

Ninth Circuit Model Criminal Jury Instructions

3.2 CHARGE AGAINST DEFENDANT NOT EVIDENCE—PRESUMPTION OF INNOCENCE—BURDEN OF PROOF

The indictment is not evidence. The defendant has pleaded not guilty to the charge. The defendant is presumed to be innocent and does not have to testify or present any evidence to prove innocence. The government has the burden of proving every element of the charge beyond a reasonable doubt.

Comment

The trial judge has wide discretion as to whether the jury should be provided with a copy of the indictment for use during jury deliberations. The Ninth Circuit has said that when a district judge permits the jury to have a copy of the indictment, the court should caution the jury that the indictment is not evidence. *See United States v. Utz*, 886 F.2d 1148, 1151–52 (9th Cir. 1989) (permissible to give each juror a copy of the indictment if judge cautions jury that indictment is not evidence), *cert. denied*, 497 U.S. 1005 (1990).

It is preferable to give a presumption of innocence instruction at the end of the case. *United States v. Garcia-Guizar*, 160 F.3d 511, 523 (9th Cir. 1998).

See also **Jury Committee of the Ninth Circuit, A Manual on Jury Trial Procedures, § 4.4** (1998).