

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

- | Juries ignore or actively resist legal instructions
- | 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

- | Katzев & 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?

- | Mock jury studies: 20–25% of comments
- | 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

- | 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%