

## Instruction 15

Your verdict must be for Plaintiff Theodore White, Jr., and against Defendant Richard McKinley on Plaintiff's claim that Defendant Richard McKinley caused Plaintiff to be deprived of his federal constitutional right to a fair trial if you believe:

First, either:

Defendant Richard McKinley failed to disclose to the prosecutors evidence material to the Plaintiff's defense; or

Defendant Richard McKinley failed to preserve evidence material to the Plaintiff's defense;

and

Second, Defendant Richard McKinley took one or both of the actions described in paragraph First in bad faith; and

Third, by taking one or both of the actions described in paragraph First, Defendant Richard McKinley proximately caused injury to the Plaintiff.

If any of the above elements has not been proved, then your verdict must be for Defendant Richard McKinley.

Evidence is material if there is a reasonable probability that, had the evidence been disclosed to the accused, the result of the proceeding would have been different. The Plaintiff need not prove that the result would have been different, only that the evidence would have put the case in a different light so as to undermine confidence in the outcome. In deciding whether evidence is material, the evidence is viewed collectively rather than item-by-item.

An injury or damage is proximately caused by an act, or a failure to act, whenever it appears from the evidence in the case that the act or omission played a moving part in bringing

about or actually caused the injury or damage, and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission. The Defendant's act or omission need not be the sole cause of the injury.

## Instruction 16

You must find for Plaintiff Theodore White, Jr., and against Defendants Tina McKinley and Richard McKinley on Plaintiff's claim that they conspired to deprive him of his federal constitutional right to a fair trial if you believe:

First, Defendants Tina McKinley and Richard McKinley reached an agreement or came to an understanding to either:

fail to disclose to the prosecutors evidence material to the Plaintiff's defense; or  
cause the prosecutors not to disclose evidence material to the Plaintiff's defense;  
or fail to preserve evidence material to the Plaintiff's defense;

and

Second, Defendants Tina McKinley and Richard McKinley took one or more of the actions described in paragraph First in bad faith;

Third, while the agreement or understanding was in effect, either Defendant Tina McKinley or Defendant Richard McKinley took one or more acts for the purpose of carrying out or carrying forward the agreement or understanding; and

Fourth, by reaching an agreement or coming to an understanding and taking one or more of the actions described in paragraph First, Defendants Tina McKinley and Richard McKinley proximately caused injury to the Plaintiff.

If any of the above elements has not been proved, then your verdict must be for Defendants Tina McKinley and Richard McKinley.

Evidence is material if there is a reasonable probability that, had the evidence been disclosed to the accused, the result of the proceeding would have been different. The Plaintiff need not prove that the result would have been different, only that the evidence would have put

the case in a different light so as to undermine confidence in the outcome. In deciding whether evidence is material, the evidence is viewed collectively rather than item-by-item.

An injury or damage is proximately caused by an act, or a failure to act, whenever it appears from the evidence in the case that the act or omission played a moving part in bringing about or actually caused the injury or damage, and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission. The act or omission need not be the sole cause of the injury.

## Instruction 17

The Plaintiff Theodore White, Jr., must prove that Defendants Tina McKinley and Richard McKinley reached an agreement or understanding. The "agreement or understanding" need not be an express or formal agreement or be in writing or cover all the details of how it is to be carried out. Nor is it necessary that the members have directly stated between themselves the details or purpose of the scheme.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has joined in an agreement or understanding.

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