**Introductory Comment**

The Committee believes that instructions on particular kinds of evidence should be avoided as much as possible. General instructions on direct and circumstantial evidence and on credibility of witnesses should in most instances suffice, obviating the need for more specific instructions. *See, for example*, *United States v. Holmes*, 229 F.3d 782, 787-88 (9th Cir. 2000); *United States v. Ketola,* 478 F.2d 64, 66 (9th Cir. 1973).

However, instructions on particular kinds of evidence may be necessary in two circumstances. First, when evidence is admissible for one purpose but not another, a limiting instruction may be required by Fed. R. Evid. 105. Second, certain specific instructions (including those specified in Instructions 3.9, 3.10, 3.11, 3.14, and 3.15) may need to be given when requested and may be advisable even if not requested. *See United States v. Bernard*, 625 F.2d 854, 857 (9th Cir. 1980) (holding that failure to give requested accomplice instruction was prejudicial error where accomplice’s testimony was important to case).

The Committee believes that an instruction on circumstantial evidence generally eliminates the need to explain the same principle in terms of inferences. Thus, the Committee recommends against giving instructions on matters such as flight, resistance to arrest, a missing witness, failure to produce evidence, false or inconsistent exculpatory statements, failure to respond to accusatory statements, and attempts to suppress or tamper with evidence. These matters are generally better left to argument of counsel as examples of circumstantial evidence from which the jury may find another fact. *See United States v. Beltran-Garcia*, 179 F.3d 1200, 1206 (9th Cir. 1999) (in discussing jury instruction regarding inferring intent to possess for distribution from quantity of drugs, Ninth Circuit stated that “[a]lthough the instructions in this case were not delivered in error, we do not hesitate to point out the ‘dangers and inutility of permissive inference instructions.’” (citations omitted)). *See also United States v. Rubio–Villareal*, 967 F.2d 294, 300 (9th Cir. 1992) (en banc) (Ninth Circuit disapproved of instructing jury that knowledge of presence of drugs in vehicle may be inferred from defendant being driver).

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