

The Route to Clear Jury Instructions*

By Joseph Kimble

The suggestions below are for writing jury instructions — for getting the words down in plain language. They do not involve possible reforms in procedure, such as giving preliminary instructions before trial, giving final instructions before closing arguments, using visual aids during instructions, and giving jurors copies of the instructions.¹ Whatever the reforms, the instructions still need to be clear.

1. Each state should, by committee, create a set of standard (pattern) civil and criminal instructions that are written in plain language. Each federal circuit should create a set of plain criminal instructions. In most jurisdictions, this means that the current pattern instructions will have to be revised.

2. The starting point should be a set of fairly generic pattern instructions prepared by a national group — like the Federal Judicial Center's *Pattern Criminal Jury Instructions* (1988). Or the committee could consult a highly regarded set of instructions from another jurisdiction.

3. Above all, the reporter for each committee should be chosen primarily for having a background in communication and plain writing, not for having knowledge of substantive law. At a minimum, a writing expert should be engaged to work with a substantive expert.

4. The writing expert should be familiar with the main body of literature on clear instructions.²

5. Each committee member should get a copy of Appendix A to the Federal Judicial Center's *Pattern Criminal Jury Instructions*, which summarizes some important guidelines for improving instructions.

6. The committee members must agree that comprehensibility is equally as important as accuracy. This may require a new attitude among some members.

7. Along the same lines, the committee must be willing to translate opinions and statutes into plain language, instead of slavishly using their exact language.

8. The committee should include lay members.

9. The committee should spot-test its work on members of the public. Even informal testing is better than no testing. The testing should have a target goal — say 70-75 percent comprehension overall.

10. Instructions shouldn't be drafted or revised by the whole committee, except for minor changes. If a draft instruction is unsatisfactory, the writing expert should revise it.

11. The committee should be willing to innovate. For instance, it should:

- Use contractions.
- Use concrete examples to illustrate how the law applies.
- Use controlled repetition. ("In other words . . ." "This means that . . .")
- Use signposting and summarizing techniques. ("Now I want to explain to you about . . ." "What all this means is that . . ." "So, to summarize, you must decide whether . . ." "Let me remind you that . . .")
- Include charts or other graphics that might be given to the jury.
- Encourage the instructing judge to use language that is case-specific. ("As I explained to you earlier, the defendant, _____, is on trial here because the government has charged that [brief description of the crime]. "During the trial, you've heard the testimony of _____, who is described to us as an expert in _____.")

12. National groups — such as the Federal Judicial Center, the National Center for State Courts, and the American Judicature Society — should conduct studies on the effectiveness of new techniques, or should help to publicize the work of independent researchers.

These efforts will take time and money. But we know two things for sure after 20 years of research: jurors do not understand old-style instructions, and the instructions

can be made much clearer through plain-language principles. We are duty-bound to make the effort. Jury instructions are worth it. ■

Footnotes

1. See generally NATIONAL CENTER FOR STATE COURTS, *JURY TRIAL INNOVATIONS*, 151-53, 161-82 (G. Thomas Munsterman et al. eds., 1997) (suggesting ways to improve the process of delivering instructions to the jury).
2. See, e.g., AMIRAM ELWORK ET AL., *MAKING JURY INSTRUCTIONS UNDERSTANDABLE* (1982); FEDERAL JUDICIAL CENTER, *PATTERN CRIMINAL JURY INSTRUCTIONS* (1988); Robert P. Charrow & Veda R. Charrow, *Making Legal Language Understandable: A Psycholinguistic Study of Jury Instructions*, 79 COLUM. L. REV. 1306 (1979); Shari Seidman Diamond & Judith N. Levy, *Improving Decisions on Death by Revising and Testing Jury Instructions*, 79 JUDICATURE 224 (1996); Symposium, *Making Jury Instructions Comprehensible*, 8 U. BRIDGEPORT L. REV. 279 (1987).

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