

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DARRAN LOHSE,

Defendant.

No. CR 13-4053-MWB

**INSTRUCTIONS  
TO THE JURY**

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**VERDICT FORM**

## No. 1 — INTRODUCTION

Congratulations on your selection as a juror! These Instructions are to help you better understand the trial and your role in it.

In an Indictment, a Grand Jury has charged defendant Darran Lohse with six offenses involving “producing child pornography,” “receiving child pornography,” and “possessing child pornography.” An Indictment is simply an accusation—it is not evidence of anything. The defendant has pled not guilty to the crimes charged against him, and he is presumed absolutely not guilty of each offense charged, unless and until the prosecution proves his guilt on that offense beyond a reasonable doubt.

You must decide during your deliberations whether or not the prosecution has proved the defendant’s guilt on each offense charged beyond a reasonable doubt. In making your decision, you are the sole judges of the facts. You must not decide this case based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Do not take anything that I have said or done or that I may say or do as indicating what I think of the evidence or what I think your verdict should be.

Remember, only defendant Darran Lohse, and not anyone else, is on trial. Also, the defendant is on trial only for the offenses charged against him in the Indictment, and not for anything else.

You must consider each charge against the defendant separately and return a separate, unanimous verdict for or against the defendant on each charged offense.

Please remember that this case is important to the parties and to the fair administration of justice. Therefore, please be patient, consider all of the evidence, and do not be in a hurry to reach a verdict just to be finished with the case.

## **No. 2 — PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF**

The presumption of innocence means that the defendant is presumed to be absolutely not guilty.

- This presumption means that you must put aside all suspicion that might arise from the defendant's arrest, the charges, or the fact that he is here in court
- This presumption remains with the defendant throughout the trial
- This presumption is enough, alone, for you to find the defendant not guilty, unless the prosecution proves, beyond a reasonable doubt, all of the elements of a particular offense charged against him

The burden is always on the prosecution to prove guilt beyond a reasonable doubt.

- This burden never, ever shifts to the defendant to prove his innocence
- This burden means that the defendant does not have to call any witnesses, produce any evidence, cross-examine the prosecution's witnesses, or testify
- This burden means that, if the defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict

- This burden means that you must find the defendant not guilty of a particular offense charged against him, unless the prosecution proves beyond a reasonable doubt that he has committed each and every element of that offense

### No. 3 — REASONABLE DOUBT

A reasonable doubt is a doubt based upon reason and common sense.

- A reasonable doubt may arise from evidence produced by the prosecution or the defendant, keeping in mind that the defendant never, ever has the burden or duty to call any witnesses or to produce any evidence
- A reasonable doubt may arise from the prosecution's lack of evidence

The prosecution must prove the defendant's guilt beyond a reasonable doubt.

- Proof beyond a reasonable doubt requires careful and impartial consideration of all of the evidence in the case before making a decision
- Proof beyond a reasonable doubt is proof so convincing that you would be willing to rely and act on it in the most important of your own affairs

The prosecution's burden is heavy, but it does not require proof beyond all doubt.

## **No. 4 — OTHER IMPORTANT TERMS**

Before I turn to specific instructions on the offenses charged in this case, I will explain some important terms.

### ***Elements***

Each offense charged consists of “elements,” which are the parts of the offense. The prosecution must prove beyond a reasonable doubt all of the elements of a particular offense for you to find the defendant guilty of that offense.

### ***Timing***

The Indictment alleges an approximate time period for each charged offense.

- The prosecution does not have to prove that a particular offense occurred on an exact date
- The prosecution only has to prove that a particular offense occurred at a time that was reasonably within the time period alleged for that offense in the Indictment.

### ***Location***

You must decide whether the defendant’s conduct occurred in the Northern District of Iowa. Woodbury County is in the Northern District of Iowa.

### ***Verdict Form***

A Verdict Form is attached to these Instructions.

- A Verdict Form is simply a written notice of your decision
- When you have reached a unanimous verdict, your foreperson will complete one copy of the Verdict Form by marking the appropriate blank or blanks for each question
- You will all sign that copy to indicate that you agree with the verdict and that it is unanimous
- Your foreperson will then bring the signed Verdict Form to the courtroom when it is time to announce your verdict

\* \* \*

Before giving you the “elements” instructions on the charged offenses, I must explain some additional terms that are important in “child pornography” offenses.

## **No. 5 — GLOSSARY OF CHILD PORNOGRAPHY TERMINOLOGY**

In these Instructions, the following terms have these meanings:

- “Child pornography” means
  - any visual depiction of
  - a person under the age of 18 years
  - engaging in sexually explicit conduct
  - where the child was engaged in the sexually explicit conduct during production of the depiction
  
- “Visual depiction” includes
  - any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means
  - undeveloped film and videotape, and data stored on computer disk or by electronic means that is capable of conversion into a visual image
  
- “Sexually explicit conduct” means
  - actual or simulated sexual intercourse, including genital-genital, oral-genital, anal-genital, and oral-anal, whether between persons of the same or opposite sex

- bestiality
  - masturbation
  - sadistic or masochistic abuse, or
  - lascivious exhibition of the genitals or pubic area of any person
- 
- “Lascivious” means open and offensive sexual display
    - Whether a visual depiction of the genitals or pubic area constitutes a lascivious exhibition requires a consideration of the overall content of the material, including the following factors:
      - whether the focal point of the picture is on the minor’s genitals or pubic area;
      - whether the setting of the picture is sexually suggestive, that is, in a place or pose generally associated with sexual activity;
      - whether the minor is depicted in an unnatural pose or in inappropriate attire, considering the age of the minor;
      - whether the minor is fully or partially clothed, or nude;
      - whether the picture suggests sexual coyness or a willingness to engage in sexual activity;
      - whether the picture is intended or designed to elicit a sexual response in the viewer;

- whether the picture portrays the minor as a sexual object; and
    - the caption(s) on the picture(s)
  - You must decide the weight or lack of weight to be given to any of these factors
  - A picture need not involve all of these factors to constitute a lascivious exhibition of the genitals or pubic area
  - Even images of children acting innocently can be considered lascivious if they are intended to be sexual
- “Commerce” includes, among other things,
    - travel, trade, transportation, and communication
      - “Interstate commerce” means commerce between any combination of states, territories, and possessions of the United States, including the District of Columbia
      - “Foreign commerce” means commerce between any state, territory or possession of the United States and a foreign country
    - Items have moved in “commerce” if they have crossed state or international borders by any means
      - Images transmitted or received over the Internet have moved in interstate or foreign commerce
      - The Internet is a “means or facility of interstate or foreign commerce”

- You may, but are not required to, find that an item moved in interstate or foreign commerce, if you find both of the following:
  - the item was manufactured in a state other than Iowa or in another country, *and*
  - the defendant possessed that item in Iowa
- The prosecution does not have to prove that the defendant knew that the material in question had moved in interstate or foreign commerce

\* \* \*

I will now give you the “elements” instructions on the charged offenses. The “elements” themselves are set out in **bold**.

**No. 6 — COUNT 1: ALLEGEDLY  
“PRODUCING CHILD PORNOGRAPHY”**

**Count 1** of the Indictment charges defendant Lohse with “producing child pornography.” The defendant denies that he committed this offense.

For you to find the defendant guilty of “producing child pornography,” the prosecution must prove beyond a reasonable doubt *all* of the following elements against him:

***One*, between about March 2010 and November 2011, K.S. was under the age of eighteen years.**

For this element to be proved,

- the prosecution does not have to prove that the defendant knew that K.S. was under the age of eighteen years
- the defendant’s lack of knowledge of K.S.’s age also is not a defense to this charge

***Two*, the defendant knowingly used K.S. to engage in sexually explicit conduct.**

The defendant “used” K.S. if K.S. was photographed or videotaped.

***Three*, the defendant acted for the purpose of producing one or more images of child pornography.**

For this element to be proved,

- You must unanimously agree that the defendant acted for the purpose of producing one or more images of child pornography

- An image of child pornography was “produced,” if it was directed, manufactured, issued, published, advertised, created, made, or in any other way brought into being by the involvement of an individual participating in the recording of child pornography
- You must also unanimously agree on which one or more images, if any, that the defendant produced were images of child pornography

***Four, the defendant produced the image or images of child pornography using one or more cameras or an SD memory card.***

The Indictment charges that the defendant used the following materials to produce the image or images of child pornography:

- an HP digital camera
- a Kodak digital camera
- a PNY SD memory card

For this element to be proved

- the prosecution does not have to prove that the defendant used all of the materials listed to produce an image or images of child pornography, *but*
- you must unanimously agree on which one or more of the materials listed the prosecution has proved that the defendant used to produce an image or images of child pornography

***Five*, the material or materials used to produce the image or images of child pornography had moved in interstate or foreign commerce.**

If the prosecution *does not* prove all of these elements beyond a reasonable doubt, then you must find the defendant not guilty of “producing child pornography,” as charged in **Count 1**.

**No. 7 — COUNT 2: ALLEGEDLY “RECEIVING  
CHILD PORNOGRAPHY”**

**Count 2** of the Indictment charges defendant Lohse with “receiving child pornography.” The defendant denies that he committed this offense.

For you to find the defendant guilty of “receiving child pornography,” the prosecution must prove beyond a reasonable doubt *all* of the following elements against him:

***One, in about February 2010, the defendant knowingly received one or more videos of child pornography.***

For this element to be proved,

- the prosecution is not required to prove that the defendant received all of the videos of child pornography alleged by the prosecution, ***but***
- the prosecution must prove that he received at least one video of child pornography between about the dates alleged
- you must unanimously agree which video or videos, if any, that the defendant knowingly received were “child pornography”

To “receive” something means to come into possession of it or to acquire it

- The prosecution is not required to prove that the defendant bought or paid for the child pornography or exchanged anything of value for it

**Two, the defendant knew that the video or videos in question were child pornography.**

For this element to be proved,

- the defendant need not have known the legal definition of “child pornography” or “sexually explicit conduct,” *but*
- the prosecution must prove
  - that the defendant knew that the video or videos in question were of “sexually explicit conduct,” as defined in Instruction No. 5, *and*
  - that the person depicted was under the age of eighteen years

**Three, one or more of the following occurred:**

- (a) the video or videos of child pornography in question had moved in interstate or foreign commerce**
- (b) the video or videos of child pornography in question had been transported using a means or facility of interstate or foreign commerce**

If the prosecution *does not* prove all of these elements beyond a reasonable doubt, then you must find the defendant not guilty of “receiving child pornography,” as charged in **Count 2**.

**No. 8 — COUNTS 3 THROUGH 6:  
ALLEGEDLY “POSSESSING CHILD  
PORNOGRAPHY”**

Counts 3 through 6 of the Indictment charge defendant Lohse with separate offenses of “possessing child pornography.” These counts are summarized in the following chart:

<b>Count</b>	<b>Time Period</b>	<b>Alleging that the video or videos in question</b>
<b>3</b>	Between about February 2010 and November 2011	(a) were produced using an IBM Deskstar hard drive (from a Gateway 980 server) that had previously moved in interstate or foreign commerce, and/or
		(b) were moved in interstate or foreign commerce, and/or
		(c) were transported using a means and facility of interstate or foreign commerce
<b>4</b>	Between about March 2010 and November 2011	(a) were produced using a RAID array containing two IBM hard drives and two Seagate hard drives (from a Gateway 980 server) that had previously been moved in interstate or foreign commerce, and/or
		(b) were moved in interstate or foreign commerce, and/or
		(c) were transported using a means and facility of interstate or foreign commerce
<b>5</b>	In or about September 2011	(a) were produced using a Western Digital hard drive (from a Gateway computer) that had previously moved in interstate or foreign commerce, and/or
		(b) were moved in interstate or foreign commerce, and/or
		(c) were transported using a means and facility of interstate or foreign commerce
<b>6</b>	Between about February 2010 and November 2011	(a) were produced using a Maxell CD that had previously moved in interstate or foreign commerce, and/or
		(b) were moved in interstate or foreign commerce, and/or
		(c) were transported using a means and facility of interstate or foreign commerce

The defendant denies that he committed these offenses.

For you to find the defendant guilty of a particular “possessing child pornography” offense, the prosecution must prove beyond a reasonable doubt *all* of the following elements against him as to that offense:

***One, during the time period alleged in the count in question, the defendant knowingly possessed one or more videos of child pornography.***

For this element to be proved,

- the prosecution is not required to prove that the defendant possessed all of the videos of child pornography alleged in the count in question, *but*
- the prosecution must prove that he possessed at least one video of child pornography alleged in the count in question between about the dates alleged
- you must unanimously agree which video or videos alleged in the count in question, if any, that the defendant knowingly possessed were “child pornography”

A person possessed something if both of the following are true:

- the person knew about it, *and*
- the person had
  - physical control over it, *or*
  - the power, or ability, and the intention to control it

More than one person may have possessed something at the same time.

**Two, the defendant knew that the video or videos in question were child pornography.**

For this element to be proved,

- the defendant need not have known the legal definition of “child pornography” or “sexual explicit conduct,” *but*
- the prosecution must prove
  - that the defendant knew that the video or videos in question were of “sexually explicit conduct,” as defined in Instruction No. 5, *and*
  - that the person depicted was under the age of eighteen years

**Three, one or more of the following (a), (b), and/or (c) occurred:**

**(a)**

- (1) *for Count 3, the video or videos of child pornography were produced using an IBM Deskstar hard drive (from a Gateway 980 server) that had previously moved in interstate or foreign commerce***
- (2) *for Count 4, the video or videos of child pornography were produced using a RAID array containing two IBM hard drives and two Seagate hard drives (from a Gateway 980 server) that had previously been moved in interstate or foreign commerce***
- (3) *for Count 5, the video or videos of child pornography were produced using a Western Digital hard drive (from a***

**Gateway computer) that had previously moved in interstate or foreign commerce**

**(4) *for Count 6, the video or videos of child pornography in question were produced using a Maxell CD that had previously moved in interstate or foreign commerce***

**(b) *for Counts 3 through 6, the video or videos of child pornography in question had moved in interstate or foreign commerce***

**(c) *for Count 3 through 6, the video or videos of child pornography in question had been transported using a means or facility of interstate or foreign commerce***

If the prosecution *does not* prove all of these elements beyond a reasonable doubt as to a particular count, then you must find the defendant not guilty of that count of “possessing child pornography.”

## No. 9 — DEFINITION OF EVIDENCE

Evidence is the following:

- testimony
- exhibits admitted into evidence, but exhibits are not necessarily more important than any other evidence, just because they are shown to you
- stipulations, which are agreements between the parties that certain facts are true; you must treat stipulated facts as having been proved

The following are not evidence:

- testimony that I tell you to disregard
- exhibits that are not admitted into evidence
- statements, arguments, questions, and comments by the lawyers
- objections and rulings on objections
- anything that you see or hear about this case outside the courtroom

You may have heard of “direct” or “circumstantial” evidence.

- “Direct” evidence is direct proof of a fact
  - An example is testimony by a witness about what that witness personally saw or heard or did

- “Circumstantial” evidence is proof of one or more facts from which you could find another fact
  - An example is testimony that a witness personally saw a broken window and a brick on the floor, from which you could find that the brick broke the window
- You should consider both kinds of evidence, because the law makes no distinction in their weight
- The weight to be given any evidence, whether it is “direct” or “circumstantial,” is for you to decide

Some evidence may be admitted only for a limited purpose.

- I will tell you if that happens
- I will instruct you on the purposes for which the evidence can and cannot be used

## No. 10 — TESTIMONY OF WITNESSES

You may believe all of what any witness says, only part of it, or none of it.

In evaluating a witness's testimony, consider the following:

- the witness's
  - intelligence
  - memory
  - opportunity to have seen and heard what happened
  - motives for testifying
  - interest in the outcome of the case
  - manner while testifying
  - drug or alcohol use or addiction, if any
- the reasonableness of the witness's testimony
- any differences between what the witness says now and said earlier
- any inconsistencies between the witness's testimony and any other evidence that you believe
- whether any inconsistencies are the result of seeing or hearing things differently, actually forgetting things, or innocent mistakes or are, instead, the result of lies or phony memory lapses, and
- any other factors that you find bear on believability or credibility

You should not give any more or less weight to a witness's testimony just because the witness is one of the following:

- a public official or law enforcement officer
- an expert

You may give any witness's opinion whatever weight you think it deserves, but you should consider the following:

- the reasons and perceptions on which the opinion is based
- any reason that the witness may be biased, and
- all of the other evidence in the case

If the defendant testifies,

- you should judge his testimony in the same way that you judge the testimony of any other witness

You may hear evidence that a witness has been convicted of a crime. You may use that evidence

- only to help you decide whether or not to believe that witness, and
- how much weight to give that witness's testimony

Remember, it is your exclusive right to give any witness's testimony whatever weight you think it deserves.

## No. 11 — OBJECTIONS

The lawyers may make objections and motions during the trial that I must rule upon.

- If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself
- Do not hold it against a lawyer or a party that a lawyer has made an objection, because lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible

## No. 12 — BENCH CONFERENCES

During the trial, it may be necessary for me to talk with the lawyers out of your hearing.

- I may hold a bench conference while you are in the courtroom or call a recess
- These conferences are to decide how certain evidence is to be treated, to avoid confusion and error, and to save your valuable time, so please be patient
- We will do our best to keep such conferences short and infrequent

## No. 13 — NOTE-TAKING

You are allowed to take notes during the trial, if you want to.

- Be sure that your note-taking does not interfere with listening to and considering all the evidence
- Your notes are not necessarily more reliable than your memory or another juror's notes or memory
- Do not discuss your notes with anyone before you begin your deliberations
- Leave your notes on your chair during recesses and at the end of the day
- At the end of trial, you may take your notes with you or leave them to be destroyed
- No one else will ever be allowed to read your notes, unless you let them

If you choose not to take notes, remember that it is your own individual responsibility to listen carefully to the evidence.

An official court reporter is making a record of the trial, but her transcripts will not be available for your use during your deliberations.

## No. 14 — CONDUCT OF JURORS DURING TRIAL

You must decide this case *solely* on the evidence and your own observations, experiences, reason, common sense, and the law in these Instructions. You must also keep to yourself any information that you learn in court until it is time to discuss this case with your fellow jurors during deliberations.

To ensure fairness, you must obey the following rules:

- Do not talk among yourselves about this case, or about anyone involved with it, until you go to the jury room to decide on your verdict.
- Do not talk with anyone else about this case, or about anyone involved with it, until the trial is over.
- When you are outside the courtroom, do not let anyone ask you about or tell you anything about this case, anyone involved with it, any news story, rumor, or gossip about it, until the trial is over. If someone should try to talk to you about this case during the trial, please report it to me.
- During the trial, you should not talk to any of the parties, lawyers, or witnesses—even to pass the time of day—so that there is no reason to be suspicious about your fairness. The lawyers, parties, and witnesses are not supposed to talk to you, either.

- You may need to tell your family, friends, teachers, co-workers, or employer about your participation in this trial, so that you can tell them when you must be in court and warn them not to ask you or talk to you about the case. However, do not provide any information to anyone by any means about this case until after I have accepted your verdict. That means do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, a Blackberry, a PDA, a computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, any blog, or any website such as Facebook, MySpace, YouTube, or Twitter, to communicate to anyone any information about this case until I accept your verdict.
- Do not do any research—on the Internet, in libraries, in the newspapers, in dictionaries or other reference books, or in any other way—or make any investigation about this case, the law, or the people involved on your own.
- Do not visit or view any place discussed in this case and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony.
- Do not read any news stories or articles, in print, on the Internet, or in any “blog,” about this case, or about anyone involved with it, or listen to any radio or television reports about it or about anyone involved with it, or let anyone tell you anything about any such news reports. I assure you that when you have heard all the evidence, you

will know more about this case than anyone will learn through the news media—and it will be more accurate.

- Do not make up your mind during the trial about what the verdict should be. Keep an open mind until you have had a chance to discuss the evidence with other jurors during deliberations.
- Do not decide the case based on “implicit biases.” As we discussed during jury selection, everyone, including me, has feelings, assumptions, perceptions, fears, and stereotypes, that is, “implicit biases,” that we may not be aware of. These hidden thoughts can impact what we see and hear, how we remember what we see and hear, and how we make important decisions. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.
- If, at any time during the trial, you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer (CSO),

who will give it to me. I want you to be comfortable, so please do not hesitate to tell us about any problem.

I will read the remaining two Instructions at the end of the evidence.

## No. 15 — DUTY TO DELIBERATE

A verdict must represent the careful and impartial judgment of each of you. However, before you make that judgment, you must consult with one another and try to reach agreement, if you can do so consistent with your individual judgment.

- If you are convinced that the prosecution has not proved beyond a reasonable doubt that the defendant is guilty of a particular charge, say so
- If you are convinced that the prosecution has proved beyond a reasonable doubt that the defendant is guilty of a particular charge, say so
- Don't give up your honest beliefs just because others think differently or because you simply want to be finished with the case
- On the other hand, do not hesitate to re-examine your own views and to change your opinions, if you are convinced that they are wrong
- You can only reach a unanimous verdict if you discuss your views openly and frankly, with proper regard for the opinions of others, and with a willingness to re-examine your own views
- Remember that you are not advocates, but judges of the facts, so your sole interest is to seek the truth from the evidence
- The question is never who wins or loses the case, because society always wins, whatever your verdict, when you return a just verdict

based solely on the evidence, reason, your common sense, and these instructions

- You must consider all of the evidence bearing on each question before you
- Take all the time that you feel is necessary
- Remember that this case is important to the parties and to the fair administration of justice, so do not be in a hurry to reach a verdict just to be finished with the case

## No. 16 — DUTY DURING DELIBERATIONS

You must follow certain rules while conducting your deliberations and returning your verdict:

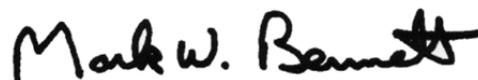
- Select a foreperson to preside over your discussions and to speak for you here in court.
- Do not consider punishment in any way in deciding whether the defendant is not guilty or guilty. If the defendant is guilty of one or more of the charges, I will decide what his sentence should be.
- Communicate with me by sending me a note through a Court Security Officer (CSO). The note must be signed by one or more of you. Remember that you should not tell anyone, including me, how your votes stand. I will respond as soon as possible, either in writing or orally in open court.
- Base your verdict solely on the evidence, reason, your common sense, and these instructions. Again, nothing I have said or done was intended to suggest what your verdict should be—that is entirely for you to decide.
- Reach your verdict without discrimination. In reaching your verdict, you must not consider the defendant's race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the defendant unless you would return the same verdict without regard to his race, color, religious beliefs, national origin, or sex.

To emphasize the importance of this requirement, the verdict form contains a certification statement. Each of you should carefully read that statement, then sign your name in the appropriate place in the signature block, if the statement accurately reflects how you reached your verdict.

- Complete the Verdict Form. The foreperson must bring the signed Verdict Form to the courtroom when it is time to announce your verdict.
- When you have reached a verdict, the foreperson will advise the CSO that you are ready to return to the courtroom.

Good luck with your deliberations.

**DATED** this 4th day of November, 2013.



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MARK W. BENNETT  
U.S. DISTRICT COURT JUDGE  
NORTHERN DISTRICT OF IOWA

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DARRAN LOHSE,

Defendant.

No. CR 13-4053-MWB

**VERDICT FORM**

As to defendant Darran Lohse, we, the Jury, find as follows:

<b>COUNT 1: ALLEGEDLY PRODUCING CHILD PORNOGRAPHY</b>		<b>VERDICT</b>
<b>Step 1: Verdict</b>	On the offense of “producing child pornography,” as charged in <b>Count 1</b> of the Indictment and explained in Instruction No. 6, please mark your verdict. <i>(If you find the defendant “not guilty,” do not consider Steps 2 and 3. Instead, go on to consider your verdict on Count 2.)</i>	<input type="checkbox"/> Not Guilty  <input type="checkbox"/> Guilty
<b>Step 2: Images of Child Pornography</b>	<i>If you found the defendant “guilty” in Step 1, please indicate which one or more of the images listed below you unanimously find were child pornography produced by the defendant.</i>	
	<input type="checkbox"/> Plaintiff’s Exhibit 1	
	<input type="checkbox"/> Plaintiff’s Exhibit 2	
	<input type="checkbox"/> Plaintiff’s Exhibit 3	
	<input type="checkbox"/> Plaintiff’s Exhibit 4	
	<input type="checkbox"/> Plaintiff’s Exhibit 5	
	<input type="checkbox"/> Plaintiff’s Exhibit 6	
	<input type="checkbox"/> Plaintiff’s Exhibit 7	
	<input type="checkbox"/> Plaintiff’s Exhibit 8	
	<input type="checkbox"/> Plaintiff’s Exhibit 9	

<b>Step 3:</b> Materials Used that were Moved in Commerce	<i>If you found the defendant “guilty” in Step 1, please indicate which one or more of the materials listed below you unanimously find were used by the defendant to produce child pornography and had been moved in interstate or foreign commerce.</i>	
	___ an HP digital camera	
	___ a Kodak digital camera	
	___ a PNY SD memory card	
<b>COUNT 2: ALLEGEDLY RECEIVING CHILD PORNOGRAPHY</b>		<b>VERDICT</b>
<b>Step 1:</b> Verdict	On the offense of “receiving child pornography,” as charged in <b>Count 2</b> of the Indictment and explained in Instruction No. 7, please mark your verdict. <i>(If you find the defendant “not guilty,” do not consider Steps 2 and 3. Instead, go on to consider your verdict on Count 3.)</i>	___ Not Guilty  ___ Guilty
<b>Step 2:</b> Videos of Child Pornography	<i>If you found the defendant “guilty” in Step 1, please indicate which one or more of the videos listed below you unanimously find were child pornography received by the defendant.</i>	
	___ Plaintiff’s Exhibit 25, video referenced in Plaintiff’s Exhibit 28, No. 15	
	___ Plaintiff’s Exhibit 25, video referenced in Plaintiff’s Exhibit 28, No. 16	
	___ Plaintiff’s Exhibit 25, video referenced in Plaintiff’s Exhibit 28, No. 17	
	___ Plaintiff’s Exhibit 25, video referenced in Plaintiff’s Exhibit 28, No. 22	
<b>Step 3:</b> Movement in Commerce	<i>If you found the defendant “guilty” in Step 1, please indicate which one or more of the following occurred.</i>	
	___ the video or videos of child pornography in question had moved in interstate or foreign commerce	
	___ the video or videos of child pornography in question had been transported using a means or facility of interstate or foreign commerce	

<b>COUNT 3: ALLEGEDLY POSSESSING CHILD PORNOGRAPHY</b>		<b>VERDICT</b>
<b>Step 1: Verdict</b>	On the offense of “possessing child pornography,” as charged in <b>Count 3</b> of the Indictment and explained in Instruction No. 8, please mark your verdict. <i>(If you find the defendant “not guilty,” do not consider Steps 2 and 3. Instead, go on to consider your verdict on Count 4.)</i>	<input type="checkbox"/> Not Guilty  <input type="checkbox"/> Guilty
<b>Step 2: Videos of Child Pornography</b>	<i>If you found the defendant “guilty” in Step 1, please indicate which one or more of the videos listed below you unanimously find were child pornography possessed by the defendant.</i>	
	<input type="checkbox"/> Plaintiff’s Exhibit 25, video referenced in Plaintiff’s Exhibit 28, No. 4	
	<input type="checkbox"/> Plaintiff’s Exhibit 25, video referenced in Plaintiff’s Exhibit 28, No. 15	
	<input type="checkbox"/> Plaintiff’s Exhibit 25, video referenced in Plaintiff’s Exhibit 28, No. 16	
	<input type="checkbox"/> Plaintiff’s Exhibit 25, video referenced in Plaintiff’s Exhibit 28, No. 17	
	<input type="checkbox"/> Plaintiff’s Exhibit 25, video referenced in Plaintiff’s Exhibit 28, No. 22	
<b>Step 3: Movement in Commerce</b>	<i>If you found the defendant “guilty” in Step 1, please indicate which one or more of the following you unanimously find occurred.</i>	
	<input type="checkbox"/> the video or videos of child pornography were produced using an IBM Deskstar hard drive (from a Gateway 980 server) that had previously moved in interstate or foreign commerce	
	<input type="checkbox"/> the video or videos of child pornography in question had moved in interstate or foreign commerce	
	<input type="checkbox"/> the video or videos of child pornography in question had been transported using a means or facility of interstate or foreign commerce	
<b>COUNT 4: ALLEGEDLY POSSESSING CHILD PORNOGRAPHY</b>		<b>VERDICT</b>
<b>Step 1: Verdict</b>	On the offense of “possessing child pornography,” as charged in <b>Count 4</b> of the Indictment and explained in Instruction No. 8, please mark your verdict. <i>(If you find the defendant “not guilty,” do not consider Steps 2 and 3. Instead, go on to consider your verdict on Count 5.)</i>	<input type="checkbox"/> Not Guilty  <input type="checkbox"/> Guilty

<b>Step 2:</b> Videos of Child Pornography	<i>If you found the defendant “guilty” in Step 1, please indicate which one or more of the videos listed below you unanimously find were child pornography possessed by the defendant.</i>	
	___ Plaintiff’s Exhibit 26, video referenced in Plaintiff’s Exhibit 30, No. 1	
	___ Plaintiff’s Exhibit 26, video referenced in Plaintiff’s Exhibit 30, No. 2	
	___ Plaintiff’s Exhibit 26, video referenced in Plaintiff’s Exhibit 30, No. 3	
<b>Step 3:</b> Movement in Commerce	<i>If you found the defendant “guilty” in Step 1, please indicate which one or more of the following you unanimously find occurred.</i>	
	___ the video or videos of child pornography were produced using a RAID array containing two IBM hard drives and two Seagate hard drives (from a Gateway 980 server) that had previously been moved in interstate or foreign commerce	
	___ the video or videos of child pornography in question had moved in interstate or foreign commerce	
	___ the video or videos of child pornography in question had been transported using a means or facility of interstate or foreign commerce	
<b>COUNT 5: ALLEGEDLY POSSESSING CHILD PORNOGRAPHY</b>		<b>VERDICT</b>
<b>Step 1:</b> Verdict	On the offense of “possessing child pornography,” as charged in <b>Count 5</b> of the Indictment and explained in Instruction No. 8, please mark your verdict. ( <i>If you find the defendant “not guilty,” do not consider Steps 2 and 3. Instead, go on to consider your verdict on Count 6.</i> )	___ Not Guilty  ___ Guilty
<b>Step 2:</b> Videos of Child Pornography	<i>If you found the defendant “guilty” in Step 1, please indicate which one or more of the videos listed below you unanimously find were child pornography possessed by the defendant.</i>	
	___ Plaintiff’s Exhibit 27, video referenced in Plaintiff’s Exhibit 31, No. 1	
	___ Plaintiff’s Exhibit 27, video referenced in Plaintiff’s Exhibit 31, No. 2	
	___ Plaintiff’s Exhibit 27, video referenced in Plaintiff’s Exhibit 31, No. 3	

<b>Step 3:</b> Movement in Commerce	<i>If you found the defendant “guilty” in Step 1, please indicate which one or more of the following you unanimously find occurred.</i>	
	___ the video or videos of child pornography were produced using a Western Digital hard drive (from a Gateway computer) that had previously moved in interstate or foreign commerce	
	___ the video or videos of child pornography in question had moved in interstate or foreign commerce	
	___ the video or videos of child pornography in question had been transported using a means or facility of interstate or foreign commerce	
<b>COUNT 6: ALLEGEDLY POSSESSING CHILD PORNOGRAPHY</b>		<b>VERDICT</b>
<b>Step 1:</b> Verdict	On the offense of “possessing child pornography,” as charged in <b>Count 6</b> of the Indictment and explained in Instruction No. 8, please mark your verdict. <i>(If you find the defendant “not guilty,” do not consider Steps 2 and 3. Instead, notify the Court Security Officer (CSO) that you have reached a verdict.)</i>	___ Not Guilty  ___ Guilty
<b>Step 2:</b> Videos of Child Pornography	<i>If you found the defendant “guilty” in Step 1, please indicate which one or more of the videos listed below you unanimously find were child pornography possessed by the defendant.</i>	
	___ Plaintiff’s Exhibit 11, video referenced in Plaintiff’s Exhibit 12, No. 1	
	___ Plaintiff’s Exhibit 11, video referenced in Plaintiff’s Exhibit 12, No. 4	
	___ Plaintiff’s Exhibit 11, video referenced in Plaintiff’s Exhibit 12, No. 6	
<b>Step 3:</b> Movement in Commerce	<i>If you found the defendant “guilty” in Step 1, please indicate which one or more of the following you unanimously find occurred.</i>	
	___ the video or videos of child pornography in question were produced using a Maxell CD that had previously moved in interstate or foreign commerce	
	___ the video or videos of child pornography in question had moved in interstate or foreign commerce	
	___ the video or videos of child pornography in question had been transported using a means or facility of interstate or foreign commerce	

**CERTIFICATION**

By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant was not involved in reaching his or her individual decision, and that the individual juror would have returned the same verdict for or against the defendant on the charged offenses regardless of the race, color, religious beliefs, national origin, or sex of the defendant.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Foreperson

\_\_\_\_\_  
Juror

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DARRAN LOHSE,

Defendant.

No. CR 13-4053-MWB

**COURT’S PROPOSED  
INSTRUCTIONS  
TO THE JURY**

(10/31/13 SECOND REVISED  
“ANNOTATED” VERSION)

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**VERDICT FORM**

## No. 17 — INTRODUCTION<sup>1</sup>

Congratulations on your selection as a juror! These Instructions are to help you better understand the trial and your role in it.

In an Indictment, a Grand Jury has charged defendant Darran Lohse with six offenses involving “producing child pornography,” “receiving child pornography,” and “possessing child pornography.”<sup>2</sup> An Indictment is simply an

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<sup>1</sup> Compare 8th Cir. Criminal Model 1.01.

<sup>2</sup> Like the parties, I do not find it necessary to explain more specifically here the six offenses with which the defendant is charged **in the Superseding Indictment**. See Joint Proposed Jury Instruction No. 1 (**two offenses**). Those offenses will be addressed with particularity in the “elements” instructions.

I have identified the **first offense**, both in these **Instructions** and in the **Statement of the Case**, somewhat differently than the parties have, however, because this case presents some difficulties with nomenclature. **Count 1**, like the statute defining the offense, 18 U.S.C. § 2251(a), describes the offense as “sexual exploitation of a child,” but the conduct at issue in the statute is producing visual depictions of a child engaging in sexually explicit conduct, *i.e.*, producing “child pornography” as defined in 18 U.S.C. § 2256(8), and 8th Cir. Crim. Model 6.18.2251(a) incidentally defines “producing” as “recording of child pornography.” **Similarly, the new kind of offense charged in the Superseding Indictment, pursuant to 18 U.S.C. § 2252(a)(2), is defined in the statute as “receiv[ing] . . . any visual depiction . . . if the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and such visual depiction is of such conduct,” *i.e.*, if the depiction received is “child pornography” as defined in 18 U.S.C. § 2256(8).** On the other hand, **Counts 3 through 6 of the Superseding Indictment**, like the statute defining those offenses, 18 U.S.C. § 2252A(a)(5)(B), are expressly stated in terms of “knowingly possess[ing] . . . child pornography.”

The Joint Proposed Jury Instructions (**which only addressed the § 2251(a) offense and one § 2252A(a)(5)(B) offense**) use the terms “engaging in sexually explicit

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conduct,” “visual depictions,” and “child pornography,” often without clear definitions or cross-references to definitions or other methods of demonstrating the relationships among those terms. *See* Joint Proposed Jury Instructions Nos. 5A, 5B, and 6.

I note that the Eighth Circuit Court of Appeals has repeatedly identified § 2251(a) and § 2252A(a) offenses as “production of child pornography” and “possession of child pornography,” respectively. *See, e.g., United States v. Beasley*, 688 F.3d 523, 527 (8th Cir. 2012) (“A jury convicted Leland Beasley of eight counts of production of child pornography and two counts of attempted production of child pornography, in violation of 18 U.S.C. § 2251(a), and two counts of possession of child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B).”); *United States v. Coutentos*, 651 F.3d 809, 813 (8th Cir. 2011) (stating, “A jury found Jimmie Coutentos guilty of one count of sexual exploitation or attempted sexual exploitation of a minor to produce child pornography, in violation of 18 U.S.C. § 2251(a) and (d) (2000), and one count of possession or attempted possession of child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B) and (b)(2) (2000),” but later stating, “The district court later sentenced Coutentos to 120 months’ imprisonment on the production of child pornography count, the statutory minimum for that count. It further sentenced him to a concurrent 60-month term of imprisonment on the possession of child pornography count.”). **Similarly, the Eighth Circuit Court of Appeals has identified a § 2252(a)(2) as “receiving child pornography.”** *See, e.g., United States v. Worthey*, 716 F.3d 1107, 1109 (8th Cir. 2013) (“A jury convicted Dustin Worthey of one count of receiving child pornography and one count of possessing child pornography, in violation of 18 U.S.C. § 2252(a)(2) and (a)(4)(B).”).

I believe that referring to the offenses charged here as **“producing child pornography,” “receiving child pornography,” and “possessing child pornography,”** respectively, is not only accurate, but will make the similarities and distinctions among the charged offenses more apparent. **I have used verb forms (gerunds) in response to the addition of the “receiving” charge in the Superseding Indictment, because I believe that “receiving child pornography” will seem less stilted and be more comprehensible to average jurors than “receipt of child pornography,” and I believe that the form of the “titles” of the offenses should be consistent.** Using these titles for the offenses will allow me to use a “Glossary of Child Pornography Terms” as **Instruction No. 5**, defining “child pornography,” “sexually explicit conduct,” “lascivious,” “visual depiction,” and “commerce,” then to use only “child pornography,” rather than “visual depictions of a child engaged in sexual activity,” in the elements of the offenses.

accusation—it is not evidence of anything. The defendant has pled not guilty to the crimes charged against him, and he is presumed absolutely not guilty of each offense charged, unless and until the prosecution proves his guilt on that offense beyond a reasonable doubt.

You must decide during your deliberations whether or not the prosecution has proved the defendant's guilt on each offense charged beyond a reasonable doubt. In making your decision, you are the sole judges of the facts. You must not decide this case based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Do not take anything that I have said or done or that I may say or do as indicating what I think of the evidence or what I think your verdict should be.

Remember, only defendant Darran Lohse, and not anyone else, is on trial. Also, the defendant is on trial only for the offenses charged against him in the Indictment, and not for anything else.

You must consider each charge against the defendant separately and return a separate, unanimous verdict for or against the defendant on each charged offense.

Please remember that this case is important to the parties and to the fair administration of justice. Therefore, please be patient, consider all of the evidence, and do not be in a hurry to reach a verdict just to be finished with the case.

## **No. 18 — PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF<sup>3</sup>**

The presumption of innocence means that the defendant is presumed to be absolutely not guilty.

- This presumption means that you must put aside all suspicion that might arise from the defendant's arrest, the charges, or the fact that he is here in court
- This presumption remains with the defendant throughout the trial
- This presumption is enough, alone, for you to find the defendant not guilty, unless the prosecution proves, beyond a reasonable doubt, all of the elements of a particular offense charged against him

The burden is always on the prosecution to prove guilt beyond a reasonable doubt.

- This burden never, ever shifts to the defendant to prove his innocence
- This burden means that the defendant does not have to call any witnesses, produce any evidence, cross-examine the prosecution's witnesses, or testify
- This burden means that, if the defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict

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<sup>3</sup> Compare 8th Cir. Criminal Model 3.05.

- This burden means that you must find the defendant not guilty of a particular offense charged against him, unless the prosecution proves beyond a reasonable doubt that he has committed each and every element of that offense

## No. 19 — REASONABLE DOUBT<sup>4</sup>

A reasonable doubt is a doubt based upon reason and common sense.

- A reasonable doubt may arise from evidence produced by the prosecution or the defendant, keeping in mind that the defendant never, ever has the burden or duty to call any witnesses or to produce any evidence
- A reasonable doubt may arise from the prosecution's lack of evidence

The prosecution must prove the defendant's guilt beyond a reasonable doubt.

- Proof beyond a reasonable doubt requires careful and impartial consideration of all of the evidence in the case before making a decision
- Proof beyond a reasonable doubt is proof so convincing that you would be willing to rely and act on it in the most important of your own affairs

The prosecution's burden is heavy, but it does not require proof beyond all doubt.

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<sup>4</sup> Compare 8th Cir. Criminal Model 3.11.

## No. 20 — OTHER IMPORTANT TERMS

Before I turn to specific instructions on the offenses charged in this case, I will explain some important terms.

### *Elements*

Each offense charged consists of “elements,” which are the parts of the offense. The prosecution must prove beyond a reasonable doubt all of the elements of a particular offense for you to find the defendant guilty of that offense.

### *Timing*

The Indictment alleges an approximate time period for each charged offense.

- The prosecution does not have to prove that a particular offense occurred on an exact date
- The prosecution only has to prove that a particular offense occurred at a time that was reasonably within the time period alleged for that offense in the Indictment.

### *Location*

You must decide whether the defendant’s conduct occurred in the Northern District of Iowa. Woodbury County is in the Northern District of Iowa.

### ***Verdict Form***

A Verdict Form is attached to these Instructions.

- A Verdict Form is simply a written notice of your decision
- When you have reached a unanimous verdict, your foreperson will complete one copy of the Verdict Form by marking the appropriate blank or blanks for each question
- You will all sign that copy to indicate that you agree with the verdict and that it is unanimous
- Your foreperson will then bring the signed Verdict Form to the courtroom when it is time to announce your verdict

\* \* \*

Before giving you the “elements” instructions on the charged offenses, I must explain some additional terms that are important in “child pornography” offenses.

## No. 21 — GLOSSARY OF CHILD PORNOGRAPHY TERMINOLOGY

In these Instructions, the following terms have these meanings:

- “Child pornography”<sup>5</sup> means
  - any visual depiction of
  - a person under the age of 18 years<sup>6</sup>
  - engaging in sexually explicit conduct
  - where the child was engaged in the sexually explicit conduct during production of the depiction
  
- “Visual depiction” includes
  - any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means
  - undeveloped film and videotape, and data stored on computer disk or by electronic means that is capable of conversion into a visual image

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<sup>5</sup> 18 U.S.C. § 2256(8)(A) (defining “child pornography”).

<sup>6</sup> 18 U.S.C. § 2256(1) (defining “minor”).

- “Sexually explicit conduct”<sup>7</sup> means
  - actual or simulated sexual intercourse, including genital-genital, oral-genital, anal-genital, and oral-anal, whether between persons of the same or opposite sex
  - bestiality
  - masturbation
  - sadistic or masochistic abuse, or
  - lascivious exhibition of the genitals or pubic area of any person
  
- “Lascivious” means open and offensive sexual display<sup>8</sup>
  - Whether a visual depiction of the genitals or pubic area constitutes a lascivious exhibition requires a consideration of the overall content of the material, including the following factors:
    - whether the focal point of the picture is on the minor’s genitals or pubic area;
    - whether the setting of the picture is sexually suggestive, that is, in a place or pose generally associated with sexual activity;

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<sup>7</sup> 18 U.S.C. § 2256(2)(A) (defining “sexually explicit conduct”).

<sup>8</sup> Dictionary definition of “lascivious.” *Compare* Prosecution Proposed Jury Instruction No. 5A. The remainder of this definition, explaining the pertinent factors and the jurors’ weighing of them, is drawn from 8th Cir. Criminal Model 6.18.2252A.

- whether the minor is depicted in an unnatural pose or in inappropriate attire, considering the age of the minor;
  - whether the minor is fully or partially clothed, or nude;
  - whether the picture suggests sexual coyness or a willingness to engage in sexual activity;
  - whether the picture is intended or designed to elicit a sexual response in the viewer;
  - whether the picture portrays the minor as a sexual object; and
  - the caption(s) on the picture(s)
- You must decide the weight or lack of weight to be given to any of these factors
  - A picture need not involve all of these factors to constitute a lascivious exhibition of the genitals or pubic area
  - Even images of children acting innocently can be considered lascivious if they are intended to be sexual<sup>9</sup>
- “Commerce”<sup>10</sup> includes, among other things,
    - travel, trade, transportation, and communication

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<sup>9</sup> *United States v. Johnson*, 639 F.3d 433, 440 (8th Cir. 2011). This language was added at the request of the prosecution.

<sup>10</sup> 8th Cir. Criminal Model 6.18.2252B.

- “Interstate commerce” means commerce between any combination of states, territories, and possessions of the United States, including the District of Columbia
- “Foreign commerce” means commerce between any state, territory or possession of the United States and a foreign country
- Items have moved in “commerce” if they have crossed state or international borders by any means<sup>11</sup>
  - Images transmitted or received over the Internet have moved in interstate or foreign commerce<sup>12</sup>
  - The Internet is a “means or facility of interstate or foreign commerce”<sup>13</sup>

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<sup>11</sup> This additional explanation of movement in “commerce” is my attempt to paraphrase the definition in plain English.

<sup>12</sup> This specific example is drawn from 8th Cir. Criminal Model 6.18.2252B, unnumbered ¶ 4. *Compare* Joint Proposed Jury Instruction No. 6, explanation to element *three* (b).

<sup>13</sup> The parties agreed on this statement in Joint Proposed Jury Instruction No. 6, explanation to element *three* (c), but cited no authority. Nevertheless, there is such authority. *See, e.g., United States v. Silva-Morales*, 660 F.3d 72, 75 & n.2 (1st Cir. 2011) (“This court has already held that transmission over the internet is sufficient to meet almost identically worded jurisdictional elements in other closely related statutory provisions.” (citing *United States v. Hilton*, 257 F.3d 50, 54 (1st Cir. 2001), as involving § 2252A(a)(5)(B)); *Utah Lighthouse Ministry v. Found. for Apologetic Info. & Research*, 527 F.3d 1045, 1054 (10th Cir. 2008) (“[T]he Internet is generally an instrumentality of interstate commerce.”)).

- You may, but are not required to, find that an item moved in interstate or foreign commerce, if you find both of the following:<sup>14</sup>
  - the item was manufactured in a state other than Iowa or in another country, *and*
  - the defendant possessed that item in Iowa
- The prosecution does not have to prove that the defendant knew that the material in question had moved in interstate or foreign commerce

\* \* \*

I will now give you the “elements” instructions on the charged offenses. The “elements” themselves are set out in **bold**.

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<sup>14</sup> The parties apparently have not reached a stipulation on the movement of the materials in interstate or foreign commerce, but simply state in their explanations to pertinent elements of the offenses that the materials were manufactured outside of Iowa. I find that, in the absence of a stipulation, it is appropriate to give a “permissive inference” instruction adapted from 8th Cir. Criminal Model 6.18.922A, antepenultimate ¶, concerning the permissive inference of interstate transportation from manufacture of a firearm in another state.

**No. 22 — COUNT 1: ALLEGEDLY  
“PRODUCING CHILD PORNOGRAPHY”<sup>15</sup>**

**Count 1** of the Indictment charges defendant Lohse with “producing child pornography.” The defendant denies that he committed this offense.

For you to find the defendant guilty of “producing child pornography,” the prosecution must prove beyond a reasonable doubt *all* of the following elements against him:<sup>16</sup>

***One, between about March 2010 and November 2011, K.S. was under the age of eighteen years.***

For this element to be proved,

- the prosecution does not have to prove that the defendant knew that K.S. was under the age of eighteen years<sup>17</sup>
- the defendant’s lack of knowledge of K.S.’s age also is not a defense to this charge<sup>18</sup>

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<sup>15</sup> For the reasons stated, *supra*, in note 2, I will call this offense “production of child pornography,” rather than “sexual exploitation of a child.”

<sup>16</sup> *Compare* 8th Cir. Criminal Model 6.21.2251(a); Joint Proposed Jury Instructions Nos. 5A and 5B. I note that the prosecution has dropped any “attempt” alternatives charged in the Indictment.

<sup>17</sup> *See* 18 U.S.C. § 2251(a); 8th Cir. Criminal Model 6.18.2251(a), penultimate ¶, and Committee Comments (“Knowledge of the age of the minor victim is not an element of the offense.” (citing *United States v. Wilson*, 565 F.3d 1059, 1066 (8th Cir. 2009))).

<sup>18</sup> *See United States v. McCloud*, 590 F.3d 560, 566-69 (8th Cir. 2009); *Wilson*, 565 F.3d at 1066-69.

**Two, the defendant knowingly used K.S. to engage in sexually explicit conduct.**

The defendant “used” K.S. if K.S. was photographed or videotaped.<sup>19</sup>

**Three, the defendant acted for the purpose of producing one or more images of child pornography.<sup>20</sup>**

For this element to be proved,

- You must unanimously agree that the defendant acted for the purpose of producing one or more images of child pornography
  - An image of child pornography was “produced,” if it was directed, manufactured, issued, published, advertised, created, made, or in any other way brought into being by the involvement of an individual participating in the recording of child pornography<sup>21</sup>

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<sup>19</sup> 8th Cir. Criminal Model 6.18.2251(a), unnumbered ¶ 6 (definition of “used”) & n.4. I note that the prosecution has only asserted a “used” alternative in Joint Proposed Jury Instruction No. 5A.

<sup>20</sup> Because “production of one or more visual depictions of sexually explicit conduct,” as stated in Joint Proposed Jury Instruction Nos. 5A and 5B, is production of “child pornography,” as defined in 18 U.S.C. § 2256(8) and Instruction No. 5, I have stated this element in terms of “production” of “child pornography.” The relevant explanation then need only explain “production.”

<sup>21</sup> 8th Cir. Criminal Model 6.18.2251(a) (defining “produced”) and n.7. I have omitted “produced” from the list of terms defining “produced” as a pointless tautology. Other terms in the list cover any connotation that “produced” might have here.

- You must also unanimously agree on which one or more images, if any, that the defendant produced were images of child pornography

***Four*, the defendant produced the image or images of child pornography using one or more cameras or an SD memory card.<sup>22</sup>**

The Indictment charges that the defendant used the following materials to produce the image or images of child pornography:

- an HP digital camera
- a Kodak digital camera
- a PNY SD memory card<sup>23</sup>

For this element to be proved

- the prosecution does not have to prove that the defendant used all of the materials listed to produce an image or images of child pornography, *but*
- you must unanimously agree on which one or more of the materials listed the prosecution has proved that the defendant used to produce an image or images of child pornography

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<sup>22</sup> I agree with the parties' separation of the fourth element in 8th Cir. Criminal Model 6.18.2251(a) into two elements, one focusing on the materials used, and one focusing on movement of those materials in interstate or foreign commerce. *See* Joint Proposed Jury Instructions Nos. 5A and 5B.

<sup>23</sup> *See* Indictment, Count I; Joint Proposed Jury Instructions Nos. 5A and 5B, explanation to element *five*.

***Five*, the material or materials used to produce the image or images of child pornography had moved in interstate or foreign commerce.**

If the prosecution *does not* prove all of these elements beyond a reasonable doubt, then you must find the defendant not guilty of “producing child pornography,” as charged in **Count 1**.

**No. 23 — COUNT 2: ALLEGEDLY “RECEIVING  
CHILD PORNOGRAPHY”**

**Count 2** of the Indictment charges defendant Lohse with “receiving child pornography.” The defendant denies that he committed this offense.

For you to find the defendant guilty of “receiving child pornography,” the prosecution must prove beyond a reasonable doubt *all* of the following elements against him:<sup>24</sup>

***One, in about February 2010, the defendant knowingly received one or more videos of child pornography.***<sup>25</sup>

For this element to be proved,

- the prosecution is not required to prove that the defendant received all of the videos of child pornography alleged by the prosecution, *but*

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<sup>24</sup> There is no 8th Cir. Criminal Model Instruction for a “receiving” offense under § 2252(a)(2), although there is a model for a “receiving” offense under § 2252A(a)(2), 8th Cir. Criminal Model 6.18.2252. Although the Committee notes that “the phraseology of § 2252A(a) is different [from that of § 2252(a)(2)], . . . [both] statute[s] also contain as an element scienter of the age of the person depicted.” 8th Cir. Criminal Model 6.18.2252, note 2. I believe that it is more appropriate to use 8th Cir. Criminal Model 6.18.2252 than 8th Cir. Criminal Model 6.18.2251 as a model. It appears that the prosecution agrees, because that model appears to be the basis for the prosecution’s *new* Proposed Jury Instruction No. 7.

<sup>25</sup> The prosecution requests that the “images” of child pornography in this Count be described as “videos,” because all of the images alleged in Counts 2 through 6 of the Superseding Indictment are “videos.”

- the prosecution must prove that he received at least one video of child pornography between about the dates alleged
- you must unanimously agree which video or videos, if any, that the defendant knowingly received were “child pornography”<sup>26</sup>

To “receive” something means to come into possession of it or to acquire it

- The prosecution is not required to prove that the defendant bought or paid for the child pornography or exchanged anything of value for it<sup>27</sup>

***Two*, the defendant knew that the video or videos in question were child pornography.**

For this element to be proved,

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<sup>26</sup> *Compare* Prosecution’s Proposed Jury Instruction No. 7, explanation to element *one*.

<sup>27</sup> The Prosecution’s Proposed Jury Instruction No. 7, explanation to element *one*, last paragraph, is based on Instruction No. 3 in *United States v. Miller*, No. CR 09-4014-MWB. In my explanation of the rationale for the *Miller* instruction, I stated that I had found no statutory or caselaw definition of “receiving,” so that I assumed a “plain meaning,” drawn from a “dictionary” definition, is intended, and that, because the statute is cast in terms of prohibitions on “receiving,” as the counterpart to “distributing,” not in terms of “selling” or “buying” child pornography, I believed that it is also appropriate to instruct the jurors that no purchase or exchange for a thing of value is required to prove that the defendant “received” the child pornography.

- the defendant need not have known the legal definition of “child pornography” or “sexually explicit conduct,” *but*
- the prosecution must prove
  - that the defendant knew that the video or videos in question were of “sexually explicit conduct,” as defined in Instruction No. 5, *and*
  - that the person depicted was under the age of eighteen years<sup>28</sup>

***Three, one or more of the following occurred:***

- (a) the video or videos of child pornography in question had moved in interstate or foreign commerce**
- (c) the video or videos of child pornography in question had been transported using a means or facility of interstate or foreign commerce**

If the prosecution *does not* prove all of these elements beyond a reasonable doubt, then you must find the defendant not guilty of “receiving child pornography,” as charged in **Count 2**.

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<sup>28</sup> *Compare* Prosecution’s Proposed Jury Instruction No. 7, explanation to element *two*; 8th Cir. Criminal Model 6.18.2252, element *two*, and note 2.

**No. 24 — COUNTS 3 THROUGH 6:  
ALLEGEDLY “POSSESSING CHILD  
PORNOGRAPHY”<sup>29</sup>**

Counts 3 through 6 of the Indictment charge defendant Lohse with separate offenses of “possessing child pornography.” These counts are summarized in the following chart:

<b>Count</b>	<b>Time Period</b>	<b>Alleging that the video or videos in question</b>
<b>3</b>	Between about February 2010 and November 2011	(a) were produced using an IBM Deskstar hard drive (from a Gateway 980 server) that had previously moved in interstate or foreign commerce, and/or
		(b) were moved in interstate or foreign commerce, and/or
		(c) were transported using a means and facility of interstate or foreign commerce
<b>4</b>	Between about March 2010 and November 2011	(a) were produced using a RAID array containing two IBM hard drives and two Seagate hard drives (from a Gateway 980 server) that had previously been moved in interstate or foreign commerce, and/or
		(b) were moved in interstate or foreign commerce, and/or
		(c) were transported using a means and facility of interstate or foreign commerce
<b>5</b>	In or about September 2011	(a) were produced using a Western Digital hard drive (from a Gateway computer) that had previously moved in interstate or foreign commerce, and/or
		(b) were moved in interstate or foreign commerce, and/or
		(c) were transported using a means and facility of interstate or foreign commerce

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<sup>29</sup> The prosecution proposes separate instructions for each of the “possessing child pornography” charges in Counts 3 through 6. I believe that the various “possessing” offenses can be distinguished sufficiently in a single instruction on the elements of a “possessing” offense, thus avoiding needless repetition.

<b>6</b>	Between about February 2010 and November 2011	(a) were produced using a Maxell CD that had previously moved in interstate or foreign commerce, and/or
		(b) were moved in interstate or foreign commerce, and/or
		(c) were transported using a means and facility of interstate or foreign commerce

The defendant denies that he committed these offenses.

For you to find the defendant guilty of a particular “possessing child pornography” offense, the prosecution must prove beyond a reasonable doubt *all* of the following elements against him as to that offense:<sup>30</sup>

***One, during the time period alleged in the count in question, the defendant knowingly possessed one or more videos of child pornography.***<sup>31</sup>

For this element to be proved,

- the prosecution is not required to prove that the defendant possessed all of the videos of child pornography alleged in the count in question, *but*
- the prosecution must prove that he possessed at least one video of child pornography alleged in the count in question between about the dates alleged
- you must unanimously agree which video or videos alleged in the count in question, if

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<sup>30</sup> ***Compare 8th Cir. Criminal Model 6.18.2252; Prosecution’s Proposed Jury Instruction Nos. 8-10.***

<sup>31</sup> ***As the prosecution requested in its Response to the 10/23/13 VERSION, I have used “videos” instead of “images,” because the prosecution alleges that all of the images of child pornography at issue in the “possessing” offenses are videos.***

any, that the defendant knowingly possessed were “child pornography”<sup>32</sup>

A person possessed something if both of the following are true:

- the person knew about it, *and*
- the person had
  - physical control over it, *or*
  - the power, or ability, and the intention to control it

More than one person may have possessed something at the same time.<sup>33</sup>

***Two, the defendant knew that the video or videos in question were child pornography.***

For this element to be proved,

- the defendant need not have known the legal definition of “child pornography” or “sexual explicit conduct,” *but*
- the prosecution must prove
  - that the defendant knew that the video or videos in question were of “sexually explicit conduct,” as defined in Instruction No. 5, *and*

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<sup>32</sup> *Compare* Prosecution’s Proposed Jury Instruction Nos. 8-10, explanation to element *one*, unnumbered ¶ 2.

<sup>33</sup> 9th Cir. Criminal Model 3.18 (modified and recast in past tense); *and compare* Joint Proposed Jury Instruction Nos. 8-10, explanation to element *one*, unnumbered ¶ 3.

- that the person depicted was under the age of eighteen years<sup>34</sup>

***Three, one or more of the following occurred:***

**(a)**<sup>35</sup>

- (1) *for Count 3, the video or videos of child pornography were produced using an IBM Deskstar hard drive (from a Gateway 980 server) that had previously moved in interstate or foreign commerce***
- (2) *for Count 4, the video or videos of child pornography were produced using a RAID array containing two IBM hard drives and two Seagate hard drives (from a Gateway 980 server) that had previously been moved in interstate or foreign commerce***
- (3) *for Count 5, the video or videos of child pornography were produced using a Western Digital hard drive (from a Gateway computer) that had previously moved in interstate or foreign commerce***

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<sup>34</sup> *Compare* Prosecution’s Proposed Jury Instruction Nos. 8-10, explanation to element *two*; 8th Cir. Criminal Model 6.18.2252, element *two*, and note 2.

<sup>35</sup> I believe that setting up alternative (a) to address the specific items used to produce the child pornography in each count obviates the need for separate instructions on each “possessing” count.

- (4) ***for Count 6, the video or videos of child pornography in question were produced using a Maxell CD that had previously moved in interstate or foreign commerce***
- (b) ***for Counts 3 through 6, the video or videos of child pornography in question had moved in interstate or foreign commerce***
- (c) ***for Count 3 through 6, the video or videos of child pornography in question had been transported using a means or facility of interstate or foreign commerce***

If the prosecution *does not* prove all of these elements beyond a reasonable doubt as to a particular count, then you must find the defendant not guilty of that count of “possessing child pornography.”

## No. 25 — DEFINITION OF EVIDENCE<sup>36</sup>

Evidence is the following:

- testimony
- exhibits admitted into evidence, but exhibits are not necessarily more important than any other evidence, just because they are shown to you
- stipulations, which are agreements between the parties that certain facts are true; you must treat stipulated facts as having been proved

The following are not evidence:

- testimony that I tell you to disregard
- exhibits that are not admitted into evidence
- statements, arguments, questions, and comments by the lawyers
- objections and rulings on objections
- anything that you see or hear about this case outside the courtroom

You may have heard of “direct” or “circumstantial” evidence.

- “Direct” evidence is direct proof of a fact

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<sup>36</sup> Judge Bennett’s “plain language” jury instructions. *See* 8th Cir. Criminal Model 1.03.

- An example is testimony by a witness about what that witness personally saw or heard or did
- “Circumstantial” evidence is proof of one or more facts from which you could find another fact
  - An example is testimony that a witness personally saw a broken window and a brick on the floor, from which you could find that the brick broke the window
- You should consider both kinds of evidence, because the law makes no distinction in their weight
- The weight to be given any evidence, whether it is “direct” or “circumstantial,” is for you to decide<sup>37</sup>

Some evidence may be admitted only for a limited purpose.

- I will tell you if that happens
- I will instruct you on the purposes for which the evidence can and cannot be used

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<sup>37</sup> See 8th Cir. Civil Model 1.02 (modified) and 9th Cir. Criminal Model 1.9 (modified); *but see* 8th Cir. Criminal Model 1.04 (suggesting that definitions of direct and circumstantial evidence are ordinarily not required).

## No. 26 — TESTIMONY OF WITNESSES<sup>38</sup>

You may believe all of what any witness says, only part of it, or none of it. In evaluating a witness's testimony, consider the following:

- the witness's
  - intelligence
  - memory
  - opportunity to have seen and heard what happened
  - motives for testifying
  - interest in the outcome of the case
  - manner while testifying
  - drug or alcohol use or addiction, if any
- the reasonableness of the witness's testimony
- any differences between what the witness says now and said earlier
- any inconsistencies between the witness's testimony and any other evidence that you believe
- whether any inconsistencies are the result of seeing or hearing things differently, actually forgetting things, or innocent mistakes or are, instead, the result of lies or phony memory lapses, and
- any other factors that you find bear on believability or credibility

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<sup>38</sup> Judge Bennett's "stock" jury instructions. See 8th Cir. Criminal Models 1.05 and 3.04.

You should not give any more or less weight to a witness's testimony just because the witness is one of the following:

- a public official or law enforcement officer
- an expert

You may give any witness's opinion whatever weight you think it deserves, but you should consider the following:

- the reasons and perceptions on which the opinion is based
- any reason that the witness may be biased, and
- all of the other evidence in the case

If the defendant testifies,

- you should judge his testimony in the same way that you judge the testimony of any other witness

You may hear evidence that a witness has been convicted of a crime. You may use that evidence

- only to help you decide whether or not to believe that witness, and
- how much weight to give that witness's testimony

Remember, it is your exclusive right to give any witness's testimony whatever weight you think it deserves.

## No. 27 — OBJECTIONS<sup>39</sup>

The lawyers may make objections and motions during the trial that I must rule upon.

- If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself
- Do not hold it against a lawyer or a party that a lawyer has made an objection, because lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible

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<sup>39</sup> Judge Bennett’s “stock” jury instructions. *See* 8th Cir. Criminal Model 1.02, numbered ¶ 3.

## No. 28 — BENCH CONFERENCES<sup>40</sup>

During the trial, it may be necessary for me to talk with the lawyers out of your hearing.

- I may hold a bench conference while you are in the courtroom or call a recess
- These conferences are to decide how certain evidence is to be treated, to avoid confusion and error, and to save your valuable time, so please be patient
- We will do our best to keep such conferences short and infrequent

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<sup>40</sup> Judge Bennett's "stock" jury instructions. *See* 8th Cir. Criminal Model 1.03.

## No. 29 — NOTE-TAKING<sup>41</sup>

You are allowed to take notes during the trial, if you want to.

- Be sure that your note-taking does not interfere with listening to and considering all the evidence
- Your notes are not necessarily more reliable than your memory or another juror's notes or memory
- Do not discuss your notes with anyone before you begin your deliberations
- Leave your notes on your chair during recesses and at the end of the day
- At the end of trial, you may take your notes with you or leave them to be destroyed
- No one else will ever be allowed to read your notes, unless you let them

If you choose not to take notes, remember that it is your own individual responsibility to listen carefully to the evidence.

An official court reporter is making a record of the trial, but her transcripts will not be available for your use during your deliberations.

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<sup>41</sup> Judge Bennett's "stock" jury instructions. *See* 8th Cir. Criminal Model 1.04.

**No. 30 — CONDUCT OF JURORS DURING  
TRIAL<sup>42</sup>**

You must decide this case *solely* on the evidence and your own observations, experiences, reason, common sense, and the law in these Instructions. You must also keep to yourself any information that you learn in court until it is time to discuss this case with your fellow jurors during deliberations.

To ensure fairness, you must obey the following rules:

- Do not talk among yourselves about this case, or about anyone involved with it, until you go to the jury room to decide on your verdict.
- Do not talk with anyone else about this case, or about anyone involved with it, until the trial is over.
- When you are outside the courtroom, do not let anyone ask you about or tell you anything about this case, anyone involved with it, any news story, rumor, or gossip about it, until the trial is over. If someone should try to talk to you about this case during the trial, please report it to me.
- During the trial, you should not talk to any of the parties, lawyers, or witnesses—even to pass the time of day—so that there is no

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<sup>42</sup> Judge Bennett’s “stock” jury instructions. See 8th Cir. Criminal Model 1.08.

reason to be suspicious about your fairness. The lawyers, parties, and witnesses are not supposed to talk to you, either.

- You may need to tell your family, friends, teachers, co-workers, or employer about your participation in this trial, so that you can tell them when you must be in court and warn them not to ask you or talk to you about the case. However, do not provide any information to anyone by any means about this case until after I have accepted your verdict. That means do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, a Blackberry, a PDA, a computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, any blog, or any website such as Facebook, MySpace, YouTube, or Twitter, to communicate to anyone any information about this case until I accept your verdict.
- Do not do any research—on the Internet, in libraries, in the newspapers, in dictionaries or other reference books, or in any other way—or make any investigation about this case, the law, or the people involved on your own.
- Do not visit or view any place discussed in this case and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony.
- Do not read any news stories or articles, in print, on the Internet, or in any “blog,” about this case, or about anyone involved with it, or listen to any radio or television reports about it or about anyone

involved with it, or let anyone tell you anything about any such news reports. I assure you that when you have heard all the evidence, you will know more about this case than anyone will learn through the news media—and it will be more accurate.

- Do not make up your mind during the trial about what the verdict should be. Keep an open mind until you have had a chance to discuss the evidence with other jurors during deliberations.
- Do not decide the case based on “implicit biases.” As we discussed during jury selection, everyone, including me, has feelings, assumptions, perceptions, fears, and stereotypes, that is, “implicit biases,” that we may not be aware of. These hidden thoughts can impact what we see and hear, how we remember what we see and hear, and how we make important decisions. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.<sup>43</sup>

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<sup>43</sup> Judge Bennett’s “stock” instruction on “implicit bias.”

- If, at any time during the trial, you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer (CSO), who will give it to me. I want you to be comfortable, so please do not hesitate to tell us about any problem.

I will read the remaining two Instructions at the end of the evidence.

### No. 31 — DUTY TO DELIBERATE<sup>44</sup>

A verdict must represent the careful and impartial judgment of each of you. However, before you make that judgment, you must consult with one another and try to reach agreement, if you can do so consistent with your individual judgment.

- If you are convinced that the prosecution has not proved beyond a reasonable doubt that the defendant is guilty of a particular charge, say so
- If you are convinced that the prosecution has proved beyond a reasonable doubt that the defendant is guilty of a particular charge, say so
- Don't give up your honest beliefs just because others think differently or because you simply want to be finished with the case
- On the other hand, do not hesitate to re-examine your own views and to change your opinions, if you are convinced that they are wrong
- You can only reach a unanimous verdict if you discuss your views openly and frankly, with proper regard for the opinions of others, and with a willingness to re-examine your own views
- Remember that you are not advocates, but judges of the facts, so your sole interest is to seek the truth from the evidence

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<sup>44</sup> Judge Bennett's "stock" jury instructions. *See* 8th Cir. Criminal Model 10.02.

- The question is never who wins or loses the case, because society always wins, whatever your verdict, when you return a just verdict based solely on the evidence, reason, your common sense, and these instructions
- You must consider all of the evidence bearing on each question before you
- Take all the time that you feel is necessary
- Remember that this case is important to the parties and to the fair administration of justice, so do not be in a hurry to reach a verdict just to be finished with the case

## No. 32 — DUTY DURING DELIBERATIONS<sup>45</sup>

You must follow certain rules while conducting your deliberations and returning your verdict:

- Select a foreperson to preside over your discussions and to speak for you here in court.
- Do not consider punishment in any way in deciding whether the defendant is not guilty or guilty. If the defendant is guilty of one or more of the charges, I will decide what his sentence should be.
- Communicate with me by sending me a note through a Court Security Officer (CSO). The note must be signed by one or more of you. Remember that you should not tell anyone, including me, how your votes stand. I will respond as soon as possible, either in writing or orally in open court.
- Base your verdict solely on the evidence, reason, your common sense, and these instructions. Again, nothing I have said or done was intended to suggest what your verdict should be—that is entirely for you to decide.
- Reach your verdict without discrimination. In reaching your verdict, you must not consider the defendant’s race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the defendant unless you would return the same verdict without

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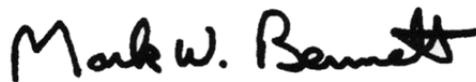
<sup>45</sup> Judge Bennett’s “stock” jury instructions. *See* 8th Cir. Criminal Model 3.12.

regard to his race, color, religious beliefs, national origin, or sex. To emphasize the importance of this requirement, the verdict form contains a certification statement. Each of you should carefully read that statement, then sign your name in the appropriate place in the signature block, if the statement accurately reflects how you reached your verdict.

- Complete the Verdict Form. The foreperson must bring the signed Verdict Form to the courtroom when it is time to announce your verdict.
- When you have reached a verdict, the foreperson will advise the CSO that you are ready to return to the courtroom.

Good luck with your deliberations.

**DATED** this 4th day of November, 2013.



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MARK W. BENNETT  
U.S. DISTRICT COURT JUDGE  
NORTHERN DISTRICT OF IOWA

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DARRAN LOHSE,

Defendant.

No. CR 13-4053-MWB

**COURT'S PROPOSED  
VERDICT FORM  
(10/31/13 SECOND REVISED  
VERSION)**

As to defendant Darran Lohse, we, the Jury, find as follows:<sup>46</sup>

<b>COUNT 1: ALLEGEDLY PRODUCING CHILD PORNOGRAPHY</b>		<b>VERDICT</b>
<b>Step 1: Verdict</b>	On the offense of “producing child pornography,” as charged in <b>Count 1</b> of the Indictment and explained in Instruction No. 6, please mark your verdict. <i>(If you find the defendant “not guilty,” do not consider Steps 2 and 3. Instead, go on to consider your verdict on Count 2.)</i>	<input type="checkbox"/> Not Guilty  <input type="checkbox"/> Guilty
<b>Step 2: Images of Child Pornography</b>	<i>If you found the defendant “guilty” in Step 1, please indicate which one or more of the images listed below you unanimously find were child pornography produced by the defendant.</i>	
	<input type="checkbox"/> Plaintiff’s Exhibit 1	
	<input type="checkbox"/> Plaintiff’s Exhibit 2	
	<input type="checkbox"/> Plaintiff’s Exhibit 3	
	<input type="checkbox"/> Plaintiff’s Exhibit 4	
	<input type="checkbox"/> Plaintiff’s Exhibit 5	
	<input type="checkbox"/> Plaintiff’s Exhibit 6	
	<input type="checkbox"/> Plaintiff’s Exhibit 7	

<sup>46</sup> The exhibits identified by the prosecution have been incorporated into the Verdict Form.

	___ Plaintiff's Exhibit 8	
	___ Plaintiff's Exhibit 9	
<b>Step 3:</b> Materials Used that were Moved in Commerce	<i>If you found the defendant "guilty" in Step 1, please indicate which one or more of the materials listed below you unanimously find were used by the defendant to produce child pornography and had been moved in interstate or foreign commerce.</i>	
	___ an HP digital camera	
	___ a Kodak digital camera	
	___ a PNY SD memory card	
<b>COUNT 2: ALLEGEDLY RECEIVING CHILD PORNOGRAPHY</b>		<b>VERDICT</b>
<b>Step 1:</b> Verdict	On the offense of "receiving child pornography," as charged in <b>Count 2</b> of the Indictment and explained in Instruction No. 7, please mark your verdict. <i>(If you find the defendant "not guilty," do not consider Steps 2 and 3. Instead, go on to consider your verdict on Count 3.)</i>	___ Not Guilty  ___ Guilty
<b>Step 2:</b> Videos of Child Pornography	<i>If you found the defendant "guilty" in Step 1, please indicate which one or more of the videos listed below you unanimously find were child pornography received by the defendant.</i>	
	___ Plaintiff's Exhibit 25, Babyj - 9Yr Old Isabel Rca#1 - 9Y deepthroat.mpg	
	___ Plaintiff's Exhibit 25, babyj - Inna Private 4yo close-up anal and cum] pedo pthc young girl child 5yo 6yo 7yo 8yo daddy incest fuck.avi	
	___ Plaintiff's Exhibit 25, Babyj-Long 5Yo {Perm Black Hair} 8m21s.avi	
	___ Plaintiff's Exhibit 25, Valya.mpg	
<b>Step 3:</b> Movement in Commerce	<i>If you found the defendant "guilty" in Step 1, please indicate which one or more of the following occurred.</i>	
	___ the video or videos of child pornography in question had moved in interstate or foreign commerce	
	___ the video or videos of child pornography in question had been transported using a means or facility of interstate or foreign commerce	

<b>COUNT 3: ALLEGEDLY POSSESSING CHILD PORNOGRAPHY</b>		<b>VERDICT</b>
<b>Step 1: Verdict</b>	On the offense of “possessing child pornography,” as charged in <b>Count 3</b> of the Indictment and explained in Instruction No. 8, please mark your verdict. <i>(If you find the defendant “not guilty,” do not consider Steps 2 and 3. Instead, go on to consider your verdict on Count 4.)</i>	<input type="checkbox"/> Not Guilty  <input type="checkbox"/> Guilty
<b>Step 2: Videos of Child Pornography</b>	<i>If you found the defendant “guilty” in Step 1, please indicate which one or more of the videos listed below you unanimously find were child pornography possessed by the defendant.</i>	
	<input type="checkbox"/> Plaintiff’s Exhibit 25, Little Girls Mix (Kleuterkutje-Kinderkutje-Lolitas-Preteens-Reelkiddymov-R@Ygold-Hussyfans-Undera.mpg	
	<input type="checkbox"/> Plaintiff’s Exhibit 25, Babyj - 9Yr Old Isabel Rca#1 - 9Y Deepthroat.mpg	
	<input type="checkbox"/> Plaintiff’s Exhibit 25, babyj - Inna Private 4yo close-up anal and cum] pedo pthc young girl child 5yo 6yo 7yo 8yo daddy incest fuck.avi	
	<input type="checkbox"/> Plaintiff’s Exhibit 25, Babyj-Long 5Yo {Perm Black Hair} 8m21s.avi	
	<input type="checkbox"/> Plaintiff’s Exhibit 25, Valya.mpg	
<b>Step 3: Movement in Commerce</b>	<i>If you found the defendant “guilty” in Step 1, please indicate which one or more of the following you unanimously find occurred.</i>	
	<input type="checkbox"/> the video or videos of child pornography were produced using an IBM Deskstar hard drive (from a Gateway 980 server) that had previously moved in interstate or foreign commerce	
	<input type="checkbox"/> the video or videos of child pornography in question had moved in interstate or foreign commerce	
	<input type="checkbox"/> the video or videos of child pornography in question had been transported using a means or facility of interstate or foreign commerce	
<b>COUNT 4: ALLEGEDLY POSSESSING CHILD PORNOGRAPHY</b>		<b>VERDICT</b>
<b>Step 1: Verdict</b>	On the offense of “possessing child pornography,” as charged in <b>Count 4</b> of the Indictment and explained in Instruction No. 8, please mark your verdict. <i>(If you find the defendant “not guilty,” do not consider Steps 2 and 3. Instead, go on to consider your verdict on Count 5.)</i>	<input type="checkbox"/> Not Guilty  <input type="checkbox"/> Guilty

<p><b>Step 2:</b> Videos of Child Pornography</p>	<p><i>If you found the defendant “guilty” in Step 1, please indicate which one or more of the videos listed below you unanimously find were child pornography possessed by the defendant.</i></p>	
	<p>___ Plaintiff’s Exhibit 26, Little Girls Mix (Kleuterkutje-Kinderkutje-Lolitas-Preteens-Reelkiddymov-R@Ygold-Hussyfans-Undera.mpg</p>	
	<p>___ Plaintiff’s Exhibit 26, Babyj - 9Yr Old Isabel Rca#1 - 9Y Deepthroat.mpg</p>	
	<p>___ Plaintiff’s Exhibit 26, 6yr Girl Best Vicky BJ &amp; Handjob with sound (r@ygold pedo reelkiddymov underage illegal lolita daughter incest xxx oral handjob).mpg</p>	
<p><b>Step 3:</b> Movement in Commerce</p>	<p><i>If you found the defendant “guilty” in Step 1, please indicate which one or more of the following you unanimously find occurred.</i></p>	
	<p>___ the video or videos of child pornography were produced using a RAID array containing two IBM hard drives and two Seagate hard drives (from a Gateway 980 server) that had previously been moved in interstate or foreign commerce</p>	
	<p>___ the video or videos of child pornography in question had moved in interstate or foreign commerce</p>	
	<p>___ the video or videos of child pornography in question had been transported using a means or facility of interstate or foreign commerce</p>	
<p><b>COUNT 5: ALLEGEDLY POSSESSING CHILD PORNOGRAPHY</b></p>		<p><b>VERDICT</b></p>
<p><b>Step 1:</b> Verdict</p>	<p>On the offense of “possessing child pornography,” as charged in <b>Count 5</b> of the Indictment and explained in Instruction No. 8, please mark your verdict. <i>(If you find the defendant “not guilty,” do not consider Steps 2 and 3. Instead, go on to consider your verdict on Count 6.)</i></p>	<p>___ Not Guilty ___ Guilty</p>
<p><b>Step 2:</b> Videos of Child Pornography</p>	<p><i>If you found the defendant “guilty” in Step 1, please indicate which one or more of the videos listed below you unanimously find were child pornography possessed by the defendant.</i></p>	
	<p>___ Plaintiff’s Exhibit 27, \$RBGDDT5.mpg</p>	
	<p>___ Plaintiff’s Exhibit 27, \$R1JIHML.mpg</p>	
	<p>___ Plaintiff’s Exhibit 27, \$RO0GAUH.mpg</p>	

<b>Step 3:</b> Movement in Commerce	<i>If you found the defendant “guilty” in Step 1, please indicate which one or more of the following you unanimously find occurred.</i>	
	___ the video or videos of child pornography were produced using a Western Digital hard drive (from a Gateway computer) that had previously moved in interstate or foreign commerce	
	___ the video or videos of child pornography in question had moved in interstate or foreign commerce	
	___ the video or videos of child pornography in question had been transported using a means or facility of interstate or foreign commerce	
<b>COUNT 6: ALLEGEDLY POSSESSING CHILD PORNOGRAPHY</b>		<b>VERDICT</b>
<b>Step 1:</b> Verdict	On the offense of “possessing child pornography,” as charged in <b>Count 6</b> of the Indictment and explained in Instruction No. 8, please mark your verdict. <i>(If you find the defendant “not guilty,” do not consider Steps 2 and 3. Instead, notify the Court Security Officer (CSO) that you have reached a verdict.)</i>	___ Not Guilty ___ Guilty
<b>Step 2:</b> Videos of Child Pornography	<i>If you found the defendant “guilty” in Step 1, please indicate which one or more of the videos listed below you unanimously find were child pornography possessed by the defendant.</i>	
	___ Plaintiff’s Exhibit 11, Little Girls Mix (Kleuterkutje-Kinderkutje-Lolitas-Preteens-Reelkiddymov-R@Ygold-Hussyfans-Undera.mpg	
	___ Plaintiff’s Exhibit 11, (Hussyfan) (Pthc) (R@Ygold) (Babyshivid) New - Janessa 0 Blowjob (0.27 Min).avi	
	___ Plaintiff’s Exhibit 11, [ PTHC - Hussyfan - Kingpass] Vicky 10yo sucking her Dad.avi	
<b>Step 3:</b> Movement in Commerce	<i>If you found the defendant “guilty” in Step 1, please indicate which one or more of the following you unanimously find occurred.</i>	
	___ the video or videos of child pornography in question were produced using a Maxell CD that had previously moved in interstate or foreign commerce	
	___ the video or videos of child pornography in question had moved in interstate or foreign commerce	
	___ the video or videos of child pornography in question had been transported using a means or facility of interstate or foreign commerce	

**CERTIFICATION**

By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant was not involved in reaching his or her individual decision, and that the individual juror would have returned the same verdict for or against the defendant on the charged offenses regardless of the race, color, religious beliefs, national origin, or sex of the defendant.

\_\_\_\_\_  
Date

Foreperson	Juror
Juror	Juror