

- Juror interpretations vary significantly (Kramer & Koenig 1990)
- Differing legal opinions and jury instructions amplify this
- Regarding BARD (citations from Laudan 2006, Ch. 2):
 - “Proof beyond reasonable doubt...is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs” (Fifth U.S. Circuit Court)
 - “by reasonable doubt is not meant that the accused may possibly be innocent of the crime charged against him, but it means some actual doubt having some reason for its basis” (Jury instructions in *Burnett v. Nebraska*)

The state of confusion

- There is even substantial opinion that things **ought not be clarified**:
 - ““Reasonable doubt” must speak for itself. Jurors know what is “reasonable” and are quite familiar with the meaning of “doubt”. Judges’ and lawyers’ attempts to inject other amorphous catch-phrases into the “reasonable doubt” standard, such as “matter of the highest importance”, only muddy the water...” (Judges of the Seventh Circuit in *U.S. v. Hall*)
- Laudan (2016) reports that 10 US states prohibit clarification to jurors while 15 states mandate it
- Jon Newman (Chief Judge, U.S. Court of Appeals) retorts:
 - “I find it rather unsettling that we are using a formulation that we believe will become less clear the more we explain it.”

Probability thresholds

- Attractive suggestion without obvious suitable alternatives:
 - different standards of proof = different **thresholds of probability given the evidence**
- This would make sense of our desire to balance the correctness of judgments with the cost of errors
- Like *any* clarification, this one is controversial:
 - “The idea of reasonable doubt is inherently qualitative. Any attempt to quantify it may impermissibly lower the prosecution’s burden of proof, and is likely to confuse rather than clarify” (Supreme Court of Nevada, cited in Laudan 2006)
- How does it stand up to scrutiny?