Rethinking Jury Instructions: Fact-Finding v. Legal Theory?

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It is well established that Anglo-American jury instructions present large problems of comprehensibility. Scholars working in several jurisdictions have demonstrated clearly that rewriting jury instructions according to broad plain language principles enhances their comprehensibility. Attention has recently been paid to the timing and delivery of jury instructions, and at least one scholar has suggested that roadmaps and narrative examples (to reduce the difficulty of abstract concepts) are helpful. One approach that has been largely overlooked by social scientists is what is being called the Kentucky approach to instruction. Instead of treating jury instruction as a compulsory mini-law school, Kentucky instructions seek to orient jury instruction practice so that it helps jurors to resolve narrow questions of fact, rather than to contribute to jurors’ broad knowledge of sometimes random information about the law. Instructions are framed around the parties’ respective burdens of proof and their contentions. Thus an effort is made to enable jurors to perform their fact-finding function, rather than the essentially legal function of harmonizing disparate legal texts. This paper examines ways of including principles of the Kentucky approach within other jury instruction reform practices, considers constitutional issues, and suggests a set of principles for writing comprehensible jury instructions.

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