

Stumped jurors may now get instructions in plain English

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In California courtrooms, jurors used to be advised that: "Innocent misrecollection is not uncommon."

Now, they may hear the plain English version: "People sometimes honestly forget things or make mistakes about what they remember."

The legal concepts everyday Joes and Janes are asked to apply to criminal cases are often convoluted and confusing. It doesn't help that these difficult concepts are written in antiquated legalese full of jargon and stilted grammar.

But on Friday, the Judicial Council of California -- a 21-member group of judges, lawyers and legislators that sets policy for the state's courts -- agreed to allow the use of easy-to-understand jury instructions in criminal cases.

"Law lives in its language and historically that language has made sense to lawyers, but not to anyone else," said 1st District Appellate Court Associate Justice Carol A. Corrigan, who chaired the panel. "It is no longer acceptable to say, 'Too bad people don't understand.' "

The more than 700 revised instructions, which took about eight years to write, will not replace the existing instructions judges now give juries, which are called California Jury Instructions Criminal (CALJIC) and were compiled about 70 years ago.

However, starting in January, judges will have the option of giving the plain English instructions to criminal trial juries.

Deputy District Attorney John Harlan, assigned to the Torrance Courthouse, said it's a rare trial in which the jury doesn't submit some kind of question about the law to the judge.

Take the seemingly innocuous question of what exactly constitutes a "home."

To convince a jury in June that Robert Anderson was guilty of battery on a "co-habitant" -- his girlfriend whom he lived with, Harlan told a jury that home is "where the underwear drawer is," citing supporting evidence that a drawer of men's undergarments was found in a Lennox home.

To prove Anderson guilty, Harlan had to prove he lived with the alleged victim.

It wasn't enough for the jury, which sent a note to the judge asking for the definition of "residence."

But no dictionaries are allowed in the deliberation room -- only common sense.

The jury deadlocked and a retrial is scheduled for Anderson, 36, who is facing his third strike, next month.

Harlan said he believes clearer language can only help, but doubts that most of the laws can be rewritten in a way that they will stand up to the scrutiny of higher courts.

Second District Court of Appeal Presiding Justice Roger W. Boren, who served on the rewriting task force, said the group went to great lengths to make sure the laws will withstand appellate review.

"I think they are going to be as bulletproof, if not more bulletproof, than the CALJIC," Boren said.

In crafting the new instructions, the task force virtually ignored the existing body of instructions to ensure they didn't plagiarize the copyrighted catalog.

"In many ways it was like building a ship while sailing," said Corrigan, who chaired the San Francisco-based task force.

Using California's case law and statutes, along with jury instructions from other states and the federal books, the task force started from scratch. It met monthly, going line-by-line.

The members of the panel went around and around about the language of each instruction and whether or not it correctly states the law.

A lot of their discord swirled around whether or not they should include examples to illustrate a point, Boren said. Some were adopted, especially on the instructions that cause juries the most confusion, like the one that purports to explain the difference between direct and circumstantial evidence.

Now jurors might hear the difference explained by way of the following example: direct evidence of a rainstorm outside would be if a witness testifies they saw water coming out of the sky before walking into the courthouse. Circumstantial evidence of the same would be if a witness saw someone wearing a raincoat covered with drops of water.

"I think this is monumentally wonderful," Boren said. "Jurors are going to understand these better."

Kevin Knopf, a 30-year-old technical writer who served on a criminal jury in Torrance earlier this year, said deliberations in that trial were extended because of questions about the instructions.

"I felt that the jury instructions were clear from my perspective," Knopf said. "It was apparent once we were in deliberations that they were not clear to everyone on the jury."

Reasonable doubt was a big problem for the group, Knopf said.

"One lady kept saying she was not 100 percent sure," Knopf said.

Knopf and several of the other jurors finally got together and presented the instructions to the rest, almost as if they were teaching a class, he said. Less than two hours later, they reached a verdict.

"Some of us deal with legal terms on a daily basis, so it was no problem," Knopf said. "But a large cross-section of people ... aren't used to encountering that type of language."

Knopf said additional clarification would be helpful, but was afraid that the problems could not be solved, even if the judge were to "dumb it down."

Kathy Kellermann, a senior consultant at Trial Behavior Counseling, which coaches lawyers on, among other things, how to pick a jury and present a case to them, said jury instructions almost always cause confusion during mock trials.

"Jury instructions are quite a ways away from how people use words in day-to-day life," Kellermann said.

"You see them trying to do their job," she said of jurors. "You see them struggling."

Kellermann also supports a revision of the instructions, noting numerous studies that have found simpler, clearer language would make the deliberation process easier.

"The constraint is always what the law requires," Kellermann said. "And that sometimes conflicts with plain English."

California is not the first state to draft plain-English instructions, although its revisions are the most comprehensive, according to the Judicial Council.

The revision is part of the Judicial Council's campaign to reform the jury system and encourage more people to participate. New civil jury instructions were unveiled in 2003.

All the judges in the state will be provided copies of the new criminal instructions in both print and electronic formats. In addition, the Center for Judicial Education and Research will offer programs to help the judges become more familiar with the instructions.