

## 6.0 Introductory Comment

In 2019, the Ninth Circuit reversed a criminal conviction based on “structural error” because the district court did not orally instruct the jury but instead directed the jurors to read the instructions themselves and then confirmed with each juror that the juror had done so. *United States v. Becerra*, 939 F.3d 995 (9th Cir. 2019). As the reader encounters the model jury instructions that follow and begins to craft the instructions to be given at trial, the words from this decision provide valuable guidance and context:

[M]any jurors may not adequately comprehend written instructions. It is no secret that jury instructions are often written in language more suitable for lawyers than laypersons. *See, e.g.,* Jonathan Barnes, *Tailored Jury Instructions: Writing Instructions that Match a Specific Jury’s Reading Level*, 87 Miss. L.J. 193, 195 (2018); Prentice H. Marshall et al., *Pattern Criminal Jury Instructions: Report of the Federal Judicial Center Committee to Study Jury Instructions*, at vii, 79–83 (1982); Phil H. Cook, *Instructionese: Legalistic Lingo of Contrived Confusion*, 7 J. Mo. B. 113 (1951). Written instructions can be especially impenetrable for those jurors with limited reading comprehension skills. *See* Laurence J. Severance et. al., *Toward Criminal Jury Instructions that Jurors Can Understand*, 75 J. Crim. L. & Criminology 198, 224 (1984); Robert P. Charrow & Veda R. Charrow, *Making Legal Language Understandable: A Psycholinguistic Study of Jury Instructions*, 79 Colum. L. Rev. 1306, 1320–21 (1979). And even if a jury is comprised of an unusually educated cross-section of the community, many of us at times succumb to the temptation to glaze over a long paragraph of text or flip over a few pages of a lengthy stack of papers. When the instructions are read orally, tonal inflection can make the content of the instructions more accessible, as well as discourage the “tuning out” common when reading dense material. Oral instruction in the formal courtroom setting thus assures that jurors are exposed to the substance of the essential instructions by at least one sensual route.

The oral charge also performs a second, signaling function that cannot be replaced by a printout or a pamphlet. Jury instructions are not the judicial equivalent of a car manual or a cookbook. When an enrobed judge orally charges the jury, the jurors are impressed with the fact that they have been entrusted with the power to decide the defendant’s fate. This oral, public ritual helps ensure that “jurors . . . recognize the enormity of their task and ... take [that task] seriously.” Nancy S. Marder, *Bringing Jury Instructions into the Twenty-First Century*, 81 Notre Dame L. Rev. 449, 465 (2006). By analogy, reading a sermon is not the same as hearing it read in church or synagogue by a pastor or priest or rabbi. If it were, religious leaders would just hand out the sermons and end the services early.

For these reasons, the historic practice of oral jury instruction remains central to the fairness of jury trials.

*Becerra*, 939 F.3d at 1001. Further, the Federal Rules of Criminal Procedure permit the court to instruct the jury before or after arguments, or at both times. Fed. R. Crim. P. 30(c).