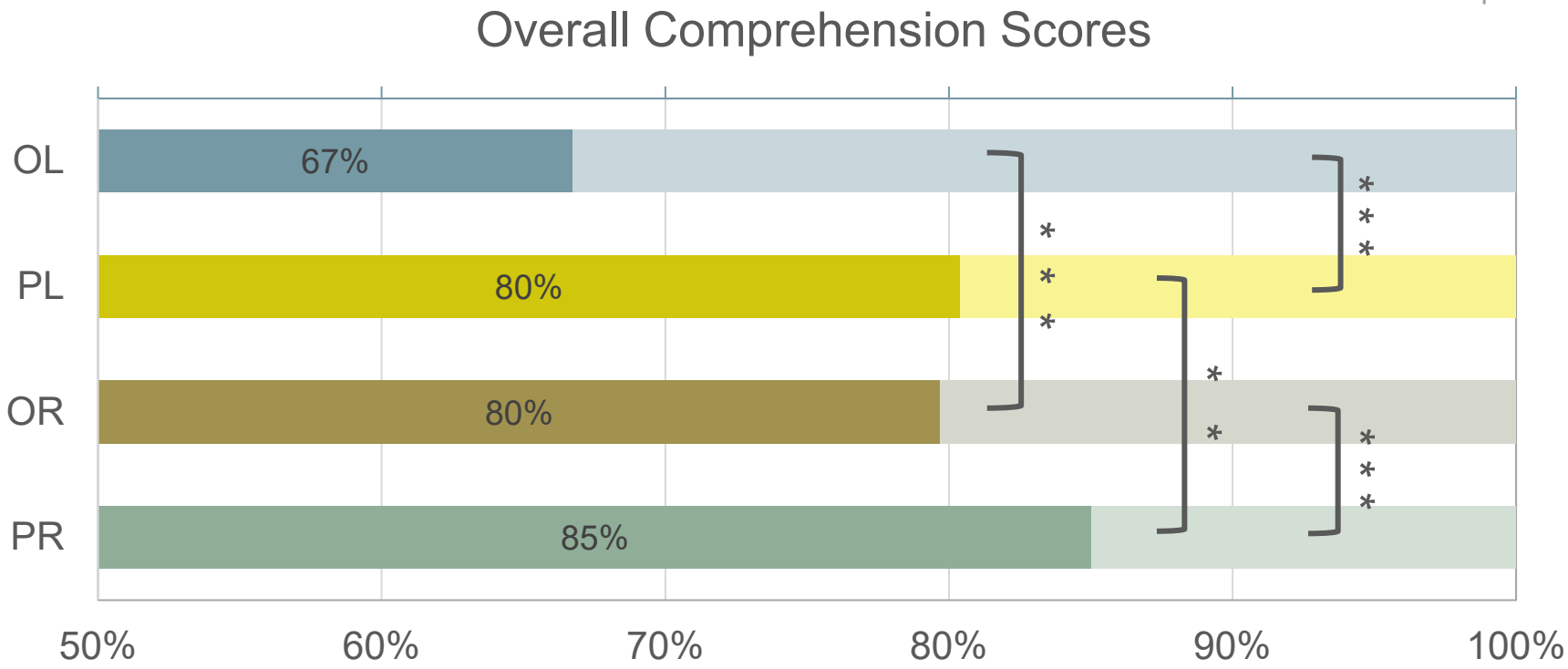
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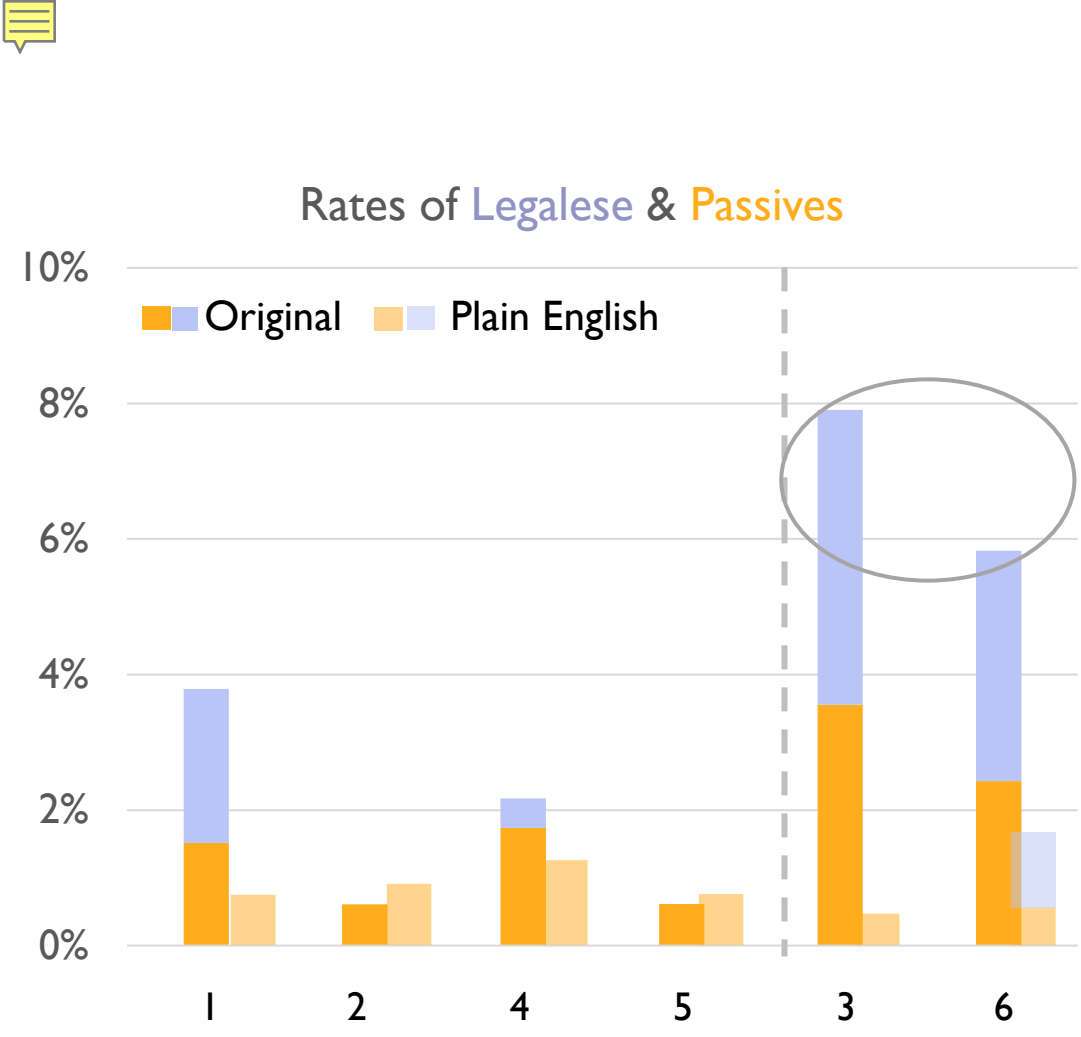
Hypothesis 1

Plain English > Original Instructions

Hypothesis 2

Reading + Listening > Listening alone


Rates of Legalese & Passives
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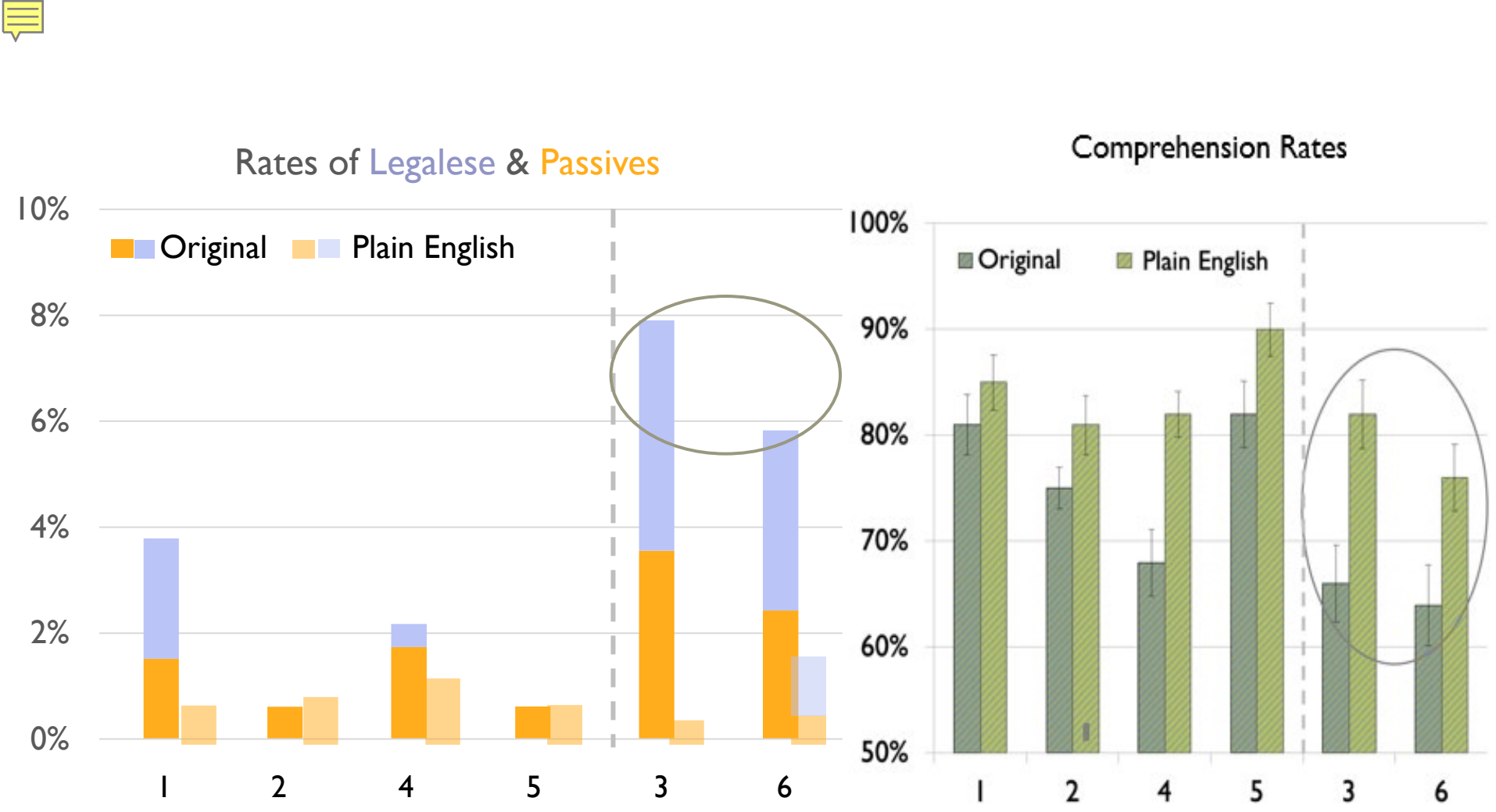
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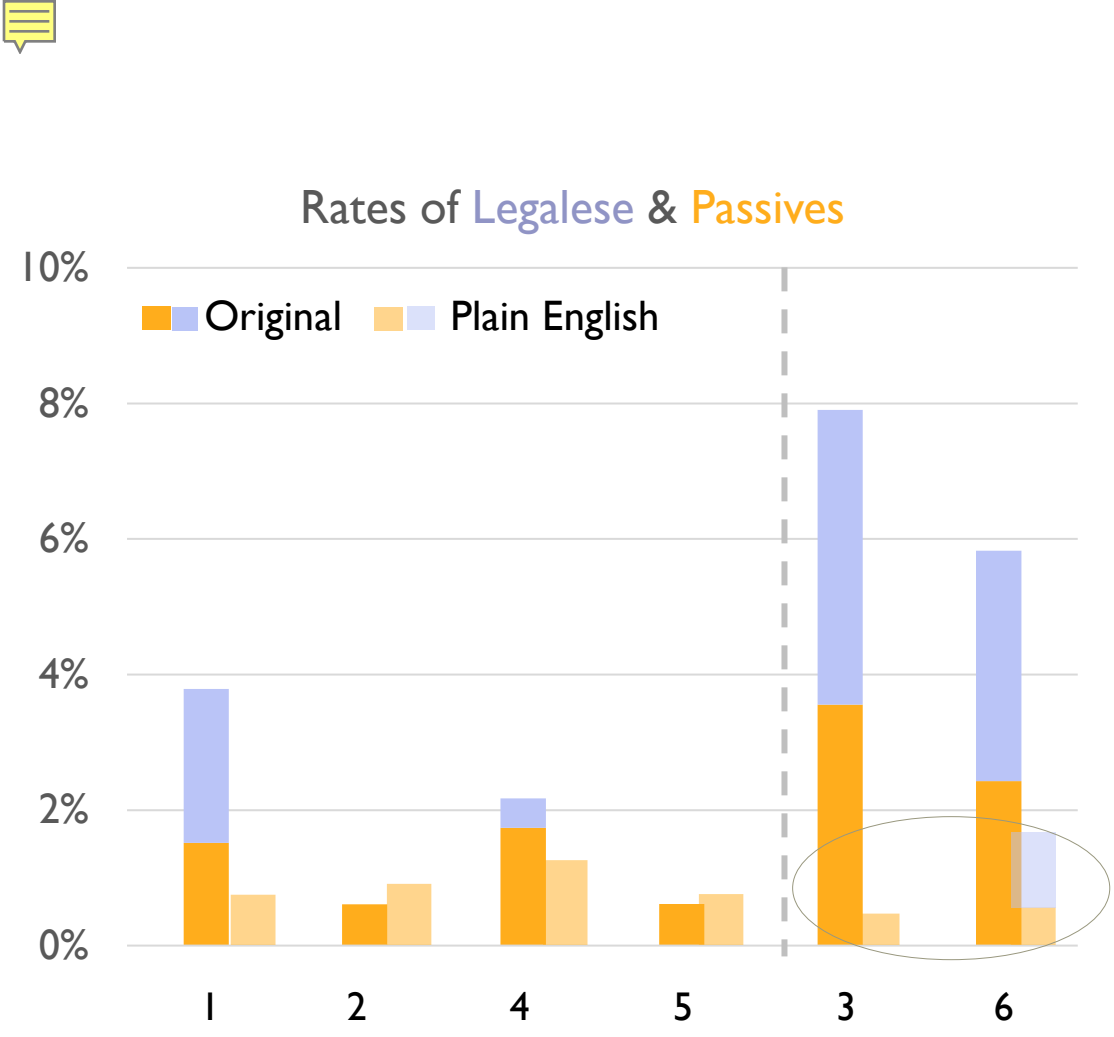
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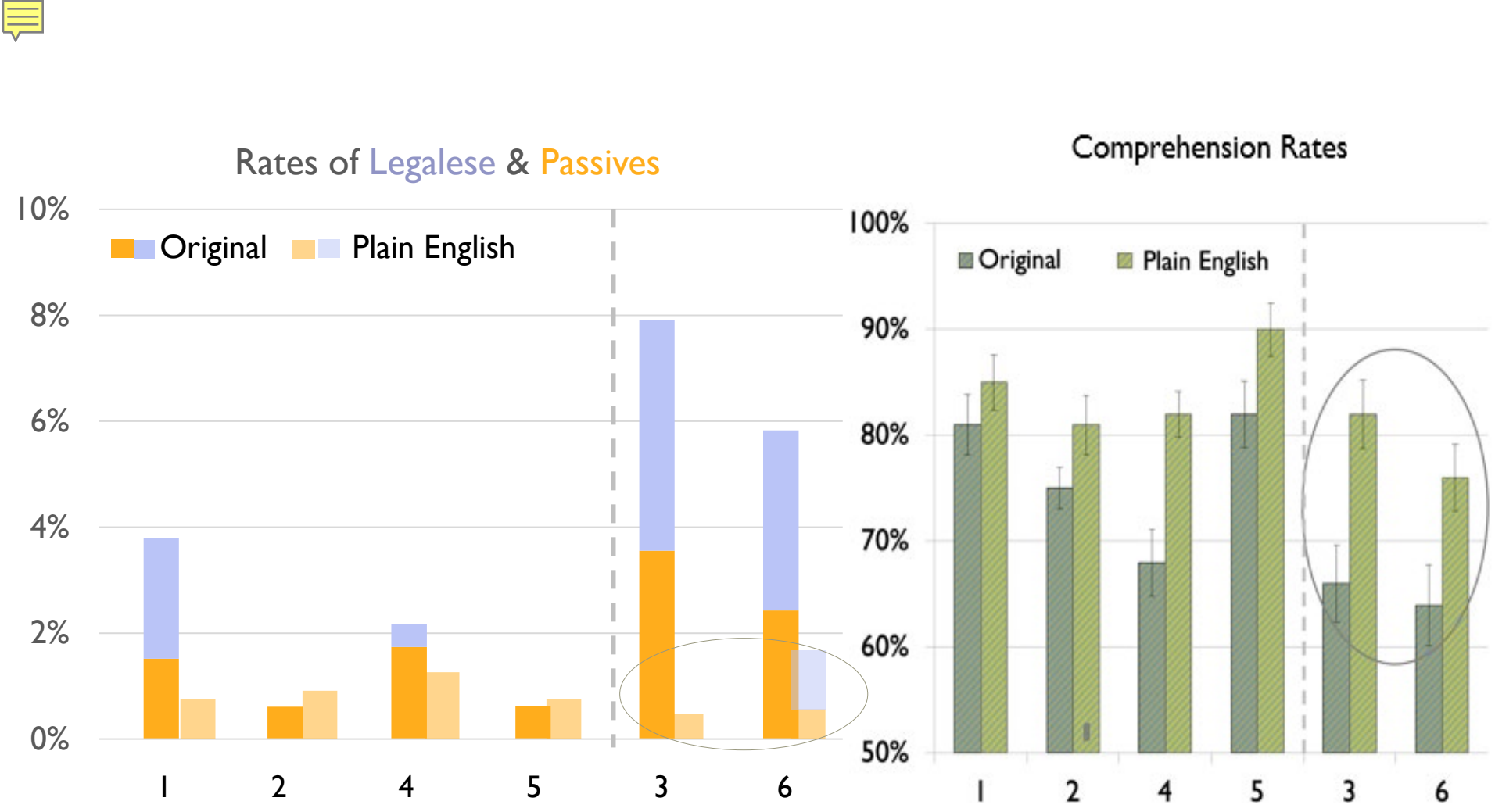
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The American Judicial System

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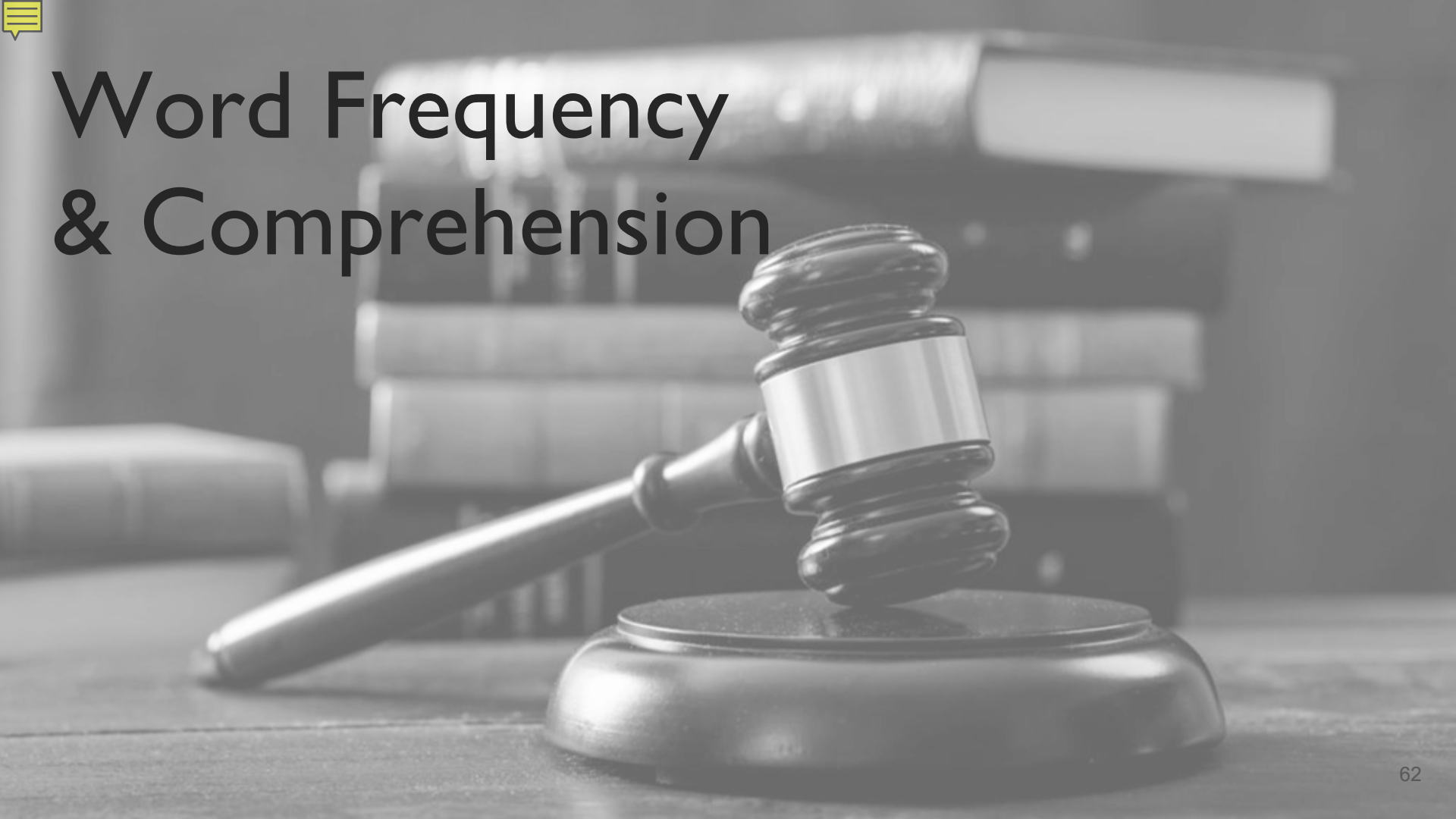
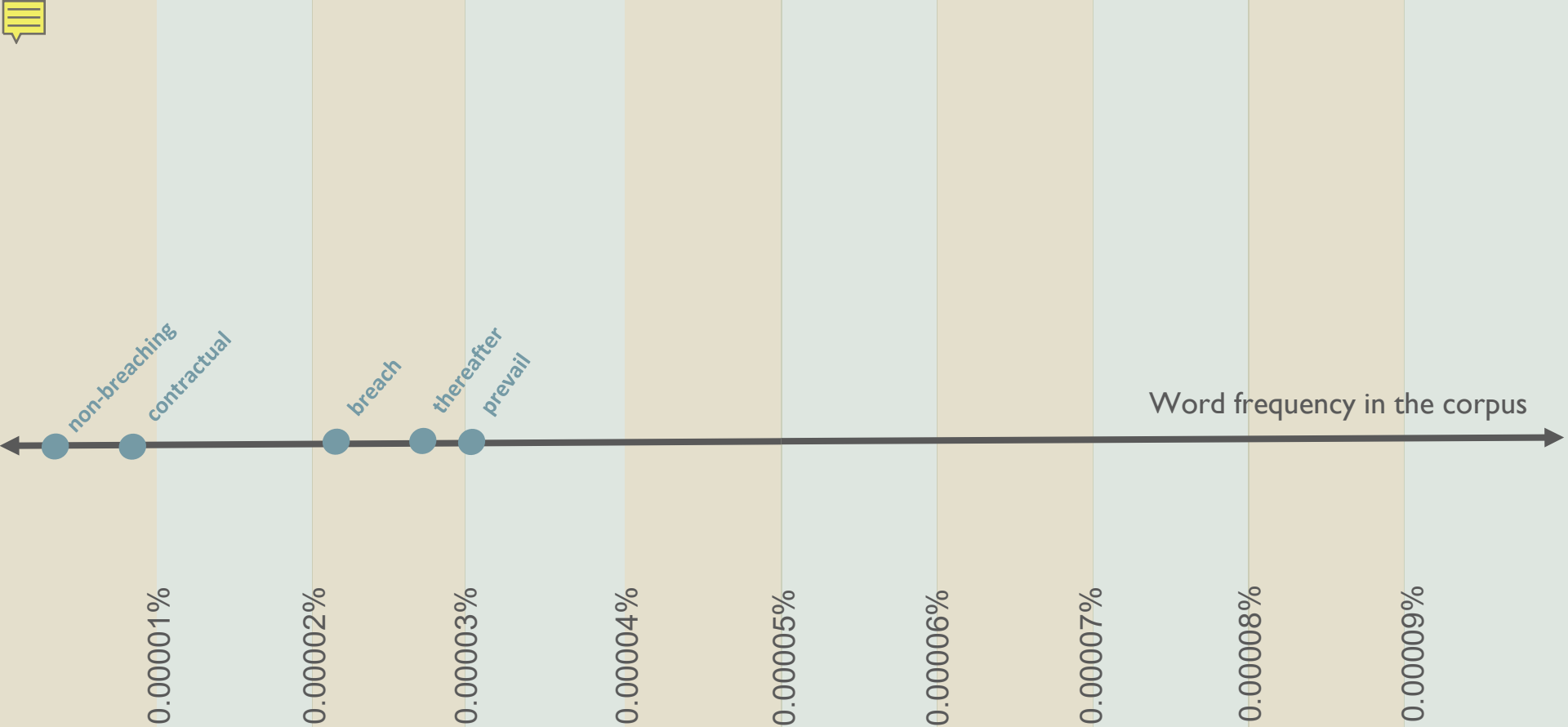
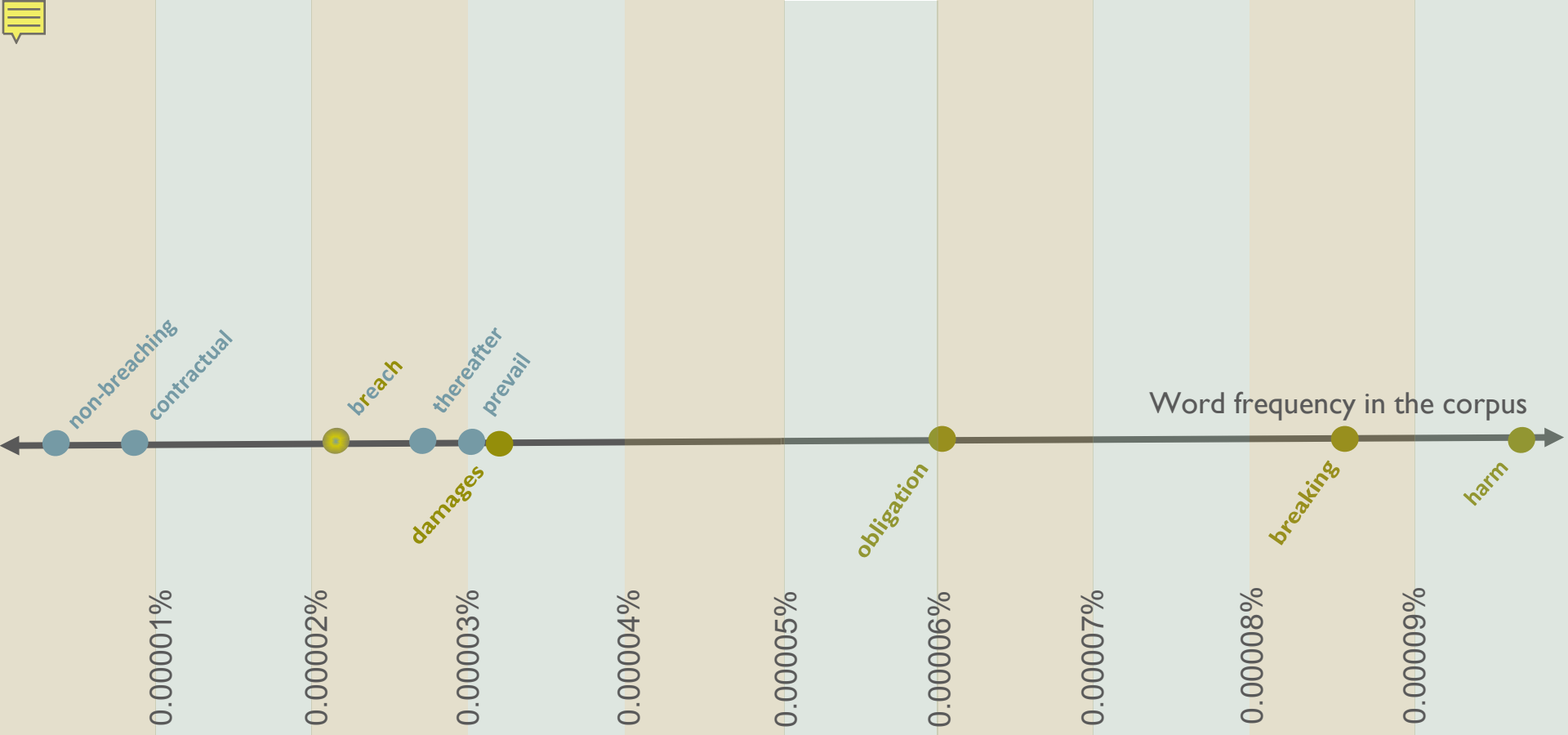
What We've Learned

Word Frequency & Comprehension





Accessed through English Lexicon Project (Balota, Yap, et al., 2007)



Accessed through English Lexicon Project (Balota, Yap, et al., 2007)

A Collaborative Conference


MARCH 30-31, 2017
THE SYNTAX OF JUSTICE:
LAW, LANGUAGE, ACCESS & EXCLUSION
certiorari
hoodie on, so I like
easier
legal custody
scare
breathin' har'
rima facie
it wa' like a ol' man
he might got off
service of process
like he crazy
just tell me
dispositive
man is watchin'
ex parte
guardian
know he was scare
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habeas corpus
he go' keep ru'
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He love his

In the Press

The *Economist*

14-20 April, 2018

Johnson | 12 confused men

The language of jury instructions is dangerously ponderous and baffling

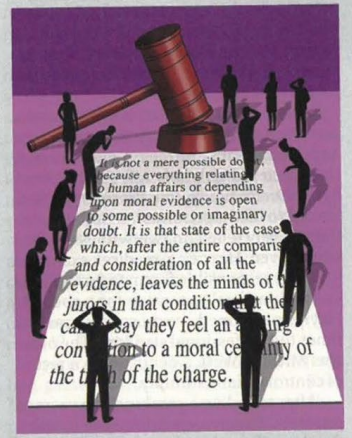
IN 1954 an Ohio jury was told it must acquit Sam Sheppard of murdering his wife if the jurors had a "reasonable doubt" that he had done so. The judge then defined "reasonable doubt":

> It is not a mere possible doubt, because everything relating to human affairs or depending upon moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge.

Sheppard was convicted. Larry Solan of Brooklyn Law School reckons that this and other baffling instructions misled the jury into thinking that the burden of proof was on Sheppard to prove himself innocent, not on the state to prove him guilty beyond a reasonable doubt. In a second trial, in 1966, he was found not guilty and freed.

A jury is a buffer between defendants and the might of the state, and a jury trial is guaranteed in America's bill of rights. But there is reason to worry that juries often do not understand what they are told to do to fulfil this role. Jurors are not (usually) lawyers, which is the point. They are the defendant's peers. But their instructions are written by lawyers, who are often so immersed in their professional argot that they do not realise how impenetrable it can be to outsiders.

Take this sentence from Massachusetts's civil-jury instructions: "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." The sentence is not only long; the bigger problem is that it has four clauses, embedded within one another. This kind of prose is hard to process, especially for non-native speakers, even more so when it is spoken rather than written down.



Another problem is the passive voice. Though the passive has some applications, it is overused in formal contexts. Like convoluted clauses, passive jury instructions can be hard to follow. Research has shown that when people hear sentences such as "the woman was visited by the man", and are quickly prompted to identify who was the "do-er" and who "acted upon", their reaction time and accuracy are considerably worse than when hearing the active-voice equivalent.

A final problem is legalese. Lawyers love words such as "notwithstanding" and "inference", but studies suggest as many as half of jurors think "preponderance" has something to do with pondering. Even plain words like "burden" have specialised meanings in court.

Janet Randall, a psycholinguist at Northeastern University, has found that rendering these instructions in plain English, stripping out passives and legalese especially, makes them much easier to interpret. Providing a written version brought an even bigger benefit. She first recorded modest results when testing psychologists' favourite lab rats—their students. But these are people who did well on English tests to get into university. When she recruited respondents online, who looked more like the actual jury pool overall, the good effects of the plain-English instructions shot up.

The Supreme Court has weighed in on ambiguous jury instructions, but has not yet struck down those that are merely hard to comprehend. Some American states have adopted simplified language, and some provide each juror with written instructions. But some still have not. A justifiable reason is that it can be difficult to render legalese accurately into terms that sound like conversational English. Less defensible reasons are mere inertia or, even worse, the belief on the part of a few judges that cumbersome formal language is needed to give jurors a sense of the majesty of the law.

Jurors will not often want to admit they don't understand. They are eager to end the trials and get back to their lives, and lawyers and judges in crowded court systems want them to get on with it, too. But bafflement should worry anyone who may face a jury, particularly in a country where the state can execute a defendant (see previous story). As long as that is the law in America, every easy reform that makes the system work better should be seized with urgency. Cleaning up the language of courtrooms is an obvious place to start.

Upcoming Projects

The American Judicial System

The Linguistics & Law Lab

A Recent Study

Other Projects

What We've Learned

Our collaborative work started when we launched a partnership with the **legal community**.

We learned that:

we can talk to **other linguists** all we want,

We learned that:

we can talk to **other linguists** all we want,

but when we **collaborate**, with people outside our field, we can make **real change**

Together with our legal colleagues, we're pursuing a **joint goal**:

Together with our legal colleagues, we're pursuing a **joint goal**:

that **legal language** be understood by **everyone**,

Together with our legal colleagues, we're pursuing a **joint goal**:

that **legal language** be understood by **everyone**,

so that we all have **equal access** to **justice**.

Thank you!

¡Gracias!

Merci!

Questions?