

Jury Instructions Syllabus

Course Description and Objectives

Many attorneys and most recent law school graduates routinely fail to devote sufficient attention to—or lack the skill set necessary to succeed at—what is arguably the most important aspect of a jury trial: telling the jury what the law is so jurors can render a favorable verdict. Often this is a result of counsel lacking adequate training in drafting effective jury instructions. This skill-based course will introduce students to the theoretical considerations involved in drafting jury instructions, as well as provide them with hands-on training in the research and writing of instructions. Students will learn a step-by-step approach to the drafting of instructions for use prior to trial, during trial, and at the end of trial. Students will also learn how to prepare jury interrogatories and additional findings, how to prepare verdict forms, how to participate in a charging conference and preserve perceived error, and how to address jury questions and the issue of inconsistent verdicts. Throughout the course, there will be continuing discussion on the role of counsel as an advocate and an officer of the Court, including ethical considerations and balancing advocacy with presenting correct statements of the law.

The pedagogical approach will include lecture, group discussion of assigned reading, and writing projects. Students will survey seminal and contemporary jury instruction literature and engage in extensive individual and group writing projects involving the drafting of instructions based upon the analysis of statutes and case law, including presentations to the class of the resulting instructions for group critique.

Instructor

Shawn Judge is a career law clerk to the Honorable Gregory L. Frost of the United States District Court for the Southern District of Ohio. In addition to drafting jury instructions for use in that federal court, Judge has served since 2005 as the editorial consultant to the criminal subcommittee of the Ohio Judicial Conference's Ohio Jury Instructions Committee. In that capacity, Judge drafts and presents multiple instructions each year, as well as critiquing instructions proposed by Committee members. Judge has previously served multiple appointments as an adjunct at Capital University Law School (teaching Jury Instructions), as an adjunct at The Ohio State University Moritz College of Law (teaching Appellate Advocacy, Jury Instructions, and Advanced Legal Writing), and as an adjunct at Ohio Northern University College of Law (teaching Jury Instructions and Opinion Writing). He periodically serves as a panelist and speaker on legal writing and best practices in federal court. **Contact information:** email, kincade79@aol.com; office phone, 614-719-3303; cell phone, 614-284-3274.

Assigned Reading

There is no textbook for this course. Students should obtain the articles identified below through Westlaw or Lexis. Additional reading will consist of pattern jury instructions either distributed in class or identified in class and available through Westlaw or Lexis.

- Robert P. Charrow & Veda R. Charrow, *Making Legal Language Understandable: A Psycholinguistic Study of Jury Instructions*, 79 Colum. L. Rev. 1306 (1979).
- Jamison Wilcox, *The Craft of Drafting Plain-Language Jury Instructions: A Study of a Sample Pattern Instruction on Obscenity*, 59 Temp. L.Q. 1159 (1986).
- Neil P. Cohen, *The Timing of Jury Instructions*, 67 Tenn. L. Rev. 681 (2000).
- Peter M. Tiersma, *Communicating with Juries: How to Draft More Understandable Instructions*, 10 Scribes J. Legal Writing 1 (2006).

Please note in regard to jury instructions that will be distributed or used in class: You are receiving excerpts from the *Ohio Jury Instructions*, whose copyright and other proprietary rights are held by the Ohio Judicial Conference. These excerpts are used with the permission of the Ohio Judicial Conference and are not to be duplicated, reproduced or distributed in any manner whatsoever without the express written permission of the Ohio Judicial Conference.

Course Work and Evaluation

Individual Writing Project (50% of final grade)

As a final project/take-home exam, each student will receive a set of facts for a case proceeding to trial that involves two hypothetical criminal statutes or two hypothetical civil claims. Applying Ohio law, the student must produce a complete set of jury instructions including verdict forms and citations to supporting authority where appropriate.

Group Writing Project (25% of final grade)

Working in small groups, students will serve as co-counsel in drafting a jury instruction for a new Ohio statute or case holding.

Group Presentation (10% of final grade)

With their small groups, students will present their draft instruction to the class for discussion of the drafting strategies employed and group critique.

Class Participation (10% of final grade)

In addition to active participation in class discussion, students will participate in in-class drafting exercises and critique sessions related to proposed jury instructions. Participation in these exercises will be evaluated on student effort and involvement as

opposed to the ability to produce polished instructions.

Attendance (5% of final grade)

Attendance is required. This course meets on January 8, 10, 15, 17, 29, and 31 and February 5 in Room A122 from 6:00 p.m. to 8:00 p.m.

Students are expected to adhere to the school Honor Code.

No late assignments will be accepted without good cause as determined by the instructor. Any extension request should be directed to the instructor prior to the deadline.

Schedule

Week One

Class # 1: Introduction to jury instructions. Finding the law and the use of model or pattern jury instructions. Use of jury instructions before pleading. Problems with jury instructions and juror comprehension.

1/8/13

- Reading: Robert P. Charrow & Veda R. Charrow, *Making Legal Language Understandable: A Psycholinguistic Study of Jury Instructions*, 79 Colum. L. Rev. 1306, 1306-11, 1341-60 (1979) (read Introduction, Section I, Section IV, and Conclusion).

Class # 2: The plain language approach (and conflicts with statutory language), legislative approaches to juror confusion, and alternative approaches to jury instruction issues. Civil v. criminal jury instructions. Burdens of proof.

1/10/13

- Reading: Jamison Wilcox, *The Craft of Drafting Plain-Language Jury Instructions: A Study of a Sample Pattern Instruction on Obscenity*, 59 Temp. L.Q. 1159, 1159-77 (1986) (read Introduction, Section I, Section II, and Section III).
- Class critique/drafting exercise of proposed jury instruction.

Week Two

- Class # 3:** 1/15/13 Instructions for the jury before and during trial, including the use of limiting instructions and stipulations. Theories on the timing of jury instructions. Standard components of final jury instructions.
- Reading: Neil P. Cohen, *The Timing of Jury Instructions*, 67 Tenn. L. Rev. 681 (2000) (read entire article).
 - Class critique/drafting exercise of proposed jury instruction.
- Class # 4:** 1/17/13 Drafting common instructions: the role of the judge, juror duties, types of evidence, evaluating testimony, expert witnesses. Drafting checklist of common errors. Begin drafting case-specific substantive instructions.
- Reading: Peter M. Tiersma, *Communicating with Juries: How to Draft More Understandable Instructions*, 10 Scribes J. Legal Writing 1 (2006) (read entire article).
 - Class critique/drafting exercise of proposed jury instruction.

Break

No classes the week of January 21, 2013.
Students work on their group projects and class presentations.

Week Three

- Class # 5:** 1/29/13 Finish drafting case-specific substantive instructions. Drafting common instructions: deliberations, reaching a verdict. Drafting jury interrogatories, additional findings, and verdict forms.
- Reading: continued discussion of Peter M. Tiersma, *Communicating with Juries: How to Draft More Understandable Instructions*, 10 Scribes J. Legal Writing 1 (2006).
- Class # 6:** 1/31/13 Charging conferences. Objections and preserving error. Questions from the jury. Charges to deadlocked juries. Receiving the verdict. Inconsistent verdicts. Ethical considerations.
- Group presentations (if needed).

Week Four

- Class # 7:** 2/5/13 Course summary.
- Group presentations.
 - Assignment of take-home exam: Drafting complete set of instructions.