A Concept in Search of a Definition: The Effects of Reasonable Doubt Instructions on Certainty of Guilt Standards and Jury Verdicts

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Eighty (6-person) juries heard 1 of the 5 reasonable doubt instructions in a trial that either had strong evidence for guilt or favored acquittal. None of the instructions produced acceptable criteria of self-reported reasonable doubt, although instructions that informed juries to be firmly convinced (FC) elicited the highest standards of proof. The FC instructions yielded verdicts that tended to correspond with the evidence in both versions of the trial. FC juries focused proportionately more on the evidence and less on non-probative issues than juries given other instructions. Juries had lower self-reported standards of proof when the trial evidence was weak for conviction as opposed to when it was strong. The discussion addresses the surprisingly low self-reported standards of proof.

One of the most critical components of the judge’s instruction to the jury is the specification of the burden of proof criterion. Parties bear the burden of proving their own charge, claim, or defense.

In a criminal trial, the standard of proof will be successfully met when the prosecution presents facts that convince the jury “beyond a reasonable doubt.” The U.S. Constitution does not provide a definition of reasonable doubt. The Due Process Clause, however, requires that the state demonstrate a criminal defendant’s guilt beyond a reasonable doubt and trial judges must refrain from characterizing reasonable doubt in a way that allows conviction on a lesser showing than required by due process (Victor v Nebraska, 1994).

There are a variety of extant definitions of reasonable doubt, although the U.S. Supreme Court has never mandated that trial courts employ any particular definition of reasonable doubt (Note, 1995). Recently, however, the Court has begun to examine the ramifications of these instructional sets (Mueller & Kirkpatrick, 1995).

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Jurors are typically informed that “reasonable doubt is a doubt based on reason, a doubt for which you can give a reason. It is not a fanciful doubt, or a whimsical doubt, nor a doubt based on conjecture” (Tanford, 1990, p.78). As this definition suggests, the concept of reasonable doubt has an intuitive appeal until one tries to define it in a way that is of use to the decision maker. Indeed, some legal scholars argue that the empirical evidence does not support providing a definition of reasonable doubt and that jurors have an “original understanding” of the concept that makes explicit definition unnecessary (Note, 1995).

Empirical Studies of Reasonable Doubt

Kagehiro and Stanton (1985) conducted three experiments that compared the effects of verbal definitions of three standards of proof (preponderance of the evidence, “clear and convincing evidence,” and reasonable doubt) with quantified definitions of the same standards on jury decision making. Kagehiro and Stanton found that legal definitions of standard of proof did not affect jury verdicts. However, quantified definitions (51%, 71%, 91% of probability of truth) had their intended effect. The difficulty of obtaining a verdict for the party with the burden of proof increased as the probabilities increased. These probability criteria were presented as floors, below which the juror must decide the burden had not been met. Certainty could, of course, exceed those minimal criteria.

In a follow-up experiment Kagehiro and Stanton (1985) combined verbal definitions with the quantified definitions of reasonable doubt unsuccessfully. That is, the various definitions of the burden did not differentially influence verdicts (Kagehiro & Stanton, 1985). The researchers examined this option because the use of degree of certainty expressed as a percentage has generally been frowned upon by the courts and does not seem to be a viable option. For example, in *McCullough v. State* (1983), the trial judge explained degrees of proof to the jury in terms of a scale from zero to ten. The judge placed the civil burden at just over 5 and beyond reasonable doubt as 7.5. The Nevada Supreme Court reversed, stating that the concept of reasonable doubt is “inherently qualitative” and any attempt to quantify it may impossibly lower the state’s burden of proof, and is likely to confuse the jurors.

Dane (1985) compared the ability of several decision models, including the reasoning inherent in relevant U.S. Supreme Court decisions, to accurately quantify jurors' use of the reasonable doubt decision criterion. Dane (1985) examined Justice White’s reasoning in *Johnson v. Louisiana* (1972), a case in which the Court decided that less than a unanimous decision rule was constitutionally acceptable. Applying statistical reasoning to Justice White’s descriptions of reasonable doubt, Dane estimated that the Court projected the burden of proof to have been met at 88% certainty of guilt. This prediction was then compared to the analysis of a mock jury experiment. Dane (1985) found that the Court’s prediction was considerably at variance with the jurors’ predeliberation reasonable doubt criteria (73%) but tracked much better with the jurors postdeliberation levels (84%).