Jury Instructions

United States of America v. Donald J. Jones, III
(Cr. 11-082-S)

Introduction

At this time, it is my duty to instruct you on the law applicable to this case. You must accept the rules of law that I give you and apply them to the facts in this case as you find those facts to be.

In applying the law that I am about to explain to you in these instructions, you must consider the instructions as a whole. You should not choose one part and disregard another. You must accept and apply the law as I give it to you in its entirety.

You must accept and apply the rules of law that I give to you whether you agree with them or not. It would be a violation of the oath you took as jurors to base a decision on any version of the law other than that contained in my instructions, just as it would be a violation of that oath to return a decision upon anything but the evidence in this case. It is not up to you to decide what the law is or should be. Your duty is to apply the law as I explain it to you.

Jury Not to Consider Punishment

If you find the defendant guilty, it will then be my job to decide what punishment should be imposed. In considering the evidence and arguments that were presented during the trial, you should not guess about the punishment. It should not enter into your consideration or discussions at any time.

Presumption of Innocence

As I told you at the start of this trial, the Defendant is presumed to be innocent of the accusations against him. This presumption of innocence remains with the Defendant unless and until the Government presents evidence satisfying you beyond a reasonable doubt that the Defendant is guilty.

The presumption of innocence is sufficient to require a not guilty verdict unless you find that such evidence has been presented.

If you find that the Government has proven the Defendant guilty beyond a reasonable doubt, the presumption of innocence disappears and is of no further avail to him. However, until that time, the presumption remains with the Defendant.

Defendant's Constitutional Right Not to Testify

A Defendant in a criminal trial has a constitutional right not to testify and no inference of guilt, or of anything else, may be drawn from the fact that the Defendant did not testify. For any of you to draw such an inference would be wrong; indeed, it would be a violation of your oath as a juror.

Proof of All Elements

I will shortly explain the offenses with which the Defendant is charged and the elements the Government must prove in order to establish that the Defendant is guilty of these offenses.

In order for the Government to prove the Defendant guilty of an offense, it must convince you, beyond a reasonable doubt, that it has proved each and every element of that offense. Possibilities or even probabilities are not sufficient.

If the Government fails to prove any one or more elements of the offense beyond a reasonable doubt, you must find the Defendant not guilty of that particular offense.

On the other hand, if you are convinced, beyond a reasonable doubt, that all elements of the offense with which the Defendant has been charged have been proven, then you should find the Defendant guilty of that offense.

Bear in mind that the requirement that the Government prove every element of the offense with which the Defendant is charged does not mean that the Government is required to prove every statement contained in the indictment.

What it means is that the Government must prove facts sufficient to prove all of the elements of the offense with which the Defendant is charged as I have explained them.

Reasonable Doubt

As I have said, the burden is upon the Government to prove beyond a reasonable doubt that the Defendant is guilty of the charges made against him. It is a strict and heavy burden, but it does not mean that the Defendant's guilt must be proved beyond all possible doubt. It does require that the evidence exclude any reasonable doubt concerning the Defendant's guilt.

A reasonable doubt may arise not only from the evidence produced but also from a lack of evidence. Reasonable doubt exists when, after weighing and considering all the evidence, using reason and common sense, jurors cannot say that they have a settled conviction of the truth of the charge.

Of course, a Defendant is never to be convicted on suspicion or conjecture. If, for example, you view the evidence in the case as reasonably permitting either of two conclusions-one that the Defendant is guilty as charged, the other that the Defendant is not guilty-you will find the Defendant not guilty.

It is not sufficient for the Government to establish a probability, though a strong one, that a fact charged is more likely to be true than not true. That is not enough to meet the burden of proof beyond reasonable doubt. On the other hand, there are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt.

Concluding my instructions on the burden, then, I instruct you that what the Government must do to meet its heavy burden is to establish the truth of each part of the offenses charged by proof that convinces you and leaves you with no reasonable doubt, and thus satisfies you that you can, consistently with your oath as jurors, base your verdict upon it. If you so find as to the charges against the Defendant, you will return a verdict of guilty on those charges. If, on the other hand, you think there is a reasonable doubt about whether the Defendant is guilty of the offense, you must give the Defendant the benefit of the doubt and find the Defendant not guilty of that offense.

Indictment - Effect

You will have the indictment with you in the jury room to help you remember the precise nature of the charges against the Defendant.

I remind you, once again, that an indictment is nothing more than an accusation. It should not be considered as evidence of guilt. It may not even be the basis of an inference of guilt. All that it does is to bring this matter before you for determination. Beyond that, it has no significance, whatever. It merely sets forth the elements of the offenses which the Government must prove beyond a reasonable doubt.

Definition of "On or About"

You will note the indictment charges that the offenses were committed "on or about" a certain date. The proof need not establish with certainty the exact date of the alleged offenses. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offenses were committed on a date reasonably near the date alleged.

Summary of the Charges

The indictment in this case charges the Defendant Donald J. Jones, III, with six counts.

Count One charges the Defendant with Aggravated Sexual Abuse: that the Defendant crossed a state line with the intent to engage in a sexual act with a person under the age of 12.

Count Two charges the Defendant with using a facility of interstate and foreign commerce, specifically the internet, to knowingly persuade, induce, entice, and coerce, someone under the age of 18 to engage in criminal sexual activity.

Count Three charges the Defendant with Travel with Intent to Engage in Illicit Sexual Conduct: that the Defendant traveled in interstate commerce for the purpose of engaging in any illicit sexual conduct with another person under the age of 18.

Count Four charges the Defendant with Transportation of Child Pornography: that the Defendant knowingly transported child pornography by any means in or affecting interstate commerce.

Count Five charges the Defendant with Possession of Child Pornography: that the Defendant knowingly possessed child pornography.

Count Six charges the Defendant with committing a felony offense involving a minor while he was required to register as a sex offender.

As I have told you, each of these offenses has essential elements. To find the Defendant guilty of an offense, you must all find that the government has proven each of the essential elements of that offense beyond a reasonable doubt. I will explain the elements of each offense and specific definitions in more detail shortly.

Proof May Be Conjunctive or Disjunctive

The indictment charges certain acts in the conjunctive. For example, in Count Two, the Defendant is charged with attempting to persuade, induce, entice, and coerce a person under the age of eighteen to engage in unlawful sexual activity. There are also other examples of charging in the conjunctive or disjunctive in the indictment. In order to prove the Defendant guilty of a particular offense, the United States does not need to prove that the Defendant did all of those things, but only that he did one of those things. In the above example, the United States would need to prove, beyond a reasonable doubt, that the Defendant attempted to persuade or induce or entice or coerce.

I will tell you, in the instructions for each individual count, what the United States is required to prove.

Multiple Counts - One Defendant

As you consider the charges against the Defendant, keep in mind, a separate offense is charged in each of the counts of the Indictment. Each offense, and the evidence which applies to it, should be considered separately, and you should return separate verdicts as to each count.

Count One - Aggravated Sexual Abuse - Crossing a State Line with the Intent to Engage in a Sexual Act with a Minor

I will now instruct you about the law governing the six charges in the indictment. Count One of the indictment charges the Defendant with Aggravated Sexual Abuse. It is a federal crime for anyone to cross a state line with the intent to engage in a sexual act with a person younger than 12 years old. Title 18, United States Code Section 2241(c) provides in relevant part:

Whoever crosses a State line with intent to engage in a sexual act with a person who has not attained the age of 12 years, . . . or attempts to do so, shall be [guilty of Aggravated Sexual Abuse].

In order for the Defendant to be found guilty of Aggravated Sexual Abuse, the Government must prove each of the following elements beyond a reasonable doubt:

First: the Defendant intended to engage in a sexual act with the minor;

Second: the minor was under the age of twelve years;

Third: the Defendant did something that was a substantial step toward committing the crime; and

Fourth: the Defendant crossed a state line with the intent to engage in a sexual act with a person who was under the age of twelve years.

Substantial Step

Mere preparation is not a substantial step toward committing the crime. To constitute a substantial step, a defendant's act or actions must demonstrate that the crime will take place unless interrupted by independent circumstances.

Definition Of "State"

The term "State" means a state of the United States, the District of Columbia, and any commonwealth, possession, or territory of the United States.

Definition Of "Knowingly"

I am now going to instruct you as to the specific meaning of some of the words and phrases used in these instructions. In these instructions, the word "knowingly" means that the act was done voluntarily and intentionally and not because of mistake or accident. You may consider evidence of the defendant's words, acts, or omissions, along with all other evidence in deciding whether the defendant acted knowingly. The Government is not required to prove that the Defendant knew that its acts or omissions were unlawful.

The offenses of Aggravated Sexual Abuse, charged in Count One; Coercion and Enticement of a Minor, charged in Count Two; Transportation of Child Pornography, charged in Count Four; and Possession of Child Pornography, charged in Count Five, require that the Government prove that the Defendant acted with knowledge. This means that the Government must prove beyond a reasonable doubt that the Defendant was conscious and aware of the nature of his actions and of the surrounding facts and circumstances, as specified in the elements of those offenses, as I have outlined them, and that he did not act because of ignorance, mistake, or accident.

In deciding whether the Defendant acted with knowledge, you may consider evidence about what he said, what he did and failed to do, how he acted, and all the other facts and circumstances

shown by the evidence that may prove what was in the Defendant's mind at that time.

I will give you some further instruction in a moment with respect to the knowing requirement in Counts Four and Five. For now, keep in mind that this definition of knowingly applies whenever I use that term throughout these instructions.

Definition Of Intent

The offenses of Aggravated Sexual Abuse, charged in Count One; Enticement and Coercion of a Minor, charged in Count Two; and Travel to Engage in Illicit Sexual Conduct, charged in Count Three, require that the Government prove that the Defendant acted with intent with respect to certain elements of the offenses, as I have outlined them for you in these instructions.

This means that the Government must prove beyond a reasonable doubt either that (1) it was the Defendant's conscious desire or purpose to act in a certain way or to cause a certain result, or that (2) the Defendant knew that he was acting in that way or would be practically certain to cause that result.

In deciding whether the Defendant acted with intent, you may consider evidence about what he said, what he did and failed to do, how he acted, and all the other facts and circumstances shown by the evidence that may prove what was in the Defendant's mind at that time.

Often the state of mind, intent, knowledge, or willfulness, with which a person acts at any given time cannot be proved directly, because one cannot read another person's mind and tell what he is thinking. However, the Defendant's state of mind can be proved indirectly from the surrounding circumstances. Thus, to determine the Defendant's state of mind, or what the Defendant intended or knew, at a particular time, you may consider evidence

about what the Defendant said, what the Defendant did and failed to do, how the Defendant acted, and all the other facts and circumstances shown by the evidence that may prove what was in the Defendant's mind at the time. It is entirely up to you to decide what the evidence presented during this trial proves, or fails to prove, about the Defendant's state of mind.

You may also consider the natural and probable results or consequences of any acts the Defendant knowingly did, and whether it is reasonable to conclude that the defendant intended those results or consequences. You may find, but you are not required to find, that the defendant knew and intended the natural and probable consequences or results of acts that he knowingly did. This means that if you find that an ordinary person in the defendant's situation would have naturally realized that certain consequences would result from his actions, then you may find, but you are not required to find, that the defendant did know and intend that those consequences would result from his actions. This is entirely up to you to decide as the finders of facts in this case.

Definition Of "Sexual Act"

The term "sexual act" means:

(A) contact between the penis and the vulva, or the penis and the anus, and contact involving the penis occurs upon penetration, however, slight; or

(B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or

(C) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or

(D) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

No Actual Sexual Contact Required

Count One, Aggravated Sexual Abuse, includes no element of actual sexual contact. A defendant commits the crime of Aggravated Sexual Abuse if he travels in interstate commerce with the intent to engage in a sexual act with a child under the age of twelve and takes a substantial step towards committing the crime. He does not need to have knowingly engaged in a sexual act with a person under twelve. The sexual act does not need to have been completed in order to find the Defendant guilty of the charge.

You must find that the Defendant crossed a state line with the requisite intent, and determine that he made a substantial step towards the commission of the crime. However, that step does not have to be knowingly engaging in a sexual act.

Not In Fact A Child - Not A Defense

Counts One, Two and Three of the indictment do not require that an actual minor child exists. You have heard evidence in this case that the alleged victim, an eight year-old girl referred to by Inspector Stern, was fictitious. The Government does not have to prove that the intended victim actually existed, but it must prove beyond a reasonable doubt that the Defendant believed that the intended victim existed and was a person younger than twelve years old.

Count Two - Coercion and Enticement of a Minor

The Defendant is charged in Count Two of the indictment with using a facility of interstate and foreign commerce, specifically the internet, to knowingly persuade, induce, entice, and coerce someone under age eighteen to engage in sexual activity for which a person can be charged with a criminal offense. It is against federal law to engage in such conduct, or to attempt to do so.

In order for the Defendant to be found guilty of Coercion and Enticement of a Minor, or attempted coercion and enticement of a minor, the United States must prove each of the following elements beyond a reasonable doubt:

First: the Defendant used a facility or means of interstate or foreign commerce, specifically the internet;

Second: to attempt to, or to knowingly, persuade, induce, coerce or entice;

Third: someone younger than eighteen years old;

Fourth: to engage in criminal sexual activity; and

Fifth: that the sexual activity would have been a criminal offense.

The Government does not have to prove that the Defendant acted with the intent that the underlying sexual activity would actually take place, only that the Defendant acted with the intent to solicit the minor - that the Defendant had the intent to persuade, coerce or entice the minor, or attempted to

persuade, coerce, or entice the minor. The offense does not require proof of intent to engage in the sexual activity. The criminal act is the attempt to achieve the minor's assent to engage in sexual activity.

Interstate or Foreign Commerce

Using a facility or means of interstate commerce means employing or utilizing any method of communication between one state and another state. Here the method of interstate commerce alleged in Count II is the Internet. The Internet is considered a facility or means of interstate commerce. As long as the electronic communications (emails and/or text messages) travel between one state and another state, there has been a use of a facility or means of interstate commerce.

Enticement Through an Adult Intermediary - Direct Communication with a Minor Is Not Necessary

With respect to the second element of Count Two, that the Defendant attempted to persuade or induce or entice or coerce a person who the Defendant believed to be under the age of 18 to engage in sexual activity, just as with Count One, the person with whom the Defendant communicated need not be an actual minor in order for the Defendant to be guilty of the charge.

It is not a defense to Count Two that the minor child did not, in fact, exist. The Government must only prove that the person the Defendant believed he would attempt to persuade or induce or entice or coerce to engage in sexual activity was a minor.

Further, it is not a defense to Count Two that the Defendant did not directly communicate with a minor child. Direct communication with a child is not necessary. Here it is alleged that the Defendant communicated with an adult intermediary whom he believed had access to a child. The government must only prove that the Defendant believed that he was communicating with someone who could arrange for the child to engage in unlawful sexual activity. The fact that no actual minor child was victimized in this case is not a defense to the charge.

Attempt

Count Two involves an allegation of "attempt" to commit the act charged (Count Three also involves an allegation of "attempt"). Therefore, I am now going to give you some instructions on the law of attempt. In order to prove the charge of attempting Counts Two or Three in this case, the Government must prove the following two elements beyond a reasonable doubt:

First: that the Defendant intended to commit the crime of coercion or enticement of a minor, or intended to commit the crime of travelling with the intent to engage in illicit sexual contact with a minor; and

Second: that the Defendant did some act that was a substantial step in an effort to bring about or accomplish the crime.

Mere intention to commit a specific crime does not amount to an attempt. In order to convict the Defendant of an attempt, you must find beyond a reasonable doubt that the Defendant intended to commit the crime charged, and that he took some action which was a substantial step toward the commission of that crime. In determining whether the Defendant's actions amounted to a substantial step toward the commission of the crime, it is necessary to distinguish between mere preparation on the one hand, and the actual doing of the criminal deed on the other. Mere preparation, which may consist of planning the offense, or

of devising, obtaining or arranging a means for its commission, is not an attempt, although some preparations may amount to an attempt. The acts of a person who intends to commit a crime will constitute an attempt when the acts themselves clearly indicate an intent to commit the crime, and the acts are a substantial step in a course of conduct planned to culminate in the commission of the crime.

Sexual Activity for Which Any Person Can Be Charged with a Crime

In order to find the Defendant guilty of Count Two, the government must prove that if any sexual activity had occurred, the Defendant could have been charged with a criminal offense under the law of Rhode Island.

Under Rhode Island law, it is a crime to engage in sexual penetration with a person fourteen (14) years of age or under. Rhode Island law defines sexual penetration as "sexual intercourse, cunnilingus, fellatio, and anal intercourse, or any other intrusion, however slight, by any part of a person's body or by any object into the genital or anal openings of another person's body, or the victim's own body upon the accused's instruction, but emission of semen is not required."

Under Rhode Island Law, it is a crime to engage in sexual contact with another person fourteen (14) years of age or under. Rhode Island law defines sexual contact as "the intentional touching of the victim's or accused's intimate parts, clothed or unclothed, if that intentional touching can be reasonably construed as intended by the accused to be for the purpose of sexual arousal, gratification, or assault."

Count Three: Travel with Intent to Engage in Illicit Sexual Conduct

The Defendant is charged in Count Three of the indictment with traveling in interstate commerce for the purpose of engaging in illicit sexual conduct. Title 18, United States Code, Section 2423(b), states that a person who travels in interstate commerce for the purpose of engaging in any illicit sexual conduct with a person under the age of 18 is guilty of an offense against the United States.

In order for the Defendant to be found guilty of Count Three, the United States must prove each of the following elements beyond a reasonable doubt:

First: that the defendant traveled in interstate commerce. A person travels in interstate commerce when he travels from one state to another state; and

Second: that the Defendant's purpose in traveling in interstate commerce was to engage in illicit sexual conduct with a person under age 18.

Definition of Illicit Sexual Conduct

With respect to the charge contained in Count Three of the indictment, "illicit sexual conduct" means a sexual act, as I previously defined for you in the instruction for Count One, where the individual is younger than 18.

Count Four: Transportation of Child Pornography

Count Four of the indictment charges the Defendant with knowingly transporting visual depictions of child pornography in violation of Title 18, United States Code Section 2252(a)(1). That statute makes it a federal crime to knowingly transport or ship in interstate commerce using any means including by computer any visual depictions involving the use of minors under the age of 18 years engaging is sexually explicit conduct.

In order for the Defendant to be found guilty of Count Four, the Government must prove each of the following elements beyond a reasonable doubt:

First: that the Defendant knowingly transported a visual depiction in interstate commerce by any means, including a computer;

Second: that the production of such visual depiction involved the use of a minor engaging in sexually explicit conduct;

Third: that such visual depiction was of a minor engaged in sexually explicit conduct;

Fourth: that the Defendant knew that such visual depiction was of sexually explicit conduct; and

Fifth: that the Defendant knew that at least one of the persons engaged in sexually explicit conduct in such visual depiction was a minor.

Count Five - Possession of Child Pornography

Title 18, United States Code, Section 2252(a)(4)(B), makes it a federal crime for any person to knowingly possess any material that contains a visual depiction that has been shipped or transported in interstate or foreign commerce, by any means including by computer, if the production of such visual depiction involved the use of a minor engaging in sexually explicit conduct and the visual depiction is of such conduct.

To find the Defendant guilty of Count Five, the Government must prove the following elements beyond a reasonable doubt:

First: that the Defendant knowingly possessed any materials, computer, computer storage medium, or matter that the Defendant knew contained a visual depiction of a minor engaged in sexually explicit conduct;

Second: the Defendant knew the visual depiction contained in the materials, computer, computer storage medium, or matter showed a minor engaged in sexually explicit conduct;

Third: The Defendant knew that production of such visual depiction involved use of a minor engaging in sexually explicit conduct; and;

Fourth: that the visual depiction had been either: (a) mailed, shipped, or transported in interstate or foreign commerce, or (b) produced using material that had been mailed, shipped, or transported in interstate or foreign commerce.

The Government is not required to prove that each of the previously stated elements has been proved beyond a reasonable doubt as to each and every image or video that was introduced into evidence. The Government is only required to make this showing with respect to one image or video.

Definitions of "Transport" and "Interstate Commerce"

To "transport" something simply means to transfer or attempt to transfer possession of it to someone else by any means, including mail, computer, or in person. As to Count Four, Transportation of Child Pornography, you must find that at least one of the images contained in the evidence presented to you was transported in interstate commerce using any means.

The term "interstate commerce," as that term is used in Counts Four and Five of the indictment, as I have previously told you, includes commerce between any place in a state and any place outside of that state. I instruct you that images transmitted or received over the Internet have moved in interstate or foreign commerce. It is for you to determine, however, if the material in question was transmitted or received over the Internet.

Further Definition of "Knowingly"

I have previously defined the term "knowingly" for you. As applied to Counts Four and Five, the term "knowingly" refers to an awareness of the sexually explicit nature of the material, and to the knowledge that the visual depictions were in fact of minors engaged in that sexually explicit conduct. The United States does not need to show that the Defendant need have specific knowledge as to the actual age of the person in the picture. Rather, the Defendant must have knowledge or an awareness that the material contained a visual depiction of a minor engaging in sexually explicit conduct. Such knowledge may be shown by direct or circumstantial evidence, or both.

Definition Of "Minor"

The term minor, as that term is used in Counts Four through Five of the [redacted] Indictment, is defined in Title 18, United States Code, Section 2256(1), as follows: "minor" means any person under the age of eighteen years.

Definition of "Computer"

The term "computer" means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device.

Definition of "Visual Depiction"

The term "Visual depiction" includes undeveloped film and videotape, data stored on computer disk or other storage device by electronic means which is capable of conversion into a visual image, and data which is capable of conversion into a visual image that has been transmitted by any means, whether or not stored in a permanent format. For example, a video, still image, or photograph containing child pornography would satisfy the definition.

Definition of "Sexually Explicit Conduct"

The term "sexually explicit conduct," as that term is used in Counts Four and Five of the indictment, includes any *one* of the following five categories of conduct, whether actual or simulated: (1) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; (2) bestiality; (3) masturbation; (4) sadistic or masochistic abuse; or (5) lascivious exhibition of the genital or pubic area of any person.

Whether an image of the genitals or pubic area constitutes a "lascivious exhibition" requires a consideration of the overall content of the material. In considering the overall content of the image, you may, but are not required to, consider the following factors: (1) whether the genitals or pubic area are the focal point of the image; (2) whether the setting of the image is sexually suggestive, for example, a location generally associated with sexual activity; (3) whether the child is depicted in an unnatural pose or inappropriate attire, considering the age of the child; (4) whether the child is fully or partially clothed, or nude; (5) whether the image suggests sexual coyness or a willingness to engage in sexual activity; (6) whether the image appears intended or designed to elicit a sexual response in the viewer. An image need not involve all of these factors to constitute a "lascivious exhibition." It is for you to decide the

weight, or lack of weight, to be given to any of the factors I just listed. You may conclude that they are not applicable given the facts of this case. This list of factors is not comprehensive, and you may consider other factors specific to this case that you find relevant.

Definition of "Possession"

"Possess" means to exercise authority, dominion or control over something. The law recognizes different kinds of possession.

"Possession" includes both actual and constructive possession. A person who has direct physical control of something on or around his or her person is then in actual possession of it. A person who is not in actual possession, but who has both the power and the intention to exercise control over something is in constructive possession of it. Whenever I use the term "possession" in these instructions, I mean actual as well as constructive possession.

Possession" also includes both sole possession and joint possession. If one person alone has actual or constructive possession, possession is sole. If two or more persons share actual or constructive possession, possession is joint. Whenever I have used the word "possession" in these instructions, I mean joint as well as sole possession.

Real Child

The visual depiction must be of a real person under the age of eighteen engaging in sexually explicit conduct. The government does not have to prove the identity of the minor or the exact age of the minor. You may consider all of the evidence, including your viewing of the depiction, in determining whether the depiction portrayed an actual person under the age of eighteen engaging in sexually explicit conduct.

Single Image

Although you have heard evidence that the Defendant had multiple images or videos of child pornography, as I have defined for you in these instructions, the Government is not required to prove that all of the images in evidence constitute child pornography. Rather, the Government will have proved what is necessary for a finding of guilty if it proves, beyond a reasonable doubt, that the Defendant acted as charged with respect to any one depiction of child pornography, so long as you the jury agree unanimously as to which depiction or depictions have been proved. Therefore, as long as you find beyond a reasonable doubt that the Defendant knowingly acted with respect to at least one image or video, and that the other elements of the offense have been proved beyond a reasonable doubt, you may find the Defendant guilty.

Count Six - Commission of a Felony Offense Involving a Minor By an Individual Required to Register as a Sex Offender

The Defendant is charged in Count Six of the indictment with The Commission of a Felony Offense Involving A Minor by an Individual Required to Register as a Sex Offender, in violation of Title 18 of the United States Code, Sections 2260A.

In order for the Defendant to be found guilty of Count Six, the Government must prove each of the following elements beyond a reasonable doubt:

First: That the Defendant committed a felony offense involving a minor. This element is satisfied by proof that the defendant is guilty of any one of the crimes charged in Counts One, Two or Three of the indictment; and

Second: That at the time he committed the felony offense involving a minor, the Defendant was required by Federal or other law to register as a sex offender.

A defendant is required to register under the Sex Offender Registration and Notification Act if he is a "sex offender" under federal or other law. A "sex offender" is a person who has been convicted of a qualifying "sex offense." You are instructed as a matter of law that if you find that the Defendant was convicted of Aggravated Sexual Abuse in New Jersey Superior Court in or about 1993, that would satisfy the second element of Count Six.

Method of Assessing Evidence

Now that you know what it is that the Government must prove and the standard of proof to be applied, the next question is how do you determine whether the Government has proved these things beyond a reasonable doubt?

Obviously, you must make your determination solely from the evidence properly before you and from all reasonable and legitimate inferences to be drawn from that evidence.

The evidence that is properly before you consists of:

1. The testimony of the witnesses;

2. The exhibits that I have admitted into evidence; and

3. Any stipulations among the attorneys in which they agree as to what the facts are.

From that evidence, you may draw whatever conclusions are reasonable under the circumstances.

The evidence that is properly before you does not include:

1. Comments or statements by the attorneys;

2. Answers given by witnesses which I ordered stricken and instructed you to disregard;

3. Documents, photographs or other items which may have been referred to but have not been admitted into evidence. Since they are not proper evidence, you should not speculate or guess as to what they might say or show and you may not consider them except to the

extent that, and for the purpose that, they may have been read or shown to you during the course of the trial; or

4. Anything you may have heard or seen outside of this courtroom regarding the events in question or the participants in this case.

Notetaking

You were permitted to take notes in this case. However, please remember that not everything you write down is necessarily what was said and that your notes are not "evidence." Thus, when you return to the jury room to discuss the case, do not assume simply because something appears in somebody's notes that it necessarily took place in court. Instead, it is your collective memory that must control as you deliberate upon the verdict.

Similar Acts of Sexual Abuse

There has been evidence received during the trial that the Defendant engaged in other conduct which was similar in nature to the acts charged in the indictment. Specifically, the Government has produced evidence regarding the Defendant's prior conviction of Aggravated Sexual Abuse in or about 1993. In a criminal case in which the Defendant is accused of transporting or possessing child pornography, aggravated sexual abuse, and coercion or enticement of a minor, evidence of the Defendant's commission of another offense of sexual abuse of a child is admissible and may be considered for its bearing on whether the Defendant committed the offenses for which he is charged in this indictment.

However, evidence of another offense on its own is not sufficient to prove the Defendant guilty of the crimes charged in the indictment. As you consider this evidence, bear in mind at all times that the Government has the burden of proving that the Defendant committed each of the elements of the offense in the indictment as I have explained them to you. I remind you that the Defendant is not on trial for any act, conduct, or offense not charged in the indictment.

Statements by Defendant

You have heard evidence that the Defendant made a statement in which the government claims he admitted certain facts.

It is for you to decide (1) whether the Defendant actually made the statement, and (2) if so, how much weight to give the statement. In making those decisions, you should consider all of the evidence about the statement, including the circumstances under which it may have been made and any facts or circumstances tending to corroborate or contradict the version of events described in the statement.

Witnesses - Credibility - General Factors

As to the testimony of witnesses, your principal task is to determine the credibility of the witnesses and the weight you will give to the testimony of each.

In making that determination, there are a number of factors that you may consider:

1. The opportunity or lack of opportunity the witness had to acquire knowledge of the facts about which the witness testified. In other words, was the witness in a position to have accurately perceived the facts that the witness related to you.

2. The reliability or unreliability of the witness's memory. In other words, did the witness have a clear recollection of what happened or was the witness's memory uncertain or unclear.

3. The witness's appearance on the stand. Did the witness appear to be a person who was telling the complete and unadulterated truth, or did it appear that the witness was slanting things one way or another either consciously or unconsciously.

4. The probability or improbability of the witness's testimony. Did what the witness had to say sound reasonable or plausible or did it appear to be highly unlikely or impossible.

5. Whether the witness had anything to gain or lose from the outcome of this case. In other words, was the witness totally impartial or did the witness have some stake in the outcome or some reason to favor one side or the other.

Witnesses - Number - Weight of Testimony

In evaluating the testimonial evidence, remember that you are not required to believe something to be a fact simply because a witness has stated it to be a fact and no one has contradicted what that witness said. If, in the light of all of the evidence, you believe that the witness is mistaken or has testified falsely or that he or she is proposing something that is inherently impossible or unworthy of belief, you may disregard that witness's testimony even in the absence of any contradictory evidence.

You should also bear in mind that it is not the number of witnesses testifying on either side of a particular issue that determines where the weight of the evidence lies. Rather, it is the quality of the witnesses' testimony that counts.

Thus, just because one witness testifies on one side of an issue and one witness testifies on the other side does not necessarily mean that you must consider the evidence evenly balanced. If you feel that one of the witnesses was more credible than the other, for whatever reason, you may find that the weight of the evidence lies on the side of that witness.

Similarly, just because there may be more witnesses testifying on one side of an issue than on the other does not mean that the weight of the evidence lies in favor of the greater number of witnesses. Once again, it is the credibility or

quality of the testimony that determines where the weight of the evidence lies.

Expert Witness

During this trial, you have heard testimony from one witness who claims to have specialized knowledge in a technical field; specifically, you heard from Brittnee Morgan. Such a person is sometimes referred to as an expert witness. Because of her specialized knowledge, she is permitted to express opinions which may be helpful to you in determining the facts.

Since such a witness has specialized knowledge, the opinion of an expert witness, whether expressed personally or in documents which have been admitted into evidence, should not be disregarded lightly. On the other hand, you are not required to accept such an opinion just because the witness has specialized knowledge.

In determining what weight to give to the testimony of a so-called expert witness, you should apply the same tests of credibility that apply to the testimony of any other witness. That is to say, you should consider such things as the witness's:

-- opportunity to have observed the facts about which he or she testified; and

-- apparent candor or lack of candor.

In addition, you should take into account the witness's:

-- qualifications; and

-- the accuracy of the facts upon which the witness's opinions were based.

In short, you should carefully consider the opinion of an expert witness, but it is not necessarily conclusive.

Witnesses - Credibility - Government Agents

The fact that a witness may be employed by a law enforcement agency does not, by itself, mean that you should give that witness's testimony any greater or any lesser weight simply because of that fact. You should assess the credibility and testimony of such a witness by applying the same factors as you would with respect to any other witness.

Use of an Undercover Agent

You have heard testimony that law enforcement officers worked undercover during this investigation. There is nothing illegal or improper with the Government employing these techniques.

Whether or not you approve of the use of an undercover agent to detect criminal acts is not to enter into your deliberations in any way. If you are satisfied beyond a reasonable doubt that the Defendant committed the offenses charged in the indictment, the fact that the Government made use of an undercover agent is irrelevant to your determination.

The Government as a Party

The mere fact that this case is brought in the name of the United States of America does not entitle the prosecution to any greater consideration than that accorded to the Defendant. By the same token, it does not mean that the prosecution is entitled to any less consideration. All parties, whether Government or individuals, stand as equals at the bar of justice.

Exhibits

In addition to assessing the credibility of the witnesses and the weight to be given to their testimony, you should also evaluate the exhibits which you will have with you in the jury room. Examine them and consider them carefully.

However, bear in mind that merely because an exhibit has been admitted into evidence does not mean that you are required to accept it at face value. Like the testimony of a witness, the significance of an exhibit or the weight you attach to it will depend upon your evaluation of that exhibit in light of all the facts and circumstances of the case.

Nature of Certain Videos and Images

Certain digital photographs and videos of a disturbing nature have been admitted into evidence. They are not pleasant images to look at. You should not let these images affect your emotions to the prejudice of the Defendant. Your verdict must be based on a rational and fair consideration of all the evidence and not on passion or prejudice against the Defendant, the government, or anyone else connected with this case.

Circumstantial Evidence

As I mentioned previously, you may consider only the evidence that is properly before you. However, that does not mean that, in determining the facts, you are limited to the statements of the witnesses or the contents of the exhibits.

In reaching your conclusions, you are permitted to draw, from facts which you find have been proved, such reasonable inferences as seem justified in the light of your experience.

Inferences are deductions or conclusions which reason and common sense lead you to draw from facts which have been established by the evidence in the case.

Such evidence is sometimes called circumstantial evidence. To put it another way, a fact may be proved either by direct evidence or by circumstantial evidence. Direct evidence includes such things as the testimony of an eyewitness who personally observed the fact in question or a photograph or document showing the actual thing described.

Circumstantial evidence consists of proof of a series of facts or circumstances from which the existence or nonexistence of another fact may be reasonably inferred.

The law makes no distinction between the weight to be given to direct and circumstantial evidence. However, it does require that any fact required to convict the Defendant be proved beyond a reasonable doubt.

Not All Evidence, Not All Witnesses Needed

Although the Government is required to prove the Defendant guilty beyond a reasonable doubt, the Government is not required to present all possible evidence related to the case or to produce all possible witnesses who might have some knowledge about the facts of the case. In addition, as I have explained, a defendant is not required to present any evidence or produce any witnesses.

Conduct of Court - General

As I have said before, it is up to you to determine the facts in this case. You should not interpret anything I have said or done during this trial as expressing an opinion on my part as to what the facts in this case are. I have not intended to express any such opinion and you should not be concerned about what my opinions might be regarding the facts. That is a matter for you to decide.

Objections

During this trial there have been occasions when the attorneys have objected to a question that was asked of a witness. You are not to penalize either the Government or the Defendant for making objections to testimony which they believed to be not in conformance with the rules of evidence. It is their right to make such objections.

If I sustained the objection, it is important that you not speculate about what the answer to the objected-to question might have been. By sustaining the objection, the court has determined that the evidence should not be considered by you.

Bias and Prejudice

Neither bias in favor of any person or cause, prejudice against any person or cause, nor sympathy of any kind should be permitted to influence you in the course of your deliberations.

All that any party here is entitled to, or, for that matter expects, is a verdict based upon your fair, scrupulous and conscientious examination of the evidence before you and your application of the law as I have explained it to you.

Verdict - Unanimity Required

In order to return a verdict in this case, all twelve of you must agree as to what that verdict will be. You cannot return a verdict of either guilty or not guilty against the Defendant unless your decision is unanimous.

Therefore there are two things that you should keep in mind during the course of your deliberations.

On the one hand, you should listen carefully as to what your fellow jurors have to say and should be open minded enough to change your opinion if you become convinced that it was incorrect.

On the other hand, you must recognize that each of you has an individual responsibility to vote for the verdict that you believe is the correct one based on the evidence that has been presented and the law as I have explained it. Accordingly, you should have the courage to stick to your opinion even though some or all of the other jurors may disagree as long as you have listened to their views with an open mind.

Selection of Foreperson and Duty to Deliberate

When you begin your deliberations, you should elect one member of the jury as your foreperson. The foreperson will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous. Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion during the course of the deliberations if the discussion persuades you that you should. Do not come to a decision simply because other jurors think it is right.

Communications with the Court

If it becomes necessary during your deliberations to communicate with me, you may send a note through the marshal, signed by the foreperson. No member of the jury should ever attempt to contact me except by a signed writing; and I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court.

Jury Recollection Controls - Rehearing Testimony

If any reference by the Court or by counsel to matters of evidence does not coincide with your own recollection, it is your recollection which should control during your deliberations.

Occasionally, juries want to rehear testimony. Understand that in a relatively short trial, generally, your collective recollection should be sufficient for you to be able to deliberate effectively. However, if you feel that you need to rehear testimony, I will consider your request. However keep in mind that this is a time-consuming and difficult process, so if you think you need this, consider your request carefully and be as specific as possible.

Return of Verdict

A verdict form has been prepared for you by the Court. After you have reached unanimous agreement on a verdict, your foreperson will fill in the form that has been given to you, sign and date it, and advise the Court that you are ready to return to the courtroom.

Copy of Instructions

I have instructed you on the law that governs your deliberations. I will send into the jury room a written copy of my instructions. You are reminded, however, that the law is as I have given it to you from the bench; the written copy is merely a guide to assist you.