

HELPING TROUBLED DELIBERATING JURIES

Module #2: Helping Jurors Overcome Jargon

[1 hour]

Learning Objectives:

After this session, the participants will be able to:

1. Reduce use of legal and technical jargon;
2. List criteria for determining what legal words and phrases a jury needs to understand;
3. Create a checklist for determining when a legal or technical word or phrase needs to be explained to a jury;
4. Identify linguistic guides for how to translate legal or technical words and phrases into clearly comprehensible concepts; and
5. Describe at least one new jury-communication practice that the participant will utilize in the future on an experimental basis as a way to promote juror understanding and lessen juror confusion.

Learning Activities:

1. **Opening and mini-role-play:** The lead instructor asks the class participants to ponder three questions: (1) what legal words and phrases does a typical jury need to know?, (2) when does a jury need to know those legal concepts and technical jargon?, and (3) what is the current legal orthodoxy for teaching legal concepts and technical jargon to jurors? Then, with the class members being asked to play the role of prospective jurors receiving a legal instruction during a criminal or civil case, the instructor reads a pattern jury instruction (ideally from the host jurisdiction) pertaining to a purely legal concept. For example, “aggravating” and “mitigating” circumstances or “patent infringement.” This mock instruction scenario will serve as a catalyst for the group discussions that follow. (10 minutes)
2. **Group exercise:** The class members divide into groups approximating the size of a deliberating jury. They are directed to discuss the merits and demerits of the court’s instructions given earlier and report back with suggestions for improving the instruction to the jury. (15 minutes)
3. **Lecture and discussion:** The instructor, preferably a linguist, presents the latest research about factors that promote or hinder lay persons’ comprehension of legal terms. He/she distributes *Communicating with Juries: How to Draft More Understandable Jury Instructions*, by Professor Peter M. Tiersma and highlights its components: (1) understanding the audience, (2) adopting an appropriate tone, (3) organizing the order of presentation, (4) do’s and don’ts in choosing words, (5) striving for simplicity, and (6) basic principles. The lead instructor asks the participants to return to their smaller discussion groups. The groups should address and report on the following: (1) what are the legal and practical hurdles

that a trial judge may face in employing these principles and practices in the next trial he/she presides over?, (2) how should a trial judge go about resolving the ever-recurring tension between promoting legal accuracy and juror comprehension?, and (3) what are the minimum, practical steps that a trial judge should take to reduce juror confusion? (30 minutes)

4. **Closing:** The instructor facilitates a plenary discussion about whether any participant plans to institute any new deliberation guidance technique in his or her courtroom in the future. The instructor also identifies available resources on this subject. Special attention is given to Principle 14 of the ABA *Principles for Juries & Jury Trials*, (10 minutes).

Materials:

1. For use during class: three or more pattern jury instructions from the host jurisdiction, Peter M. Tiersma, *Communicating with Juries: How to Draft More Understandable Jury Instructions*, NATIONAL CENTER FOR STATE COURTS (2007).
2. Reference materials
 - a. Annotated bibliography. Local instructor will add any state-specific reference materials that would be helpful for the participants (e.g., bench books, case law, statutes, court rules, etc.)
 - b. Principle 14 of the ABA *Principles for Juries & Jury Trials*,
 - c. Sample of recently revised pattern jury instructions that approach the practices and principles espoused in *Communicating with Juries: How to Draft More Understandable Jury Instructions*.

Bibliography:

Core Documents

AMERICAN BAR ASSOCIATION, PRINCIPLES FOR JURIES & JURY TRIALS (2005),

http://www.abanet.org/jury/pdf/final%20commentary_july_1205.pdf

Peter M. Tiersma, *Communicating with Juries: How to Draft More Understandable Jury Instructions*, NATIONAL CENTER FOR STATE COURTS (2007).

Journals/Periodicals

Robert G. Boatright & Beth Murphy, *How Judges Can Help Deliberating Jurors: Using the Guide for Jury Deliberations*, 36 COURT REVIEW 38-45 (1999).

Charles M. Cork, III, *A Better Orientation for Jury Instructions*, 54 MERCER L. REV. 1 (2002-03).

B. Michael Dann, *“Learning Lessons” and “Speaking Rights”*: *Creating Educated and Democratic Juries*, 68 IND.L.J. 1229 (1993).

- Shari Seidman Diamond & Jonathan D. Casper, *Blindfolding the Jury to Verdict Consequences: Damages, Experts, and the Civil Jury*, 26 LAW & SOC'Y REV. 513, 548-53 (1992).
- Shari Seidman Diamond & Neil Vidmar, *Jury Room Ruminations on Forbidden Topics*, 87 VA. L. REV. 1857 (2001).
- Meyer & Rosenberg, *Questions Juries Ask: Untapped Springs of Insight*, 55 JUDICATURE 105 (1971).
- Fred L. Strodbeck & Richard M. Lipinsky, *Becoming First Among Equals: Moral Considerations in Jury Foreman Selection*, 49 J. PERSONALITY & SOC. PSYCHOL. 927, 934-36 (1985).

Books and Other Works

- G.Thomas Munsterman, Paula L. Hannaford-Agor & G.Marc Whitehead, **Jury Trial Innovations, 2nd Edition**, 136-148, NATIONAL CENTER FOR STATE COURTS (2006).
- Neil Vidmar & Valerie P. Hans, **American Juries**, Prometheus Books (2007).