Practical Outline for Effective Use of Jury Instructions

I. Know the pattern jury instructions

As soon you suspect that a case may be tried, you should read and copy all of the pattern jury instructions relevant to your facts.

There is easy to use software on your computers, NC Research Assistant, which contains the instructions. Sometimes, when a statute is new, or has been revised, the new/revised jury instruction is not in NC Research Assistant. When that happens, you should look on the School of Government’s website to see if an interim instruction has been posted. If not, prior to trial you should prepare a proposed instruction, closely tracking the statutory language.

“All relevant jury instructions relevant to your facts” includes:
  - The crime(s);
  - Any affirmative defenses upon which you might rely; PLUS
  - If it’s a constructive possession case, review that;
  - If the state has unreliable witnesses, review credibility instructions;
  - If the state has circumstantial evidence, read that, etc.

Go through the instruction on the charge(s) and think about how you want it given in your case. How was the case indicted? Is there a valid argument that the DA should be limited to the language in his/her indictment? If the judge will have multiple options about how the charge should be read, think about how you want it read and why.

II. Know when there isn’t a pattern jury instruction covering your issue(s)

The jury instructions are all the law that the jury has to rely on. If the judge doesn’t tell them that it is the law, it isn’t the law in the universe of your case.

I think this is an excellent time to look at the annotated statutes. That helps you focus on issues for which there is good case law. If the case law supports you, you should get an instruction.
Although most judges aren’t going to fight you on the concept of “the defense is entitled to have the jury instructed on its theory of defense, it is always good to have a case to back up your assertion. To that end, I commend to you:

The jury must not only consider the case in accordance with the State’s theory of the occurrence but also in accordance with the defendant’s theory. Defendant in apt time requested that the law bearing upon his theory of the case be presented to the jury. He was merely asking the court to charge the law arising on the evidence. Justice and the law countenance nothing less.


III. At trial

**BE PRESENT AT THE CHARGE CONFERENCE!**

This is one of your chances, as a newer lawyer, to establish yourself as a serious litigator. In the most basic sense, you do this by being heard.

A good judge will tell you which instructions s/he intends to give and will then ask if you have any additions/modifications you would like to propose.

Other judges will rattle off some numbers (of pattern jury instructions) and not provide an opportunity for your input.

Remember:
- Most judges won’t give all of the general pattern instructions. You need to listen and if you aren’t sure whether an instruction has been included, you need to stand up and ask for clarification.
- If they are bowling you over, and not asking for input, stand up and be heard. Even if you think you have no objections, stand up and ask some questions. Don’t be bullied.
- If you have written and are requesting a non-pattern instruction, act like doing so is the most normal thing in the world. Ask to approach with it like it’s you fee app, not forgetting to deposit a copy on the DA’s table on your way up.
BOTTOM LINE

If you believe any of that primacy/recency business, jury instructions are important. The instructions are the last thing they jury is going to hear, and the jurors will hear them from the judge. If jurors have already heard something from you, and then they hear it again from the judge, it is more likely to make an impression. Most jurors are trying very hard to do the right thing and follow the law and, again, in their universe, the jury instructions are THE LAW. The only way to effectively utilize the language of the jury instructions in your closing argument is to have that language in mind throughout your trial preparation and throughout the trial.