

Memory and Perception Lab

Assessing the timing of judicial instructions: Evidence from psychological research

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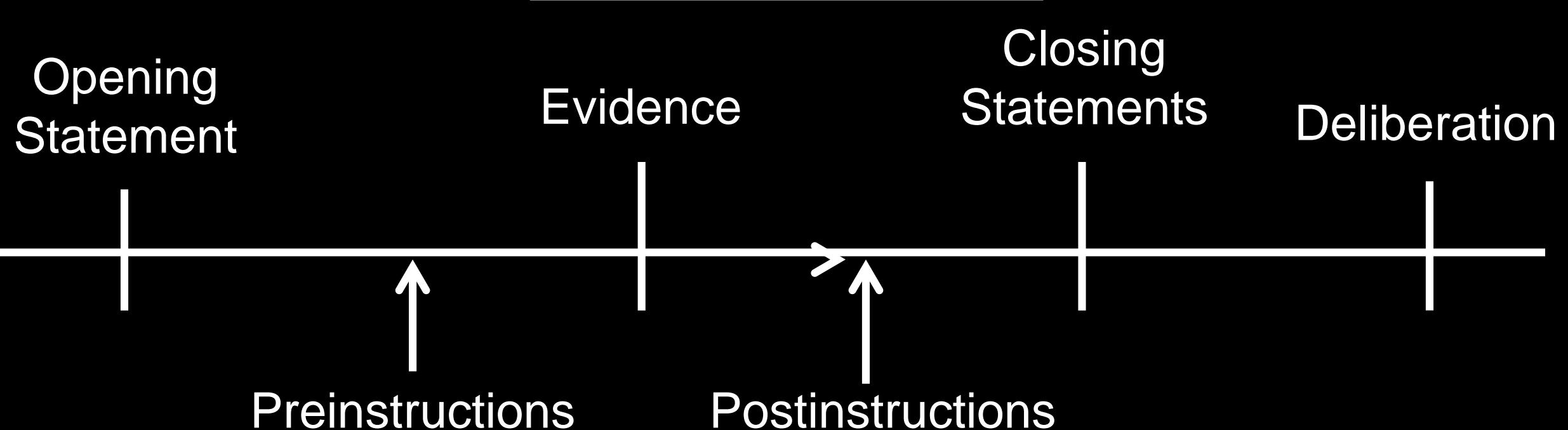
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Background

- There is currently no consensus on the timing of juror instructions among United States jurisdictions, and most states are silent on the timing of juror instructions
- In the jurisdictions that specifically comment on timing of juror instructions, court rules often leave the time of the instructions in the discretion of the judge
- Instructions can either be provided to jurors before (i.e., preinstructions) or after (i.e., postinstructions) the presentation of evidence or closing arguments
- A 2007 survey of U.S. trial practitioners showed that jurors only received preinstructions on substantive law in 17.7% of state and 16.9% of federal court trials (National Center for State Courts)
- The same survey also showed that jurors received instructions before closing arguments in 41.2% of state court trials and 52.7% of federal court trials
- Critics of preinstructions argue that postinstructions allow jurors to keep the law fresh in their minds, while also permitting judges to have the last word in the trial itself
- However, others suggest that preinstructions may help the jury frame arguments within the specific legal constructs that they are to apply, while also limiting the effects of closing arguments
- These conflicting conclusions from legal scholarship on the optimal timing of juror instructions inspired an exploration of psychological research and literature in order to establish improvements on judicial instruction timing in this country

Courtroom Timeline



Present Aim

To assess psychological research and scholarship, in order to determine whether a consensus exists regarding the optimal timing of jury instructions

Methods

Databases: NCBI/Pubmed, PsychINFO, Google Scholar, ProQuest Social Science Journals, PsycARTICLES

Search Terms: Preinstructions, postinstructions, judicial instruction timing, juror instructions, timing of trial instructions, jury instructions, trial instructions, instructions and juror competence, preliminary instructions

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Results

Article	Timing	Summary of Findings	Benefit
Fitzgerald et al. (2000) <i>Younger and Older Jurors: The Influence of Environmental Supports on Memory Performance and Decision Making in Complex Trials.</i>	-Before vs. after evidence	-Participants provided more detailed (source identification) and cohesive (free recall) accounts when they were given preinstructions -Preinstructions had a greater positive effect in older jurors, and helped them construct accounts that were relatively more evidence-based	Preinstructions
Forster-Lee et al. (1997) <i>Enhancing juror competence in a complex trial.</i>	-Before vs. after evidence	-Notetakers were more effective decision makers when preinstructed -Preinstructed notetakers displayed enhanced recall of probative evidence, fewer non-probative intrusions, and better decision making on legally appropriate grounds	Preinstructions
Forster-Lee et al. (1993) <i>Juror competence in civil trials: Effects of preinstruction and evidence technicality.</i>	-Before vs. after evidence	-Preinstructed jurors made clear distinctions among four differentially worthy plaintiffs -Preinstructions enhanced jurors' cognitive processing in a complex civil trial -Preinstructed jurors awarded plaintiffs amounts that were more consistent with the testimony (most severely injured plaintiff were awarded the most compensation) -Preinstructed jurors displayed superior verbal representations of the evidence, which contained more probative evidence and less nonprobative and evaluative information	Preinstructions
Smith et al. (1991) <i>Impact of pretrial instructions on jurors' information processing and decision making.</i>	-Before vs. after vs. both vs. not at all during the trial	-Jurors who were instructed both before and after the trial were better able to interpret the facts and the law -Preinstructed jurors more often deferred their verdict decisions until after the trial (i.e., discouraged midtrial verdict decision) -Preinstructions did not impair juror's information processing or decision making in any way	Preinstructions & Both
Bourgeois et al. (1995) <i>Nominal and interactive groups: Effects of preinstruction and deliberations on decision and evidence recall in complex trials.</i>	-Before the evidence vs. after vs. both vs. not at all	-Preinstructed jurors were able to differentiate among the plaintiffs in awarding damages, whereas the postinstructed and interactive jurors could not -Preinstructed jurors awarded the most compensation to plaintiffs compared to other jurors and displayed improved recall of evidence -Study suggests that preinstructions may yield a pro-plaintiff bias when evidence is hard to understand, but enhanced systematic processing and juror decision making when evidence was less complex	Preinstructions
Kassin et al. (1979) <i>On the requirements of proof: The timing of judicial instruction and mock juror verdicts.</i>	-Before evidence vs. after vs. not at all	-Timing manipulation had no significant effect on the standards of reasonable doubt adopted by subjects -Preinstructed jurors demonstrated a lower conviction rate than the other juror groups (i.e., less likely to convict throughout the trial) -Preinstructed jurors viewed the defendant as less likely to have committed the crime	Preinstructions
Elwork et al. (1977) <i>Juridic Decisions: In Ignorance of the Law or in Light of It?</i>	-Before evidence presentation vs. after vs. both	-Presentation of the instructions at both at the beginning and the end of the case allowed jurors greater opportunities to focus their attention on relevant evidence and to remember it -Preinstructed jurors held different beliefs on two out of three key issues in the trial, which supports the notion that preinstructions help jurors distinguish relevant evidence during the trial and later remember it	Preinstructions & Both
Heuer et al. (1989) <i>Instructing Jurors: A Field Experiment With Written and Preliminary Instructions.</i>	-Preliminary instructions present vs. preliminary instructions absent	-Preliminary instructions did not assist the juror with following legal guidelines in their decision making or increase the jurors' satisfaction with the trial process -Jurors who received preinstructions were not able to better recall trial evidence nor were they more confident in their evidence recollection -Preinstructions did help jurors evaluate the evidence according to the correct legal guidelines	Preinstructions
Paglia et al. (1998) <i>Jurors' use of hearsay evidence: The effects of type and timing of instructions</i>	-Immediately after the hearsay vs. at the end of the trial vs. both of these times	-Timing of the instructions did not affect the verdict -Timing of the instructions did not make a difference on juror performance	No effect
Hastie et al. (1983) <i>Inside the Jury (Book)</i>	-Before vs. after evidence	-Preinstructed jurors reported less bias	Preinstructions
Feldman et al. (1978) <i>Juror Competence Through Judicial Instructions (Book)</i>	-Before vs. after evidence	-Pre-evidentiary instructions decreased the biasing effect of the defendant's characteristics	Preinstructions
Hastie et al. (1982) <i>An empirical evaluation of five methods of instructing the jury (Book)</i>	-Both before and after vs. after	-No difference (i.e., timing does not matter)	No effect
White et al. (2000) <i>Effects of preinstruction and linguistic simplification on juror comprehension of capital sentencing instructions.</i>	-Before vs. after vs. both before and after evidence	-When the instructions were written in simplified language, presentation prior to the evidence resulted in the highest comprehension rates for both aggravating and mitigating circumstances -When the instructions were written in pattern language, presentation prior to and after the evidence resulted in the highest comprehension levels	Preinstructions & Both

Main Findings

- (1) Preinstructions allow jurors to allocate an appropriate amount of attention to details and information relevant to the law, rather than what is subjectively important to the jurors themselves; thus, preinstructions guide jurors to determine which facts should be used to satisfy the requirements for the conviction of a specific case.
- (2) Preinstructions provide a contextual framework for jurors to work from, which helps them organize the evidence presented to them and integrate facts and law
- (3) Preinstructions decrease juror bias, since most jurors enter the trial with their own set of expectations which may interfere with their appraisal of the evidence
- (4) Postinstructions did not seem to offer any additional cognitive benefits to jurors, compared to preinstructions

Discussion

- Some judges oppose the implementation of substantive preinstructions because they prefer to hear all of the evidence in a case before researching and ruling on proper substantive instructions in the case.
- Many attorneys also hold off on requesting substantive instructions because the theories of their cases may change throughout trial.
- Essentially, legal practitioners are concerned that there is no way to ensure that substantive instructions given at the beginning of a trial will match the instructions given at the end of the trial.
- Eleven out of the thirteen psychology articles found that preinstructions benefited juror performance.
- Psychology research suggests that instructing jurors prior to the presentation of evidence helps them to consider more relevant evidence and better apply the law to the facts of the case before them.
- Research also suggests that preliminary instructions aid the enforcement of the presumption of innocence by helping jurors withhold a determination of guilt until the conclusion of trial.
- However, these studies indicate overall that the greatest potential benefit to jurors comes from hearing the instructions before the presentation of evidence, as this helps jurors frame the trial evidence and remember the instructions.

Future Directions

Future directions for research include the determination of whether preliminary instructions combined with juror notetaking during evidence presentation in court help juror information processing, and memory accuracy, retrieval, and recall.

References

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