

Jury Instructions: Are they too complicated for jurors to understand?

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Introduction

This study suggests that the model jury instructions used by state and federal court systems are too archaic and complex for the average juror to comprehend. Much research has been dedicated to showing a correlation exists between the readability levels of the jury instructions and the jurors comprehension of those jury instructions, (e.g., Higgins, 1998; Robbins, 1996). The preliminary findings of the published research in this area tend to show that comprehension of jury instructions is peak when the reading level of the juror is equal to the readability score of the jury instruction on the Flesch- Kincaid Grade Level Test (Flesch, 1974; Johnson, 1980).

In the past two decades, jury instruction reform has been a hotly debated topic in and around the legal circles (Higgins 1998). The main thrust for reform is the fear that jury instructions are leading to incorrect verdicts because jurors are incapable of understanding the legal jargon and repetitive nature which typifies model jury instructions (Higgins, 1998). In order to analyze this problem we must first look to the origins of jury instructions and their purpose. This will help us better realize how jury instructions became so complicated and misleading and why it is important to address this issue. Next, we need to determine the readability level of model jury instructions. This can be done by using the Flesch-Kincaid Grade Readability Statistics (Flesch 1974). Once we determine the reading level of the jury instructions, we need to determine the readability level of the average juror. By juxtaposing the average reading levels of the jury pool against the readability level of the average jury instruction, we hope to show that jurors are in fact confused by the language used in the jury instructions.

History and Purpose

In the late 1900's jury instructions became a very popular tool in arena of jurisprudence (Cho, 1994). Their creation grew out of a desire to simplify the complexities of fact and law presented to the jury and create a uniform criterion to determine the guilt or innocence of a party based on the answers to certain standard questions. The main goal was improving accuracy, reducing error, and improving jury comprehension (69 Cal L Rev 731, 1981). The primary function is to convey to the jury the correct principles of law applicable to the evidence so that the jury can arrive at a proper conclusion based on the law and the evidence (People V Moya,

1988). Also, the framers of the constitution viewed the jury trial as an effective mechanism for maintaining local control over the critical decisions of government (Higginbotham, 1991). Many scholars believe this magnificent idea was made a disaster when the jury instructions were drafted by legal scholars who primarily publish in the arena of legal treatises and rhetoric (Higginbotham, 1991). What grew out of an idea to simplify instructions to jurors has turned into an exercise in futility when jurors are expected to wade through such phrases as "reasonable man" and "standard duty of care" or perhaps legal jargon such as "malice aforethought" or "premeditation." Furthermore, many of these instructions were written over sixty years ago when flowery legalese was quite the norm (Frank, 1930).

One major problem with jury instructions is that about half of U.S. adults read below the 8th grade reading level (Arkansas Department of Education, Larry Farrell, 1999). Another problem is that no one has ensured that jury instructions are understandable and easy to use (Robbins, 1996). In the past two decades, outcries for reform have littered the pages of legal journals, psychological journals, and linguistic studies, (e.g., Hathaway, 1999; Higgins, 1998; Johnson, 1980; Wydrick, 1980). These studies have led to vast research on the reading levels of the jury pool and the readability of model jury instructions.

Readability and Comprehension

In 1979, a research project was launched which attempted to ascertain the average reading level of the jury pool (Higginbotham, 1979). Using the Flesch-Kincaid Grade Level Test, it was determined that the average reading level of jurors is approximately 10.5 years. This would correlate to a high school sophomore's reading level. In contrast, the average jury instruction registers somewhere around 13.5 years on the same scale with 13.5 years being roughly equivalent to a sophomore in college (69 Fla B.J., 1995.)

The present study intends to take this data and apply it to an empirical, objective linguistic study of the comprehensibility of standard jury instructions using psycholinguistic methodology. This requires analyzing the composition of each individual jury instruction measuring word length, sentence structure, and comprehensibility. The linguistic study will strengthen our premise that the words and sentence structure employed in the composition of jury instructions are too archaic for the common juror to fully comprehend (79 Colum L Rev 1306, 1979; Severance & Loftus, 1982).

The linguistic problem in jury instructions has been further highlighted in the American Bar Association journal (June 1998). In a 1995 California criminal case, jurors had to deliberate for three weeks. "We kept going back to the judge asking "What does this mean? What does that mean?" recalls the jury foreman. "It was always given back to us, you make that determination. And we were told we could not use the dictionary because the legal definition is different from Webster's" (Higgins, 1998). What is even more striking is that the foreman was not an uneducated simpleton, he held a Psychology degree and managed a county anti-poverty agency. A law professor from Thomas Cooley School of Law stated that "Lawyers have internalized this language so much that they don't recognize a lot of its jargon" (Higgins, 1998). Most veteran judges have "encountered a standard instruction that even puzzles the judge" (Higgins, 1998). A Michigan judge stated that "[we] were embarrassed to give them (jury instructions) to the jury because they were so wordy and so ridiculous" (Higgins, 1998).

Jury instructions can be made more comprehensible by merely redrafting them. Comprehensibility may largely be a function of how the instructions are worded. New Jersey has already begun the arduous task of rewriting its jury instructions and the Supreme Court Committee on Model Jury Charges has adopted a psycholinguist approach to rewriting these instructions (Higgins, 1998). Redrafting model jury instructions on a readability level which more closely represents that of the jurors can improve comprehension and thus improve our judicial system (Charrow & Charrow, 1979; Elwork & Sales, 1985; Elwork, Sales, & Alfini, 1982; Strawn & Buchannan, 1976). What really highlights the need to change jury instructions is the alarming fact that nearly 54% of jurors mis-comprehend jury instructions (Weiner, Pritchard, & Weston, 1995).

Why Change Jury Instructions?

Our judicial system was founded on the idea that all men are innocent until proven guilty by a jury of their peers. This sounds simple enough but the determination of guilt or innocence rests in the hands of average citizens from all walks of life. When jury instructions become too complicated for jurors to comprehend, the judicial system is undermined. This study hopes to show why there is a need for change in the model jury instructions. When jurors cannot understand the content and meaning of jury instructions, the idea of justice is vanquished and the constitutional right to due process and a fair trial is lost in the lingo. In order to improve jury

instructions, we need to rewrite jury instructions in plain English. This is especially important with less educated and less experienced jurors (Severance, Greene, & Loftus, 1984).

By conducting a readability study on excerpts of the Arkansas model jury instructions and comparing them with the reading level of the average Arkansas juror, we hope to prove that the jury instructions are too sophisticated for the average juror. By asking potential Arkansas jurors to identify misleading words contained in excerpts from the Arkansas model jury instructions, we hope to show how age and education level affect comprehension of jury instructions. If jurors cannot understand the jury instructions, no accurate determination of guilt or innocence can be obtained.

Specifically, this study attempts to answer the following research questions:

RQ 1: Does the readability level of the Arkansas model jury instructions affect comprehension of potential Arkansas jurors?

RQ 2: Does age and education level affect comprehension of the Arkansas model jury instruction?

Method

Sample.

The sampling frame consisted of 43 students enrolled in two undergraduate level Communication classes. Questions concerning gender, age, and grade level were addressed at the beginning of the survey. The 43 subjects ranged in age from 17 to 22 years ($m = 18.88$). The sample included 19 men and 24 women. The percentage of male to female was 44% to 56% respectively. There were 26 freshmen, 11 sophomores, 5 juniors, and one senior ($m = 13.56$). The two classes were conveniently selected and the students volunteered to participate in the study. Questionnaires (see Appendix A) were not marked in any way and therefore could not be connected to the original subject insuring anonymity. In addition, all student were given a consent form and told that their participation in the experiment was voluntary (see Appendix B). The students were told that the purpose of this study was to determine what words in the Arkansas Model Jury Instructions were unclear to the jurors charged with determining a defendant's guilt or innocence. They were instructed to read each instruction carefully and circle any words whose meanings were unclear to them. Due to the time restrictions, the central focus of this study is on the readability of instructions regarding capital murder charges and defenses.

We will also discuss comprehensibility of the entire Arkansas Model Jury Instructions and reading levels for all Arkansas adults. We obtained information on the average reading level of Arkansas adults from the Arkansas Education Association and the Adult Literacy Council. The Arkansas Model Criminal Jury Instructions acted as our sampling unit for the readability section of our study.

Procedure

We compared the data from the Arkansas reading statistics, and the Flesch-Kincaid readability test to hypothesize a correlation between the reading level of the juror, the readability level of the instruction, and comprehension. We also compared the coded statistical data concerning the difficulty of words contained in the jury instructions, with the age, gender, and education levels of the subjects in our sample. We hypothesized that age, gender, and education level affect comprehension.

Measures

Reading Level of the Jurors

There are two variables to be tested here. The first variable was tested by using information available from the Department of Education and the Adult Literacy Council (Larry Farrell, Arkansas Department of Education, 1999). The second variable is based on the coded data gathered from the 43 college students in our sample concerning difficulty of specific words within the jury instructions. By coding those words that give the participants in our survey difficulty, we can ascertain how differences in age, gender, and level of education effect their ability to comprehend jury instructions. We are specifically interested in how age, sex, and education level may effect comprehension.

By typing in the precise linguistic language used in the model jury instructions, we ascertained the readability level of the instructions for the various crimes. By adding up all the measures coded from each individual jury instruction we derived an average readability level for the jury instructions as a whole. We used SPSS to ascertain the median of the Arkansas Model Jury Instructions. By juxtaposing the median reading level of the jurors against the median readability level of the jury instruction, we hope to suggest a hypothesis about potential constitutional issues evoked from the finding.

Results

Research Question One.

The first research question asked if the reading level of Arkansas jury instructions affected the comprehension of potential Arkansas jurors. To do this, we ran a Flesch-Kincaid readability test on each excerpt we included in our survey. The average readability for the six excerpts was 10.9, below the 13.5 average contained in the entire volume. Despite these excerpts registering lower than the vast majority of model jury instructions, 14% missed four words, 18% missed three words, 28% missed two words, and 16% missed 1 word. The mean number of words missed in the excerpts was 2.58 and the standard deviation was 1.61, and a range of 0 to 6. In addition to analyzing specific words missed by potential Arkansas jurors, we also analyzed reading statistics of all Arkansas adults.

We found that the average Arkansas adult reads on a level of 8.6 which places his or her reading level below that of a high school freshman (Larry Farrell, Arkansas Department of Education, 1998). Conversely, the average Arkansas jury instruction is written on a 13.5 level which correlates to a college sophomores reading level (West Publishing Co. 1988). Based on statistical data contained in our survey, and the vast disparity found between the average reading level of Arkansas adults and the average readability level of the Arkansas jury instructions, it is clear comprehension suffers and more research needs to be devoted to this area. In our own study, we found that 62% of our subjects had difficulty determining what the phrase, "preponderance of the evidence" meant although a definition was provided in the jury instruction itself. Other words such as "malice aforethought," "induce," and "reasonable," were also frequently missed by the subjects who participated in our survey.

Research Question Two.

The second research question investigated the relationship between age, gender, education, and words missed. While all of the variables correlated significantly, there were varying degrees of significance. Education and number of words missed provided us the weakest correlation, however still significant ($r = -.50, p < .01$). The negative correlation signifies that as education increases, the number of words decreases. Age and number of words missed also provided a correlation ($r = -.60, p < .01$). Therefore, it is also apparent that as age increases, the number of words missed again decreases. This can partly be explained in the fact that age and education level correlated in our convenience sample ($r = .88, p < .01$). We found no evidence that

gender played any role in affecting the number of words missed. Males missed an average of 2.49 words per survey and females missed an average of 2.63 words per survey.

We expected to find correlations between the variables of age and education. We also expected to find correlations between both education level and number missed and between age and number missed. However, we assumed the correlation between education level and the number missed to be stronger than the effect age would have on number missed. Therefore, we ran a partial correlation on age and number missed controlling for the variable education. The significance of this correlation dropped by almost 50% ($r = -.3804$, $p < .01$).

Discussion

This study provided valuable information about how education is related to comprehensibility and how Arkansas Model Jury Instructions are written at a level too complicated for the average juror to comprehend. According to the Arkansas Department of Education, Arkansas adults read at or below the eighth grade reading level (Arkansas Department of Education, Larry Farrell, 1999). Taking this information and juxtaposing it against findings that Arkansas model jury instructions are on a readability level of 13.5 years it is clear to see that comprehensibility of jury instructions is a growing concern in the arena of American jurisprudence.

Based on the findings of our research, comprehensibility of jury instructions increases as the education level of the juror increases. Given that half of Americans read at an eight grade reading level and the average juror reads at a 12.5 level, it is clear that reform of our current jury instructions needs to take place.

The limitations of this study leave the door open for further research in this arena. The sampling frame was not comprehensive enough to compare it to the general Arkansas voting population. A random sample would be more accurate; however, data collected concerning all Arkansas adults makes this study much more generalizable than it would have been using only the small convenience sample. Other confounds were that we were not able to administer a reading level test to our subjects and therefore unable to assess their actual reading level. This forced us to rely on secondary data. Further research needs to be conducted on the actual redrafting of jury instructions and how the linguistic methodology employed in the redrafting of the jury instructions will make them more comprehensible. It is imperative to make jury instructions comprehensible to the average juror in order to ensure that justice and jurisprudence

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is being adequately meted out in the American court systems. Without this safeguard, the fourth amendment is being circumscribed and the very foundations of the American justice system are being ignored. The only way to adequately determine if comprehensibility of jury instructions is indeed an issue which faces American jurors today is through further research.