

ELEVENTH CIRCUIT

PATTERN JURY INSTRUCTIONS

(CRIMINAL CASES)

2010

JUDICIAL COUNCIL

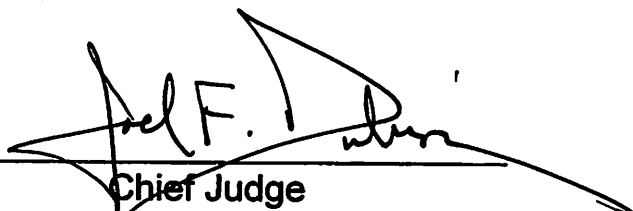
of the

ELEVENTH CIRCUIT

RESOLUTION

Resolved that the Committee on Pattern Jury Instructions of the Judicial Council of the Eleventh Circuit is hereby authorized to distribute to the District Judges of the Circuit for their aid and assistance, and to otherwise publish, the Committee's Pattern Jury Instructions, Criminal Cases, Eleventh Circuit (2010 revision); provided, however, that this resolution shall not be construed as an adjudicative approval of the content of such instructions which must await case by case review by the Court.

Date: 6/21/10



Chief Judge
United States Court of Appeals
For the Council

Preface

These Pattern Jury Instructions, Criminal Cases, Eleventh Circuit (2010 revision), update and extend the 2003 edition published by a predecessor committee of this Circuit whose work, in turn, built upon the Pattern Jury Instructions (Criminal Cases) first published in the former Fifth Circuit in 1978.

Two changes deserve special mention. First, there has been an effort to improve clarity and juror comprehension through the use of plain English, and the removal of complexity and legal terminology where possible. Bryan A. Garner, the editor of Black's Law Dictionary, has assisted the Committee in this work. Second, because of the developing Supreme Court and Eleventh Circuit case law concerning the definition of the mens rea required for particular crimes, including the movement away from the traditional dichotomy of general and specific intent crimes and the variety of meanings attributed to "willfully" depending upon the context of a statute, the Committee recommends the elimination of "willfully" from instructions where that term is not employed in the statute.

Additionally, the instructions employ two formulations of a willfulness instruction, a general instruction which can be used in most cases, and a heightened “intentional violation of a legal duty” approach that can be used for statutes, such as tax and currency structuring, which require a particularized knowledge of the law being violated. See, e.g., Dixon v. United States, 548 U.S. 1, 126 S. Ct. 2437, 165 L. Ed. 2d 165 (2006); Bryan v. United States, 524 U.S. 184, 118 S.Ct. 1939, 141 L. Ed. 2d 197 (1998); Ratzlaf v. United States, 510 U.S. 135, 114 S. Ct. 655, 126 L. Ed. 2d 615 (1994); Cheek v. United States, 498 U.S. 192, 111 S.Ct. 604, 112 L. Ed. 2d 617 (1991); United States v. Bailey, 444 U.S. 394, 100 S. Ct. 624, 62 L. Ed. 2d 575 (1980).

The objectives have remained constant: first, to simplify and to provide in words of common usage and understanding, a body of brief, uniform jury instructions, fully and accurately stating the law without needless repetition; second, to organize the instructions in a sequential format designed to facilitate rapid assembly and reproduction of a complete jury charge in each case, suitable for submission to the jury in written form.

As in the 2003 Edition, the instructions have been arranged in four groups:

- A. Preliminary Instructions
- B. Basic Instructions
- C. Special Instructions
- D. Offense Instructions
- E. Trial Instructions.

A. Preliminary Instructions explain basic principles of a criminal trial and the duties of the jury. They are designed to be given after jury selection. They include instruction on juror use of electronic communications technologies as recommended by the Judicial Conference Committee on Court Administration and Case Management. An optional instruction is also included that may be given before jury selection in the rare instance of an anonymous jury.

B. The Basic Instructions cover in a logical sequence those subjects that should normally be included in the Court's instructions in every case. When necessary, alternate versions of each instruction are provided for selection depending upon the variable circumstances of the individual case, i.e., the election of a defendant to testify or not to testify; the various forms of impeachment frequently consummated during the trial; whether there was expert opinion evidence under FRE 702; whether willfulness is an essential element of any offense charged;

and whether the case involves single or multiple defendants, and single or multiple counts.

C. The Special Instructions cover a number of subjects frequently included in the charge to the jury but may not be necessary in every case. They fall into three groups: (1) Instructions dealing with specific issues concerning the jury's consideration of the evidence such as the testimony of accomplices or informers, and those testifying with grants of immunity or some form of plea agreement; the evaluation of confessions or incriminating statements; the evaluation of similar acts evidence admitted under Fed. R. Evid. 404(b); and the evaluation of identification testimony. (2) Instructions frequently given in tandem with the pertinent Offense Instruction(s) such as the definition of "possession;" the concept of criminal agency or aiding and abetting (18 U.S.C. § 2); special state of mind instructions such as deliberate ignorance (as proof of knowledge), and intentional violation of a known legal duty (as proof of willfulness). (3) Instructions on theories of defense such as character evidence; entrapment; alibi; insanity; coercion and intimidation; good faith defense to a charge of intent to defraud; and good faith reliance upon advice of counsel.

D. The Offense Instructions cover over 100 of the most frequently prosecuted federal offenses. They are arranged sequentially according to section number in Title 18, United States Code, beginning with 18 USC § 111, Assaulting a Federal Officer. Federal crimes in other titles are arranged sequentially by Title and section number following the instructions under Title 18. These include, primarily, immigration offenses under Title 8; controlled substances offenses under Title 21; and tax offenses under Title 26.

A separate instruction is provided for each offense beginning with a generic description of the nature of the crime followed by an enumeration of the essential elements of the offense and the definitions of the key words or phrases employed in the statement of the elements. Each instruction, when combined with the appropriate Special Instruction applicable to the case, is designed to be a complete charge concerning the offense to which it relates.

Several instructions have been added to this volume to take into account an increase in federal prosecutions in certain areas. One such area is the prosecution of offenses classified as "Sex Offenses" by the Administrative Office of the U.S. Courts. In fiscal year 2002, immediately prior to the issuance of the last edition of these

Instructions, the Administrative Office calculated that 1,181 Sex Offense cases were filed in United States District Courts. In fiscal year 2009, that number had grown to 2,808. Of the 6,106 criminal cases filed in the District Courts of the Eleventh Circuit in fiscal year 2009, 294 were classified as Sex Offenses, compared to 159 such cases in 2005. The instructions contained herein are based upon those versions of the Sex Offense statutes in effect on the date of publication. Statutes in this area have been modified several times since the issuance of the last edition of these Instructions and future modifications are likely. Accordingly, courts and counsel are advised to consult these Instructions in conjunction with the version of the statute in effect on the date(s) charged in the indictment.

E. The Trial Instructions include a collection of explanatory instructions frequently stated to the jury during the trial itself and a modified "Allen" charge for use in appropriate circumstances during deliberations when the jury reports an impasse.

With respect and appreciation, we acknowledge the leadership and creative skill of Wm. Terrell Hodges who previously chaired this Committee. From its inception as a Committee of the District Judges Association of the Fifth Circuit, Terry, Jimmie Hancock, Avant Edenfield

and others, with the assistance of Barbara Wood, led the nation in developing comprehensive jury instructions for the most frequently prosecuted criminal offenses.

We also thank Sylvia Wenger and James Gerstenlauer for their help in preparing this revision.

Judge Donald M. Middlebrooks	⌋	Chair
Judge Inge Johnson	⌋	Alabama
Judge Mark Fuller		
Judge Roger Vinson	⌋	Florida
Judge Clay Land	⌋	Georgia
Judge Beverly B. Martin	⌋	11 th Circuit

Directions For Use

In preparing a complete jury charge, one should first refer to the Index of the Basic Instructions and, proceeding sequentially from one instruction to the next beginning with Basic Instruction 1, select the instruction or alternative version of each instruction that fits the case. At the appropriate point in the assembly of the charge, directions are given in the Index to refer to the indices of the Special Instructions and the Offense Instructions, respectively, for selection and incorporation of the applicable charges from those sources.

After the complete package of instructions has been assembled in that manner, the Offense Instructions included in the charge should be carefully reviewed to determine whether editing will be required to tailor the particular instruction to the case. Many of the Offense Instructions contain bracketed material consisting of examples or alternative statements that may or may not apply in a particular case. Such material must be edited and tailored to fit the case, and the brackets must be removed.