

BRINGING JURY INSTRUCTIONS INTO THE TWENTY-FIRST CENTURY

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ABSTRACT

There have been numerous empirical studies of the instructions used in American jury trials. These instructions are supposed to inform jurors about their role and the law. Instead, these studies show that jury instructions with their legal formulations are incomprehensible to the layperson, poorly structured, and delivered ineffectively. Given the strong evidence that jurors do not understand the instructions, the focus of this Article will be on two related questions: Why have American jury instructions been so resistant to reform? What can be done so that jury instructions enter the twenty-first century?

Some states, such as California and Arizona, have made large-scale efforts to improve their jury instructions. In California, a group consisting of lawyers, law professors, linguists, and even some laypersons have rewritten the civil and criminal jury instructions in “plain language.” In Arizona, when a jury informs the judge that it has reached an impasse, the judge, rather than delivering a traditional *Allen* charge, can engage in a dialogue with the jury to see if additional information or clarification would be useful.

However, in most state and federal courts, jury instructions remain incomprehensible and the question is why? I identify one explanation as the “institutional process” because it considers who drafts the instructions, the process they use, and their priorities. Jury instructions are typically drafted by committees consisting of lawyers and judges who strive to encapsulate the law correctly in their instructions. They write instructions that they and appellate judges understand, but that laypersons will not necessarily grasp. A second explanation, which I label the “acculturation

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process” considers whether jury instructions have remained so resistant to change because they accomplish other, unstated goals like inspiring in jurors respect for the trial process. This Article will explore these and other explanations for the tradition of incomprehensible jury instructions.

This Article also will consider how jury instructions should change. The instructions have long been delivered orally by the judge. One fairly recent change has been to give each juror a written copy of the instructions in addition to the judge's reading. In some courtrooms, the judge's reading is recorded on videotape or audiotape so that the jury can replay the instructions as needed. How else might jury instructions be given to the jury? Are there other technologies that could be employed? How can the language of the instructions be made more comprehensible? For example, what if former jurors sat on the committees that write these pattern instructions? This Article explores efforts to simplify the language and to use new methods to deliver the instructions, which are critical if the jury is to remain a vital institution to the next generation of jurors.