

Pattern Criminal Federal Jury Instructions
for the
Seventh Circuit

The Committee on Federal Criminal Jury Instructions for the Seventh Circuit drafted these proposed pattern jury instructions. The Seventh Circuit Judicial Council, on November 30, 1998, approved these instructions in principle and authorized their publication for use in the Seventh Circuit.

The Judicial Council wishes to express its gratitude to the judges and lawyers who have worked so long and hard to make a contribution to our system of criminal justice.

6.07 RELIANCE ON PUBLIC AUTHORITY

A defendant who acts in reliance on public authority does not act knowingly [or with the intent to (state intent requirement of statute, if any)], and should be found not guilty.

A defendant acts under public authority if:

- (1) that defendant is affirmatively told that his/her conduct would be lawful;
- (2) the defendant is told this by an official of the [United States] government; [and]
- (3) the defendant actually relies on what the official tells him/her in taking the action; [and,
- (4) the defendant's reliance on what he/she was told by the official is reasonable in light of the circumstances.]

In considering whether a defendant actually relied on representations by an official that his/her conduct would lawful, you should consider all of the circumstances of their discussion, including the identity of the official, the point of law discussed, the nature of what the defendant told, and was told by, the official, and whether that reliance was reasonable.

Committee Comment

This defense is also known as “entrapment by estoppel.” It is “rarely available,” *United States v. Howell*, 37 F.3d 1197, 1204 (7th Cir. 1994). The defense was first recognized by the Supreme Court in *Raley v. State of Ohio*, 360 U.S. 423 (1959). It is not actually a form of entrapment, but is instead a species of good faith. The jury should not be instructed, as it must be in entrapment cases, that the government has the burden of proving the negative of the defense. *United States v. Austin*, 915 F.2d 363, 365 (8th Cir. 1990), cert. denied, 499 U.S. 977 (1991).

The bracketed language “United States” in (2) will only be necessary if there is a factual dispute over whether the official who made representations to the defendant was a federal official or an official of some other type. If there is no dispute that the official was an official of some level of government other than federal, such as of a state, reliance on the official’s representations as to the legality of conduct under federal law would not be objectively reasonable, and the instruction should not be given at all. *United States v. Rector*, 111 F.3d 503, 506-07 (7th Cir. 1997).

Note that a defendant’s subjective reliance might be sufficient for offenses requiring proof of willfulness, such as tax crimes. In such cases, the fourth factor should be omitted and the concluding language should follow the third factor.