

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Chambers of
William J. Bauer
Circuit Judge

October 4, 2012

The Honorable Frank H. Easterbrook
Chief Judge
United States Court of Appeals
For the Seventh Circuit
219 South Dearborn Street
Room 2746
Chicago, IL 60604

Re: *Proposed Pattern Criminal Jury Instructions – 2012 Revision*

Dear Chief Judge Easterbrook:

The Committee on Federal Criminal Jury Instructions of the Seventh Circuit is pleased that the Judicial Council of the Seventh Circuit has authorized the publication of the pattern instructions that our Committee has prepared. These revised instructions are the product of more than three years of work by the judges, prosecutors, defense attorneys and academics who serve on the Committee. It represents a top-to-bottom overhaul and expansion of the instructions and commentary that were last revised in 1999.

This draft is substantially more comprehensive than prior versions. It includes changes to existing instructions and their accompanying commentary that reflect experience with those instructions as well as developments in the law. It also adds a number of new instructions and accompanying Committee Comments. Most of the new instructions address statutory provisions (and related definitions of terms) that were not covered in prior editions, including (but hardly limited to) instructions on criminal forfeiture as well as immigration, child sexual exploitation and computer-related offenses. There are several new instructions included in the “General Instructions” section as well.

In general the Committee has tried to reduce the number of words used in instructions, except where adding a word or phrase would make an instruction clearer. On a broader level, we agree with the statement in *United States v. Hill*, 252 F.3d 919, 923 (7th Cir. 2001) that “[u]nless it is necessary to give an instruction, it is necessary not to give it, so that the important instructions stand out and are remembered.” 252 F.3d at 923. While judges should not hesitate to instruct a jury

on any issue it ought to know about to decide the case, we recommend against giving instructions that are not needed for that purpose. In particular, we advise against giving an instruction simply because the court sees no reason not to do so, in order to avoid diluting the impact of necessary instructions and potentially injecting unnecessary issues into the jury's deliberations. As *Hill* points out, a set of pattern instructions "offers model instructions for occasions when they are appropriate but does not identify those occasions." *Id.* Needless to say (although *Hill* also said it), no instruction should be given simply because it is included among the Circuit's pattern instructions.

Finally, we would be remiss in not mentioning the passing of our fellow Committee member and friend, Nathan A. Fishbach, in September of 2011. A prominent member of the bar in Milwaukee who served for many years as both an Assistant United States Attorney and in private practice, Nathan was widely regarded for his expertise in criminal tax matters but was a valued source of knowledge, wisdom and experience on any issue related to federal criminal law. He was also the most congenial of colleagues. Nathan continued to contribute to the Committee's work for as long as his health allowed. His passing was a great loss for his family and friends, for the Bar in this Circuit, and certainly for this Committee. We dedicate these instructions to his memory.

We recognize, of course, that neither the Council nor the Court of Appeals can approve in advance the use of any of these instructions in a particular case. It is enough that they are approved in principle.

Sincerely yours,

The Committee on Federal Criminal
Jury Instructions of the Seventh Circuit



Judge William J. Bauer
Chairman

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Reporter

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