

**COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS  
THIRD CIRCUIT**

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REPORTERS:

Professor Anne Bowen Poulin  
Professor James A. Shellenberger

STAFF:

Kathleen Peek

INTRODUCTION:

In the summer of 2004 Chief Judge Anthony J. Scirica appointed a Committee of district judges<sup>1</sup> to draft model criminal jury instructions to help judges communicate more effectively with juries. He and the Committee enlisted Professor James A. Shellenberger of Temple University Law School and Professor Anne Bowen Poulin of Villanova University School of Law to serve as Reporters for the Committee. The Committee also appointed an Advisory Committee including representatives of the U.S. Attorney's Office, the Federal Defender's Office and private defense counsel from each of the Districts in the Circuit. (A list of the current members of the Advisory Committee follows.) Throughout its work the Committee and the Reporters also received assistance from Circuit Executive, Toby Slawsky, Administrative Assistant, Susan Mangino, and, especially, Assistant Circuit Executive, Theresa Burnett.<sup>2</sup> The project was funded by contributions from the Court of Appeals and each District

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<sup>1</sup> Judge John C. Lifland of the District of New Jersey served on the Committee until his retirement in 2007.

<sup>2</sup> Toby Slawsky retired from her position as Circuit Executive in 2012. In 2011, Theresa Burnett left her position to accept appointment as the Chief Deputy for Administration in the District of New Jersey. Trish Kowalski then staffed the committee from 2011 until her retirement in 2012.

Court in the Third Circuit.<sup>3</sup>

The Committee commenced its work in September 2004. The final set of model instructions includes preliminary and final instructions, instructions for use during trial and instructions covering the most frequently litigated federal crimes and defenses. In addition to model instructions, the Committee and the Reporters prepared Comments to accompany those instructions, summarizing relevant Third Circuit and Supreme Court precedent. Although we believe the Comments are accurate in every respect, they do not pretend to be exhaustive discussions of the subject matter. The extraordinary efforts of the Reporters and the scholarly strength they brought to the task of drafting these instructions cannot be overly emphasized. In addition, the members of the Committee wish to acknowledge the leadership and tireless efforts of Judge Yohn as Chairman, which were indispensable to a project of this nature. Finally, the suggestions of the Advisory Committee on our proposed instructions have been invaluable.

We recognize that the manner of instructing a jury varies widely among judges. These model instructions are available to judges and litigants to be used in their discretion in tailoring the instructions in a particular case. They are intended to be model, not mandatory, instructions. Every effort has been made to assure conformity with current Third Circuit law; however, it cannot be assumed that all of these model instructions in the form given will necessarily be appropriate under the facts of a particular case or that the Third Circuit will approve these instructions, if given.

The model instructions are available electronically on the Third Circuit website at [www.ca3.uscourts.gov](http://www.ca3.uscourts.gov). A tab at the top of the home page will take you to another page that contains the model civil and criminal jury instructions. The documents are provided in Microsoft Word, WordPerfect and/or PDF formats. (For easy referral to just the Table of Contents, you should save the Table of Contents web page as one of your “favorites”). All instructions have been published by Thomson West, but not all of the annual updates.

The subject matter of the Model Criminal Jury Instructions is set forth in the Table of Contents. We call your attention particularly to the instructions in Chapter 2, which we believe will be extremely helpful to trial judges and lawyers, both as to the language of the instruction and the law which applies to its use, in order to resolve issues that arise during the course of a trial.

By referring to the Table of Contents beginning with General Instruction No. 1.01 and then proceeding through the Table of Contents one may select particular instructions. It must be emphasized, however, that every case is unique, having its particular fact pattern, and care must be exercised when adapting the model instructions to the individual case. Some of the instructions may contain paragraphs or sentences that address issues not relevant to the case actually being tried. All unnecessary concepts and terms should be removed so the instructions may properly focus the attention of the jury only on the precise issue or issues that it is being asked to resolve and nothing else.

These Model Criminal Jury Instructions remain a work in progress. The law develops as

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<sup>3</sup> Neither the Court of Appeals nor any judge of that Court participated in the drafting of the model instructions and the Court of Appeals has not approved the use of these instructions.

time passes. Even as the instructions were being assembled in final form, opinions of the Court of Appeals came down that required additions or revisions. Undoubtedly, judges and lawyers who use these instructions will have suggestions for improvement. As these instructions are used, if a judge or lawyer believes improvements can be made in the clarity of any instruction, or that a particular instruction is in error, we would appreciate being advised. You may e-mail any comments to the e-mail address provided on the Model Jury Instructions section of the Third Circuit Website. The Committee meets annually with its Reporters to review developments in the law and the comments of those who use the model instructions. These updates are posted annually on the website. In addition, revised editions will be printed from time to time. The Committee hopes that this work will ease the burden of district judges in preparing their jury instructions and will also provide a technique for the rapid preparation and assembly of complete instructions in suitable form for submission to the jury.

### **ADVISORY COMMITTEE**<sup>4</sup>

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Joel H. Holt, Esquire  
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<sup>4</sup> Although not officially members of the Advisory Committee, the Committee wants to acknowledge the very substantial contributions made by Nancy Hoppock, Esquire and Robert Zauzmer, Esquire.