

Third Circuit Model Jury Instructions Criminal
(revisions approved by Committee as of November 2009)

Chapter 1. Preliminary Instructions Before Opening Statements

- 1.03 Conduct of the Jury
Instruction modified to reflect developing electronic technology for communicating, obtaining, and disclosing information about the case on trial.
- 1.09 Direct and Circumstantial Evidence
United States v. Soto, 539 F.3d 191 (3d Cir. 2008) added to the Comment.
- 1.13 Presumption of Innocence; Burden of Proof; Reasonable Doubt
F.3d citation for *United States v. Hoffecker*, 530 F.3d 137 (3d Cir. 2008) added to the Comment.

Chapter 2: Instructions For Use During Trial

- 2.09 Opinion Evidence (Expert Witnesses):
Title changed to correspond to Table of Contents and other instructions.
- 2.10 Opinion Evidence (Lay Witnesses) (F.R.E. 701):
Title changed to correspond to Table of Contents and other instructions;
Citations to *Hirst v. Inverness Hotel Corp.*, 544 F.3d 221 (3d Cir. 2008) and *United States v. Hoffecker*, 530 F.3d 137 (3d Cir. 2008) added to comment.
- 2.17 Impeachment of Defendant's Character Witness (F.R.E. 404, 405):
United States v. Kellogg, 510 F.3d 188 (3d Cir. 2007) added to comment.
- 2.23 Defendant's Prior Bad Acts or Crimes (F.R.E. 404(b)):
Three cases added to comment.
- 2.25 Impeachment of Defendant - Prior Conviction (F.R.E. 609):
Two citations to *United States v. Gilmore*, 553 F.3d 266 (3d Cir. 2009) added to comment.
- 2.34 Disruptive Defendant:
Citation to *United States v. Brantley*, 2009 WL 2618811 (3d Cir. 2009) added to comment.

Chapter 3. Final Instructions: General

- 3.03 Direct and Circumstantial Evidence
United States v. Soto, 539 F.3d 191 (3d Cir. 2008) added to the Comment.

- 3.06 Presumption of Innocence; Burden of Proof; Reasonable Doubt
Brief discussion of *United States v. Hoffecker*, 530 F.3d 137 (3d Cir. 2008) added to the Comment.

Chapter 4. Final Instructions: Consideration of Particular Kinds of Evidence

- 4.09 Opinion Evidence (Lay Witnesses) (F.R.E. 701):
Citations to *Hirst v. Inverness Hotel Corp.*, 544 F.3d 221 (3d Cir. 2008) and *United States v. Hoffecker*, 530 F.3d 137 (3d Cir. 2008) added to the Comment.
- 4.29 Defendant’s Prior Bad Acts or Crimes (F.R.E. 404(b))
Citations to *United States v. Gilmore*, 553 F.3d 266(3d Cir. 2009), *United States v. Major*, 293 Fed.Appx. 160, 2008 WL 4229933 (3d Cir. 2008), and *United States v. Morena*, 547 F.3d 191 (3d Cir. 2008) added to the Comment.
- 4.34 Silence in the Face of Accusation:
Citation to *Government of Virgin Islands v. Davis*, 561 F.3d 159 (3d Cir. 2009) added to the Comment.
- 4.36 Impeachment of Defendant - Prior Conviction (F.R.E. 609)
Citations to *United States v. Gilmore*, 553 F.3d 266, 272-73 (3d Cir. 2009) added to the Comment.

Chapter 5. Mental States

- 5.02 Knowingly
United States v. Starnes, 583 F.3d 196 (3d Cir. 2009) added to the Comment.
- 5.03 Intentionally
Discussion of *United States v. Starnes*, 583 F.3d 196 (3d Cir. 2009) added to the Comment.
- 5.05 Willfully
Discussion of *United States v. Starnes*, 583 F.3d 196 (3d Cir. 2009) added to the Comment.
- 5.07 Good Faith Defense
Discussion of *United States v. Jimenez*, 513 F.3d 62 (3d Cir. 2008) and cross-references to Instructions 6.18.1341-4 (Mail or Wire Fraud – “Intent to Defraud” Defined) and 6.18.1344-1 (Bank Fraud – “Intent to Defraud” Defined) added to the Comment.

Chapter 6. Bribery of Public Officials and Witnesses (18 U.S.C. § 201)

6.18.201B1 Bribery of a Public Official (18 U.S.C. § 201(b)(1)): Citation to *United States v. Kemp*, 500 F.3d 257, 284 (3d Cir. 2007) added to the Comment.

6.18.201B1-2 Bribery of a Public Official – “Official Act” Defined: Citation to *United States v. Ozcelik*, 527 F.3d 88 (3d Cir. 2008) added to The Comment.

6.18.201B2 Receiving Bribe by Public Official (18 U.S.C. §201(b)(2)): Discussion of *United States v. Ozcelik*, 527 F.3d 88 (3d Cir. 2008) added to the Comment.

6.18.201C1B Receiving Illegal Gratuity by a Public Official (18 U.S.C. § 201(c)(1)(B)): Citation to *United States v. Kemp*, 500 F.3d 257, 284 (3d Cir. 2007) added to the Comment.

Chapter 6. Conspiracy (18 U.S.C. § 371)

6.18.371A Conspiracy To Commit An Offense Against The United States – Basic Elements (18 U.S.C. § 371) Instruction and Comment modified in view of *United States v. Fullmer*, 584 F.3d 132 (3d Cir. 2009).

6.18.371B Conspiracy “To Defraud the United States” – Basic Elements *United States v. Tanner*, 483 U.S. 107 (1987) added to the Comment.

6.18.371C Conspiracy – Existence of an Agreement Discussion of *United States v. Fullmer*, 584 F.3d 132 (3d Cir. 2009) added to the Comment.

6.18.371E Conspiracy – Mental States *United States v. Carbo*, 572 F.3d 112 (3d Cir. 2009) added to the Comment.

6.18.371F Conspiracy – Overt Acts Discussion of *United States v. Fullmer*, 584 F.3d 132 (3d Cir. 2009) added to the Comment.

6.18.371H Conspiracy – Single or Multiple Conspiracies Instruction and Comment modified to reflect *United States v. Kemp*, 500 F.3d 257 (3d Cir. 2007).

6.18.371K Conspiracy – Acts and Statements Of Co-Conspirators
Citation to *United States v. Kemp*, 500 F.3d 257 (3d Cir. 2007) added to the Comment.

Chapter 6. Firearm Offenses (18 U.S.C. §§ 922, 924)

6.18.922A False Statement in Purchase of a Firearm (18 U.S.C. § 922(a)(6)):
Discussion of *Logan v. United States*, 552 U.S. 23 (2007) added to the Comment.

6.18.922G Felon In Possession of Firearm (18 U.S.C. § 922(g)) (non-bifurcated proceeding)
Citations to *United States v. Brantley*, 2009 WL 2618811 (3d Cir. 2009), and *United States v. Broadus*, 291 F. App'x. 486 (3d Cir. 2008) added to the Comment.

6.18.922G-1 Felon In Possession of Firearm (18 U.S.C. § 922(g)) (bifurcated proceeding):
Citations to *United States v. Brantley*, 2009 WL 2618811 (3d Cir. 2009), and *United States v. Broadus*, 291 F. App'x. 486 (3d Cir. 2008) added to the Comment.

6.18.922G-2 Proof of Prior Conviction
Discussion of *Logan v. United States*, 552 U.S. 23 (2007) added to the Comment.

6.18.922G-4 Firearm Offenses – Knowing Possession Defined:
Discussion of *United States v. Lowery*, 265 F. App'x. 111 (3d Cir. 2008) added to the Comment.

6.18.924A Possession of a Firearm In Furtherance of Crime of Violence or Drug Trafficking Crime (18 U.S.C. § 924(c)(1)):
Discussion of *United States v. Wise*, 515 F.3d 207 (3d Cir. 2008) and *United States v. Ross*, 323 F. App'x. 117 (3d Cir. 2009) added to the Comment.
United States v. Jenkins, 2009 WL 2518529 (3d Cir 2009) added to footnote 3.

6.18.924A-1 “In Furtherance of” Defined:
Citation to *United States v. Iglesias*, 535 F.3d 150 (3d Cir. 2008), *United States v. Bobb*, 471 F.3d 491 (3d Cir.2006) and *United States v. Carter*, 265 F. App'x. 47 (3d Cir. 2008) added to the Comment.

6.18.924B Using or Carrying a Firearm During Any Crime of Violence or Drug Trafficking Crime (18 U.S.C. § 924(c)(1)):
Discussion of *United States v. Watson*, 552 U.S. 74 (2007), *United States v. Ressay*, 128 S. Ct. 1858 (2008), and *Dean v. United States*, 129 S. Ct. 1849 (2009) added to the Comment. *United States v. Jenkins*, 2009 WL 2518529 (3d Cir 2009), added to footnote 7.

Chapter 6. Fraud Offenses - Mail, Wire, Bank and Health Care (18 U.S.C. §§ 1341, 1343, 1344, 1347)

- 6.18.1341-1 Mail, Wire, or Bank Fraud – “Scheme to Defraud or to Obtain Money or Property” Defined :
Added citation to *United States v. Tulio Landscaping, Inc.*, 2008 WL 324193 (2/7/2008), and discussion of *United States v. Kemp*, 500 F.3d 257 (3d Cir. 2007).
- 6.18.1341-3 Mail or Wire Fraud – Protected Interests: Honest Services:
Added citation to *United States v. McGeehan*, --- F.3d ----, 2009 WL 3380678 (Oct. 22, 2009); *United States v. Carbo*, 572 F.3d 112, 116 (3d Cir. 2009), *United States v. Kemp*, 500 F.3d 257, 292-93 (3d Cir.2007), and *United States v. Chartock*, 283 F. App’x. 948 (3d Cir. 2008).
- 6.18.1341-4 Mail or Wire Fraud – “Intent to Defraud” Defined:
Added citations to *United States v. Jimenez*, 513 F.3d 62 (3d Cir. 2008), and *United States v. Diamond*, 322 F. App’x. 255 (3d Cir. 2009).
- 6.18.1341-5 Mail Fraud – “Use of the Mails” Defined :
Added citation to *United States v. Diamond*, 322 F. App’x. 255 (3d Cir. 2009).
- 6.18.1344 Bank Fraud - Elements of the Offense (18 U.S.C. § 1344):
Corrected error in the Cmment.
- 6.18.1344-1 Bank Fraud – “Intent to Defraud” Defined:
Added discussion of *United States v. Jimenez*, 513 F.3d 62 (3d Cir. 2008).

Chapter 6. Obstruction of Justice: Witness Tampering (18 U.S.C. §§ 1512, 1503)

- 6.18.1512B Obstruction of Justice - Witness Tampering Through Intimidation, Threats, or Corrupt Persuasion (18 U.S.C. § 1512(b)(1) and (2)):
Citation to *United States v. Wolfe*, 301 Fed.Appx. 134 (3d Cir. 2008), added.

Chapter 6. Hobbs Act Extortion and Robbery (18 U.S.C. § 1951)

- 6.18.1951-3 Hobbs Act - “Unlawful Taking by Force, Violence or Fear” Defined:
Citation to *United States v. Parkin*, 319 F. App’x. 101 (3d Cir. 2009) added.

Chapter 6. Money Laundering (18 U.S.C. §1956)

- 6.18.1956-1 Money Laundering - Conducting a Financial Transaction Defined:
Citation to *United States v. Chartock*, 283 F. App’x. 948 (3d Cir. 2008) added.
- 6.18.1956-3 Money Laundering - Proceeds of a Specified Unlawful Activity Defined:

Instruction and comment modified to reflect 18 U.S.C. § 1956(c)(7) and *United States v. Santos*, 128 S. Ct. 2020 (2008). Discussion of *United States v. Yusuf*, 536 F.3d 178, 189 (3d Cir. 2008) added.
Citation to *United States v. Chartock*, 283 F. App'x. 948 (3d Cir. 2008) added.

Chapter 6. Racketeer Influenced and Corrupt Organizations (RICO)

6.18.1962C-2 RICO – “Enterprise;” Association in Fact Defined
Instruction and Comment modified to reflect *United States v. Boyle*, ___ U.S. ___, 129 S. Ct. 2237 (2009).

Chapter 6. Controlled Substances (21 U.S.C. §§ 841, 844, 846, 853)

6.21.841A Controlled Substances – Possession with Intent to (*Manufacture*) (*Distribute*) (21 U.S.C. § 841(a) & (b))
Discussion of *United States v. Jackson*, 443 F.3d 293 (3d Cir. 2006) and *United States v. Johnson*, 292 Fed. Appx. 178 (3d Cir. 2008) (non-precedential), regarding lesser included offenses, added to the Comment. Comment also modified to add discussion of accomplice liability, aiding and abetting controlled substance offenses, in view of *United States v. Soto*, 539 F. 3d 191 (3d Cir. 2008).

Chapter 6. Tax Offenses (26 U.S.C. §§ 7201, 7203, 7206(1))

6.26.7201 Tax Evasion - Elements of the Offense (26 U.S.C. § 7201):
Discussion of *United States v. Farnsworth*, 302 Fed.Appx. 110, 2008 WL 5174899 (3d Cir. 2008), added to the Comment. Citation to *Boulware v. United States*, 128 S.Ct. 1168, 1173 n. 2 (2008), added.

6.26.7201-2 Tax Evasion - Computation of Tax Deficiency:
Discussion of *Boulware v. United States*, 128 S.Ct. 1168 (2008), added.

Chapter 7. Final Instructions: Additional Bases for Criminal Responsibility

7.02 Accomplice Liability; Aiding and Abetting
Instruction and comment modified to reflect *United States v. Carbo*, 572 F.3d 112 (3d Cir. 2009) and *United States v. Kemp*, 500 F.3d 257 (3d Cir. 2007).

Chapter 8. Final Instructions: Defenses and Theories of Defense

8.01 Theory of Defense
Discussion of *United States v. Hoffecker*, 530 F.3d 137 (3d Cir. 2009) added to the Comment.

- 8.03 Duress [*Coercion*]
Comment modified to reflect *United States v. Alston*, 526 F.3d 91 (3d Cir. 2008).
- 8.05 Entrapment
United States v. Hoffecker, 530 F.3d 137 (3d Cir. 2009) added to the Comment regarding outrageous government conduct and Due Process.

Chapter 9. Supplemental Instructions

- 9.01 Retention of Alternate Jurors:
Citations to *United States v. Kemp*, 500 F.3d 257 (3d Cir. 2007), and *United States v. Jimenez*, 513 F.3d 62 (3d Cir. 2008) added to the Comment; old citations removed.
- 9.03 Reading of Testimony:
Citations to *United States v. Shabazz*, 564 F.3d 280 (3d Cir. 2009), and *United States v. Harper*, 314 Fed.Appx. 478, 2008 WL 5077723 (3d Cir. 2008), added to the Comment.
- 9.05 Deadlocked Jury – Return for Deliberations:
Citation to *United States v. Wecht*, 541 F.3d 493 (3d Cir. 2008), added to the Comment.
- 9.06 Deadlocked Jury – Discharge (comment only):
Discussion of *United States v. Wecht*, 541 F.3d 493 (3d Cir. 2008), added to the Comment