

The “Kettleful of Law”: *Implications for Eyewitness Testimony*

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Classic Image of Jury & Instructions on the Law

“doused with a kettleful of law during the charge that would make a third-year law student blanch”

-Curtis Bok, 1946

Conventional Wisdom about Jury Instructions

- I Juries ignore or actively resist legal instructions
- I Juries simply don't understand legal instructions because they are defeated by jargon and legalese

Evaluating the Comprehensibility of Jury Instructions

- | Post-trial surveys
- | Mock jury experiments to evaluate effects of variations in instruction wording
- | Testing instruments:
 - abstract questions
 - questions applying the law
 - T-F; multiple-choice; questions asking jurors to paraphrase

General Pattern of Results

- | Poor performance with standard instructions
- | Some improvement with revised instructions
 - Elwork, Alfini & Sales, 1982 (comprehension)
 - Horowitz & Kirkpatrick, 1996 (application)
- | Effects of deliberation?
 - mixture of results
 - Ellsworth, 1989 – no improvement
 - Diamond & Levi, 1996 – some improvement

Testing Eyewitness Instructions (and Expert Testimony) - I

I Katzev & Wishart (1985)

a) General instructions

b) GI + summary

C) GI + summary + commentary by judge

Commentary appeared to lead to fewer guilty verdicts, quicker deliberations

[but low rate of conviction overall, small sample]

Testing Eyewitness Instructions (and Expert Testimony) - II

I Greene (1988)

a) good vs. poor viewing conditions

b) no eyewitness instr. vs. Telfaire vs. revised

conviction lowest for revised, but no diff
between good and poor viewing cond.

Skepticism effect of revised instru.

Testing Eyewitness Instructions (and Expert Testimony) - III

I Cutler, Penrod & Dexter (1989)

a) eyewitness expert vs. no expert

b) good vs. poor witnessing conditions

expert produced sensitization to quality of
viewing condition

expert did not produce overall skepticism

Potential deliberation effects: How much do jurors discuss instructions?

- I Mock jury studies: 20–25% of comments
- I Arizona real jurors: 17.1% (of 78,864 comments)
 - Conservative measure
 - 92% of cases – at least one instruction read aloud
 - 46% of cases – at least half of jurors read at least one instruction aloud

Reference to boilerplate (vs. case-specific) instructions

- | 17.1% of comments

- | Ex: admonition not to speculate

Juror #1: Well, he missed those hours [of work], but how, that is not to say he didn't get paid when he was gone. If you or I get in a car accident---

Juror #8: [*interrupting*] **But we can't consider that, that's speculation.**

Juror #2: Because we don't know that.

Juror #3: Yeah, even though we would like to.

A special challenge for eyewitness instructions

- I How to convey the appropriate weight to give a feature of witnessing conditions or line-up quality?
 - Number in line-up
 - Presence of weapon

Talk about Instructions

Nature of Comment	Percent	N
Accurate comments	79.2%	10,702
Comprehension errors	16.0%	2,169
Resistance errors	3.2%	438
Accuracy ambiguous	1.6%	210
Total instruction comments	100.0%	13,519
(% of total comments	17.1%	78,864)

Correcting Comprehension Errors

Corrected by:

another juror 32.3%

the judge 9.2%

both 5.2%

Uncorrected 53.2%