

Guidelines for Drafting Plain-Language Jury Instructions

Basic Principles

1. Be clear.
2. Be brief.
3. Remember who your audience is (lay people, with varying degrees of education and language skills).
4. Be conversational. (Prefer spoken English over written English.)
5. Address the jurors directly. *E.g.*:
“You must . . .” rather than “The jury must . . .” or “Members of the jury must . . .”
6. Use first person for the judge. *E.g.*:
“I ruled that . . .” rather than “The court ruled that . . .”
7. Order points in a logical sequence (*e.g.*, more important before less; general before specific).
8. Use questions. *E.g.*:
“To find for the plaintiff, you must answer ‘yes’ to two questions. First, . . .? And second, . . .?”
9. Use case-specific language. *E.g.*:
“[Name] has admitted lying under oath. You should consider his testimony with caution and great care.” instead of, “The testimony of an admitted perjurer should be considered with caution and great care.”

“You have heard the testimony of [name], who is described as an expert in . . .” instead of, “The testimony of an expert witness . . .”
10. Use concrete examples. *E.g.*:

“If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining.”

(But be careful not to use examples that would imply that the court favors one side over the other or is suggesting what result the jury should reach.)

11. Use transitions, signposts and signals. *E.g.:*

“Now I want to explain to you about . . .”

“So, to summarize, you must decide whether . . .”

“What all this means is that . . .”

12. Use controlled repetition. *E.g.:*

“In other words, . . .”

“This means . . .”

13. State things in alternative ways. *E.g.:*

“A person must take some affirmative steps to renounce or defeat the purpose of the conspiracy. This could include things like But some affirmative step is required. Just doing nothing is not enough.”

14. Use parallel structures for parallel ideas. *E.g.:*

“To prove a claim of false advertising, [the plaintiff] must show that [the defendant] made a statement that (1) was false or misleading, (2) actually deceived or was likely to deceive a substantial segment of the advertisement’s audience, and (3) resulted in injury to [the plaintiff].” instead of, “To prove a claim of false advertising, the plaintiff must show that the defendant (1) made a false or misleading statement, (2) that actually deceived or was likely to deceive a substantial segment of the advertisement’s audience, and (3) that resulted in injury to the plaintiff.”

15. Use lists or tabulations for complex items, such as multiple conditions or rules.

16. Don’t instruct the jury about things they don’t need to know, such as evidentiary rules.

17. Test your instructions on a lay audience.

Sentences

18. Use short sentences (generally no more than 25 words on average).

19. Use simple sentence patterns:

subject (S) - verb (V)

subject (S) - verb (V) - object (O)

20. Put the subject near the beginning and the verb near the subject.

21. Put the action in strong verbs, not in abstract nouns.

22. Avoid impersonal phrases. *E.g.:*

“You must . . .” instead of “It is your duty to . . .” or “It is necessary for you . . .”

23. Generally use the active voice rather than the passive voice, especially in subordinate clauses. *E.g.:*

“If I have stated any rule in different ways . . .” instead of, “If any rule has been stated in varying ways . . .”

“You should consider an owner’s testimony about the value of his property . . .” instead of “The testimony of an owner as to value is to be considered by you . . .”

Exceptions:

Where the agent is unknown or unimportant.

To focus attention on the object.

24. Limit the use of subordinate clauses and phrases, and particularly avoid placing them before or within the main clause. (In other words, don’t combine several simple sentences into one complex sentence.) *E.g.:*

“The attorneys’ questions are not evidence. You must not draw conclusions from the questions alone.” instead of “You must never speculate to be true any insinuation suggested by a question asked a witness.”

“The defendant claims the plaintiff was also negligent,” instead of, “In addition to denying that any negligence of the defendant proximately caused any injury or damage to the plaintiff, the defendant alleges, as a further defense, that some contributory negligence on the part of the plaintiff, himself, was a proximate cause of any injuries and consequent damages plaintiff may have sustained.”

25. Put modifiers next to what they modify. *E.g.:*

“If any rule in these instructions is repeated . . .” or “If any rule is repeated in these instructions . . .” instead of, “If, in these instructions, any rule is repeated . . .”

26. Put conditions (especially lengthy conditions) at the end of the sentence, preceded by “if.” *E.g.:*

“You may disregard the opinion of an expert entirely if you decide that the opinion is not based on sufficient education or experience, that the reasons for the opinion are not sound or that the opinion is outweighed by other evidence” instead of, “Should you should decide that the opinion of an expert witness is not based on sufficient education and experience, or should you conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, then you may disregard the opinion entirely.”

27. Do not omit relative pronouns (*e.g.*, “that,” “which,” “who”) and the following verb (some form of “be”). *E.g.:*

“questions of fact that are submitted to you,” instead of “questions of fact submitted to you”

Note: This guideline seems counterintuitive if the goal is to make instructions short and simple. However, empirical research has shown that jurors have a harder time processing instructions when relative pronouns are left out.

28. Avoid multiple negatives (including words starting with “un-” or “mis-”). *E.g.:*

“You must understand . . .” instead of, “You must not misunderstand . . .”
“The plaintiff only claims that the defendant sold a defective product. He does not claim that the defendant was negligent.” instead of, “The plaintiff does not claim that the defendant did anything wrong other than selling a defective product.”

Words

29. Use familiar words. *E.g.:*

“begin” instead of “initiate”
“sworn statement” instead of “affidavit”
“helps or encourages” for “aids, facilitates, promotes or instigates”
“helps or hides” for “aids, harbors or conceals”

30. Avoid legal jargon. *E.g.:*

“tortfeasor”
“estopped”

31. If you must use legal terms, define them.

32. Avoid arcane words. *E.g.:*

“said” used as an adjective (*e.g.*, “said vehicle”)
“aforesaid”
“herein”
“thereunder”

33. Avoid homonyms (words with more than one meaning). *E.g.:*

“in camera”

34. Don’t use familiar words to convey uncommon meanings. *E.g.:*

“admit” to refer to a judge’s evidentiary ruling
“court” to refer to the judge
“incompetent” to refer to a witness who has not been allowed to testify
“impeached” to refer to a witness whose testimony has been called into question

35. Prefer short, Anglo-Saxon words. *E.g.:*

“use” for “utilize”

36. Prefer concrete words to abstract words. *E.g.:*

“the Pinto” instead of “a motor vehicle”
“his knee surgery” instead of “a medical procedure”

37. Avoid nominalizations (*i.e.*, nouns derived from verbs). *E.g.:*

“People often forget,” instead of, “Failure of recollection is common.”

38. Omit unnecessary words. *E.g.:*

“whether” instead of “the question as to whether”
“although” instead of “despite the fact that”
“sometimes” instead of “in some instances”

39. Replace wordy phrases with simpler ones. *E.g.:*

“before” for “prior to”
“if” for “in the event that”
“because” or “since” instead of “owing to the fact that”

40. Use “must.” *E.g.*:

“You must . . .” instead of, “It is necessary for you . . .” or “It is your duty to . . .”
or “You are required to . . .”

41. Avoid “as to.” *E.g.*:

“If I sustained an objection to a question, don’t speculate about the reason for the objection or about what the answer might have been” instead of, “As to any question to which an objection was sustained, you must not speculate as to what the answer might have been or as to the reason for the objection.”

42. Use words consistently.

43. Avoid doublets and triplets. *E.g.*:

“any and all”
“gives, devises and bequeaths”

44. Use (but don’t overuse) contractions.

Sources:

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