



**Modern Federal Jury Instructions**, Pub. #00485, updated twice per year—Highlights from the most recent **2018 Civil release** updating Volumes 4 – 5 and Diamond and Double Diamond volumes include:

Chapter 77, “Damages”; Chapter 78, “Jury Deliberations”; and Chapter 86, “Patents” all discuss *Flexuspine, Inc. v. Globus Medical, Inc.*, 879 F.3d 1369 (Fed. Cir. 2018), in which the jury filled out the verdict sheet improperly.

Chapter 80, “Monopolization,” additions feature *Philadelphia Taxi Ass’n, Inc. v. Uber Technologies, Inc.*, 886 F.3d 332 (3d Cir. 2018).

Chapter 82, on the 1934 Securities Exchange Act, adds material on *Maguire Financial, L.P. v. Power Secure International, Inc.*, 876 F.3d 541 (4th Cir. 2017), and *Mineworkers’ Pension Scheme v. First Solar, Inc.*, 881 F.3d 750 (9th Cir. 2018).

Chapter 83, on the 1933 Securities Act, features the new case of *Cyan, Inc. v. Beaver County Employees Retirement Fund*, 200 L. Ed. 2d 332 (2018).

Chapter 84, RICO, updates material on extraterritoriality, or “domestic injury.”

Chapter 85, “The Fair Labor Standards Act,” includes updates on instructions 85 – 6 (involving employee/independent contractor issues), 85 – 8 (failure to pay the minimum wage), 85 – 21 (exemptions) and 85 – 27 (outside sales employees).

Chapter 86, “Patents,” has revisions in 86 – 15, 86 – 35, and 86 – 38 (on validity, reasonable royalties, and measures of damages, respectively).

Chapter 86B, Copyright, affected instructions are 86 – 7 (right to exclusive use), 86-9 (purpose of copyright), 86 – 11 (what is or is not copyrightable), 86 – 14 (copying) and 86 – 16 (contributory infringement).

Chapter 87, “Civil Rights Actions”—42 U.S.C. §§ 1981 – 1985 and the Fair Housing Act, has new material in Instructions 87 – 4, 87 – 11 and 87 – 19, all dealing with § 1981 cases. They cover the right to contract, intent and suits against municipalities.

Chapter 88, Civil Rights Actions—Equal Pay Act; Age Discrimination in Employment Act; Title VII Employment Discrimination (Civil Rights Act of 1991); Family and Medical Leave Act, has many revisions, affecting instructions 88 – 13, 88 – 15, and 88 – 17 as to EPA “factor other than sex” issues; 88 – 23 (ADEA disparate-impact claims by applicants); 88 – 27A (the McDonnell Douglas formula); 88 – 42 (sexual orientation and gender nonconformity, under Title VII); and 88 – 46 (the importance—or not—of the timing of alleged retaliation, under Title VII).

Chapter 93, “Odometer Fraud and Other Automobile Litigation,” is extensively revised.

The Third Circuit revised Chapters 1 – 11 of its pattern instructions.

The Ninth Circuit added or revised large portions of Chapters 9 (§ 1983 actions) and 17 (Copyright), as well as instructions, comments or both designated 5.5 (punitive damages), 7.8 (proving Jones Act damages), 10.8 (Title VII retaliation), 15.19 (strength of the trademark) and 18.5 (“knowingly” under the Securities Exchange Act).

The Eleventh Circuit revised Chapter 5 (civil rights claims under 42 U.S.C. § 1983).

Highlights from the most recent **2018 Criminal release** updating Volumes 1 – 3A and Star-Triple Star volumes include:

Chapter 3A, “Scienter,” covers *United States v. Rivero*, 889 F.3d 618, 621 (9th Cir. 2018) and *United States v. Henry*, 888 F.3d 589 (2d Cir. 2018).

Chapter 7, “Witness Credibility”, discusses *United States v. Savage*, 585 F.3d 212, 222–24 (4th Cir. 2018).

Chapter 9, “Concluding General Instructions,” has *United States v. Oscar*, 877 F.3d 1270, 1286 (11th Cir. 2017) and *United States v. Recio*, 884 F.3d 230 (4th Cir. 2018) (both on the Allen charge), and *United States v. Fairley*, 880 F.3d 198 (5th Cir. 2018) (jury corrections to a verdict sheet).

Chapter 11, “Aiding and Abetting,” discusses *United States v. Sweeney*, 887 F.3d 529 (1st Cir. 2018), and *United States v. Savage*, 885 F.3d 212 (4th Cir. 2018).

Chapter 19, “Conspiracy,” has many changes, principally due to *United States v. Garrison*, 888 F.3d 1057 (9th Cir. 2018); *United States v. Crabtree*, 878 F.3d 1274, 1285 (11th Cir. 2018); *United States v. Belanger*, 890 F.3d 13 (1st Cir. 2018); *United States v. Mikhel*, 889 F.3d 1003 (9th Cir. 2018); and *United States v. Morel*, 885 F.3d 17 (1st Cir. 2018).

Chapter 23A, “Theft of Government Property,” discusses *United States v. Fairley*, 880 F.3d 198 (5th Cir. 2018), in multiple places.

Chapter 27A, “Federal Program Theft and Bribery,” has *United States v. Suhl*, 885 F.3d 1106 (8th Cir. 2018), in multiple places.

Chapter 30, “Explosive Destruction of Property,” discusses *United States v. Salas*, 889 F.3d 681 (10th Cir. 2018), in which the court vacated a conviction for using a destructive device in furtherance of a crime of violence, finding that the definition of a crime of violence in 18 U.S.C. § 924(c)(3) was unconstitutionally vague.

Chapter 31, “Threatening Communications,” updates focus on *United States v. Stevens*, 881 F.3d 1249 (10th Cir. 2018), which analyzed whether a reasonable person would have understood defendant’s statements as threats.

Chapter 33A, “Immigration Offenses,” covers *United States v. Rodriguez*, 880 F.3d 1151 (9th Cir. 2018), on “reckless disregard.” The most important case covered is *Sessions v. Dimaya*, 200 L. Ed. 2d 549 (2018), which held unconstitutional part of the definition of “aggravated felony,” 8 U.S.C. § 1101(a)(43), because it referred to a “vague” definition of a crime of violence in 18 U.S.C. § 16.

Chapter 35, “Firearms,” extensively discusses *United States v. Henry*, 888 F.3d 589 (2d Cir. 2018) (willfulness). It also gives considerable attention to *United States v. Silva*, 889 F.3d 704 (10th Cir. 2018), involving a dispute over a stipulation that a convicted felon was a “prohibited person” for purposes of having a firearm and ammunition. Chapter 35 also covers *Sessions v. Dimaya*, mentioned regarding Chapter 33A, and Salas, in Chapter 30.

Chapter 44, “Mail, Wire, Bank and Health Care Fraud,” discusses *United States v. Crabtree*, 878 F.3d 1274 (11th Cir. 2018), on healthcare fraud, which also is covered in Chapter 19.

Chapter 46, “Obstruction of Justice,” is updated throughout the chapter.

Chapter 53A, “Carjacking,” adds *United States v. Gutierrez*, 876 F.3d 1254 (9th Cir. 2017) (carjacking through intimidation).

Chapter 56, “Possession and Distribution of Controlled Substances,” adds material on *United States v. Garrison*, 888 F.3d 1057 (9th Cir. 2018) (also discussed in Chapter 19), where the evidence was sufficient to allow a reasonable jury to infer that the defendant was prescribing Oxycontin with the intent to do so for no legitimate medical purpose.

Chapter 57, “Securities Fraud,” notes that a sentencing judge must look to Sentencing Guideline § 1B1.3, “Relevant Conduct,” to determine the scope of conduct for which a convicted “tipper” can be held accountable. *United States v. Metro*, 882 F.3d 431 (3d Cir. 2018).

The First Circuit affected Instructions 4.18.1344 (bank fraud), 4.18.1512(b)(1) (witness tampering) and 4.26.5861(d) (possession of an unregistered firearm), and broke 4.26.7212 (attempts to interfere with administration of internal revenue laws) into two instructions.

The Sixth Circuit revised Instruction 14.07B (Unanimity Required: Determining Amount of Controlled Substance (§ 846) and Special Verdict Forms 14.07B-1 and 14.07B-2).

The Eighth Circuit PJIs are extensively revised, especially in Chapter 6 (the elements of specific offenses) and Chapter 9 (defenses).

The Ninth Circuit PJIs were extensively added to, revised, renumbered and given new material (text, comments or both) for Chapters 2 (instructions during trial), 3 (instructions at the end of the trial), 4 (relating to particular evidence), 5 (responsibility), 8 (Title 18 offenses) and 9 (offenses under other U.S.C. titles). In many instructions on attempted crimes, the Ninth Circuit added language to clarify that a “substantial step” toward the crime also must “strongly corroborate [] the defendant’s intent to commit the crime.” The Circuit also added instructions 8.134A (Sex trafficking of children or by force under 18 U.S.C. § 1591(a)(1)) and 8.134B (sex trafficking of children or by force, fraud or coercion—benefitting from participation in venture under 18 U.S.C. § 1591(a)(2)). Among other changes is that in 9.2 (illegal transportation of an alien under 8 U.S.C. § 1324(a)(1)(A)(ii)) the Circuit added language to clarify “reckless disregard.”

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