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ABSTRACT

This paper discusses the results of part of an ongoing project studying an aspect of real world language usage, the comprehension of standard jury instructions. Problems in the comprehension of these instructions include the memory load that they impose, the fact that most instructions are read only once, and the fact that instructions are written in legal language, with vocabulary, syntax and semantic usage unfamiliar to the average juror. The purpose of the study is to isolate the lexical, grammatical, semantic and pragmatic factors which impede comprehension. The study attempts to get at what jurors actually comprehend and remember when they hear a jury instruction, by having them paraphrase jury instructions. Thirty-five jurors called for jury duty in Prince George's County, Maryland, but who had as yet not served, were divided into four groups and presented on a one-to-one basis with three practice instructions and eleven test instructions. In addition, a type of phrase-structure analysis was used to break the instructions into their constituent meanings to isolate factors impeding comprehension. Results are given for two instructions; they reveal that comprehension difficulties do exist and that there are discrepancies between lawyers' and jurors' judgements of instruction difficulty. (CLK)

# Investigating Comprehension in Real World Tasks: Understanding Jury Instructions

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Linguistic Society of America
December 29, 1976

The paper I am presenting today discusses the results of part of an ongoing project funded by the National Science Foundation, studying an aspect of real world language usage: the comprehension of that aspect of legal language known as standard jury instructions. I will first explain what standard jury instructions are.

Toward the end of a trial, either before or after the lawyers give their closing arguments, the judge tells the jury the law that they are to use in reaching their verdict. Now the jury has two basic functions. First, they have to weigh the evidence and decide where the truth lies, so that if you get descrepancies in testimony - e.g. one person saying that the light was red and somebody else saying the light was green - it is up to the jury to decide these questions of fact, as they are called. Second, the jury has to listen to the law that the judge tells them, and apply the law to the evidence in order to reach a verdict.

The judge will get together with the attorneys in the case and choose the jury instructions for the case. (In most jurisdictions there's a book of standard jury instructions that has been compiled at some time or another, and the lawyers will argue for various jury instructions which apply to the fact situation in the case.) In some trials there are as few as twenty instructions (these are usually short and uncomplicated sorts of trials) and we have heard of as many as six hours of instructions being given to the jury.

Now there are obviously some ostensible problems with standard jury instructions, aside from the enormous memory load that an enormous packet of jury instructions would impose. One of the problems is that the judge reads the jury instructions, as they are written in the book, and he reads them only once. And in most cases, in most jurisdictions, the jury is not given any

written transcript of the instructions. And in most cases, also, the judge will not repeat one instruction in isolation. If the jury asks for an instruction to be elaborated upon, the judge will sometimes refuse to do so, for fear of biasing the jury; he will merely reread the troublesome instruction.

Another problem, and it is one that we are concerned with here, is that jury instructions are written in legalese, as you can see in the handout. There are three examples of jury instructions: BAJI (that means Bar Approved Jury Instructions - these are California Jury Instructions) BAJI 1.00, 3.50, and 3.75. These are some of the nicer instructions. We had some that were well over 100 words in length. In any case, as you can see from these, they are written in very turgid style; they are written in writing style, not in speaking style. There is a lot of unfamiliar vocabulary, and some very strange grammatical constructions. And the third problem that we are interested in with jury instructions is the fact that because they are standard jury instructions, they are independent of the trial context. They are therefore very abstract, so that an instruction will refer to the "plaintiff" and "defendant", who were the "parties" in the case and not to "Mr. Smith whose car ran into Mr. Jones" and so on.

The purpose of our study is not merely to prove the obvious - that jurors don't adequately comprehend standard jury instructions. We wanted to isolate, where possible, the lexical, grammatical, semantic and pragmatic factors which impede comprehension. (The lack of comprehension, of course, may also be due to the memory load, but we are not concerning ourselves with that). For the purpose of isolating these factors, we are in the process of conducting one major study of standard jury instruction comprehension, with a number of subsidiary studies. I will report on one part of the major study, and one of the subsidiary studies. Our major study attempts to get at what jurors actually can comprehend and remember when they hear a jury instruction, by having them paraphrase jury instructions. This appears to be a very fruitful way of determining understanding of discourse, which has been used by psychologists of discourse analysis, such as Kintsch and Frederiksen. It has also been used in studies of non-standard dialect by people like Baratz. It has been used in child language study by people like Bever, and so on.

Subjects

Our subjects for the paraphrase task that I am reporting on today, were 35 persons who were randomly selected from people called for jury duty in Prince Georges County, Maryland, but who had not yet served. We wanted to get people who hadn't served, because that way we could control for the amount of knowledge that they would have of the trial situation and of legal language in other words, either little or no contact with that kind of language. We did the test in the courthouse itself, using the following methodology.

Materials

Our materials were fourteen civil standard instructions from California, three practice instructions and eleven test items, which had been recorded on cassettes by a male attorney acting the part of the judge. The three practice instructions are three introductory instructions normally given in California in all civil cases, and BAJI 1.00 (on the first page of the handout) is the first one of those. We chose the eleven test instructions such that they accurately represented a packet of instructions that would normally be presented in a highway accident case where damages were not at issue. (Where damages were at issue we would have had to put in all kinds of instructions about how they should arrive at the amount of money to be awarded, and so on.) And we kept the total down to fourteen for the sake of our subjects', the jurors', comfort.

The Experiment

The experiment took about forty-five minutes. The thirty-five jurors were divided into four almost equal groups. Each group received the eleven test instructions in a different order. The first three practice instructions were always present at the beginning, and in the same order. The first group received the eleven instructions in the order in which they would have been heard at a trial, the other three groups received them in random orders. I have been talking about groups, but actually the instructions were presented in a one-on-one situation. One experimenter - one juror. The juror and the experimenter sat at a table with two tape recorders. The experimenter explained the task to the juror, and gave him or her a picture of the accident that would give rise to a law suit in which these instructions would be given, (see page 2 of the handout.) The experimenter first read these instructions, (there was a little introductory

passage and then)"In this study I am going to play some jury instructions for you on this tape recorder. After I play each jury instructions twice I would like you to paraphrase the instruction, that is to say, explain the instruction in your own words, as best you can. Your explanations will be recorded on the other machine," - And we put in this for their sake - "We are evaluating the jury instructions, we are not testing you." (This was repeated at various times.) Then we read the blurb which is at the bottom of page 1 of the handout - the context for the paraphrase - and had them follow on their picture: "The jury instructions that you will hear are like those that a judge might give at the end of a civil trial involving a highway accident. For example, as the drawing shows . . .", and so on. If they had any questions they would raise them then, and we would clear them up as much as possible. The idea was give them a little bit of context for what they were about to hear. The experimenter then played an instruction twice on the first tape recorder, and after the subject had heard the instruction for the second time, he or she orally paraphrased the instruction into the second tape recorder. (We decided to do it on tape rather than having written paraphrases because we were afraid - and it turned out to be justified - that some of our subjects might be functionally illiterate. The paraphrases into the tape recorder worked out quite well.) The reasons for the two playings, which would not normally be the case in a trial situation, is that we found from a pilot test that I conducted at the University of Maryland, that one playing of an instruction was not sufficient for any kind of meaningful response from the subject; the usual response was "What? Play that again," so we did.

Each juror's paraphrases were transcribed, and then to analyze the data we worked out a workable, if not perfect, method, of breaking up the instruction into its constituent meanings. (You will see on page 1 of the handout, item (D), BAJI 1.00 Breakdown.) That was essentially the way I did it: a type of phrase structure analysis. Each of the items (meanings) was treated, at least for the sake of the analysis, as being of equal importance to all the others. So, for example, the first meaning item is: "It is my duty", "I instruct you in the law", is the second meaning, "the law applies to this case" is the third, and so on. There are 18 meanings. We then did the same sort of analysis on the subjects' paraphrases, and that was a good deal more difficult, because subjects tended to

speak almost as they would in an everyday situation, with many false starts, etc. We then went through each meaning item in an instruction for each subject to determine the following four categories: (1) whether they got it right, and it was very apparent that they got it right; (2) whether it seemed as though they got it right - in other words, we could infer from their entire answer that they got it right (we often gave them the benefit of the doubt); (3) whether they omitted that particular meaning item; or (4) whether they got it wrong.

I am going to report on the results for two instructions, BAJI 1.00 and BAJI 3.50 (on the handout). I have included BAJI 3.75, but it appears to be very difficult to analyze. It appears to have some semantic anomalies in it.

BAJI 1.00 was the first practice instruction, and we had certain hypotheses about it. The first hypothesis was that the term "exclusive duty" would be mis-understood, and reasonably so. What it means is - "It is your duty and yours alone, - not the judge's, not the bailiff's." But it doesn't mean that it is your only duty, to decide all questions of fact. Because as you will see from the prior sentence, the jurors have another duty, and that is to follow the law as the judge states it to them. However, because of the way it is stated in this instruction - it is really stated wrong - we figured that many jurors would get it wrong, and we were looking out for that. The other hypothesis that we had was that the term "questions of fact" is so much of an idiom for most people that they really don't know its meaning and therefore they wouldn't get it right, or else they would omit it, and so on. What the term means is, as I mentioned before, that there are discrepancies in the evidence or a controversy as to which piece of evidence is correct - (eg. was the light red or green according to different people's testimony). The "question of fact" in such a case is "what was the color of the light?"

The results upheld our hypothesis about those two items, and showed a number of other very interesting things. First, the first meaning item: "It is my duty," (i.e, it is the judge's duty): 86% of the jurors omitted any mention of the judge's duty. 69% omitted any mention of the fact that they were getting instructions of law. 74% omitted any mention of the fact that they were to follow the law. Now when we come to the term "exclusive duty," we had 57% of the people omitting any mention of the exclusive duty, and 29% (in other words 10 of the 35 jurors) got it wrong. They said things like the following (here are

two examples): "The way I understand it, the jury has to evaluate the case on its own merits, on the facts alone." That's some indication that the word "exclusive" got to them as meaning "only." Another person said "He's just instructing the jury that it is his duty to tell us that we are not to let our emotions, sympathy or anything along that line influence our decisions, and we are just supposed to interpret the case strictly from the facts."

There were a number of these things where it was pretty obvious, in comparison with other people's responses, that they had been influenced by that word "exclusive", and they had interpreted it to mean "only the facts."

For the term "question of fact", - 91% of the jurors omitted any mention of their duty being to decide all questions of fact. There was no mention of it, no paraphase of it, no saying of it in any way. That's 32 of the 35 jurors. What the jurors got right is interesting also. 80% of the jurors knew that it was their duty to do something or other; 74% of them knew that it was their duty to determine the effect and value of the evidence. (Just by the way, this analysis is valid, as some people would say "It is my duty to..." and then they would say, "I forget".) In the case of the last set of meaning items - "You must not be influenced..." and so on, 86% of them knew that they must not do something, and 77% knew that they must not be influenced, but it got kind of fuzzy as to what they weren't suppose to be influenced by. Less than half actually remembered sympathy, prejudice or passion. And of those who remembered, the most people remembered the term "prejudice" or "bias".

There are some interesting results from 3.50 also 3.50 is particularly interesting in light of the subsidiary study that we did, which was a norming study which showed that California trial lawyers felt that BAJI 3.50 was a very difficult instruction and that a great many jurors would probably have trouble understanding it. Our results, on the other hand, showed that the jurors understood this instruction far better than 1.00. First there is the term "contributory negligence": 57% of the jurors omitted any reference to the term "contributory negligence", but when it came to what contributory negligence does, i.e., it contributes to the plaintiff's injury - 63% of them understood that and indicated it. 63% of them indicated that contributory negligence is the negligence of the plaintiff combined with that of the defendant. 91% of them understood the fact that a plaintiff who is contributorily negligent cannot something or other, and

86% of them understood that the plaintiff could not recover money. Thus, they understood certain very salient parts of that instruction very very well. It is particularly interesting in the light of the norming study using trial attorneys, which I will go into briefly.

We performed a norming study a few months before we started testing jurors, in which we asked experienced California trial lawyers to rate how comprehensible they thought 52 BAJI instructions would be for the average juror to understand. This was a written task involving two groups of attorneys. The first group (about 31 attorneys) was asked to read each instruction and rate it on a scale of 1 to 11 according to the following questions: "Disregarding the language of the instruction (in other words, vocabulary and grammar) how difficult do you think the legal concepts in this instruction would be for the average juror to understand?" The second group (22 lawyers) was asked to read the same instructions, and rate them in the same way, but these people were asked to take into account both the language and the legal concepts, in rating the comprehensibility of the instructions. There was fairly good agreement within each group as to the relative ease or difficulty of an instruction, (standard deviations were low), and between groups the correlations were so high (.9 is the correlation between the 2 groups' ratings) that it seems as though both groups of attorneys were actually rating the same thing, in spite of the different questions that they were asked. We have a couple of theories about this: one possibility is that they were unable to disassociate the legal concept from the language, and the other possibility (which I tend toward) is that lawyers in general don't know how to judge the ease or difficulty of legal language. In any case, what is of interest is that the lawyers rated BAJI 1.00 as the easiest or the second easiest of the 52 instructions that they were given, and they rated BAJI 3.50 somewhere in the middle in difficulty. The mean rating for 1.00 was 2 on a scale of 11, - 2 being easy - and the mean rating for BAJI 3.50 was 5.92 - almost 6 - right in the middle in difficulty. The jurors' paraphrases indicated that they understood more of 3.50 than they did of 1.00. Now obviously 1.00 was given first, and it was a practice instruction, but I think that it is quite likely that these results are accurate, because 1.00 is always given first, in every trial. Therefore, although we probably did get some ordering effect, nonetheless the responses probably do reflect reality.

We will be collecting paraphrase data from about 60 more jurors, and we will do meaning analyses on all our other instructions and on the paraphrases of them. We hope to find some very interesting results regarding the comprehensibility of standard jury instructions.

HANDOUT

A. BAJI 1.00

Ladies and Gentlemen of the Jury:

It is my duty to instruct you in the law that applies to this case and you must follow the law as I state it to you.

As jurors it is your exclusive duty to decide all questions of fact submitted to you and for that purpose to determine the effect and value of the evidence.

You must not be influenced by sympathy, prejudice or passion.

B. BAJI 3.50

Contributory negligence is negligence on the part of a plaintiff which, combining with the negligence of a defendant, contributes as a proximate cause in bringing about the injury.

A plaintiff who is contributorily negligent cannot recover for such injury.

C. BAJI 3.75

A proximate cause of an injury is a cause which, in natural and continuous sequence, produces the injury, and without which the injury would not have occurred.

D. BAJI 1.00 - BREAKDOWN

Ladies and gentlemen of the jury:

1. It is my duty (A)
   (A) I instruct you in the law$_1$
      (a) the law$_1$ applies to this case

and 1'. You must follow the law$_1$
   (a) (as) I state the law$_1$ to you.

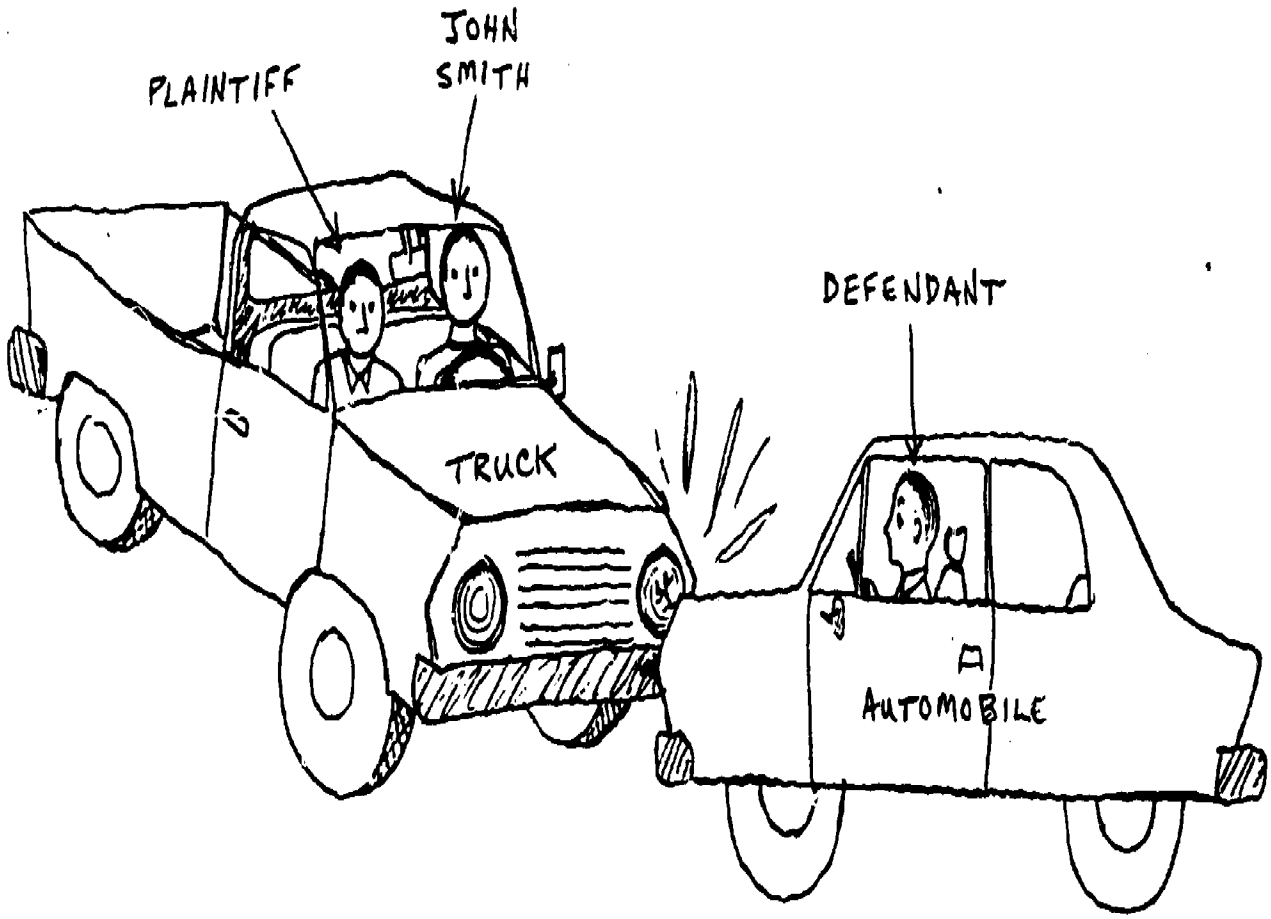
2. It is your$_1$ exclusive duty$_1$ (A)
   (a) you are jurors
   (A) you decide all questions of fact$_1$
      (b) questions of fact$_1$ are submitted to you
      ((c) the duty$_1$ is exclusive to you)

and 2'. It is your duty (B)
   (B) You determine$_1$ the effect and value of the evidence
      (a) determine$_1$ for the purpose of (2A)

3. You must NOT (C)
   (C) You be influenced by (a) sympathy
      (b) prejudice
      (c) passion

E. CONTEXT FOR PARAPHRASE

The jury instructions that you will hear are like those that a judge might give at the end of a civil trial involving a highway accident. For example, as the drawing shows, a truck and an automobile collide. A passenger in the truck is injured. This passenger sues the driver of the automobile. The passenger, who is bringing suit, is known as the plaintiff in the case. The driver of the automobile, who is being sued, is known as the defendant. The truck driver's name is John Smith.


PLAINTIFF
JOHN SMITH
DEFENDANT
TRUCK
AUTOMOBILE