IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. MILO VAREEN DAVIS, Defendant.	No. 10-CR-41-LRR **FINAL JURY INSTRUCTIONS**

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NO. 1

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

INSTRUCTION NO. 2

Neither in these instructions nor in any ruling, action or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdicts should be.

INSTRUCTION NO. 3

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you just verdicts, unaffected by anything except the evidence, your common sense and the law as I give it to you.

INSTRUCTION NO. 4

I have mentioned the word "evidence." The "evidence" in this case consists of the following: the testimony of the witnesses, the stipulations of the parties and documents and other things received as exhibits.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions and comments by the lawyers are not evidence.
2. Anything that might have been said by jurors, the attorneys or the judge during the jury selection process is not evidence.
3. Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
4. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
5. Anything you saw or heard about this case outside the courtroom is not evidence.

If you were instructed that some evidence was received for a limited purpose only, you must follow that instruction. During the trial, documents were referred to but they were not admitted into evidence and therefore, they will not be available to you in the jury room during deliberations.

INSTRUCTION NO. 5

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witnesses to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NO. 6

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to the testimony of each witness who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 7

In a previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be "impeached" and how you are to consider the testimony of certain witnesses.

A witness may be discredited or impeached by contradictory evidence; by showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony.

You have heard evidence that certain witnesses were once convicted of a crime. You may use that evidence only to help you decide whether you believe these witnesses and how much weight to give their testimony.

You have heard evidence that certain witnesses hope to receive a reduced sentence on criminal charges pending against these witnesses in return for the witnesses' cooperation with the government in this case. If the prosecutor handling a witness's case believes the witness provided substantial assistance, that prosecutor can file in the court in which the charges are pending against the witness a motion to reduce the witness's sentence. The judge has no power to reduce a sentence for substantial assistance unless the government, acting through the United States Attorney, files such a motion. If such a motion for reduction of sentence for substantial assistance is filed by the government, then it is up to the judge to decide whether to reduce the sentence at all, and if so, how much to reduce it. You may give the testimony of these witnesses such weight as you think it deserves. Whether or not the testimony of the witnesses may have been influenced by the witnesses' hopes of receiving a reduced sentence is for you to decide. These witnesses' guilty pleas cannot be considered by you as any evidence of this defendant's guilt. These witnesses' guilty pleas can be considered by you only for the purpose of determining how much, if at all, to rely upon these witnesses' testimony.

INSTRUCTION NO. 8

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdicts. You are not to tamper with the exhibits or their contents, and each exhibit should be returned into open court, along with your verdicts, in the same condition as it was received by you.

INSTRUCTION NO. 9

You have heard testimony from persons described as experts. A person who, by knowledge, skill, training, education or experience, has become an expert in some field may state his opinions on matters in that field and may also state the reasons for his opinions.

Expert testimony should be considered just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used and all the other evidence in the case.

INSTRUCTION NO. 10

The government and the defendant have stipulated—that is, they have agreed—that certain facts are as counsel have stated. You must therefore treat those facts as having been proved.

INSTRUCTION NO. 11

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 12

You have heard evidence that the defendant committed a drug offense in the past. You may consider this evidence only if you unanimously find it is more likely true than not true. This is a lower standard of proof than beyond a reasonable doubt. If you find that this evidence is more likely true than not true, you may consider it to help you decide issues related to the defendant's intent and/or motive. You should give it the weight and value you believe it is entitled to receive. If you find that it is not more likely true than not true, then you shall disregard it.

Remember, even if you find that the defendant may have committed a similar act in the past, this is not evidence that he committed such an act in this case. You may not convict a person simply because you believe he may have committed similar acts in the past. The defendant is on trial only for the crimes charged, and you may consider evidence of prior acts only on the issue of intent and/or motive

INSTRUCTION NO. 13

The Indictment in this case charges the defendant with two separate crimes.

In Count 1, the Indictment charges that between about 1997 and continuing through 2006, in the Northern District of Iowa and elsewhere, the defendant did knowingly and unlawfully combine, conspire, confederate, and agree with others to distribute 50 grams or more of a mixture or substance containing a detectable amount of cocaine base (commonly called "crack cocaine"), a Schedule II controlled substance; 500 grams or more of a mixture or substance containing a detectable amount of cocaine, a Schedule II controlled substance; and a mixture or substance containing a detectable amount of marijuana, a Schedule I controlled substance.

In Count 2, the Indictment charges that on or about July 25, 2005, in the Northern District of Iowa and elsewhere, the defendant did knowingly conduct and attempt to conduct a financial transaction affecting interstate and foreign commerce, to wit, the transfer of title of a vehicle, that involved the proceeds of a specific unlawful activity, that is the distribution and possession with intent to distribute controlled substances, including marijuana, cocaine, and cocaine base, knowing that the transaction was designed in whole or in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of said specified unlawful activity and that while conducting and attempting to conduct such financial transaction knew that the property involved in the financial transaction represented the proceeds of some form of unlawful activity.

The defendant has pleaded not guilty to each charge.

As I told you at the beginning of the trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him.

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INSTRUCTION NO. 13 (Cont'd)

The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each element of the crimes charged.

Keep in mind that each count charges a separate crime. You must consider each count separately and return a separate verdict for each count.

There is no burden upon a defendant to prove that he is innocent. Accordingly, the fact that the defendant did not testify must not be considered or even discussed in arriving at your verdicts.

INSTRUCTION NO. 14

Count 1 of the Indictment charges the defendant with conspiring to distribute a controlled substance. This offense has three essential elements, which are:

One, from about 1997 and continuing through 2006, two or more persons reached an agreement or came to an understanding to commit one or more of the following offenses:

Object 1: To distribute cocaine base;

Object 2: To distribute cocaine; and/or

Object 3: To distribute marijuana;

Two, the defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect; and

Three, at the time the defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding.

If all of these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 1; otherwise, you must find the defendant not guilty of the crime charged under Count 1.

To assist you in deciding whether there was an agreement or understanding to commit the crime of distributing controlled substances (Object 1, Object 2 or Object 3), you are advised that the elements of this crime are set out in Instruction No. 18.

INSTRUCTION NO. 15

In determining whether the defendant is guilty of the offense charged in Count 1, the government is not required to prove that the amount or quantity of controlled substances was as charged in the Indictment. The government need only prove beyond a reasonable doubt that there was some measurable amount of controlled substances involved.

If you find the Defendant guilty of one or both of Objects 1 and 2, you will need to determine the quantity of cocaine base and/or a mixture or substance containing a detectable amount of cocaine involved. With respect to Object 1, you will need to determine whether the quantity of cocaine base involved in the offense was 50 grams or more; 5 grams or more, but less than 50 grams; or less than 5 grams. With respect to Object 2, you will need to determine whether the quantity of a mixture or substance containing a detectable amount of cocaine was 500 grams or more; 50 grams or more, but less than 500 grams; or less than 50 grams. If you find the defendant guilty of the offense of conspiracy to distribute marijuana (Object 3) charged under Count 1, you will not need to make a quantity determination.

The burden of proof is on the government to establish a quantity beyond a reasonable doubt.

For your information, one gram equals 1,000 milligrams, one ounce equals 28.35 grams, one pound equals 453.6 grams and one kilogram equals 1,000 grams.

INSTRUCTION NO. 16

In considering whether the government has met its burden of proving a conspiracy as alleged in Count 1 of the Indictment, you are further instructed as follows:

The government must prove, beyond a reasonable doubt, that the defendant reached an agreement or understanding with at least one other person. It makes no difference whether the other person is a defendant or named in the Indictment as long as you find beyond a reasonable doubt that there was at least one other co-conspirator.

The "agreement or understanding" need not be an express or formal agreement or be in writing or cover all the details of how it is to be carried out. Nor is it necessary that the members have directly stated between themselves the details or purpose of the scheme.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has joined in an agreement or understanding. A person who has no knowledge of a conspiracy but who happens to act in a way which advances some purposes of one, does not thereby become a member.

But a person may join in an agreement or understanding, as required by this element, without knowing all the details of the agreement or understanding, and without knowing who all the other members are. Further, it is not necessary that a person agree to play any particular part in carrying out the agreement or understanding. A person may become a member of a conspiracy even if that person agrees to play only a minor part in the conspiracy, as long as that person has an understanding of the unlawful nature of the plan and voluntarily and intentionally joins in it.

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INSTRUCTION NO. 16 (Cont'd)

You must decide, after considering all of the evidence, whether the conspiracy alleged in Count 1 of the Indictment existed. If you find that the alleged conspiracy did exist, you must also decide whether the defendant voluntarily and intentionally joined the conspiracy, either at the time it was first formed or at some later time while it was still in effect. In making that decision, you must consider only evidence of the defendant's own actions and statements. You may not consider actions and pretrial statements of others, except to the extent that pretrial statements of others describe something that had been said or done by the defendant.

It is not necessary for the government to prove that the conspiracy actually succeeded.

INSTRUCTION NO. 17

If you have found beyond a reasonable doubt that a conspiracy existed and that the defendant was one of its members, then you may consider acts knowingly done and statements knowingly made by the defendant's co-conspirators during the existence of the conspiracy and in furtherance of it as evidence pertaining to the defendant even though they were done or made in the absence of and without the knowledge of the defendant. This includes acts done or statements made before the defendant had joined the conspiracy, for a person who knowingly, voluntarily and intentionally joins an existing conspiracy is responsible for all of the conduct of the co-conspirators from the beginning of the conspiracy.

INSTRUCTION NO. 18

With regard to Object 1, Object 2 and Object 3 of Count 1 of the Indictment, you are instructed that the crime of distributing a controlled substance has two essential elements, which are:

(1) Intentional transfer of a controlled substance by a person, and

(2) At the time of the transfer, the person knew that it was a controlled substance.

Keep in mind that Count 1 of the Indictment charges a conspiracy to commit distribution of controlled substances and does not require the government to prove that the crime of distribution of controlled substances was actually committed.

You are instructed that, under Count 1, it is not necessary for the government to prove a conspiracy to commit all the offenses. It would be sufficient if the government proves, beyond a reasonable doubt, a conspiracy to commit *one* of the offenses. However, in that event, in order to return a verdict of guilty, you must unanimously agree upon which one or more of the offenses was the object of the conspiracy.

INSTRUCTION NO. 19

You are instructed as a matter of law that cocaine base is a Schedule II controlled substance. During this trial, you have heard the terms "crack cocaine" and "a mixture or substance containing a detectable amount of cocaine base" referred to interchangeably. You are instructed that "crack cocaine" and "a mixture or substance containing a detectable amount of cocaine base" refer to the same substance. You must ascertain whether or not the substance in question as to Count 1 was cocaine base. In so doing, you may consider all the evidence in the case which may aid in the determination of that issue.

You are instructed as a matter of law that cocaine is a Schedule II controlled substance. You must ascertain whether or not the substance in question in Count 1 was cocaine. In so doing, you may consider all the evidence in the case which may aid in the determination of that issue.

You are instructed as a matter of law that marijuana is a Schedule I controlled substance. You must ascertain whether or not the substance in question in Count 1 was marijuana. In doing so, you may consider all the evidence in the case which may aid in the determination of that issue.

INSTRUCTION NO. 20

As to Count 1, the quantity of controlled substances involved in the agreement or understanding includes the controlled substances that the defendant possessed for personal use or distributed or agreed to distribute. The quantity also includes the controlled substances fellow conspirators distributed or agreed to distribute, if you find that those distributions or agreements to distribute were a necessary consequence of the agreement or understanding and were reasonably foreseeable by the defendant.

INSTRUCTION NO. 21

The term "distribute" means to deliver a controlled substance to the possession of another person. The term "deliver" means the actual or attempted transfer of a controlled substance to the possession of another person. No consideration for the delivery need exist, and it is not necessary that money or anything of value change hands. The law is directed at the act of "distribution" of a controlled substance and does not concern itself with any need for a "sale" to occur.

INSTRUCTION NO. 22

The crime of conducting an illegal financial transaction, as charged in Count 2 of the Indictment has four elements, which are:

One, on or about July 27, 2005, the defendant conducted a financial transaction, that is, the transfer of title of a vehicle, which in any way or degree affected interstate or foreign commerce;

Two, the defendant conducted or attempted to conduct a financial transaction that involved the proceeds of the distribution and possession with the intent to distribute controlled substances, including marijuana, cocaine and cocaine base;

Three, at the time the defendant conducted the financial transaction, the defendant knew the money represented the proceeds of some form of unlawful activity; and

Four, the defendant conducted the financial transaction knowing that the transaction was designed in whole or in part to conceal or disguise the nature, location, source, ownership or control of the proceeds of the distribution of controlled substances.

A defendant may be found to have attempted to conduct a financial transaction if he intended to conduct a financial transaction and voluntarily and intentionally carried out some act which was a substantial step toward conducting that financial transaction, even if the transaction was never completed.

INSTRUCTION NO. 23

You are further instructed regarding the crime charged in Count 2 of the Indictment that the following definitions apply:

The term "conducted" includes initiating, concluding or participating in initiating or concluding a transaction.

The phrase "financial transaction" means a transaction which in any way or degree affects interstate or foreign commerce involving the transfer of a title to any vehicle.

The term "transaction" means a purchase, sale, loan, pledge, gift, transfer, delivery or other disposition of property.

The term "interstate commerce" means commerce between any combination of states, territories, and possessions of the United States, including the District of Columbia.

The term "foreign commerce" means commerce between any state, territory or possession of the United States and a foreign country.

The term "commerce" includes, among other things, travel, trade, transportation and communication.

It is not necessary for the government to show that the defendant actually intended or anticipated an effect on interstate or foreign commerce. All that is necessary is that interstate or foreign commerce was affected as a natural and probable consequence of the defendant's actions.

The term "proceeds" means any property or any interest in property, that someone acquires or retains as a result of the commission of the distribution and possession with intent to distribute controlled substances, including marijuana, cocaine and cocaine base. Proceeds can be any type of property, not just money. It can include personal property, like a car or a piece of jewelry, or real property, like an interest in land. So, for example, if someone sells drugs for cash and uses the cash to by a cashier's check, the cash received is proceeds and the cashier's check is still proceeds of the crime.

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INSTRUCTION NO. 23 (Cont'd)

The government is not required to trace the property it alleges to be proceeds of the distribution and possession with the intent to distribute controlled substances, including marijuana, cocaine and cocaine base, to a particular underlying offense. It is sufficient if the government proves that the property was the proceeds of the distribution and possession with intent to distribute controlled substances, including marijuana, cocaine and cocaine base generally. For example, in a case involving alleged drug proceeds, the government would not have to trace the money to a particular drug offense, but could satisfy the requirement by proving that the money was the proceeds of drug trafficking generally.

The government need not prove that all of the property involved in the transaction was proceeds of the distribution and possession with intent to distribute controlled substances, including marijuana, cocaine, and cocaine base. It is sufficient if the government proves that at least part of the property represents such proceeds.

The phrase "specified" unlawful activity means any one of a large variety of offenses defined by statute. I instruct you as a matter of law that the distribution and possession with the intent to distribute controlled substances, including marijuana, cocaine, and cocaine base, falls within the definition. To assist you in determining whether someone committed the distribution and possession with the intent to distribute controlled substances, including marijuana, cocaine, and cocaine base, you are advised that the elements of distributing controlled substances, are set out in Instruction No. 18. The elements of possession with intent to distribute controlled substances are set out in Instruction No. 24.

(CONTINUED)

INSTRUCTION NO. 23 (Cont'd)

The phrase "knew the money represented the proceeds of some form of unlawful activity" means that the defendant knew the money involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony offense under state or federal law. Thus, the government need not prove that the defendant specifically knew that the money involved in the financial transaction represented the proceeds of distribution and possession with the intent to distribute controlled substances, including marijuana, cocaine, and cocaine base or any other specific offense; it need only prove that he knew it represented the proceeds of some form, though not necessarily which form, of a felony under state or federal law. I instruct you as a matter of law that distribution and possession with the intent to distribute controlled substances, including marijuana, cocaine, and cocaine base is a felony under federal law.

INSTRUCTION NO. 24

The crime of possession with intent to distribute controlled substances has three essential elements, which are:

(1) a person is in possession of controlled substances;

(2) the person knows he is in possession of controlled substances; and

(3) the person intended to distribute some or all of the controlled substances to another person.

INSTRUCTION NO. 25

Intent may be proven by circumstantial evidence. It rarely can be established by other means. While witnesses may see or hear and thus be able to give direct evidence of what a person does or fails to do, there can be no eyewitness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may indicate intent or lack of intent to commit an offense.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done, but you are not required to do so. As I have previously mentioned, it is entirely up to you to decide what facts to find from the evidence.

INSTRUCTION NO. 26

The government is not required to prove that the defendant knew that his acts or omissions were unlawful. An act is done "knowingly" if the defendant is aware of the act and does not act through ignorance, mistake or accident. You may consider evidence of the defendant's words, acts or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

INSTRUCTION NO. 27

You will note that the Indictment charges that the offenses were committed "on or about" or "between about" certain dates. The government need not prove with certainty the exact date or the exact time period of the offenses charged. It is sufficient if the evidence establishes that the offenses occurred within a reasonable time of the date or period of time alleged in the Indictment.

INSTRUCTION NO. 28

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NO. 29

In conducting your deliberations and returning your verdicts, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because your verdicts—whether guilty or not guilty—must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right or simply to reach your verdicts.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

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INSTRUCTION NO. 29 (Cont'd)

Fifth, your verdicts must be based solely on the evidence and on the law which I have given to you in my instructions. The verdicts, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdicts might be—that is entirely for you to decide.

INSTRUCTION NO. 30

Attached to these instructions you will find the Verdict Forms and Interrogatory Forms. The Verdict Forms and Interrogatory Forms are simply the written notices of the decisions that you reach in this case. The answers to the Verdict Forms and Interrogatory Forms must be the unanimous decisions of the jury.

You will take the Verdict Forms and Interrogatory Forms to the jury room, and when you have completed your deliberations and each of you has agreed to the answers to the Verdict Forms and Interrogatory Forms, your foreperson will fill out the Verdict Forms and Interrogatory Forms, sign and date them and advise the Court Security Officer that you are ready to return to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return the Verdict Forms and Interrogatory Forms in accord with the evidence and these instructions.

May 25, 2011
Date

Linda R. Reade, Chief Judge
United States District Court
Northern District of Iowa