

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>STEVEN MANNING,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No. 02 C 372</b>
	)	
<b>GARY MILLER and ROBERT BUCHAN,</b>	)	
	)	
<b>Defendants.</b>	)	

**INSTRUCTIONS GIVEN TO THE JURY**

Date: January 11, 2005

Members of the jury, you have seen and heard all of the evidence, and you are about to hear the arguments of the attorneys. Now I will instruct you on the law that applies to this case.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in this case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

You must perform your duties fairly and impartially. In deciding your verdict, you must not allow sympathy, bias, prejudice, fear, public opinion, or the financial condition of the defendants to influence you. The parties to this case and the public expect that you will carefully and impartially consider all of the evidence in the case, follow the law that I give you, and reach a just verdict regardless of the consequences.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be. It is not my function to determine the facts in this case. That function belongs to you.

You should consider and decide this case as an action between persons of equal standing in the community, and holding the same or similar stations in life. Each party is entitled to the same fair consideration. All persons stand equal before the law and are to be dealt with as equals in a court of justice.

As I stated earlier, it is your duty to determine the facts. In determining the facts, you must consider only the evidence that I have admitted in the case. The evidence consists of the testimony of the witnesses, testimony that was read to you from depositions, the exhibits admitted in evidence, and stipulations.

Deposition testimony is entitled to the same consideration as testimony that was given in court. You are to judge its truthfulness and accuracy, and you are to weigh and consider it, insofar as possible, in the same way as if the witness had been present and testified from the witness stand.

As I explained during the trial, a stipulation is an agreement between both sides that certain facts are true.

The transcript of the proceedings at this trial will not be available to you during your deliberations. You should rely on your collective recollection of the evidence that was presented.

Any notes you have taken during this trial are only aids to your memory. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.

During the trial, you reviewed certain documents (listed below), heard certain testimony, and heard a tape recording (between Sharon Dugan and Gary Engel) subject to my instruction that you should consider this evidence only for a limited purpose, and not as proof that the statements in those documents, that testimony, and that tape recording were in fact true. You must consider this evidence only for the limited purpose for which it was admitted.

The documents referenced above are as follows:

Plaintiff's Exhibits 6, 20, 71, 210, 255, and 255.

Defendants' Exhibits 1G, 3D, 3L, 3O, 3S, 3T, 3V, 3W, 3Y, 3Z, 3HH, 3LL, 3NN, 3QQ, 3VV, 3GGG, 3JJJ, 4K, 4P, 4Q, 4Z, 4AA, 4BB, 5G, 5H, 5I, 5J, 5M, 5W, 12E, 14A, 14B, 14C, 14H, 14J, 14L, 14T, 14EE, 14MM, 16A, 16B, 16C, 21C, 21H, 22GG, 22HH, 22NN, 26G, 26X, 27E, 64E, 73, 74, 76, 77, 104, and 105.

Certain things are not evidence. I will list them for you.

First, any testimony or exhibits that I struck from the record, or that I told you to disregard, are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, or television reports. Such reports are not evidence, and your verdict must not be influenced in any way by such publicity.

Third, questions and objections by the lawyers are not evidence. Attorneys have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements and arguments to you are not evidence. The purpose of these statements and arguments is to discuss the issues and the evidence. If the evidence as you remember it is different from what the lawyers said, your memory is what counts.

Some of you may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, in other words it is proof of one or more facts that point to the existence or non-existence of another fact.

You are to consider both direct and circumstantial evidence. The law allows you to give equal weight to both types of evidence, but it is up to you to decide how much weight to give to any evidence in the case.

You are to consider all of the evidence in determining your verdict. However, that does not mean that you must accept all of the evidence as true or accurate.

You should use common sense in considering the evidence, and you should consider the evidence in light of your own observations in life.

In our lives, we sometimes look at one fact and conclude from that fact that another fact exists. In law we call this an “inference.” You are allowed to make reasonable inferences. Any inferences that you make must be reasonable and must be based on the evidence in the case.

In determining the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. You will also have to decide what weight, if any, to give to the testimony of each witness.

In considering the testimony of any witness, you may take into account:

- the opportunity and ability of the witness to see or hear or know the things that the witness testified about;
- the witness's memory;
- the witness's intelligence;
- any interest the witness may have in the outcome of the case, and any bias or prejudice the witness may have;
- the witness's manner while testifying;
- the reasonableness of the witness's testimony in light of all the evidence in the case; and
- any other factors that bear on believability.

The weight of the evidence as to a particular fact does not necessarily depend on the number of witnesses who testify. You may find the testimony of a smaller number of witnesses to be more persuasive than that of a greater number.

A witness may be discredited or “impeached” by contradictory evidence, by, among other things, a showing that he or she testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something that is inconsistent with the witness’ testimony.

If you believe that any witness has been impeached, then you must determine whether to believe the witness’s testimony in whole, in part, or not at all, and how much weight to give to that testimony.

It is proper for an attorney to interview a witness for the purpose of learning what testimony the witness will give. The fact that the witness has talked to an attorney does not, by itself, reflect negatively on the truth of the witness's testimony.

You have heard witnesses give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such a person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness's qualifications, and all of the other evidence in the case.

During the trial, you have seen exhibits which have had portions blacked out or deleted. These markings and deletions were made because of rulings that I have made for reasons that you do not need to consider. They are to have no bearing whatsoever on your consideration of the case. You should not concern yourself with or speculate about the contents of any blacked out or deleted portions.

You have heard evidence about whether the conduct of Mr. Buchan and Mr. Miller complied with FBI policies and procedures. It is appropriate for you to consider this evidence in your deliberations. But remember that the issue for you to decide is whether Mr. Manning has met his burden of proving the propositions required to prevail on his claims, not whether an FBI policy or procedure might have been violated.

A person acts “knowingly” if he realizes what he is doing and is aware of the nature of his conduct and does not act through ignorance, mistake, or accident.

In Illinois, the statute of limitations for perjury is three years. A criminal prosecution for perjury is barred unless it is brought within that time period.

The plaintiff in this case is Steven Manning. The defendants in this case are Gary Miller and Robert Buchan.

### **The claims**

In this case, the plaintiff, Steven Manning, has made four claims against the defendants, Robert Buchan and Gary Miller.

Mr. Manning's first claim is that Mr. Buchan and Mr. Miller violated his due process right to a fair trial with regard to the Missouri kidnapping case.

Mr. Manning's second claim is that Mr. Buchan and Mr. Miller violated his due process right to a fair trial with regard to the Illinois murder case.

Mr. Manning's third claim is that Mr. Buchan and Mr. Miller, conducted the affairs of the FBI through a pattern of racketeering activity, causing him injury.

Mr. Manning's fourth claim is that Mr. Buchan and Mr. Miller conspired with each other and other persons to conduct the affairs of the FBI through a pattern of racketeering activity, causing him damage.

Mr. Buchan and Mr. Miller deny each of Mr. Manning's claims.

You must give separate consideration to each claim and to each defendant. It does not follow that if one defendant is liable to the plaintiff, both defendants are liable.

To find a particular defendant liable, you must first find that he was personally involved in, or knowingly caused someone else to commit, actions complained of by Mr. Manning.

## **Burden of proof**

Mr. Manning has the burden to prove every essential element of each claim by a “preponderance of the evidence.”

A preponderance of the evidence simply means evidence that persuades you that a proposition is more likely true than not true.

In deciding whether any fact has been proven by a preponderance of the evidence, you may, unless otherwise instructed, consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them.

### **First and second claims**

Under the law, a person who believes that his constitutional rights have been violated by a government employee may file a lawsuit seeking an award of damages. Mr. Manning's first and second claims are brought pursuant to this law.

The Fifth Amendment to the United States Constitution guarantees a person who is accused of a crime the right to a fair trial. This includes the right to disclosure of material exculpatory and impeachment evidence, and the right not to have material exculpatory evidence intentionally destroyed by law enforcement.

### **First claim - elements**

To prevail on his first claim, Mr. Manning must prove each of the following propositions:

First, that the defendant whose case you are considering intentionally concealed material exculpatory and/or impeachment evidence from the Missouri prosecutors.

Second, that Mr. Manning would not have been convicted of kidnapping if this evidence had been disclosed.

I will define several of these terms for you shortly.

If you find from your consideration of all the evidence that Mr. Manning has proven each of these propositions as to a particular defendant, then you should find in favor of Mr. Manning and against that defendant on this claim, and go on to consider the question of damages on this claim.

If you find from your consideration of all the evidence that Mr. Manning has failed to prove any one of these propositions as to a particular defendant, then you should find in favor of that defendant and against Mr. Manning on this claim, and you will have no occasion to consider the question of damages as to that defendant on this claim.

## **Second claim - elements**

To prevail on his first claim, Mr. Manning must prove each of the following propositions:

First, that the defendant whose case you are considering intentionally concealed material exculpatory and/or impeachment evidence from the Illinois prosecutors, and/or intentionally destroyed material exculpatory evidence.

Second, that Mr. Manning would not have been convicted of murder if this evidence had been disclosed, and/or had not been destroyed.

Again, I will define several of these terms for you shortly.

If you find from your consideration of all the evidence that Mr. Manning has proven each of these propositions as to a particular defendant, then you should find in favor of Mr. Manning and against that defendant on this claim, and go on to consider the question of damages on this claim.

If you find from your consideration of all the evidence that Mr. Manning has failed to prove any one of these propositions as to a particular defendant, then you should find in favor of that defendant and against Mr. Manning on this claim, and you will have no occasion to consider the question of damages as to that defendant on this claim.

### **First and second claims - particulars of claims**

With regard to the Missouri kidnapping case, Mr. Manning contends that the following exculpatory and/or impeachment evidence was concealed from the Missouri prosecutors prior to the Missouri trials:

- that Mr. Buchan and/or Mr. Miller had knowingly induced or caused other law enforcement officers to induce Anthony Mammolito, Carolyn Heldenbrand, Sharon Dugan, Charles Ford, and Harold Ulmstead to make false statements and/or to fabricate claims; and/or
- that Mr. Buchan and/or Mr. Miller knew a promise had been made to pay money to Anthony Mammolito.

With regard to the Illinois murder case, Mr. Manning contends that the following exculpatory and/or impeachment evidence was concealed from the Illinois prosecutors prior to the Illinois trial:

- that Mr. Buchan and/or Mr. Miller had knowingly induced or caused other law enforcement officers to induce, Tommy Dye, Joyce Pellegrino, and Ronald Tyrakowski to make false statements and/or to fabricate claims;
- that Mr. Buchan and/or Mr. Miller knowingly mischaracterized to prosecutors the purpose of the \$2,000 payment to Tommy Dye that was disclosed to the Illinois prosecutors; and/or
- that Mr. Buchan and/or Mr. Miller knew Tommy Dye had been paid money (not including benefits or money from the witness security program) beyond the \$2,000 that was disclosed to the Illinois prosecutors and had been provided with conjugal visits.

With regard to the Illinois murder case, Mr. Manning also contends that law enforcement knowingly destroyed material exculpatory portions of the tape recording of the September 24, 1990 conversation between Mr. Manning and Dye.

### **First and second claims - definitions**

Exculpatory evidence is evidence that would tend to show that the accused person is not guilty of the crime charged. Impeachment evidence is evidence that would undermine the credibility of a prosecution witness who testifies at the trial.

Exculpatory and impeachment evidence may include evidence that the claims of a prosecution witness have been fabricated by law enforcement; evidence that law enforcement has knowingly induced a prosecution witness to make a false statement; evidence of benefits or other inducements promised or provided to prosecution witnesses; and evidence of prior statements by a prosecution witness that are inconsistent with the witness' testimony or that otherwise might undermine the credibility of that witness.

Exculpatory and impeachment evidence is "material" if it has a reasonable likelihood of affecting the outcome of the particular criminal case.

A law enforcement officer has the obligation to turn over material exculpatory and impeachment evidence to the prosecutors handling the case. If the officer satisfies this obligation, he is not responsible if the prosecutor does not provide the information to the accused person. An officer does not have a duty to turn over evidence if he reasonably believes that the prosecutor already has the evidence. An officer does not have a duty to seek out exculpatory or impeachment evidence of which he is not aware.

**First and second claims - particular issues (1)**

Mr. Manning contends, among other things, that Mr. Buchan intentionally induced Carolyn Heldenbrand to falsely identify him. Before you can consider this as exculpatory or impeachment evidence, you must find that Mr. Buchan did more than simply show Ms. Heldenbrand a suggestive photographic display. Rather, you must first find that Mr. Buchan took additional affirmative steps that were not disclosed to the Missouri prosecutors to induce Ms. Heldenbrand to falsely identify Mr. Manning.

### **First and second claims - particular issues (2)**

You have heard evidence about the testimony given by various witnesses at grand jury proceedings and at the Missouri and Illinois trials. It is appropriate for you to consider this evidence in your deliberations. However, you may not hold Mr. Buchan or Mr. Miller liable solely for false testimony given by a witness at a grand jury proceeding or the Missouri and Illinois trials, or solely for entering into an agreement with a witness to have that witness give false testimony at those proceedings. Rather, you may hold Mr. Buchan or Mr. Miller liable only if Mr. Manning has proven by a preponderance of the evidence each of the elements of claims 1 or 2 as stated in the prior instructions.

### **Third and fourth claims**

Mr. Manning's third and fourth claims are brought under a law called the Racketeer Influenced and Corrupt Organizations Act. This law permits a person to file suit if he is damaged in his business or property as the result of a defendant's conduct of the affairs of an enterprise through a pattern of criminal conduct. The plaintiff does not have to prove that the defendant was a "racketeer" as that term is commonly used.

### **Third claim - elements**

To prevail on his third claim, Mr. Manning must prove each of the following propositions:

First, that the FBI and/or Squad 9 was an “enterprise.”

Second, that the defendant whose case you are considering was associated with or employed by the enterprise.

Third, that the defendant whose case you are considering knowingly conducted or participated in the conduct of the affairs of the enterprise through a pattern of racketeering activity.

Fourth, that Mr. Manning was damaged in his business or property as a direct result of the racketeering activity.

I will define several of these terms for you shortly.

If you find from your consideration of all the evidence that Mr. Manning has proven each of these propositions as to a particular defendant, then you should find in favor of Mr. Manning and against that defendant on this claim, and go on to consider the question of damages on this claim.

If you find from your consideration of all the evidence that Mr. Manning has failed to prove any one of these propositions as to a particular defendant, then you should find in favor of that defendant and against Mr. Manning on this claim, and you will have no occasion to consider the question of damages as to that defendant on this claim.

#### **Fourth claim - elements**

To prevail on his fourth claim, Mr. Manning must prove each of the following propositions:

First, that the FBI and/or Squad 9 was an “enterprise.”

Second, that the defendant whose case you are considering conspired to conduct or participate in the conduct of the affairs of the enterprise through a pattern of racketeering activity.

Third, that Mr. Manning was damaged in his business or property as a direct result of the racketeering activity.

Again, I will define several of these terms for you shortly.

If you find from your consideration of all the evidence that Mr. Manning has proven each of these propositions as to a particular defendant, then you should find in favor of Mr. Manning and against that defendant on this claim, and go on to consider the question of damages on this claim.

If you find from your consideration of all the evidence that Mr. Manning has failed to prove any one of these propositions as to a particular defendant, then you should find in favor of that defendant and against Mr. Manning on this claim, and you will have no occasion to consider the question of damages as to that defendant on this claim.

### **Third and fourth claims - definitions (1)**

A law enforcement agency may constitute an enterprise as that term is used in these instructions. An enterprise may also consist of a group of people associated together for a common purpose of engaging in a course of legal and/or illegal conduct. In considering whether such a group is an enterprise, you should consider whether it has an ongoing organization or structure and whether the members of the group functioned together as a continuing unit.

A person conducts or participates in the conduct of an enterprise if he uses his position with or association with the enterprise to perform acts involved in some way in the management or operation of the enterprise or causes someone else to do so. A law enforcement officer participates in the conduct of an enterprise if he interacts with a prosecutor on behalf of a law enforcement agency.

### **Third and fourth claims - definitions (2)**

A pattern of racketeering activity consists of the commission of at least two separate acts among those which are described in the following instruction. To constitute a pattern, the acts must be related to each other and there must be continuity between them.

Acts are related to each other if they have similar purposes, results, participants, or victims, or if they are committed in a similar way.

There is continuity between acts if they are not isolated events and if they are ongoing over a substantial period of time or had the potential to continue over a substantial period, or if they are part of the regular way that the enterprise does business or conducts its affairs.

### **Third and fourth claims - particulars of claims**

Mr. Manning contends that the defendants committed, or caused others to commit, one or more of the following acts: obstruction of justice, obstruction of a criminal investigation, tampering with a federal witness, and/or tampering with a Missouri witness.

Mr. Manning contends that Mr. Buchan and/or Mr. Miller, or other law enforcement officers acting at their direction, committed obstruction of justice by intentionally inducing Thomas Dye to testify falsely in the federal grand jury proceeding.

Mr. Manning contends that Mr. Buchan and/or Mr. Miller, or other law enforcement officers acting at their direction, committed obstruction of a federal criminal investigation by willfully bribing Mr. Mammolito, Mr. Ford, and/or Mr. Dye in exchange for giving false statements regarding the Missouri kidnapping or the Pellegrino murder.

Mr. Manning contends that Mr. Buchan and/or Mr. Miller, or other law enforcement officers acting at their direction, committed tampering with a federal witness by intentionally inducing any of the following – Sharon Dugan, Tommy Dye, Charles Ford, Carolyn Heldenbrand, Anthony Mammolito, Joyce Pellegrino, or FBI Agent Ulmstead – to make false statements regarding the Missouri kidnapping or the Pellegrino murder.

Mr. Manning contends that Mr. Buchan and/or Mr. Miller, or other law enforcement officers acting at their direction, committed tampering with a Missouri witness by:

- offering to pay Anthony Mammolito to testify falsely in the Missouri kidnapping case;
- offering to give Charles Ford the diamond ring if he would falsely identify it as his own; and

- offering to imprison Sharon Dugan's ex-husband, Gary Engel, if she would falsely implicate Mr. Manning along with Mr. Engel.

### **Third and fourth claims - definitions (3)**

A person commits obstruction of justice if he knowingly endeavors to influence or intimidate a witness in a pending federal grand jury investigation, and does so corruptly, that is, with the purpose of wrongfully impeding the due administration of justice. A person is a witness if he or she is expected by the defendant to be called to testify in a pending federal grand jury investigation, whether or not the witness has actually been called to testify.

A person commits obstruction of a criminal investigation if he willfully endeavors, by means of bribery, to obstruct, delay, or prevent the communication of information relating to a violation of any federal criminal law to federal law enforcement agent or federal prosecutor. A person acts “willfully” if he acts with the purpose of achieving the particular result that is at issue. “Bribery,” as used in this instruction, means a payment or offer of benefits for the purpose of inducing the recipient to make false statements.

A person commits tampering with a federal witness if he knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to influence, delay, or prevent the testimony of a person in a federal grand jury investigation or federal criminal prosecution. The grand jury investigation need not be pending or about to be instituted at the time of the offense.

A person commits tampering with a Missouri witness if he offers or agrees to confer any benefit upon a witness or prospective witness in an official proceeding in Missouri with the purpose of inducing the witness or prospective witness to withhold evidence while testifying or to testify falsely.

### **Third and fourth claims - definitions (4)**

A conspiracy consists of an agreement between two or more persons to accomplish an unlawful purpose. To find that a defendant conspired as that term is used in these instructions, you must find that a conspiracy existed and that the defendant knowingly became a member of the conspiracy with an intention to further the conspiracy.

## **Damages**

If you find that Mr. Manning has proved any of his claims against either Mr. Buchan or Mr. Miller, then you must determine what amount of damages, if any, Mr. Manning is entitled to recover.

If you find that Mr. Manning has failed to prove all of his claims, then you will not consider the question of damages.

The damages instructions for claims 1 and 2 differ from those for claims 3 and 4.

## **Compensatory damages - claims 1 & 2**

If you find in favor of Mr. Manning on claims 1 or 2, then you must determine the amount of money that will fairly compensate him for any injury that you find he sustained and is reasonably certain to sustain in the future as a direct result of the defendant's violation of his due process right to a fair trial. These are called "compensatory damages."

Mr. Manning must prove his damages by a preponderance of the evidence. Your award must be based on evidence and not speculation or guesswork. This does not mean, however, that compensatory damages are restricted to the actual loss of money; they include both the physical and mental aspects of injury, even if they are not easy to measure.

You should consider the following types of compensatory damages, and no others:

1. The reasonable value of medical care and supplies that Mr. Manning reasonably needed and actually received, as well as the present value of the care and supplies that he is reasonably certain to need and receive in the future.
2. The wages, salary, profits, and earning capacity that Mr. Manning has lost, and the present value of the wages, salary, profits, and earning capacity that Mr. Manning is reasonably certain to lose in the future because of impairment to his employment prospects.

When I say "present value," I mean the sum of money needed now which, together with what that sum may reasonably be expected to earn in the future, will equal the amounts of those monetary losses at the times in the future when they will be sustained.

3. The physical, mental, and emotional pain and suffering and loss of a normal life that Mr. Manning has experienced and is reasonably certain to experience in the future. No evidence of the dollar value of physical, mental, or emotional pain and suffering or loss of a

normal life has been or needs to be introduced. There is no exact standard for setting the damages to be awarded on account of pain and suffering. You are to determine an amount that will fairly compensate Mr. Manning for the injury he has sustained.

### **Compensatory damages - claims 3 & 4**

If you find in favor of Mr. Manning on claims 3 or 4, then you must determine the amount of money that will fairly compensate him for any loss to his business or property that you find he sustained and is reasonably certain to sustain in the future as a direct result of any of the acts listed in the instruction entitled “Third & Fourth Claims - particulars of claims.” Mr. Manning must prove these damages by a preponderance of the evidence. Your award must be based on evidence and not speculation or guesswork.

You should consider the following types of compensatory damages, and no others:

1. The amount of any attorney’s fees that Mr. Manning spent defending the Missouri kidnapping case.
2. The amount of wages that Mr. Manning lost while incarcerated for the Missouri kidnapping and/or the Pellegrino murder.
3. The amount of any wages that Mr. Manning is reasonably likely to lose in the future as a result of his incarceration for the Missouri kidnapping and/or the Pellegrino murder. You should award no more than the present value, as I have previously defined that term, of any future lost wages.

Under the law, any compensatory damages that you award on claims 3 or 4 will be trebled, that is, multiplied by three. Only these amounts will be trebled. You must not allow this fact to influence the amount of damages that you award on claims 3 or 4, or on any other claims.

### **Compensatory damages - all claims**

You may impose compensatory damages on a claim solely upon the defendant or defendants that you find are liable on that claim. If you find that only one defendant is responsible for a particular injury, then you must award damages for that injury only against that defendant. If you find that both defendants are responsible for a particular injury, Mr. Manning is not required to establish how much of the injury was caused by each particular defendant. Thus, if you conclude both defendants are liable for a particular injury, then you may simply determine the overall amount of damages for which they are liable, without determining individual percentages of liability. If you find that both defendants are responsible for a particular injury, you may not award compensatory damages twice for the same injury.

If you find for Mr. Manning on claims 1 and 2, you may not award the same compensatory damages twice on those claims.

## **Punitive damages - claims 1 & 2**

If you find for Mr. Manning on claims 1 or 2, you may, but are not required, to assess punitive damages against Mr. Buchan and/or Mr. Miller. The purposes of punitive damages are to punish a defendant for his conduct and to serve as an example or warning to a defendant and others not to engage in similar conduct in the future.

Mr. Manning must prove by a preponderance of the evidence that punitive damages should be assessed against the particular defendant whose case you are considering. You may assess punitive damages only if you find that his conduct was malicious or in reckless disregard of Mr. Manning's rights. Conduct is malicious if it is accompanied by ill will or spite, or is done for the purpose of injuring a plaintiff. Conduct is in reckless disregard of a plaintiff's rights if, under the circumstances, it reflects complete indifference to the plaintiff's safety or rights.

If you find that punitive damages are appropriate, then you must use sound reason in setting the amount of those damages. Punitive damages, if any, should be in an amount sufficient to fulfill the purposes that I have described to you, but should not reflect bias, prejudice, or sympathy toward either party. In determining the amount of any punitive damages, you should consider the following factors:

- the reprehensibility of the particular defendant's conduct;
- the impact of the particular defendant's conduct on Mr. Manning;
- the relationship between Mr. Manning and the particular defendant;
- the likelihood that the particular defendant would repeat the conduct if an award of punitive damages is not made; and
- the relationship of any award of punitive damages to the amount of actual harm

Mr. Manning suffered.

Upon retiring to the jury room, select one of your number as your foreperson. The foreperson will preside over your deliberations and will be your representative here in court.

A form of verdict has been prepared for you. [Read the verdict form.]

Take this form to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in and date the form, and each of you will sign it.

I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the court security officer.

If any communication is made, it should not indicate your numerical division.

The verdict must represent the considered judgment of each juror. Your verdict must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the views of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions or your fellow jurors or solely for the purpose of returning a unanimous verdict.

All of you should give fair consideration to all the evidence and deliberate with the goal of reaching a verdict which is consistent with the individual judgment of each juror. You are impartial judges of the facts. Your sole interest is to determine the truth from the evidence in the case.

## Verdict form

We, the jury, unanimously find as follows on the claims of the plaintiff, Steven Manning:

### 1. First claim

As to defendant Robert Buchan:

\_\_\_\_\_ For plaintiff Steven Manning

\_\_\_\_\_ For defendant Robert Buchan

As to defendant Gary Miller:

\_\_\_\_\_ For plaintiff Steven Manning

\_\_\_\_\_ For defendant Gary Miller

### 2. Second claim

As to defendant Robert Buchan:

\_\_\_\_\_ For plaintiff Steven Manning

\_\_\_\_\_ For defendant Robert Buchan

As to defendant Gary Miller:

\_\_\_\_\_ For plaintiff Steven Manning

\_\_\_\_\_ For defendant Gary Miller

### 3. Third claim

As to defendant Robert Buchan:

\_\_\_\_\_ For plaintiff Steven Manning

\_\_\_\_\_ For defendant Robert Buchan

As to defendant Gary Miller:

\_\_\_\_\_ For plaintiff Steven Manning

\_\_\_\_\_ For defendant Gary Miller

**4. Fourth claim**

As to defendant Robert Buchan:

\_\_\_\_\_ For plaintiff Steven Manning

\_\_\_\_\_ For defendant Robert Buchan

As to defendant Gary Miller:

\_\_\_\_\_ For plaintiff Steven Manning

\_\_\_\_\_ For defendant Gary Miller

**Damages (to be addressed only if you have found for Steven Manning on one or more of his claims):**

**Claim 1 - compensatory damages:**

\_\_\_\_\_

**Claim 2 - compensatory damages:**

\_\_\_\_\_

**Claims 1 and 2 - punitive damages (to be addressed as to a particular defendant only if you have found in favor of plaintiff against that defendant):**

\_\_\_\_\_ As to defendant Robert Buchan

\_\_\_\_\_ As to defendant Gary Miller

**Claims 3 and 4 - compensatory damages:**

\_\_\_\_\_ Attorneys fees spent defending Missouri case

\_\_\_\_\_ Wages lost while incarcerated for Missouri and/or Illinois cases

\_\_\_\_\_ Future lost wages

\_\_\_\_\_  
Foreperson

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Date: \_\_\_\_\_

### Supplemental verdict form

Please answer the questions on this form if, and only if, you find in favor of Mr. Manning on either claim 1 or claim 2 against either Mr. Buchan or Mr. Miller.

1. Has Mr. Manning proved that Mr. Buchan or Mr. Miller knowingly induced or caused other law enforcement officers to induce the following witnesses to make false statements and/or to fabricate claims about the Missouri kidnapping and concealed that information from prosecutors?

	<b>Buchan</b>		<b>Miller</b>	
Anthony Mammolito	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Carolyn Heldenbrand	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Sharon Dugan	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Charles Ford	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Harold Ulmstead	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No

2. Has Mr. Manning proved that Mr. Buchan or Mr. Miller knew that a promise had been made to pay money to Anthony Mammolito and concealed that from prosecutors?

<b>Buchan</b>		<b>Miller</b>	
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No

3. Has Mr. Manning proved that Mr. Buchan or Mr. Miller knowingly induced or caused other law enforcement officers to induce the following witnesses to make false statements and/or to fabricate claims about the Pellegrino murder and concealed that from prosecutors?

	<b>Buchan</b>		<b>Miller</b>	
Tommy Dye	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Joyce Pellegrino	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Ronald Tyrakowski	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No

4. Has Mr. Manning proved that Mr. Buchan or Mr. Miller knowingly mischaracterized to prosecutors the purpose of the \$2,000 payment to Tommy Dye that was disclosed to the Illinois prosecutors?

<b>Buchan</b>	<b>Miller</b>
<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

5. Has Mr. Manning proved that Mr. Buchan or Mr. Miller knew, and concealed from the Illinois prosecutors, that Tommy Dye had been paid money (not including benefits or money from the witness security program) beyond the \$2,000 that had been disclosed to the Illinois prosecutors?

<b>Buchan</b>	<b>Miller</b>
<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

6. Has Mr. Manning proved that Mr. Buchan or Mr. Miller knowingly destroyed material exculpatory portions of the tape recording of the September 24, 1990 conversation between Mr. Manning and Mr. Dye?

**Buchan**

**Miller**

Yes

No

Yes

No

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Foreperson

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Date: \_\_\_\_\_