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The Jury Instruction Process - Apathy or Aggressive Reform?

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COMMENTS

THE JURY INSTRUCTION PROCESS— APATHY OR AGGRESSIVE REFORM?

> One of the greatest fictions known to the law is that a jury of twelve laymen can hear a judge read a set of instructions once, then understand them, digest them, and correctly apply them to the facts in the case. It has taken the judge and the lawyers years of study to understand the law as stated in those instructions.[1]

No area of jury trial procedure has been more troublesome or perplexing to both the bench and the bar than that phase of the trial described as the instruction process, where the jury is given the law which is to govern the controversy they have been called upon to decide. An answer to the problem has proved so elusive that in many instances instructions are approached with a good deal of apathy, if in fact, the problem is approached at all. A law-professor, in the process of lecturing on trial procedure, recently remarked as an introductory statement to the subject of instructions: "Now we come to one of the most meaningless phases of the trial." Professor Farley, writing in the Yale Law Journal, described the apathy which has settled among the members of the legal profession:

> The priests, however, are not fooled by the system evolved. The lawyers and judges are perfectly aware that juries pay scant attention to the type of instructions commonly given them on the law applicable to the facts and, that as a rule, they are incapable of the fine discrimination such an application requires. But it is impressive to the public and it clothes the jurors with a sanctimonious mantle of enlightment which gives them a sense of peace and accord with authority. Trial lawyers may consume a great deal of time on instructions, but little of it is wasted on attempting to force the jury's attention to them. It is usually as futile as reading a decision of the Supreme Court to a justice of the peace or arguing the Constitution with a policeman.[2]

It has been often stated that the purpose and goal of the ideal jury instruction is to give light and guidance to the jury. It should give the jury a fair understanding of the issues of the cause, outline the questions of fact to be determined, and convey a comprehension of the applicable principles of law.[3] It has been stated that the verdict of a jury who does not comprehend the law amounts to "crackerbarrel justice."[4]

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[1] Swain, *Common Sense in Jury Trials,* 30 CAL. S. B. J. 405, 412 (1955).
[2] Farley, *Instructions to Juries—Their Role in the Judicial Process,* 42 YALE L. J. 194, 213 (1932).
[3] State v. Stout, 49 Ohio St. 282, 30 N.E. 437 (1892); Holman Live Stock Co. v. Louisville & N. R. Co., 81 Fla. 194, 87 So. 750 (1921).
[4] 23 MICH. L. REV. 276, 278 (1925).

Admissions of many esteemed members of the bar illustrate that such justice and jury lawlessness results more often than not.

The history of the origin of jury instructions is as clouded as the origin of the jury trial itself. As one author has stated, it is safe to assume that judges did not charge juries before the 12th Century since there were no juries to charge.[5] In the early 13th Century, trial by jury began to evolve and though no mention is made of the instruction ritual, it is safe to assume that at the time juries began to hear and decide cases, judges began to instruct juries. Originally, the judge was given a free hand over instructions, both as to content and the procedure to be followed. Abuses of this discretion, particularly the "bullying" of juries by a number of judges, led to the adoption of certain restraints. In the United States, these restraints were instituted during colonial and pioneer times. The restrictions were based on the theory that in the area of factual determinations, the jury was supreme and that the charge of the judge could be on matters of law only. This fear of the power of the judge and fear of an abuse of that power also led to the adoption of indirect restraints such as the requirement that all instructions be in writing.[6] Many of these restrictions are with us today and their effect upon the attainment of more meaningful instructions will be discussed at a later point in this article.

For the purposes of this article, there will be no attempt to distinguish between criminal and civil procedure as to instructions since the process followed is generally the same. It should be noted, however, that instructions to the jury are considered so essential to the accomplishment of justice that in criminal proceedings the judge is almost universally under a strict duty to charge the jurymen, while in a number of jurisdictions there is no duty to charge in civil cases absent a request by counsel.[7] Criminal instructions are sometimes also subjected to a higher standard during review at the appellate level.

Throughout the years, the main concern in the area of instructional enlightenment of the jury had been whether the particular charge given by the judge correctly stated the applicable law. This is particularly true of courts at the appellate level, since having only a bare record before them there was no way for the court to determine whether or not the instruction was understood.[8] Strict legal correctness being the primary concern of the courts at the appellate level, it naturally became

[5] Sokolov, *The Judge's Charge to the Jury in Criminal Cases,* 10 CAN. B. REV. 228 (1932).

[6] Wright, *Adequacy of Instructions to the Jury,* 53 MICH. L. REV. 505 (1955)..

[7] Commonwealth v. Ferko, 269 Pa. 39, 112 Atl. 38 (1920); Martin v. State, 17 Ga. App. 516, 87 S.E. 715 (1916); State v. Lackey, 230 Mo. 707, 132 S.W. 602 (1910). See also, *Duty to Instruct in Missouri Felony Cases,* 1963 WASH. U. L. Q. 353.

[8] Edwards v. Hill-Thomas Lime & Cement Co., 378 Ill. 180, 37 N.E. 2d 801 (1941); Yates v. Manchester, 358 Mo. 894, 217 S.W. 2d 541 (1949); Farley, *supra* note 2.

the main concern of the trial judge, who was fearful that his charge might be struck down by the higher courts. Due to this appellate scrutiny, instruction became a formality, and the original purpose of giving instructions for the actual enlightenment of the jury to assist them in applying the law to the facts, became inconsequential. This formalism and use of technically correct legal language has been skillfully described for us.

> After the argument to the jury, we judges don our robes and go forth in the battle of justice v. evil with our 'book'. Our part in the trial is beginning, our script is set, the scriptual lesson for the day is 'negligence'. The language must not vary except that we might insert the names of the parties. We must not, however, deviate from 'approved legal language'. Any desire to make the ritual understandable must be suppressed for we must correctly state the law even if it is not understood. To make the script understandable would be to risk reversal for an understandable statement would not be in 'approved legal language'.[9]

Standard or pattern jury instructions[10] have added in alleviating the problem of appellate court reversal, but they should not be looked upon as a "cure all" for the defects in the area of instructions. They often do not solve the problem of legal phraseology or the other defects which will be shown to exist.

In 1938 the American Bar Association, in response to the growing dissatisfaction with instruction procedure and method, adopted its minimum standards for trial practice. The standard governing instructions specifically provides that "(after) counsel have concluded their arguments to the jury, the trial judge should instruct the jury orally . . . and should have power to advise them as to the facts. . . ."[11]

The law in a number of jurisdictions does not meet the American Bar Association standard. The proponents of the minimum standard argue that rejection of various aspects of the standard contributes greatly to the general insufficiency of jury instructions. They attest that the obscurity of instructions results in a large part from the requirements in many states that they be written and be read to the jury verbatim, the primary factor toward meaningfulness being oral presentation, with the repetition and emphasis necessary to convey meaning.[12] In defense of written instructions, it has been stated that this requirement results in a charge which will be better considered and more clearly expressed than an oral charge would ordinarily be.[13] Perhaps

[9] Winslow, *The Instruction Ritual,* 13 HASTINGS L. J. 456 (1962).
[10] For an example of the most advanced set of standard jury instructions, prepared by a committee of California Superior Court judges, see CALIFORNIA JURY INSTRUCTIONS - CIVIL (4th ed. 1956); CALIFORNIA JURY INSTRUCTIONS - CRIMINAL (2d ed. 1957).
[11] REPORT OF THE COMMITTEE ON TRIAL PRACTICE, 63 A.B.A. Rep. 551 (Adopted July, 1938).
[12] See Wright, *supra* note 5, at 509.
[13] State v. Rini, 151 La. 163, 91 So. 664 (1922).

there should be some combination of the oral and written charge. This would be favored by psychological considerations, since it is pointed out that individuals receptive in varying degrees to the visual and auditory methods of instruction.[14]

The practice of having instructions precede the arguments of counsel has been criticized, in that by the time the jury has sat through the bias and possibly heated comments of opposing counsel, what little law the jury may have comprehended from the charge will have entirely escaped them. It is said that this procedure leaves little chance for the court's words to make any impression upon the jurors. The proponents of charging before closing arguments argue that "such practice gives counsel the opportunity to explain the instructions, argue their application to the facts, and thereby, give the jury the maximum assistance in determining the issues and arriving at a good verdict on the law and the evidence."[15]

The most direct restraint upon the judiciary in delivering instructions, and the restraint which has been soundly denounced as most responsible for the inadequacy of instructions, is the requirement that the charge, written or oral, contain nothing in the nature of comment on the evidence adduced at the trial. Those jurisdictions which require written instructions generally prohibit any reference to the facts of the case in controversy even though the court expresses no opinion as to weight to be given the facts mentioned. In jurisdictions where the giving of oral instructions is not forbidden, it is within the province of the court to sum up the evidence adduced upon the trial, so that the jury may see the application of rules of law thereto, but this does not authorize the court to comment on the evidence.[16] A summing up of the evidence and an expression of opinion on a disputed question of fact by the court is allowed in the federal courts and the courts of those states which closely follow the common law, provided that the jurors be told *they* are the exclusive judges of the facts and are not bound by the opinions of the court on the facts.[17] Advocates of the system argue that the judge should be allowed to sift through the evidence presented and clarify various points, and connect this evidence with the pertinent law involved.

If there is not at least a limited right to connect the applicable law

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[14] See ALLPORT & POSTMAN, THE PSYCHOLOGY OF RUMOR (1947).

[15] Raymond, *Merits and Demerits of the Missouri System of Instructing Juries*, 5 ST. LOUIS U. L. J. 317, 319 (1958).

[16] Summary of the facts without comment is the permitted practice in perhaps sixteen states. VANDERBILT, MINIMUM STANDARDS OF JUDICIAL ADMINISTRATION 227-228 n. 9 (1949). The colorless summary has been called "a weak-hearted compromise" by Dean Wigmore. 9 WIGMORE, EVIDENCE §2551 n. 3 (3d ed. 1940).

[17] The common law system is followed in the federal courts and in twelve states. 9 WIGMORE, EVIDENCE §2551 (3d ed. 1940). For a thorough analysis of the various state procedures, see Wright, *supra* note 5.

with specific facts, the instruction will amount to a mere statement of abstract legal principles and definitions. Such instructions are based on the assumption that a juror can learn the meaning of a word, e.g. conspiracy, from the definition. Leading semanticists generally agree that this is not possible. S. I. Hayakawa, in his work *Language in Thought and Action,* states:

> We learn the meanings of practically all our words (which are, it will be remembered, merely complicated noises), not from dictionaries, not from definitions, but from hearing these noises as they accompany actual situations in life and then learning to associate certain noises with certain situations.[18]

In short, we learn words through the factual context in which the word is used.[19] To derive meaning, we must be able to relate the words utilized to our own experiences, as categorized in our memory.

As previously pointed out, the restraint upon judicial comment on the facts grew out of a fear of the misuse of judicial power. It is argued that the jury is best able to decide questions of fact, and that any reference to the facts by the judge invades the province of the jury. There seems to be a fear that the judge may lead the jury like sheep. As Lord Bacon advised trial judges, "you should be a light to open their eyes, but not a guide to lead them by the noses."[20]

An analysis of this question would tend to support the proposition that some amount of reference to the evidence by the presiding judge would be desirable. Assuming that the judge should be allowed to sort through the evidence and relate the law to the facts of each individual case, should the judge be allowed to comment on the weight of the evidence? Approaching this question purely from the instructional point of view, commenting on the weight of the evidence would add little to understanding the law of the case. In federal courts, where the ability to comment on the weight of the evidence is still present, it is submitted that the quality of the judiciary is generally higher than that of the state courts, and this power is only as advantageous as the qualifications and impartiality of the person utilizing it. It would appear that a happy medium could be struck in this area. That is, the judge could be permitted to sort through the facts in order to give factual context to the abstract legal definitions and propositions contained within the instruction, but he should not be allowed to comment on the weight of the evidence or unduly emphasize particular factual evidence.

Little has been written on the method of presentation of jury in-

[18] HAYAKAWA, LANGUAGE IN THOUGHT AND ACTION 57 (2d ed. 1964).
[19] For other works which emphasize this point see KORZYBSKI, SCIENCE AND SANITY (4th ed. 1958); CHASE, TYRANNY OF WORDS (1959); OGDEN & RICHARDS, THE MEANING OF MEANING (1959).
[20] Quoted in Norris v. Clinkscales, 47 S.C. 488, 25 S.E. 797, 805 (1896).

structions, that is, the best manner of orally conveying the law to the jury. To test the effectiveness of present technique, generalizations can be drawn from investigations in the field of educational psychology. The typical courtroom scene of twelve jurors being directed as to the law by the judge can be likened to a classroom scene where a professor is lecturing his students. The lecture method illustrates one means of verbal learning.[21] It has been often stated that selecting the best manner of oral presentation by the judge to the jury, in order to make the material more meaningful for them, is a problem within the sphere of each individual judge and solely for his concern. It is submitted that this is no more true than the proposition that teaching method is a problem entirely to be dealt with by each individual teacher. The voluminous material on teaching technique illustrates that method is a concern of the teaching profession as a whole.

The manner of delivering instructions commonly in existence has been described by one judge thusly:

> One of the most widespread abuses is the manner in which many judges deliver their instructions. First, there is the experienced judge who has given the same instructions for so many years that he forgets he is giving them for the benefit of those who have never heard them, and reads so rapidly and in such a flat and unmodulated voice that it is difficult for anyone to understand him. The opposite of this is the judge who looks in amazement at the printed words before him and stumbles over them as if it were his first experience with legal phraseology. Probably the least helpful is the judge who mumbles or speaks in such low tones that he cannot be heard, even by the most attentive juror. One of the above types of delivery usually occurs after counsel has pointed out the sanctity of the law and has repeatedly stressed that only by a complete understanding of the instructions by His Honor can the jury render a verdict based upon justice. Then the twelve unfortunate people in the jury box, who have listened to days of testimony and oratorical display by counsel, are suddenly confused and dismayed to hear a delivery of one of the above types.[22]

A study on voice quality and its effect upon the ability to communicate verbal learning indicates that generally the voice quality of the speaker does not hinder the speaker's ability to transfer information.[23] The research did indicate that simulated breathy and nasal voice quality appear to impede the transference of knowledge. In the case of nasality, the hindrance is only slight. This test can also be cited in considering another question: the ability to comprehend unfamiliar material after one reading. College level students were presented a

[21] See AUSUBEL, THE PSYCHOLOGY OF MEANINGFUL VERBAL LEARNING (1963).
[22] Cunningham, *Instructing Juries*, 32 CAL. S. B. J. 127, 133 (1957).
[23] Diehl & McDonald, *Effect of Voice Quality on Communication*, 21 J. OF SPEECH AND HEARING DISORDERS 233 (1956).

fourteen minute lecture on birds, a subject with which the participants were generally unacquainted. A recording by a skilled public speaker was used to present the lecture and a simple recall type completion test was given after the presentation. Of a possible mean score of 49, a score of 28.81 was the highest attained. Other studies also indicate that the average human mind cannot retain accurate details of precise phraseology after one presentation.[24] We can see, then, that a single proposal of material is not adequate to convey a complete knowledge of the information given, no matter how artful the performance. Applying these results to an exposition of law through the instruction process, we see that one presentation of a principle of law may not be sufficient, especially in light of the facts that jury intelligence is not usually at the college level, nor is the judge necessarily a skilled public speaker.

Another study in educational psychology indicates that increasing the rate of the presentation can lead to a significant reduction in comprehension of the material given.[25] A similar study shows that time compression, (e.g. giving the same message in a shorter period of material, though expressed in a different manner, can significantly The results of these experiments would indicate that a trial judge should be careful to pace his speech and, thereby, increase the understanding on the part of the jury.

A further study noted that verbal redundancy, (*i.e.* repetition of material, though expressed in a different manner,) can significantly increase the assimilation of material presented, though it generally decreases the comprehension of the material which is not repeated.[27] This study shows that the repetition of certain key law principles within the instruction would increase the understanding of these materials. The danger, however, would be to over emphasize the comprehension of a particular concept at the expense of another, thereby unconsciously favoring one of the litigants. However, further refinement of the instruction could rectify this problem and accomplish a suitable compromise. Psychologists make the further observation that the greater the amount of material presented, the lesser the percentage thereof is retained.[28] Courts, then, should be careful in drawing up instructions and guard against unnecessary lengthiness.

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[24] Jones & English, *Notional v. Rote Memory*, 37 AM. J. PSYCH. 602 (1926).
[25] Goldstein, *Reading and Listening Comprehension at Various Controlled Rates*, TEACH. COLL. CONT. EDUC. no. 821 (1940).
[26] Fairbanks, Guttman & Miron, *Effect of Time Compression Upon the Comprehension of Connected Speech*, 22 J. of SPEECH AND HEARING DISORDERS 10 (1957).
[27] Fairbanks, Guttman & Miron, *Auditory Comprehension in Relation to Listening Rate and Selective Verbal Redundancy*, 22 J. OF SPEECH AND HEARING DISORDERS 23 (1957).
[28] Newman, *Effect of Crowding of Material on Curves of Forgetting*, 52 AM. J. PSYCH. 601 (1939).

Further experiments indicate that when one reads material aloud, the reader utilizes longer sound phrases and less pauses.[29] We see, therefore, that by merely reading the written instructions, and not presenting them orally and with emphasis, the rate of presentation is increased which, as shown previously, could significantly affect comprehension.

Voice inflection is also essential to a meaningful presentation of verbal materials. Essential to communication is the attention of the recipient to the stimulus being issued. Attention is the process of selecting the stimulus to which reaction will be made. At any given moment, the mind can attend to only one stimulus. Attention is influenced by several factors including (a) change, (b) intensity and striking quality, (c) distance from point of fixation, (d) definite form or outline and (e) training.[30] The jurors must, to comprehend, focus their attention upon the stimulus emanating from the judge. The more monotonous the stimulus becomes, the more attention wanders, while any deviation from the routine tends to attract and hold attention.[31] Loudness of the voice will also affect the comprehension as this goes to the intensity and striking quality of the stimulus.

> A charge which is delivered without excessive use of notes is more effective than a charge read with eyes glued upon a manuscript. If complete silence is commanded and movements in the courtroom are prohibited during delivery of the charge, the effectiveness of the latter will be augmented. Oratorical effects should be avoided as should also delivery of the charge in a purely mechanical manner. That compelling tone of voice which comes from conviction is the most impressive that can be employed.[32]

Since individuals are more or less responsive to visual or auditory methods of instruction, as pointed out previously, some consideration should be given to issuing to the jury a copy of the instructions before the judge presents them orally. A procedure such as this would present mechanical and financial problems, but beneficial results may far outweigh the inconvenience. Ancillary to this question is the procedure whereby the jury is permitted to take written instructions into the jury room during its deliberations.[33]

With an impetus from the legal profession, and aid from those versed in the field of educational psychology, tests dealing specifically

[29] 11 SPEECH MONOGRAPHS 97 (1944).
[30] DAVIS, PSYCHOLOGY OF LEARNING 328 (1935).
[31] *Id.* at 328.
[32] Rossman, *The Judge-Jury Relationship in the State Courts,* 3 F.R.D. 98, 102 (1942).
[33] Cunningham, *Should Instructions Go Into the Jury Room?,* 33 CAL. S. B. J. 278 (1958). One federal judge who has experimented in the presentation of jury instructions uses a procedure whereby the jury may be re-instructed by tape recording. See Katz, *Reinstructing the Jury by Tape Recording,* 41 J. AM. JUD. SOC'Y 148 (1958).

with the presentation of legal material could possibly produce some highly beneficial results. One such experiment has already been conducted. Judge Swain of the California Superior Court, with the cooperation of faculty members at the University of Southern California Law School, presented a set of damage instructions to a class of freshmen law students. He prepared a questionnaire based on those instructions and after the reading, gave each member of the class a copy of these questions. Not a single member of the class passed the test.[34] Naturally, the results of the test are inconclusive, since there was no control of the many invariables involved in such an experiment. However, the test should illustrate the possible benefits which could be obtained from further experimentation by those qualified to conduct them.

Up to this point, the primary consideration has been the role of the judge in the instruction process, and, only incidentally, the part played by the attorney. The role of the attorney naturally varies from jurisdiction to jurisdiction, depending upon the standards adopted within the particular state. The traditional role played by the attorney has been to aid the court in determining the applicable law to be given in the charge. Some jurisdictions put the full responsibility upon the attorneys in drawing up the instructions to be given or not given. This method has been criticized on the grounds that partisan attorneys make the instructions unduly slanted and overemphasize the aspects of the law which are favorable to their case. It is argued that this procedure leaves the jury confused and befuddled.

> But it is manifested that it is impossible for counsel engaged in a contested trial to do anything impartial, that it is not their concern; and the result is that the instructions which they prepare are as onesided as it is possible to make them. Accordingly, they are not always easy for an experienced lawyer to analyze and understand, much less for a jury.[35]

The general procedure followed in most jurisdictions is to put the attorney in the role of the consultant. He recommends the instructions to the judge but the final responsibility for which instructions are given, and in what form, rest with the presiding judge. This is especially true in criminal cases where the judge is under a higher duty in charging the jury.[36]

The role played by the attorney in actually presenting the instructions to the jury depends in many instances upon the discretion of the trial judge. As previously pointed out, those jurisdictions which require the judge's instruction to precede the final arguments of counsel generally allow the attorney to argue the application of the law to the

[34] Swain, *supra* note 1, at 412.
[35] Soper, *The Charge to the Jury*, J. AM. JUD. SOC'Y 111, 114 (1940).
[36] *Supra* note 6.

facts of the case.[37] Although this rule has generally been criticized on the grounds that it destroys the effect of the impartial presentation by the judge, it should be noted that this ability to argue the application of the law to specific facts has been shown to increase the understandability and meaningfulness of instructions. It should also be considered that in presenting an additional explanation of the governing law, the attorney is under no such restriction as the judge as to commenting on the evidence, so that he is completely free of the danger of appellate reversal on this ground.

Some courts allow the attorney to read the instructions to the jury during their argument. Though this practice has been disapproved by appellate courts,[38] it is not quite clear on what grounds. As seen before, repetition of material may lead to an increase in comprehension. Considering the fact that the attorneys are vitally interested in the outcome of the litigation, it is submitted that the attorney would not fall into the same traps judges so often are unable to avoid. Certainly, an attorney who is swept up in a substantial contest on behalf of his client would not discuss or read the instructions in a monotone voice, lacking conviction, or deliver the material too rapidly for comprehension.

In those jurisdictions where the judge delivers the instructions after the argument of counsel, it is often the practice to notify the attorneys before their arguments as to the content of the instructions ultimately to be given. Though this generally is done so that the attorneys may have an outline of the portions of testimony to emphasize, some trial judges allow the attorneys to argue the law as to be given by the judge. This is usually held to be within the discretion of the trial judge and many judges hold that reference to the law to be instructed upon invades the province of the judge.

In contrast to both the English and American method, many of the continental judges, particularly the French, are not allowed to sum up at all. Counsel addresses the jury as to the applicable law and are given full responsibility for this phase of the jury trial. The commentators have generally dismissed this procedure as entirely unacceptable. Viewers of the French system have remarked that the juries take the law into their own hands and acquit or convict according to their own views after hearing the prosecution and the defense.[39] The American trial has been characterized as basically an adversary proceeding; the pull and tug of opposing counsel bringing factual truth to the surface. This being so, perhaps further investigation into a system such as that of the French would be warranted on the basis that such a pull and tug of opposing counsel on the law might also stimulate the minds of

[37] Raymond, *supra* note 14.
[38] Boreham v. Byrne, 83 Cal. 23, Pac. 212 (1890); People v. Conley, 134 Cal. App. 2d 580, 582, 285 P. 2d 693, 694 (1955).
[39] Sokolov, *supra* note 4, at 230-231.

the jurors, and through their respective presentations instill in the juror's mind an understanding of the controlling law. With the restriction that the law presented be first approved by the presiding judge so that each counsel is not presenting divergent law to the jury, this process might prove to be of some merit.

CONCLUSION

It appears that an investigation into the area of jury instructions would lead to certain basic conclusions and propositions:

1. The apathy toward jury instructions, due to their ineffectiveness, can only increase unless changes are made in the ritual as we know it today.
2. Both the trial and appellate courts must shift their concern from the technical correctness or the legal language contained within the instruction, and focus their attention on the meaningfulness of instructions and the interests of the jurors who are being presented the material, remembering that they are laymen and not lawyers.
3. Oral instructions are to be preferred over the reading of written instructions since presentation and delivery has been shown to have a definite effect upon the comprehension of the listener.
4. The presentation of instructions prior to the arguments of counsel appears to have merit, since it would lead to a repetition of the instruction which increases comprehension. Secondly, the attorney could relate the law to specific facts, thereby increasing meaningfulness.
5. Some freedom on the part of the judge to comment on the facts of the case would appear to be desirable in order to increase the meaningfulness of the instruction. The judge could still be restricted as to commenting on the weight of the evidence without losing the increased effectiveness of the instruction.
6. Further investigation into the manner of presenting jury instructions is warranted as communication of the instruction is as essential as its legal correctness. Experimentation in the field of educational psychology could lead to concrete proposals for improvement.
7. The role of the attorney in the instruction process warrants further investigation. Perhaps a blending and further emphasis of the respective roles of judge and attorney could add new effectiveness to the process of instruction.

Perhaps this subject can best be concluded by bringing to light the view of one juror who has gone through the instruction ritual, and his reflections as to how the process may be made more meaningful. The juror analyzed the problems in this way:

> Instructions to the jury, within my experience, have consisted entirely of the judge reading to the jury a number of assorted legal paragraphs from a variety of law books. This reading by the judge has always been in a flat and unmodulated voice and

very frequently in such low tones that at least some parts were not audible to the jurymen. Then too, the matter read by the judge is in definitely technical, legal language and much of it is more confusing than helpful to the lay mind. I definitely feel that the judge in actual practice adds to, rather than diminishes, the confusion already established in the mind of the juror by the claims, counterclaims and maneuvers of the attorneys. To my mind, great good could be accomplished if, in instructing the jury, the judge could come down off the bench (both mentally and physically) and in plain language of the street and in emphatic accents discuss the main points of the case.[40]

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[40] Letter in the possession of Chief Justice David M. Moffatt, Supreme Court of Utah.