



## COLLABORATIONS IN THE COURTHOUSE: MAKING LEGAL LANGUAGE ACCESSIBLE

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### **Abstract:**

The Northeastern University Linguistics and Law Lab aims to improve justice and make legal language accessible through linguistic research. Our current research program focuses on identifying and minimizing the most challenging linguistic factors in jury instructions. So far, our results show that factors like passive verbs and legalese make jury instructions harder to understand. We can improve comprehension significantly by minimizing these factors and providing written texts along with spoken instructions. It is only through fostering connections with the legal community that our research has been impactful. We accomplish this by publishing outside our discipline, collaborating at interdisciplinary meetings, and working directly with legal professionals. In conjunction with the Northeastern School of Law, we hosted a conference where academics and legal professionals examined justice through a linguistic lens. We have also appeared in professional publications in both law and linguistics, as well as international popular press. Recently, we have begun a new line of research to determine how dismissed jurors comprehend jury instructions. There are many opportunities for linguistic-law collaborations, but it is up to us to reach out and lend a helping hand.

**Keywords:** jury instructions; legal linguistics; passive verbs; legalese

### **Introduction**

“Trial by jury” is fundamental to the legal system of the United States of America, encoded in the U.S. Constitution: “The Trial of all Crimes...shall be by Jury” (U.S. Const. art. III, § 2). Among other rights, it guarantees those accused of crimes the right to be tried by their peers, who listen to the evidence on both sides of a case and determine a verdict. Jurors are selected from a list of citizens over the age of eighteen who are called to the courthouse on a given day. From among these, the judges and lawyers generally draw a set of 14 (12 + 2 alternates) to serve on each case (Federal Judicial Center, 2006).

The Constitution further explains, “such Trial shall be held in the State where the said Crimes shall have been committed.” Today, the jury system operates in all fifty states, but our work primarily concerns the jury instructions given in the state of Massachusetts.

## **1. The American Judicial System**

### **1.1 English Origins**

The American jury system was inherited from English common law, going back to the Magna Carta of 1215. Trial by jury was created to suit the needs of a population that was becoming increasingly hierarchical and also increasingly distant from traditional forms of

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justice through kinship networks. Juries provided protection for commoners against the machinations of their feudal lords. Later, after the Glorious Revolution, the right to trial by jury was reaffirmed in the British Bill of Rights (Von Moschzisker, 1921; West Virginia Association for Justice, 2014).

## 1.2. Colonial Juries

As colonists left England for the New World, they brought the tradition of trial by jury with them, incorporating it into many state charters. Trial by jury soon became a vital and iconic component of American colonial life. In fact, though the trigger for the American Revolution is usually identified by an economic dispute over unjustified taxes (as epitomized by the notorious Boston Tea Party), another motive for rebellion was the British assault on the colonists' right to trial by jury. The state of Massachusetts in particular was an early leader in demanding that juries be enshrined in the Constitution. In fact, the state agreed to join the Union only on the condition of a Bill of Rights that guaranteed, among other rights, trial by jury (Office of Jury Commissioner, 2018).

## 1.3. The Allure of Juries

The motivation for trying legal cases in front of a jury—not just a judge—is the desire to balance the power of traditional elites. Only very few citizens become judges, and only after a long legal career and years of education. It is feared that this status sets judges above typical citizens, rendering them unable to empathize with the people “down below.” Furthermore, as a judge is only a single person, there is a concern that they are susceptible to influence. In *Singer v. United States* it was asserted that “a right to jury trial is granted to criminal defendants in order to prevent oppression...and to protect against...judges too responsive to the voice of higher authority...the compliant, biased, or eccentric judge” (1965). Expanding the number of decision makers in a trial and ensuring that they are unbiased is the goal of jury trials. In its essence, the right to trial by jury depends on the belief that every citizen has the ability to understand, judge, and implement the law.

## 1.4. The Flaws of Juries

Suppose the most basic assumption underlying trial by jury is false. What if the ordinary citizen *can't* understand the law? Juries consist of the accused's peers: doctors, construction workers, teachers, students, domestic workers, and the like. Therefore, most jurors have scant legal background, entering the courtroom knowing little more about court proceedings than what they've seen on television. A jury composed of ordinary citizens can certainly deliver a fairer verdict than an individual judge. But to do so, jurors need to know *how* to make a fair decision—and that is the job of jury instructions.

## 1.5. A Jury is Only as Good as Its Instructions

Jury instructions are given to each juror by the judge presiding over the case. The judge explains the basic legal methodology that the jurors should use to evaluate the elements of the case and come to a decision: which information to trust, how to evaluate witnesses, what counts as evidence and what does not. They learn about the “standard of proof” that must be attained in order to say that the plaintiff is guilty of the charges. Conveying the instructions to the jurors can take well over an hour. If the jurors cannot understand these instructions, there is no hope that they will deliver a fair verdict. And our research shows that this is indeed the situation. Jury instructions are not phrased in everyday language. A small excerpt of one instruction, *Standard of Proof*, is shown in Figure 1.

### Standard of Proof

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.

**Figure 1.** *The Standard of Proof* from Brady, Lipchitz, and Anderson (2008).

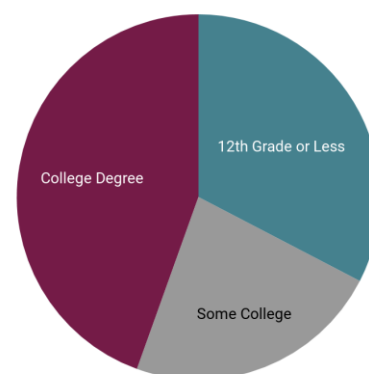
We will look at this mass of tangled, confusing sentences below. But where did these nearly incomprehensible words come from? And why do they persist?

Jury instructions must convey all of the “elements” of a case, which, in order to be precise, must be stated in specialized legal prose. The original texts are passed down from one set of judges to the next, which maintains their accuracy but also suggests that they are “sacred texts” that should inspire awe and respect for the court and, as such, *must* not be changed. Courts that nevertheless do decide to change them encounter many roadblocks along the way: inertia, the fear that past decisions made under earlier versions of the instructions will be challenged, the daunting nature of the task, and the belief that the problem is not that jurors don’t understand them, but that jurors just aren’t listening carefully, and no amount of revising will help.

However, studies have shown that the often convoluted sentence structure of jury instructions makes them difficult for even college students to parse (see Sections 2.2. and 2.3., below.). And college students are hardly representative of the population. In Massachusetts, for example, almost a third of the citizens have not attended college (see Figure 2) (U.S. Census, 2018). However challenging these instructions are for citizens with many years of schooling, they are, as we will show, even more challenging to those with fewer.

Law is a pervasive aspect of our lives. We rely on the law and trust it to protect us. For that to happen, those who deliberate on the law must *understand* it. This is where the Northeastern Linguistics and Law Lab has stepped in.

**Figure 2.** Almost a third of Massachusetts residents, 24 years of age or older, have no education beyond high school, and nearly half of residents have not attained a higher-education degree.



Massachusetts Education Levels, 2018

## 2. The Founding of the Lab

In 2010, Dr. Janet Randall of the Northeastern Linguistics Program was approached by the Massachusetts Bar Association<sup>1</sup> to join their *Plain English Jury Instruction Task Force*, a group of judges and lawyers working to improve jury instruction comprehension. They wanted to revise Massachusetts jury instructions to make them comprehensible by all jurors who serve on trials; in other words, to translate them into “Plain English.” However, in order to do this, many questions had to be answered. How difficult are our current instructions for jurors? What exactly makes them difficult? Is it specific words or constructions? If we revise them, will they be easier to understand? What kinds of revisions have other states made? Would those work for Massachusetts?

To assist with this research, Dr. Randall formed the Linguistics and Law Lab at Northeastern University to do research at the intersection of law and language and made the Plain English Jury Instruction Project its first focus. A group of students joined the Lab as research assistants, from disciplines across the university: linguistics, business, biology, psychology, computer science, statistics, and law. This interplay of backgrounds has made our research dynamic; the many different perspectives at the table leads to creative thinking and novel solutions. Our lab has been conducting experimental studies to determine the challenges of jury instructions, which we will discuss in Section 3. In the sections that follow that, we discuss our other activities and the recognition we have received along the way, which has helped us launch more collaborative efforts.

## 3. Major Studies

Since 2013, our lab has launched four major studies to analyze the challenges of Massachusetts jury instructions and how to overcome them. Together with the MBA task force, we chose a set of seven civil instructions and rewrote them into “Plain English,” eliminating many of the semantic and syntactic challenges that we identified: sentences containing multiple layers of embedded clauses, passive verbs with missing arguments, stacked negatives, nominalizations, and “legalese,” words that are not understood by many laypeople or are understood only with their alternate, everyday, non-legal meaning. The task was not an easy one; the lawyers and judges fought to retain much of the challenging wording as the linguists struggled to change it. After many versions and a number of pilot studies, we settled on the rewritten texts, which would be presented to subjects to see if our proposed simplifications led to better understanding.

### 3.1 Study 1

#### 3.1.1 Hypothesis and experimental design

We tested six instructions in two versions with a seventh as a warm-up instruction. Subjects were divided into those who heard the original, current, instructions and those who heard the Plain English versions. Hypothesis 1 was that those who had the Plain English instructions would perform better than the ones who had the originals. And we formulated a second hypothesis, Hypothesis 2, based on our research in psycholinguistics: listeners with a written copy of the instructions would perform better than listeners without one. As the design in Figure 3 shows, half of each group had the texts to read, the other group did not. So our

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<sup>1</sup> A Bar Association is a voluntary group of legal professionals who serve the legal profession and the public by promoting the administration of justice, legal education, professional excellence, and respect for the law.

design had four conditions, OL (Original Listening, OR (Original Reading), PL (Plain English Listening) and PR (Plain English Reading).

### 3.1.2 Subjects, method, and materials

Our subjects were 214 undergraduate students. They heard either the Original or Plain English versions with or without the text. After hearing each instruction, they answered a set of corresponding true–false questions. An example of one instruction, Standard of Proof, in its two versions, is shown in Figure 3.

<b>Standard of Proof</b>	
<b>Original Instruction</b>	<b>Plain English Instruction</b>
<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>Simply stated, a matter has been proved by a preponderance of the evidence if you</p>	<p>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”.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>Stronger evidence does not mean more evidence. It is the quality or strength of the</p>

determine, after you have weighed all of the evidence, that that matter is more probably true than not true.	evidence, not the quantity or amount, that matters.
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Figure 3. Side-by-side comparison of an original jury instruction, Standard of Proof, and the revised edition.

### 3.1.3 Results and Discussion

As shown in Figure 4, both of these changes led to improvements: comprehension improved (slightly) for the Plain English instructions over the Original instructions but only improved significantly for subjects who had the texts to read along.

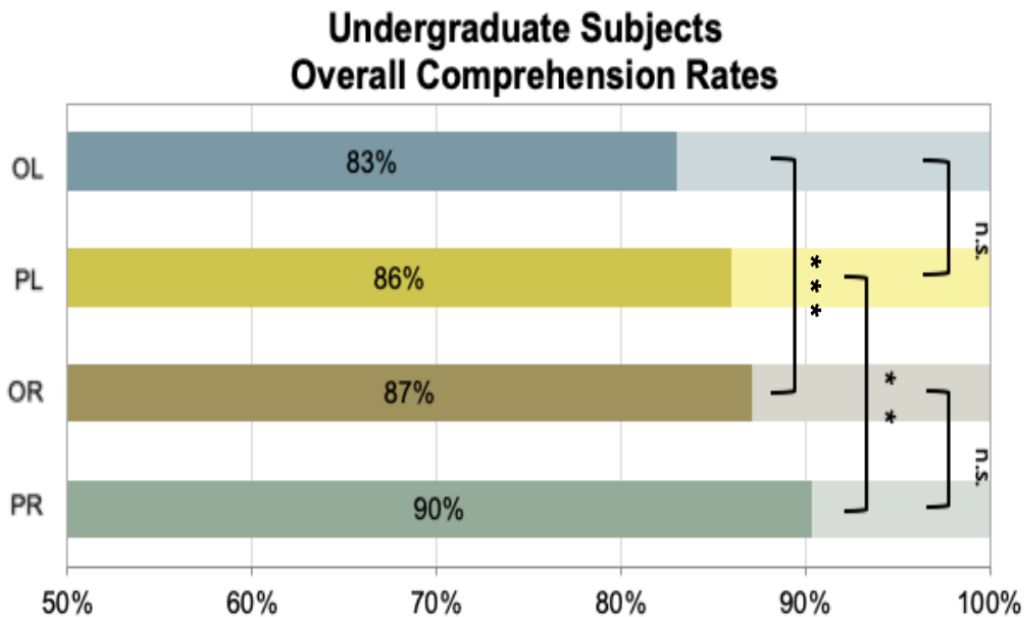
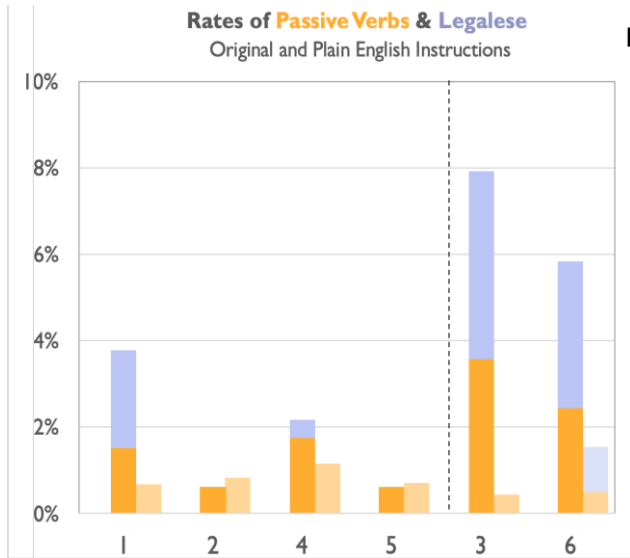


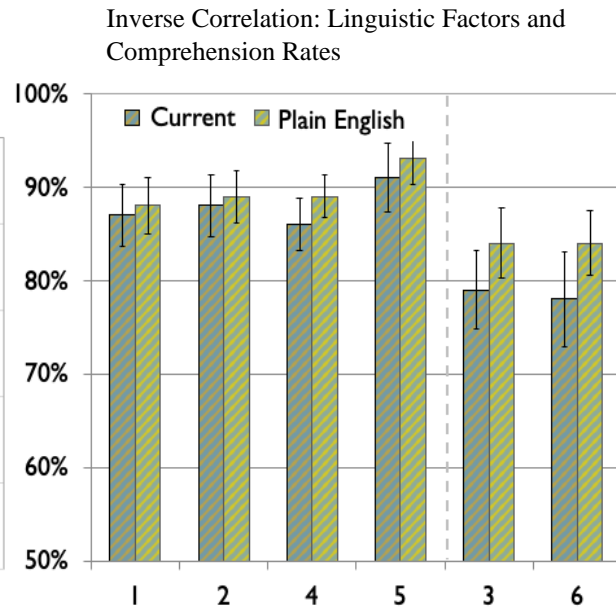
Figure 3. Results for Study I. In this graph, CL stands for “Current [instructions] Reading, PL is “Plain [English] Listening”, CR is “Current Listening” and PR is “Plain Reading”.

Making both changes—compare the top bar (OL) with the bottom bar (PR)—led to the greatest improvement. So both Hypothesis 1 and 2 were confirmed.

Looking more closely at our results was revealing about the cause of the challenges. Instructions 3 and 6 (the right-hand two bars in Figure 5 and 6) had lower comprehension rates than the other instructions. A look at the linguistic factors in the six instructions showed us why. As shown in Figure 4, Original instructions 3 and 6 (the left side of each double bar) had far more passives and “legalese terms” than the others. And the Plain English instructions (the right side of these double bars) nearly eliminate these. These two factors are clearly responsible for the difficulty of the most challenging instructions and the improvements in the Plain English versions. The bar distribution in Figure 5 matches the distribution in Figure 4.



**Figure 4.** Overall comprehension by instruction, with the reading and listening conditions merged.



**Figure 5:** a comparison of comprehension rates by the undergraduates, organized by instruction.

We might now ask why our Plain English versions did not lead to higher comprehension rates. Remember that our subjects were college students, so their baseline rates were high, 83%. Perhaps a less educated subject pool would start out with lower rates and show more improvement.

### 3.3. Study 2

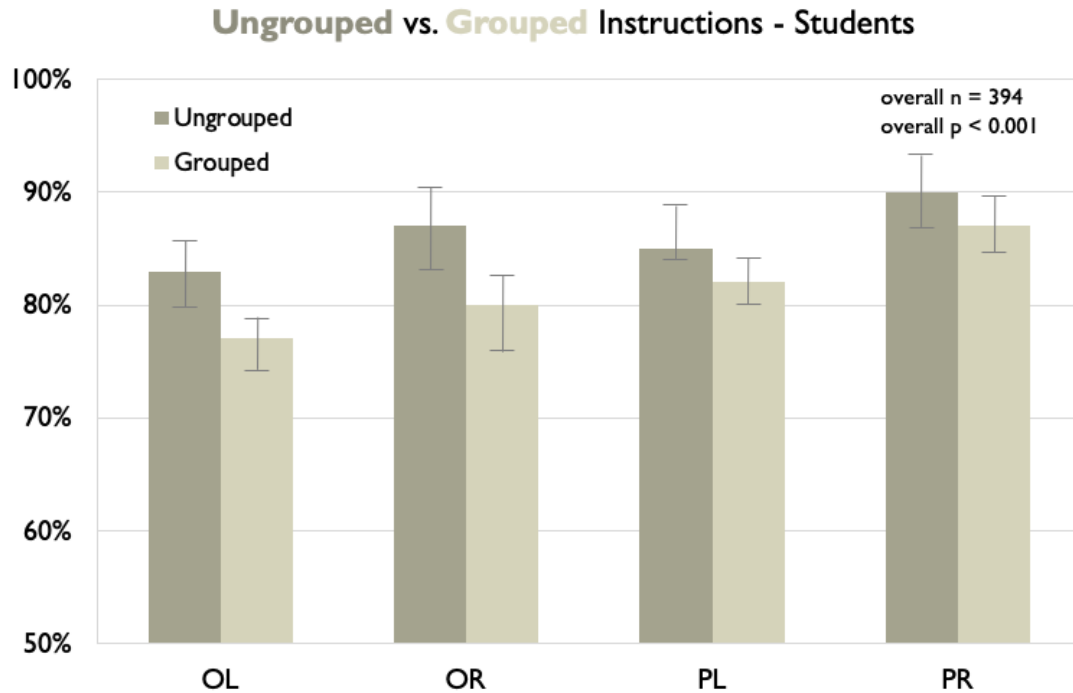
We addressed this question in our second study, using a pool of subjects more similar to that of a jury pool, which we recruited using Mechanical Turk (MTurk), an Amazon service that permits crowdsourcing of research subjects online. Demographic questionnaires administered to the subjects showed that their education levels were far more in line with that of the typical Massachusetts resident. As predicted, in comparison to the undergraduate students, comprehension declined across all conditions, and the improvements from both Plain English and reading were significant. Instead of 83% correct responses in the OL baseline condition, these subjects' correct scores were at 67%. They answered a full third of the questions wrong. To the extent that these subjects resemble jurors, these results suggest very strongly that jurors will have comprehension difficulties.

### 3.4. Study 3

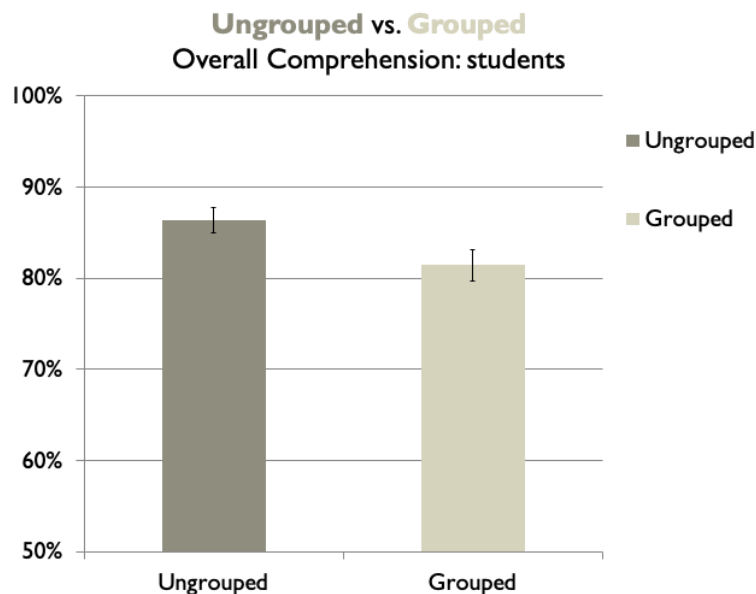
There was another way, though, that our students -- and our MTurk subjects -- had an advantage over actual jurors. In our initial two studies, we presented the jury instructions in what we can call an "ungrouped" format — subjects read each instruction and answered questions about it, before proceeding to the next one and its questions. In an actual courtroom, though, jurors hear the instructions "grouped" together and then have to consider what they mean.

To see if this factor made a difference, we ran Study 3, which replicated Study 1, in that it used students, but grouped the instructions together and then asked subjects to answer questions about all of them. Figure 6 shows that comprehension decreased in all four conditions when the instructions for the "grouped" as opposed to "ungrouped," instructions, with the

largest differences in the two Original conditions. Figure 7 shows the difference over the aggregate scores, comparing all ungrouped instructions (the darker bars) with the grouped instructions. Though these subjects are not real jurors, by more closely mimicking the real setup of a jury trial, this study paints an even clearer picture of the expected comprehension rates of actual jurors.



**Figure 6.** Comparing the comprehension rates of undergraduates across the four conditions and grouped versus ungrouped.



**Figure 7.** The difference between the average of all four conditions, grouped and ungrouped, was also significant.



### 3.5. Study 4: in Progress

Since we began our research, our studies have gotten some recognition in the legal community and we have been invited by two judges to run a version of them in their courtrooms. We plan to meet with the judges this spring and hope to launch our newest studies by the end of the year. The results, if they come out as anticipated, should be the most compelling ones yet. Actual jurors will have a chance to look at Original and revised instructions, and to read them or not. Our findings will certainly be of interest to judges who want to improve the understanding of their instructions in their courtrooms. We hope that by working in close association with them, and giving them an opportunity to participate in our research goals, they will become strong advocates for change in the arena of jury instructions.

## 4. Other Projects

Outside of our major focus testing the comprehension rates of jurors, we have also diversified into several other areas at the intersection of linguistics and law.

### 4.1. *The Syntax of Justice*

In 2017, Professor Randall and the then Dean of the Northeastern School of Law collaborated on a two-day conference, *The Syntax of Justice*, that brought together legal experts and linguists in a series of presentations and conversations. Speakers from both fields talked about the connections between language and law. One important question that the conference addressed was: *Justice should be accessible to everyone equally, but is it?* Sessions examined the injustices that surround legal language, including difficulties for various Americans whose dialects are non-standard. Students in our lab presented a paper that discussed the Trayvon Martin trial, in which the testimony of the key prosecution witness, a speaker of African-American English, was discounted because of prejudice against her dialect. Other speakers discussed how silence is interpreted by the law community and ways in which our language leads to linguistic “apartheid” in so many ways in the justice system. We presented our jury instruction research, engaging the legal community with two questions:

Will every juror understand: “Failure of recollection is common. Innocent misrecollection is not uncommon.”? Wouldn’t we do better with: “People often forget things or make mistakes in what they remember.”?

A highly successful collaboration, this conference focused on how linguistic misunderstandings can lead to exclusion and injustice, and how linguistic research can offer insight into productive legal reforms. We are following up, with some of the judges who participated, to explore projects in common for the future.

### 4.2. Word Frequency Analysis

Computing allows us to efficiently analyze the linguistic factors that impact the comprehension of jury instructions. We have developed a program that determines the most infrequent words in a given text, lemmatizing each word in the text to compare it to corpus of English words. The word frequency approximates how commonly each word is used in everyday speech, providing more clarity on how to define “legalese” or otherwise rare terms that may make instructions more difficult to understand for jurors. Preliminary analyses have found a negative correlation between a high incidence of rare words and comprehension. In other words, texts that are difficult to understand tend to contain more infrequent words than texts that are easier to understand. Legalese, therefore, may be a function of word frequency.



### 4.3 *The Economist* Article

The Linguistic Society of America's 2018 conference, held in Salt Lake City, Utah, was another important step for the Linguistics and Law Lab. The conference was attended by a writer for the international weekly news magazine *The Economist*, Lane Greene, who writes the publication's language-focused *Johnson* column. Greene wrote an article featuring Dr Randall and the Lab's work on jury instructions. The article brought significant attention to the Lab, as non-academic readers learned, many for the first time, about the issues tackled by the Lab, some of whom have been in touch with us to discuss future collaborations. One result was that Professor Randall was invited to sit on the Academic Advisory committee of the Civil Jury Project, attend a conference, and was selected to publish an article in a law journal, making it more accessible to the legal community. It will be out this Spring.

### 4.4 Collaborating with Judges

One offshoot of our conference is the opportunity to work with some Massachusetts judges, in two ways. Professor Randall was invited to give two workshops by a judicial institute that provides continuing education training for judges. Most recently, one of the judges who attended our conference asked her to work with brand-new judges. This will clearly affect how they practice their craft. A second offshoot was an invitation by a judge to help her revise and write new jury instructions. Since at this point, Massachusetts does not have model instructions, working on these instructions with judges who will circulate them more widely, is one way our lab can effect change.

## 5. Conclusion

The journey of Northeastern's Linguistics and Law Lab has been a productive one. Undergraduates have joined and graduated, studies have begun and concluded, presentations prepared and given. Along the way, students have been trained in how to conduct studies, have become more critical thinkers, have themselves delivered papers at conferences, and have been authors on published work. And our research has had an impact. But our most important work started when we began to work closely with the legal community. We learned that we could publish as much as we wanted, but if we were presenting only to linguists, we were doing little more than talking to each other. Recently, our workshops with judges, collaborations on instructions, and upcoming experiments in courthouses will widen our reach. We envision a day when every citizen can enter a courthouse knowing that the language of the law will be understood and justice will be carried out.

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