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

UNITED STATES OF AMERICA, Plaintiff,	No. CR 01-3047-MWB
vs.	**PRELIMINARY AND FINAL INSTRUCTIONS TO THE JURY**
DUSTIN LEE HONKEN, Defendant.	

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VERDICT FORM

PRELIMINARY INSTRUCTION NO. 1 - PRELIMINARY INSTRUCTIONS

Members of the jury, these preliminary instructions are given to help you better understand the trial and your role in it. Consider these instructions, together with all written and oral instructions given to you during or at the end of the trial, and apply them as a whole to the facts of the case.

PRELIMINARY INSTRUCTION NO. 2 - NATURE OF PROCEEDINGS

As I explained during jury selection, this is a criminal case brought by the United States of America against defendant Dustin Lee Honken. In an Indictment, a Grand Jury charges Mr. Honken with seventeen separate offenses involving the alleged murder of five witnesses to the defendant's drug-trafficking or other alleged criminal conduct, the solicitation of murder of other witnesses, and conspiracy to tamper with witnesses and to solicit the murder of witnesses. Somewhat more specifically, **Counts 1 through 5** of the Indictment charge Mr. Honken with "witness tampering"; **Count 6** charges Mr. Honken with "soliciting the murder of witnesses"; **Count 7** charges Mr. Honken with "conspiracy to tamper with witnesses and to solicit the murder of witnesses"; **Counts 8 through 12** each charge Mr. Honken with the murder of one of five people while engaging in a drug-trafficking conspiracy ("conspiracy murder"); and **Counts 13 through 17** each charge Mr. Honken with the murder of one of five people while engaging in or working in furtherance of a continuing criminal enterprise ("CCE murder").

As I explained during jury selection, an Indictment is only an accusation. It is not evidence of anything. Dustin Lee Honken has pleaded not guilty to the crimes charged against him; therefore, he is presumed to be innocent of each offense unless and until, after hearing all of the evidence and the arguments of the attorneys, you unanimously conclude that the prosecution has proved his guilt beyond a reasonable doubt on that offense.

The government will seek the death penalty against the defendant if he is found guilty of one or more of the charges in **Counts 8 through 17**. Therefore, if the defendant is found guilty of one or more of those Counts, there will be a second part of the trial, also before you, called the "penalty phase." In the "penalty phase," you would decide whether Dustin Lee Honken will be sentenced to life imprisonment or to death. However, as I told you during jury selection, you will never be required to return a death sentence. During this first phase of the trial, the "merits phase," the possible punishment of the defendant on any charge is not before you, so you may not consider punishment of Mr. Honken in any way in deciding whether the prosecution has proved the defendant's guilt beyond a reasonable doubt on any charge.

Finally, as I explained during jury selection, in this case, we are identifying you by numbers, rather than by names, to protect you from contact by the media or other persons, such as curiosity seekers; to protect you from unwanted publicity; and to ensure that no outside information is communicated to you during the trial, so that both parties receive a fair trial. The fact that we are identifying you by numbers should not have any impact on the presumption that Mr. Honken is innocent or any other impact on the way that you decide this case.

PRELIMINARY INSTRUCTION NO. 3 - DUTY OF JURORS

During this first phase of the trial, the "merits phase," your duty is to decide from the evidence whether the defendant is not guilty or guilty of the crimes charged against him. You will find the facts from the evidence. You are entitled to consider that evidence in light of your own observations and experiences. You may use reason and common sense to draw conclusions from facts that have been established by the evidence. You will then apply the law, which I will give you in my instructions, to the facts to reach your verdict. You are the sole judges of the facts; but you must follow the law as stated in my instructions, whether you agree with it or not.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, based solely on the evidence, your common sense, and the law as I give it to you. Do not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be. Similarly, do not conclude from any ruling or other comment I may make that I have any opinions on how you should decide the case.

Please remember that only defendant Dustin Lee Honken, not anyone else, is on trial here. Also, remember that this defendant is on trial *only* for the crimes charged against him, not for anything else.

You must give separate consideration to each charge against the defendant. Therefore, you must return a separate, unanimous verdict on each charge against the defendant.

PRELIMINARY INSTRUCTION NO. 4 - REQUIREMENTS FOR PROOF: PRELIMINARY MATTERS

To help you follow the evidence, I will now give you a summary of the requirements for proof of the offenses charged in the Indictment, beginning with some preliminary matters.

First, each offense charged in this case consists of "elements," which the prosecution must prove beyond a reasonable doubt in order to convict the defendant of that offense. I will summarize in the following instructions the elements of the offenses with which the defendant is charged.

Second, the Indictment alleges that the offenses were committed "on or about" a specific date or "between about" two dates. The prosecution does not have to prove with certainty the exact date of an offense charged. It is sufficient if the evidence establishes that an offense occurred within a reasonable time of the date alleged in the Indictment.

Third, several of the offenses charged in this case allegedly involved "controlled substances." When I refer to a "controlled substance," I mean any drug or narcotic the manufacture, possession, possession with intent to distribute, or distribution of which is prohibited or regulated by federal law. Methamphetamine is one "controlled substance" at issue in this case. "Actual (pure) methamphetamine" is the methamphetamine itself—that is, either by itself or contained in a mixture or substance. A "methamphetamine mixture," on the other

hand, is a mixture or substance containing a detectable amount of "actual (pure) methamphetamine."

Fourth, some of the offenses also allegedly involved "listed chemicals." When I refer to "listed chemicals," I mean any chemical specified by federal regulations as a chemical that is used in manufacturing a controlled substance and is important to the manufacture of controlled substances.

Finally, please remember that the preliminary instructions on the charged offenses provide only a preliminary outline of the requirements for proof of each offense. At the end of the trial, I will give you final written instructions on these matters. Because the final written instructions are more detailed, you should rely on those final instructions, rather than these preliminary instructions, where there is a difference.

PRELIMINARY INSTRUCTION NO. 5 - REQUIREMENTS FOR PROOF: "MURDER" DEFINED

Counts 1 through 7 of the Indictment charge that Mr. Honken murdered, solicited the murder of, or conspired to murder certain people. To prove "murder," the prosecution must prove *all* of the following requirements beyond a reasonable doubt:

One, the defendant unlawfully killed or caused the death of the alleged victim.

Two, the defendant did so with malice aforethought.

> "Malice aforethought" means an intent, at the time of a killing, willfully to take the life of a human being, or an intent willfully to act in a callous and wanton disregard of the consequences to human life. However, "malice aforethought" does not necessarily imply an ill will, spite, or hatred towards the individual killed. In determining whether the defendant unlawfully killed a person with malice aforethought, you should consider all the evidence concerning the facts and circumstances preceding, surrounding, and following the killing that tend to shed light upon the question of the defendant's intent.

Three, the killing was premeditated.

> "Premeditation" means that the killing was intentional and the result of planning or deliberation. The amount of time needed for premeditation of a killing depends on the person and the circumstances. It must have been long enough for the defendant, after forming the intent to kill, to be fully conscious of his intent, and to have thought about the killing.

> Thus, for there to be "premeditation," the defendant must have thought about the taking of a human life before acting. The amount of time required for premeditation cannot be arbitrarily fixed. The time required varies as the minds and temperaments of people differ and according to the surrounding circumstances in which they may be placed. Any interval of time between forming the intent to kill and acting on that intent is sufficient to justify a finding of "premeditation," if it was long enough for the defendant to be fully conscious and mindful of what he intended and willfully set about doing.

Whenever an element of an offense requires the prosecution to prove that the defendant "murdered" an individual, the prosecution must prove all three of the these requirements beyond a reasonable doubt for you to find that the "murder" element has been proved. Similarly, you must consider these requirements for proof of "murder" to determine whether the defendant intended to murder an individual, solicited the murder of an individual, or conspired to murder an individual.

PRELIMINARY INSTRUCTION NO. 6 - REQUIREMENTS FOR PROOF: COUNTS 1 THROUGH 5: WITNESS TAMPERING

Counts 1 through 5 of the Indictment charge Mr. Honken with "witness tampering." These charges are based on the alleged murders, in 1993, of Gregory Nicholson, Lori Duncan (Nicholson's friend), Amber Duncan and Kandi Duncan (Lori Duncan's daughters, ages 6 and 10), and Terry DeGeus.

Count 1 alleges that, on or about July 25, 1993, Honken murdered Gregory Nicholson (1) with intent to prevent Nicholson from attending or providing testimony at a federal criminal case against Honken; (2) with intent to prevent Nicholson from communicating to a law enforcement officer information relating to the commission or possible commission by Honken of federal drug-trafficking offenses; and (3) with intent to retaliate against Nicholson for providing information to law enforcement officers relating to the commission or possible commission of federal drug-trafficking offenses.

Counts 2, 3, and 4 allege that, on or about July 25, 1993, Honken murdered Lori Duncan, Kandi Duncan, and Amber Duncan with intent to prevent them from communicating to a law enforcement officer information relating to the commission or possible commission by Honken of federal offenses, including witness tampering and violation of conditions of pretrial release on federal charges pending against Honken.

Count 5 alleges that, on or about November 5, 1993, Honken murdered Terry DeGeus with intent to prevent DeGeus from communicating to a law enforcement

officer information relating to the commission or possible commission by Honken of federal drug-trafficking offenses.

For you to find the defendant guilty of a particular Count of "witness tampering," the prosecution must prove *both* of the following essential elements beyond a reasonable doubt as to that Count:

One, the defendant murdered the person identified in the pertinent Count of the Indictment; and

Two, the defendant murdered that person with the prohibited intent alleged in the pertinent Count of the Indictment.

If the prosecution fails to prove either of these elements beyond a reasonable doubt as to a particular Count of "witness tampering," then you must find the defendant not guilty of that Count.

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PRELIMINARY INSTRUCTION NO. 7 - REQUIREMENTS FOR PROOF: COUNT 6: SOLICITING THE MURDER OF WITNESSES

Count 6 of the Indictment charges Mr. Honken with "soliciting the murder of witnesses." This Count charges that, between about June 10, 1996, and February 24, 1998, Honken solicited, commanded, induced, and endeavored to persuade Dean Donaldson and Anthony Altimus to commit violent felonies in violation of federal law, specifically, the murders of Timothy Cutkomp and Daniel Cobeen with the intent to prevent Cutkomp and Cobeen from attending or testifying at a federal drug trial against Honken.

For you to find the defendant guilty of "soliciting the murder of witnesses," the prosecution must prove *all* of the following essential elements beyond a reasonable doubt:

One, the defendant intended that Dean Donaldson or Anthony Altimus murder Timothy Cutkomp or Daniel Cobeen.

Two, the circumstances are strongly corroborative of that intent.

> To determine whether the circumstances "strongly corroborate" the alleged intent, you may consider the following factors:
>
> (1) whether the defendant offered or promised payment or some other benefit to the person solicited if he would commit the offense;
>
> (2) whether the defendant threatened harm or other detriment to the person solicited if he would not commit the offense;

> (3) whether the defendant repeatedly solicited the commission of the offense, held forth at length in soliciting the offense, or made express statements of seriousness in soliciting the commission of the offense;
>
> (4) whether the defendant believed or was aware that the person solicited had previously committed similar offenses; and
>
> (5) whether the defendant acquired weapons, tools, or information requested by or suited to the person solicited in the commission of the offense or made other apparent preparations for the commission of the offense by the person solicited.

Three, the defendant actually solicited, commanded, induced, or otherwise endeavored to persuade Dean Donaldson or Anthony Altimus to murder Timothy Cutkomp or Daniel Cobeen.

If the prosecution fails to prove these elements beyond a reasonable doubt, then you must find the defendant not guilty of "soliciting the murder of witnesses," as charged in **Count 6** of the Indictment. However, the prosecution does not have to prove that the murder of Timothy Cutkomp or Daniel Cobeen was actually committed or attempted by anyone.

PRELIMINARY INSTRUCTION NO. 8 - REQUIREMENTS FOR PROOF: "CONSPIRACY" DEFINED

Count 7 ("conspiracy to tamper with witnesses and to solicit the murder of witnesses") and **Counts 8 through 12** ("conspiracy murder") require proof of a "conspiracy." To prove the existence of a "conspiracy," the prosecution must prove *all* of the following requirements beyond a reasonable doubt:

One, between the dates alleged in the Count in question, two or more persons reached an agreement or came to an understanding to commit one or more of the offenses alleged to be "objectives" of the conspiracy.

> The prosecution must prove that the defendant reached an agreement or understanding with at least one other person. The other person or persons do not have to be defendants, or named in the Indictment, or otherwise charged with a crime. There is no requirement that any other conspirators be named as long as you find beyond a reasonable doubt that there was at least one other co-conspirator besides the defendant.
>
> 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. In determining whether the alleged agreement existed, you may consider the actions and statements of all of the alleged participants, whether they are charged as defendants or not. The agreement may be inferred from all of the circumstances and the conduct of the alleged participants.

> The Indictment alleges that the conspirators agreed to commit specific offenses. I will instruct you further on these "objectives" of the conspiracies in particular Counts of the Indictment. For now, I must explain that it is not necessary for the prosecution to prove that the conspirators agreed to commit all of the offenses identified as "objectives" of a particular conspiracy. Rather, it would be sufficient if the prosecution proves, beyond a reasonable doubt, an agreement to commit *one or more* of those offenses. However, in order for you to find that the conspiracy in question existed, you must unanimously agree upon *which* offense or offenses were objectives of that conspiracy. If you cannot agree in that manner, then you cannot find that the prosecution has proved the existence of that conspiracy.
>
> To assist you in determining whether there was an agreement to commit the offenses alleged to be objectives of the conspiracies, you should consider the elements of those objectives. I will explain the elements of the objectives in subsequent Instructions.
>
> Keep in mind that a conspiracy requires proof of an agreement to commit certain offenses, not that those offenses were actually committed by the defendant or anyone else.

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

> You should understand that merely being present at the scene of an event, or merely acting in the same way as others, or merely associating with others does not prove that a person has joined in an agreement or understanding. A person who has no knowledge of a conspiracy, but who

happens to act in a way that advances some purpose of one, does not thereby become a member. Similarly, mere knowledge of the existence of a conspiracy is not enough to prove that the defendant joined in the conspiracy; rather, the prosecution must establish some degree of knowing involvement and cooperation.

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

In deciding whether the defendant voluntarily and intentionally joined in the agreement, you must consider only evidence of his own actions and statements. You may not consider actions and pretrial statements of others, except to the extent that pretrial statements of others describe something that the defendant said or did.

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

The defendant must know of the existence and purpose of the conspiracy. Without such knowledge, the defendant cannot be guilty of conspiracy, even if his acts furthered the conspiracy.

Whenever an element of an offense requires the prosecution to prove the existence of a "conspiracy," the prosecution must prove *all* of these requirements beyond a reasonable doubt for you to find that the "conspiracy" existed.

PRELIMINARY INSTRUCTION NO. 9 - REQUIREMENTS FOR PROOF: COUNT 7: CONSPIRACY TO TAMPER WITH WITNESSES AND TO SOLICIT THE MURDER OF WITNESSES

Count 7 of the Indictment charges Mr. Honken with "conspiracy to tamper with witnesses and to solicit the murder of witnesses." This Count charges that, between about July 1, 1993, and continuing thereafter, until about 2000, Honken conspired with other persons, known and unknown to the Grand Jury, to commit several separate offenses of witness tampering and solicitation of the murder of witnesses.

The requirements for proof of a "conspiracy" were defined generally for you in Preliminary Jury Instruction No. 8. More specifically, for you to find the defendant guilty of "conspiracy to tamper with witnesses and to solicit the murder of witnesses," as charged in **Count 7**, the prosecution must prove *all* of the following essential elements beyond a reasonable doubt:

One, between about July 1, 1993, and continuing thereafter, until about 2000, two or more persons reached an agreement or came to an understanding to commit one or more of the offenses alleged to be "objectives" of the conspiracy.

> The Indictment charges that this conspiracy had the following "objectives": (1) to kill or attempt to kill another person with the intent to prevent the attendance or testimony of that person at an official proceeding; (2) to kill or attempt to kill another person with the intent to prevent communication by that person to a law enforcement officer of information relating to the commission or possible commission of a federal offense;

> (3) to knowingly use intimidation, physical force, threats, or otherwise corruptly to persuade another person with the intent to influence, delay, or prevent testimony of a person at an official proceeding; (4) to knowingly use intimidation, physical force, threats, or otherwise corruptly persuade another person with the intent to hinder, delay, or prevent communication to a law enforcement officer of information relating to the commission or possible commission of a federal offense; and (5) to solicit a person to engage in a violent felony in violation of federal law.

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

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

Four, while the agreement or understanding was in effect, a person or persons who had joined in the agreement knowingly did one or more of the "overt acts" for the purpose of carrying out or carrying forward the agreement or understanding.

> It is not necessary that the "overt act" done in furtherance of the conspiracy be in itself unlawful. It may be perfectly innocent in itself. Nor is it necessary that the defendant have personally committed the act, known about it, or witnessed it. It makes no difference which of the conspirators did the act. This is because a conspiracy is a kind of "partnership," so that under the law, each member is an agent or partner of every other member, and each member is bound by or responsible for the acts of every other member done to further their scheme.

The prosecution does not have to prove that more than one act was done in furtherance of the conspiracy. It is sufficient if the prosecution proves beyond a reasonable doubt *one* act was done in furtherance of the conspiracy. However, you must unanimously agree upon which "overt act" or "overt acts" were committed in furtherance of the conspiracy.

The Indictment alleges that the following "overt acts" were committed in furtherance of this conspiracy:

(1) On or about July 3, 1993, Angela Johnson filed an application and obtained a permit to acquire a handgun.

(2) On or about July 7, 1993, Angela Johnson purchased a Tech-9, 9 mm semi-automatic handgun, Serial No. 127849, at Duey's Pawnshop in Waterloo, Iowa.

(3) During about July 1993, Honken attempted to locate Gregory Nicholson by various means, including talking to Scott Gahn.

(4) On or about July 25, 1993, Angela Johnson and Honken secured a babysitter to stay at Angela Johnson's residence.

(5) On or about July 25, 1993, Angela Johnson and Honken traveled to 619 North Van Buren, Mason City, Iowa, the residence of Lori Duncan, Kandi Duncan, Amber Duncan, and Gregory Nicholson.

(6) On or about July 25, 1993, Angela Johnson and Honken coerced Greg Nicholson to make statements recorded on a videotape, purporting to exonerate Honken.

(7) On or about July 25, 1993, Gregory Nicholson, Lori Duncan, Kandi Duncan, and Amber Duncan were killed by Angela Johnson and Honken.

(8) Between about July 1993 and March 1995, Honken provided a videotape of Gregory Nicholson to Honken's attorney, David Thinnes. This videotape showed Gregory Nicholson making statements exonerating

Honken. This tape was subsequently returned by Thinnes to Honken.

(9) On or about November 5, 1993, Angela Johnson contacted JoAnn DeGeus, the mother of Terry DeGeus, and requested Terry DeGeus contact Angela Johnson. Terry DeGeus dropped off his daughter, Ashley, at JoAnn DeGeus's residence, stating that he had to meet Angela Johnson and would return soon.

(10) On or about November 5, 1993, Angela Johnson and Honken met with Terry DeGeus and killed Terry DeGeus.

(11) Shortly after November 5, 1993, JoAnn DeGeus contacted Angela Johnson and Angela Johnson told JoAnn DeGeus that Terry DeGeus never showed up on the evening of November 5, 1993.

(12) Between February 7, 1996, and June 11, 1996, Honken sought information about the residence of Special Agent John Graham, including obtaining a page from a telephone directory which would have contained SA Graham's address and telephone number, if it had been listed.

(13) On or about June 16, 1996, Angela Johnson contacted Rick Held and indicated that they would not "need that pup anymore," or words to that effect, canceling an order of a firearm that Honken was attempting to obtain from Held while Honken was on pretrial release in Case No. 96-3004.

(14) Between about June 10, 1996, and February 24, 1998, Honken, while incarcerated in the Woodbury County Jail, met with Dean Donaldson and provided instructions to Donaldson for Donaldson to murder Timothy Cutkomp.

(15) After Donaldson returned to jail on or about November 20, 1996, without killing Cutkomp, Honken

approached Anthony Altimus for the purpose of Altimus killing Timothy Cutkomp and Daniel Cobeen.

(16) Between December 1996 and January 1997, Honken met with a fellow Woodbury County Jail inmate, Anthony Johnson, and agreed to have Angela Johnson meet with Anthony Johnson's ex-wife, Colleen Birkey, to obtain cash in trade for a methamphetamine recipe. The cash was to be used to provide bail for Anthony Altimus.

(17) Between December 1996 and January 1997, Angela Johnson met with Colleen Birkey in the Fort Dodge area and obtained $1,000 from Colleen Birkey.

(18) During about January 1997, Angela Johnson went to a bail bonding company in the Sioux City, Iowa, area and attempted to post bail for Anthony Altimus. Angela Johnson presented herself to the bail bonding company as a relative of Altimus.

(19) While incarcerated in the United States Penitentiary in Florence, Colorado (USP Florence), from 1998 until his transfer to another penitentiary, Honken expressed plans to various inmates to escape from custody and kill witnesses and others involved in the prosecution and investigation of his case. While soliciting individuals to join in these plans to escape and commit violent offenses, Honken made admissions about his prior murder of Gregory Nicholson, Terry DeGeus, and the Duncan family.

If the prosecution fails to prove these elements beyond a reasonable doubt, then you must find the defendant not guilty of "conspiracy to tamper with witnesses and to solicit the murder of witnesses," as charged in **Count 7** of the Indictment.

PRELIMINARY INSTRUCTION NO. 10 - REQUIREMENTS FOR PROOF: COUNTS 8 THROUGH 12: CONSPIRACY MURDER

Counts 8 through 12 of the Indictment charge Mr. Honken with the murder of five people while engaging in a drug-trafficking conspiracy ("conspiracy murder"). The victims are alleged to be Greg Nicholson in **Count 8**; Lori Duncan in **Count 9**; Amber Duncan in **Count 10**; Kandi Duncan in **Count 11**; and Terry DeGeus in **Count 12**. These Counts allege that, on or about July 25, 1993, in the case of Nicholson and the Duncans, and November 5, 1993, in the case of DeGeus, while Honken was knowingly engaging in a conspiracy to commit drug-trafficking offenses, Honken intentionally killed, procured the intentional killing of, and aided and abetted the intentional killing of the named individuals, and that such killing resulted.

For you to find the defendant guilty of a particular Count of "conspiracy murder," the prosecution must prove *all* of the following essential elements beyond a reasonable doubt as to that Count:

One, the defendant was engaged in a conspiracy to commit a drug crime between 1992 and 1998.

> This element requires the prosecution to prove the existence of a conspiracy. The requirements for proof of the existence of a conspiracy are explained in Preliminary Jury Instruction No. 8. The Indictment charges that this conspiracy had one or more of the following four objectives: (1) the distribution of actual (pure) methamphetamine; (2) the distribution of a

> methamphetamine mixture; (3) the manufacture of actual (pure) methamphetamine; (4) the manufacture of a methamphetamine mixture. Proof that the defendant was "engaged in" the conspiracy means proof that the defendant was guilty of the conspiracy.

Two, the drug conspiracy involved 100 grams or more of actual (pure) methamphetamine or 1000 grams or more of a methamphetamine mixture.

> In considering whether the conspiracy "involved" 100 grams or more of actual (pure) methamphetamine or 1000 grams or more of a methamphetamine mixture, you must consider the total quantity, in grams, of methamphetamine involved in the offense. This quantity may include quantities seized, quantities actually manufactured, quantities attempted to be manufactured, quantities distributed, and quantities possessed with intent to be distributed. The total quantity involved in the conspiracy is the total of *all* quantities involving the defendant and all other co-conspirators. You do not need to determine a specific drug amount, but you must unanimously agree that the prosecution has proved that the conspiracy involved 100 grams or more of actual (pure) methamphetamine or 1000 grams or more of a methamphetamine mixture.

Three, while engaging in the drug conspiracy, the defendant either intentionally killed, or counseled, commanded, induced, procured, or caused the intentional killing of, the victim named in the Count in question.

Four, the killing of the named victim actually resulted.

If the prosecution fails to prove these elements beyond a reasonable doubt as to a particular Count of "conspiracy murder," then you must find the defendant not guilty of that Count.

PRELIMINARY INSTRUCTION NO. 11 - REQUIREMENTS FOR PROOF: "CONTINUING CRIMINAL ENTERPRISE (CCE)" DEFINED

Counts 13 through 17 ("CCE murder") require proof of a "continuing criminal enterprise" or CCE. To prove the existence of a CCE, the prosecution must prove *all* of the following requirements beyond a reasonable doubt:

One, there was a felony violation of the federal controlled substances laws.

Two, that offense was part of a continuing series of three or more related felony violations of the federal controlled substances laws.

> "A continuing series of violations" means at least three violations of the federal controlled substance laws that were connected together as a series of related or on-going activities, as distinguished from isolated and disconnected acts. The violations are "related" if they are driven by a single impulse and operated by continuous force. You must unanimously agree on which three violations constituted the series of three or more violations in order to find that this element has been proved.

Three, such offenses involved the concerted action of five or more persons.

> To act "in concert" means to act pursuant to a common design or plan. You are *not* required to agree unanimously on the identities of the five persons.

Four, at least one person acted as organizer, supervisor, or manager of those five or more other persons.

> The person must have organized, supervised or managed, either personally or through others, five or more persons with whom that person was acting in concert

> while the person committed the series of offenses. An "organizer" is a person who puts together a number of people engaged in separate activities and arranges them in these activities in one operation or enterprise. A "supervisor" is a person who manages, directs, or oversees the activities of others.
>
> However, it is not necessary that the person managed all five at once or that the five other persons acted together at any time or in the same place. It also is not necessary that the person have been the only person who organized, managed or supervised the five or more other persons, or that the person exercised the same amount of control over each of the five, or that the person had the highest rank of authority in the enterprise.

Five, that person or those persons acting as organizers, supervisors, or managers obtained a substantial income, money, or other property from the series of violations.

> You may consider all money or property that passed through the participants' hands as a result of illegal drug dealings, not just profit, to determine whether the amount was "substantial." "Substantial" means of real worth and importance, of considerable value, or valuable.

Whenever an element of an offense requires the prosecution to prove the existence of a "continuing criminal enterprise" or CCE, the prosecution must prove *all* of the these requirements beyond a reasonable doubt for you to find that the CCE existed.

PRELIMINARY INSTRUCTION NO. 12 - REQUIREMENTS FOR PROOF: COUNTS 13 THROUGH 17: CCE MURDER

Counts 13 through 17 of the Indictment charge Mr. Honken with the murder of five people while engaging in or working in furtherance of a continuing criminal enterprise ("CCE murder"). The victims are alleged to be Greg Nicholson in **Count 13**; Lori Duncan in **Count 14**; Amber Duncan in **Count 15**; Kandi Duncan in **Count 16**; and Terry DeGeus in **Count 17**. These Counts allege that, on or about July 25, 1993, in the case of Nicholson and the Duncans, and November 5, 1993, in the case of DeGeus, while Honken was engaging in and working in furtherance of a "continuing criminal enterprise" (CCE), Honken intentionally killed, procured the intentional killing of, and aided and abetted the intentional killing of the named individuals, and that such killing resulted.

For you to find the defendant guilty of a particular Count of "CCE murder," the prosecution must prove *all* of the following essential elements beyond a reasonable doubt as to that Count:

One, the defendant was engaging in or working in furtherance of a continuing criminal enterprise (CCE).

> This element requires the prosecution to prove the existence of a CCE. The requirements for proof of the existence of a CCE are explained in Preliminary Jury Instruction No. 11. "Engaging in" a CCE means actually guilty of the CCE offense; in other words, the defendant must have been the person involved in each element stated in Preliminary Jury Instruction No. 11. "Working in

furtherance" of a CCE means that the CCE existed, and that the defendant worked to promote, help forward, or advance the interests of the CCE, even though he was not a member of the CCE. The prosecution does not have to prove that the defendant was *both* "engaging in" and "working in furtherance of" the CCE. Rather, you may find that this element is established if the prosecution proves *either* that the defendant was "engaging in" *or* "working in furtherance of" the CCE *or* both.

The Indictment charges that the following series of offenses were committed in furtherance of the CCE:

(1) between 1992 and 2000, the participants distributed methamphetamine on specific unknown dates;

(2) between 1992 and 2000, the participants possessed with intent to distribute methamphetamine on specific unknown dates;

(3) between 1992 and 2000, the participants conspired with each other to manufacture, distribute, and possess with intent to distribute 100 grams or more of actual (pure) methamphetamine or 1000 grams or more of a methamphetamine mixture;

(4) between 1992 and 2000, the participants used a communication facility, specifically the telephone and mail, to facilitate the commission of felony drug offenses;

(5) between 1992 and 1996, the participants created one or more listed chemicals, including benzyl cyanide, phenylacetic acid, phenyl-2-propanone, and methylamine for the purpose of avoiding the federal reporting requirements for such chemicals, and those chemicals were to be used to manufacture methamphetamine;

(6) on specific dates unknown between 1992 and 1996, in Arizona and Mason City, Iowa, the participants possessed benzyl cyanide, phenylacetic acid, phenyl-2-

propanone, and methylamine with intent to manufacture methamphetamine;

(7) between 1992 and 1993, Honken and Timothy Cutkomp operated a methamphetamine-producing laboratory in Arizona using the name "Printed Circuit Technology" and manufactured 100 grams or more of actual (pure) methamphetamine;

(8) on specific unknown dates between 1992 and 1993, the participants manufactured 100 grams or more of actual (pure) methamphetamine;

(9) on March 17, 1993, Gregory Nicholson possessed with intent to distribute 143.89 grams or more of actual (pure) methamphetamine;

(10) between the fall of 1995 and February 7, 1996, the participants operated a laboratory at Honken's house at 1104 16th Street, NE, in Mason City, Iowa, using the name Cytomex Company, and attempted to manufacture 100 grams or more of actual (pure) methamphetamine;

(11) during about 1995 and 1996, at #5 19th Street South, Clear Lake, Iowa, Honken knowingly and intentionally possessed chemicals, equipment, and materials which may be used to manufacture methamphetamine, MDMA, or a listed chemical, knowing, intending, or having reasonable cause to believe that the chemical, equipment, and materials would be used to manufacture a controlled substance or a listed chemical;

(12) during about September 1995, Honken had a mailbox established in the name of Cytomex Company at 924 6th Street, Urbandale, Iowa, and thereafter used the United States Mail to facilitate a conspiracy to manufacture 100 grams or more of actual (pure) methamphetamine, by ordering glassware, equipment, and books using this address or the address of Jay Lein;

> (13) on or about October 17, 1995, Honken had an individual purchase a cylinder of hydrogen gas which Honken subsequently possessed along with other chemicals, equipment, and materials, knowing, intending, or having reasonable cause to believe the gas would be used to manufacture a controlled substance or listed chemical;
>
> (14) on or about January 9, 1996, at Honken's residence at 1104 16th Street, NE, Mason City, Iowa, one or more participants intentionally, while attempting to manufacture methamphetamine, created a substantial risk to human life by creating and discharging chlorine gas;
>
> (15) on or about January 22, 1996, Timothy Cutkomp and Honken knowingly and intentionally possessed manganese chloride and other chemicals, equipment, and materials that may be used to manufacture methamphetamine or a listed chemical, knowing, intending, or having reasonable cause to believe the chemical, equipment, and materials would be used to manufacture a controlled substance or a listed chemical;
>
> (16) on or about February 7, 1996, at defendant's residence at 1104 16th Street, NE, Mason City Iowa, one or more participants possessed a three-neck, round bottom flask and other chemicals and equipment, knowing, intending, and having reasonable cause to believe the materials would be used to manufacture methamphetamine or a listed chemical.
>
> You must unanimously agree on which violations constitute the series of three or more violations in order to find that the CCE existed.

Two, the defendant intentionally killed or aided and abetted the killing of the victim named in the Count in question.

Three, the killing of the named victim was connected to the continuing criminal enterprise (CCE).

If the prosecution fails to prove these elements beyond a reasonable doubt as to a particular Count of "CCE murder," then you must find the defendant not guilty of that Count.

PRELIMINARY INSTRUCTION NO. 13 - PRESUMPTION OF INNOCENCE

The charges against the defendant are set out in an "indictment." As I explained during jury selection, an "indictment" is simply an accusation. It is not evidence of anything. Defendant Dustin Lee Honken has pled not guilty to the charges brought against him; therefore, he is presumed to be innocent. This presumption of innocence requires you to put aside all suspicion that might arise from the arrest or charge of the defendant or the fact that he is here in court. The presumption of innocence remains with the defendant throughout the trial. That presumption alone is sufficient to find him not guilty. The presumption of innocence may be overcome as to the defendant only if the prosecution proves, beyond a reasonable doubt, *all* of the elements of a crime charged against him.

The burden is always upon the prosecution to prove guilt *beyond a reasonable doubt*. This burden never shifts to the defendant to prove his innocence, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant is not even obligated to produce any evidence by cross-examining the witnesses who are called to testify by the prosecution.

PRELIMINARY INSTRUCTION NO. 14 - REASONABLE DOUBT

The prosecution must prove each and every essential element of an offense "beyond a reasonable doubt" for you to find the defendant guilty of that offense. If the prosecution fails to prove any element of an offense beyond a reasonable doubt, then you must find the defendant "not guilty" of that offense.

A "reasonable doubt" may arise from the evidence produced by either the prosecution or the defense, keeping in mind that the defendant never has the burden or duty of calling any witnesses or producing any evidence. It may also arise from the prosecution's lack of evidence. A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof "beyond a reasonable doubt," therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the more serious and important transactions of life. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

PRELIMINARY INSTRUCTION NO. 15 - OUTLINE OF TRIAL

The trial will proceed as follows:

After these preliminary instructions, the prosecutor may make an opening statement. Next, a lawyer for the defendant may, but does not have to, make an opening statement. An opening statement is not evidence. It is simply a summary of what the lawyer expects the evidence to be.

The prosecution will then present its evidence and call witnesses, and the lawyers for the defendant may, but have no obligation to, cross-examine. Following the prosecution's case, the defendant may, but does not have to, present evidence and call witnesses. If the defendant calls witnesses, the prosecutor may cross-examine them.

After the evidence is concluded, I will give you most of the final instructions. The lawyers will then make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence. I will then give you the remaining final instructions on deliberations, and you will retire to deliberate on your verdict.

PRELIMINARY INSTRUCTION NO. 16 - DEFINITION OF EVIDENCE

Evidence is:

1. Testimony.
2. Exhibits that I admit into evidence.
3. Stipulations, which are agreements between the parties.

Evidence may be "direct" or "circumstantial." The law makes no distinction between the weight to be given to direct and circumstantial evidence. The weight to be given any evidence is for you to decide.

A particular item of evidence is sometimes admitted only for a limited purpose, and not for any other purpose. I will tell you if that happens, and instruct you on the purposes for which the item can and cannot be used.

The fact that an exhibit may be shown to you does not mean that you must rely on it more than you rely on other evidence.

The following are not evidence:

1. Statements, arguments, questions, and comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony I tell you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

The weight of the evidence is not determined merely by the number of witnesses testifying as to the existence or non-existence of any fact. Also, the weight of the evidence is not determined merely by the number or volume of documents or exhibits. The weight of evidence depends upon its quality, which

means how convincing it is, and not merely upon its quantity. For example, you may choose to believe the testimony of one witness, if you find that witness to be convincing, even if a number of other witnesses contradict his or her testimony. The quality and weight of the evidence are for you to decide.

PRELIMINARY INSTRUCTION NO. 17 - CREDIBILITY OF WITNESSES

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness says, only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to see or hear the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the witness's drug or alcohol use or addiction, if any, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe. In deciding whether or not to believe a witness, keep in mind that people sometimes see or hear things differently and sometimes forget things. You need to consider, therefore, whether a contradiction results from an innocent misrecollection or sincere lapse of memory, or instead from an intentional falsehood or pretended lapse of memory.

If the defendant testifies, you should judge his testimony in the same manner in which you judge the testimony of any other witness.

Ordinarily, witnesses may only testify to factual matters within their personal knowledge. However, you may hear evidence from persons described as experts. Persons may become qualified as experts in some field by knowledge, skill, training, education, or experience. Such experts may state their opinions on matters in that

field and may also state the reasons for their opinions. You should consider expert testimony just like any other testimony. You may believe all of what an expert says, only part of it, or none of it, considering the expert's qualifications, the soundness of the reasons given for the opinion, the acceptability of the methods used, any reason the expert may be biased, and all of the other evidence in the case.

Finally, just because a witness works in law enforcement or is employed by the government does not mean you should give any more or less weight or credence to such a witness's testimony than you give to any other witness's testimony.

PRELIMINARY INSTRUCTION NO. 18 - BENCH CONFERENCES AND RECESSES

During the trial it may be necessary for me to talk with the lawyers out your hearing, either by having a bench conference here while you are present in the courtroom, or by calling a recess. Please be patient, because while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, to avoid confusion and error, and to save your valuable time. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

PRELIMINARY INSTRUCTION NO. 19 - OBJECTIONS

The lawyers may make objections and motions during the trial that I must rule upon. If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself. Also, the lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible. Do not hold it against a lawyer or the party the lawyer represents because the lawyer has made objections.

PRELIMINARY INSTRUCTION NO. 20 - NOTE-TAKING

If you want to take notes during the trial, you may, but be sure that your note-taking does not interfere with listening to and considering all the evidence. If you choose not to take notes, remember it is your own individual responsibility to listen carefully to the evidence.

Notes you take during the trial are not necessarily more reliable than your memory or another juror's memory. Therefore, you should not be overly influenced by the notes.

If you take notes, do not discuss them with anyone before you begin your deliberations. At the end of each day, please leave your notes on your chair. At the end of the trial, you may take your notes out of the notebook and keep them, or leave them, and we will destroy them. No one will read the notes, either during or after the trial.

You will notice that we have an official court reporter making a record of the trial. However, we will not have typewritten transcripts of this record available for your use in reaching your verdict.

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PRELIMINARY INSTRUCTION NO. 21 - CONDUCT OF THE JURY

Finally, to insure fairness, you as jurors must obey the following rules:

First, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdict.

Second, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

Third, when you are outside the courtroom do not let anyone tell you anything about the case, or about anyone involved with it until the trial has ended and your verdict has been accepted by me. If someone should try to talk to you about the case during the trial, please report it to me.

Fourth, during the trial you should not talk with or speak to any of the parties, lawyers, or witnesses involved in this case—you should not even pass the time of day with any of them. It is important that you not only do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the case sees you talking to a person from the other side—even if it is simply to pass the time of day—an unwarranted and unnecessary suspicion about your fairness might be aroused. If any lawyer, party, or witness does not speak to you when you pass in the hall, ride the elevator or the like, it is because they are not supposed to talk or visit with you.

Fifth, do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio or television reports about the case or about

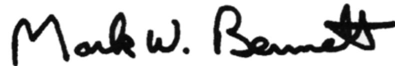
anyone involved with it. If you want, you can have your spouse or a friend clip out any stories and set them aside to give you after the trial is over. I can assure you, however, that by the time you have heard the evidence in this case you will know more about the matter than anyone will learn through the news media.

Sixth, do not do any research—on the Internet, in libraries, in the newspapers, or in any other way—or make any investigation *about this case* on your own. You must decide this case based on the evidence presented in court.

Seventh, do not make up your mind during the trial about what the verdict should be. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

Eighth, if at anytime during the trial you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer, who will deliver it to me. I want you to be comfortable, so please do not hesitate to inform me of any problem.

DATED this 8th day of September, 2004.



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

FINAL INSTRUCTION NO. 1 - INTRODUCTION

Members of the jury, the written instructions I gave you at the beginning of the trial and the oral instructions I gave you during the trial remain in effect. I will now give you some additional instructions.

The instructions I am about to give you, as well as the preliminary instructions given to you at the beginning of the trial, are in writing and will be available to you in the jury room. *All* instructions, whenever given and whether in writing or not, must be followed. This is true even though some of the instructions I gave you at the beginning of the trial are not repeated here.

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FINAL INSTRUCTION NO. 2 - "INTENT" AND "KNOWLEDGE"

Where "intent" or "knowledge" is an element of an offense charged in this case, the defendant's "intent" or "knowledge" must be proved beyond a reasonable doubt. An act is done "knowingly" if the defendant is aware of the act and does not act through ignorance, mistake, or accident. The prosecution is not required to prove that the defendant knew that his acts or omissions were unlawful. An act is done "intentionally" if it is done voluntarily, without coercion, and not because of ignorance, mistake, accident, or inadvertence. An act is done "with intent" if it is done with a certain, particular purpose.

"Intent" and "knowledge" are mental states. It is seldom, if ever, possible to determine directly the operations of the human mind. However, "intent" and "knowledge" may be proved like anything else, from reasonable inferences and deductions drawn from the facts proved by the evidence. Therefore, you may consider any statements made or acts done by the defendant and all of the facts and circumstances in evidence to aid you in the determination of the defendant's "knowledge" or "intent."

FINAL INSTRUCTION NO. 3 - "POSSESSION," "DISTRIBUTION," AND "DELIVERY"

Whenever I use the terms "possession," "distribution," or "delivery" in these instructions, you must apply the following definitions of those terms:

The law recognizes several kinds of "possession." A person who knowingly has direct physical control over a thing, at a given time, is then in "actual possession" of it. A person who, although not in actual possession, has both the power and the intention at a given time to exercise control over a thing, either directly or through another person or persons, is then in "constructive possession" of it. If one person alone has actual or constructive possession of a thing, possession is "sole." If two or more persons share actual or constructive possession of a thing, possession is "joint." Whenever the word "possession" has been used in these instructions, it includes "actual" as well as "constructive" possession and also "sole" as well as "joint" possession.

In addition, mere presence where a thing was found or mere physical proximity to the thing is insufficient to establish "possession" of that thing. Knowledge of the presence of the thing, at the same time one has control over the thing or the place in which it was found, is required. Thus, in order to establish a person's "possession" of a thing, the prosecution must establish that, at the same time, (a) the person knew of the presence of the thing; (b) the person intended to exercise control over the thing or place in which it was found; (c) the person had the power to exercise control over the thing or place in which it was found; and (d) the

person knew that he had the power to exercise control over the thing or place in which it was found.

The term “distribute” means to deliver a controlled substance to the actual or constructive possession of another person. The term “deliver” means the actual, constructive, or attempted transfer of a controlled substance to the actual or constructive possession of another person. It is not necessary that money or anything of value change hands. The law prohibits “distribution” and “possession with intent to distribute” a controlled substance; the prosecution does not have to prove that there was or was intended to be a “sale” of a controlled substance to prove distribution, conspiracy to distribute, intent to distribute, or possession with intent to distribute a controlled substance.

FINAL INSTRUCTION NO. 4 - COUNTS 1 THROUGH 5: WITNESS TAMPERING

Counts 1 through 5 of the Indictment charge Mr. Honken with "witness tampering." These charges are based on the alleged murders, in 1993, of Gregory Nicholson, Lori Duncan, Amber Duncan, Kandi Duncan, and Terry DeGeus. You must give separate consideration to each "witness tampering" charge against the defendant and return a separate, unanimous verdict on each of these charges.

For you to find the defendant guilty of a particular Count of "witness tampering," the prosecution must prove *both* of the following essential elements beyond a reasonable doubt as to that Count:

One, the defendant murdered the person identified in the pertinent Count of the Indictment.

> **Count 1** alleges that, on or about July 25, 1993, Honken murdered Gregory Nicholson. **Count 2** alleges that, on or about July 25, 1993, Honken murdered Lori Duncan. **Count 3** alleges that, on or about July 25, 1993, Honken murdered Kandi Duncan. **Count 4** alleges that, on or about July 25, 1993, Honken murdered Amber Duncan. **Count 5** alleges that, on or about November 5, 1993, Honken murdered Terry DeGeus. "Murder" was defined for you in Preliminary Jury Instruction No. 5.

Two, the defendant murdered that person with the prohibited intent alleged in the pertinent Count of the Indictment.

> **Count 1** alleges that, on or about July 25, 1993, Honken murdered Gregory Nicholson (1) with intent to

> prevent Nicholson from attending or providing testimony at a federal criminal case against Honken; (2) with intent to retaliate against Nicholson for providing information to law enforcement officers relating to the commission or possible commission of federal drug-trafficking offenses; and (3) with intent to prevent Nicholson from communicating to a law enforcement officer information relating to the commission or possible commission by Honken of federal drug-trafficking offenses.
>
> **Counts 2, 3, and 4** allege that, on or about July 25, 1993, Honken murdered Lori Duncan, Kandi Duncan, and Amber Duncan with intent to prevent them from communicating to a law enforcement officer information relating to the commission or possible commission by Honken of federal offenses, including witness tampering and violation of conditions of pretrial release on federal charges pending against Honken.
>
> **Count 5** alleges that, on or about November 5, 1993, Honken murdered Terry DeGeus with intent to prevent DeGeus from communicating to a law enforcement officer information relating to the commission or possible commission by Honken of federal drug-trafficking offenses.

If the prosecution fails to prove either of these elements beyond a reasonable doubt as to a particular Count of "witness tampering," then you must find the defendant not guilty of that Count. However, if the prosecution proves *both* of these elements beyond a reasonable doubt as to a particular Count, then you must find the defendant guilty of that Count.

FINAL INSTRUCTION NO. 5 - COUNT 6: SOLICITING THE MURDER OF A WITNESS

Count 6 of the Indictment charges Mr. Honken with "soliciting the murder of witnesses." At the beginning of trial, I told you that this Count charges Honken solicited the murders of both Timothy Cutkomp and Daniel Cobeen. However, since the trial started, the portion of this charge alleging that Honken solicited the murder of Daniel Cobeen has been withdrawn by the prosecution. Therefore, that portion of this charge is no longer before you, and the "solicitation of murder" charge now before you involves only the alleged solicitation of the murder of Timothy Cutkomp. You are not to consider the fact that the portion of the charge concerning the murder of Daniel Cobeen has been withdrawn when deciding whether or not the prosecution has proved, beyond a reasonable doubt, the remaining portion of this charge concerning the solicitation of the murder of Timothy Cutkomp or any other Count in the Indictment.

Thus, as the charge in **Count 6** now stands, it charges that, between about June 10, 1996, and February 24, 1998, Honken solicited, commanded, induced, and endeavored to persuade Dean Donaldson and Anthony Altimus to commit a violent felony in violation of federal law, specifically, the murder of Timothy Cutkomp with the intent to prevent Cutkomp from attending or testifying at a federal drug trial against Honken.

For you to find the defendant guilty of "soliciting the murder of a witness," the prosecution must prove *all* of the following essential elements beyond a reasonable doubt:

One, the defendant intended that Dean Donaldson or Anthony Altimus murder Timothy Cutkomp.

> "Intent" was defined for you in Final Jury Instruction No. 2. "Murder" was defined for you in Preliminary Jury Instruction No. 5.

Two, the circumstances are strongly corroborative of that intent.

> The law requires that, to convict someone of soliciting the murder of a witness, the circumstances must be "strongly corroborative" of the defendant's intent that another person commit the murder. Thus, there must be evidence that the defendant intended the murder of a witness and that the defendant intended that another person commit that murder. To determine whether the circumstances "strongly corroborate" the alleged intent, you may consider, but are not required to find, each the following factors:
>
> (1) whether the defendant offered or promised payment or some other benefit to the person solicited if he would commit the offense;
>
> (2) whether the defendant threatened harm or other detriment to the person solicited if he would not commit the offense;
>
> (3) whether the defendant repeatedly solicited the commission of the offense, talked at length about soliciting the offense, or made express statements of seriousness in soliciting the commission of the offense;

> (4) whether the defendant believed or was aware that the person solicited had previously committed similar offenses; and
>
> (5) whether the defendant acquired weapons, tools, or information requested by or suited to the person solicited in the commission of the offense or made other apparent preparations for the commission of the offense by the person solicited.

Three, the defendant actually solicited, commanded, induced, or otherwise endeavored to persuade Dean Donaldson or Anthony Altimus to murder Timothy Cutkomp.

> It is sufficient if the prosecution proves that the defendant actually solicited, or commanded, or induced, or otherwise endeavored to persuade another to murder a witness. The prosecution does not have to prove that the defendant actually did *all* of these things. To "solicit" someone means to urge him strongly, or entice him, or lure him into doing something. To "command" someone means to order, enjoin, or bid with authority or influence that the person do something. To "induce" someone means to move him to do something by persuasion or influence. "Otherwise endeavored to persuade" means that the defendant seriously sought to persuade another to engage in criminal conduct. The prosecution *does not have to prove* that the murder of Timothy Cutkomp was actually committed or attempted by anyone.

If the prosecution fails to prove these elements beyond a reasonable doubt, then you must find the defendant not guilty of "soliciting the murder of a witness," as charged in **Count 6** of the Indictment. However, if the prosecution proves *all* of

these elements beyond a reasonable doubt, then you must find the defendant guilty of "soliciting the murder of a witness," as charged in **Count 6** of the Indictment.

FINAL INSTRUCTION NO. 6 - COUNTS 7 THROUGH 12: NATURE OF THE CONSPIRACIES

The requirements for proof of a "conspiracy" were defined generally for you in Preliminary Jury Instruction No. 8. However, I must now reiterate certain parts of that instruction and also provide you with some additional instructions about the "nature" of the conspiracies charged in **Counts 7 through 12** in this case.

Conspiracy to commit multiple offenses. Each of the charges involving a "conspiracy" alleges that the conspiracy involved an agreement to commit several offenses. As I explained in Preliminary Jury Instruction No. 8, it is not necessary for the prosecution to prove that the conspirators agreed to commit all of the offenses identified as "objectives" of a particular conspiracy. Rather, it would be sufficient if the prosecution proves, beyond a reasonable doubt, an agreement to commit *one or more* of those offenses.

Single or multiple conspiracies. Each of the charges involving a "conspiracy" charges that the defendant was a member of a single conspiracy to commit several offenses over several years. One of the issues that you must decide for each of these counts is whether there was only a single conspiracy or whether there were really two or more separate conspiracies, each involving some individuals to commit a certain crime or crimes. The prosecution must convince you beyond a reasonable doubt that the defendant was a member of the single conspiracy at issue in the particular count in question. If the prosecution fails to prove this requirement, then you must find the defendant not guilty of the "conspiracy" charge in question,

even if you find that the defendant was a member of some other conspiracy. Proof that the defendant was a member of some other conspiracy is not enough to convict him of any of the charges in the Indictment involving a "conspiracy." On the other hand, proof that the defendant was a member of some other conspiracy would not prevent you from returning a guilty verdict on a charge involving a "conspiracy," if the prosecution has *also* proved that he was a member of the conspiracy charged in the particular Count of the Indictment in question.

A single conspiracy may have existed even if all the members did not know each other, or never met together, or did not know what roles all the other members played. A single conspiracy may also have existed even if different members joined at different times, or the membership of the group changed. Similarly, just because there were different subgroups operating in different places, or many different criminal acts committed over a long period of time, does not necessarily mean that there was more than one conspiracy. However, these are factors that you may consider in determining whether more than one conspiracy existed.

FINAL INSTRUCTION NO. 7 - COUNT 7:
CONSPIRACY TO TAMPER WITH WITNESSES
AND TO SOLICIT THE MURDER OF WITNESSES

Count 7 of the Indictment charges Mr. Honken with "conspiracy to tamper with witnesses and to solicit the murder of witnesses." This Count charges that, between about July 1, 1993, and continuing thereafter, until about 2000, Honken conspired with other persons, known and unknown to the Grand Jury, to commit several separate offenses of witness tampering and solicitation of the murder of witnesses.

The requirements for proof of a "conspiracy" were defined generally for you in Preliminary Jury Instruction No. 8, and additional general instructions on determination of the "nature" of a conspiracy were provided in Final Jury Instruction No. 6. More specifically, for you to find the defendant guilty of "conspiracy to tamper with witnesses and to solicit the murder of witnesses," as charged in **Count 7**, the prosecution must prove *all* of the following essential elements beyond a reasonable doubt:

One, between about July 1, 1993, and continuing thereafter, until about 2000, two or more persons reached an agreement or came to an understanding to commit one or more of the offenses alleged to be "objectives" of the conspiracy.

> The Indictment charges that this conspiracy had the following "objectives": (1) to kill or attempt to kill another person with the intent to prevent the attendance or testimony of that person at an official proceeding; (2) to kill or attempt to kill another person with the intent to

> prevent communication by that person to a law enforcement officer of information relating to the commission or possible commission of a federal offense; (3) to knowingly use intimidation, physical force, threats, or otherwise corruptly to persuade another person with the intent to influence, delay, or prevent testimony of a person at an official proceeding; (4) to knowingly use intimidation, physical force, threats, or otherwise corruptly to persuade another person with the intent to hinder, delay, or prevent communication to a law enforcement officer of information relating to the commission or possible commission of a federal offense; and (5) to solicit a person to engage in a violent felony in violation of federal law.
>
> To assist you in determining whether there was an agreement to commit the offenses alleged to be objectives of this conspiracy, you should consider the elements of those objectives. I will explain the elements of the objectives of this conspiracy in Final Jury Instruction No. 8. Keep in mind that a conspiracy requires proof of an agreement to commit certain offenses, not that those offenses were actually committed by the defendant or anyone else.

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

> An explanation of this element was provided in Preliminary Jury Instruction No. 8, element *two*, beginning on page 15.

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

An explanation of this element was provided in Preliminary Jury Instruction No. 8, element *three*, beginning on page 16.

Four, while the agreement or understanding was in effect, a person or persons who had joined in the agreement knowingly did one or more "overt acts" for the purpose of carrying out or carrying forward the agreement or understanding.

It is not necessary that the "overt act" done in furtherance of the conspiracy be in itself unlawful. It may be perfectly innocent in itself. Nor is it necessary that the defendant have personally committed the act, known about it, or witnessed it. It makes no difference which of the conspirators did the act. This is because a conspiracy is a kind of "partnership," so that under the law, each member is an agent or partner of every other member, and each member is bound by or responsible for the acts of every other member done to further their scheme.

The prosecution does not have to prove that more than one act was done in furtherance of the conspiracy. It is sufficient if the prosecution proves beyond a reasonable doubt *one* act was done in furtherance of the conspiracy. However, you must unanimously agree upon which "overt act" or "overt acts" were committed in furtherance of the conspiracy.

The Indictment alleges that the following "overt acts" were committed in furtherance of this conspiracy:

(1) On or about July 3, 1993, Angela Johnson filed an application and obtained a permit to acquire a handgun.

(2) On or about July 7, 1993, Angela Johnson purchased a Tec 9, 9 mm semi-automatic handgun, Serial No. 127849, at Duey's Pawnshop in Waterloo, Iowa.

(3) During about July 1993, Honken attempted to locate Gregory Nicholson by various means, including talking to Scott Gahn.

(4) On or about July 25, 1993, Angela Johnson and Honken secured a babysitter to stay at Angela Johnson's residence.

(5) On or about July 25, 1993, Angela Johnson and Honken traveled to 619 North Van Buren, Mason City, Iowa, the residence of Lori Duncan, Kandi Duncan, Amber Duncan, and Gregory Nicholson.

(6) On or about July 25, 1993, Angela Johnson and Honken coerced Greg Nicholson to make statements, recorded on a videotape, purporting to exonerate Honken.

(7) On or about July 25, 1993, Gregory Nicholson, Lori Duncan, Kandi Duncan, and Amber Duncan were killed by Angela Johnson and Honken.

(8) Between about July 1993 and March 1995, Honken provided a videotape of Gregory Nicholson to Honken's attorney, David Thinnes. This videotape showed Gregory Nicholson making statements exonerating Honken. This tape was subsequently returned by Thinnes to Honken.

(9) On or about November 5, 1993, Angela Johnson contacted JoAnn DeGeus, the mother of Terry DeGeus, and requested Terry DeGeus contact Angela Johnson. Terry DeGeus dropped off his daughter, Ashley, at JoAnn DeGeus's residence, stating that he had to meet Angela Johnson and would return soon.

(10) On or about November 5, 1993, Angela Johnson and Honken met with Terry DeGeus and killed Terry DeGeus.

(11) Shortly after November 5, 1993, JoAnn DeGeus contacted Angela Johnson and Angela Johnson

told JoAnn DeGeus that Terry DeGeus never showed up on the evening of November 5, 1993.

(12) Between February 7, 1996, and June 11, 1996, Honken sought information about the residence of Special Agent John Graham, including obtaining a page from a telephone directory which would have contained SA Graham's address and telephone number, if it had been listed.

(13) On or about June 16, 1996, Angela Johnson contacted Rick Held and indicated that they would not "need that pup anymore," or words to that effect, canceling an order of a firearm that Honken was attempting to obtain from Held while Honken was on pretrial release in Case No. 96-3004.

(14) Between about June 10, 1996, and February 24, 1998, Honken, while incarcerated in the Woodbury County Jail, met with Dean Donaldson and provided instructions to Donaldson for Donaldson to murder Timothy Cutkomp.

(15) After Donaldson returned to jail on or about November 20, 1996, without killing Cutkomp, Honken approached Anthony Altimus for the purpose of having Altimus kill Timothy Cutkomp.

(16) Between December 1996 and January 1997, Honken met with a fellow Woodbury County Jail inmate, Anthony Johnson, and agreed to have Angela Johnson meet with Anthony Johnson's ex-wife, Colleen Birkey, to obtain cash in trade for a methamphetamine recipe. The cash was to be used to provide bail for Anthony Altimus.

(17) Between December 1996 and January 1997, Angela Johnson met with Colleen Birkey in the Fort Dodge area and obtained $1,000 from Colleen Birkey.

(18) During about January 1997, Angela Johnson went to a bail bonding company in the Sioux City, Iowa,

area and attempted to post bail for Anthony Altimus. Angela Johnson presented herself to the bail bonding company as a relative of Altimus.

(19) While incarcerated in the United States Penitentiary in Florence, Colorado (USP Florence), from 1998 until his transfer to another penitentiary, Honken expressed plans to various inmates to escape from custody and kill witnesses and others involved in the prosecution and investigation of his case. While soliciting individuals to join in these plans to escape and commit violent offenses, Honken made admissions about his prior murder of Gregory Nicholson, Terry DeGeus, and the Duncan family.

If the prosecution fails to prove these elements beyond a reasonable doubt, then you must find the defendant not guilty of "conspiracy to tamper with witnesses and to solicit the murder of witnesses," as charged in **Count 7** of the Indictment. However, if the prosecution proves *all* of these elements beyond a reasonable doubt, then you must find the defendant guilty of "conspiracy to tamper with witnesses and to solicit the murder of witnesses," as charged in **Count 7** of the Indictment.

FINAL INSTRUCTION NO. 8 - COUNT 7: OBJECTIVES OF THE CONSPIRACY

To assist you in determining whether there was an agreement to commit one or more of the offenses alleged to be "objectives" of the conspiracy charged in **Count 7**, you should consider the elements of those objectives. The elements of the "objectives" are set out below.

1. Murder to prevent attendance or testimony

The first offense alleged to be an "objective" of the conspiracy in Count 7 is killing or attempting to kill another person with the intent to prevent the attendance or testimony of that person at an official proceeding. This offense has the following elements:

One, a person murdered or attempted to murder the individual in question; and

Two, the murder was committed or was to be committed with intent to prevent the individual from possibly attending or providing testimony at a federal trial.

2. Murder to prevent communication with a law enforcement officer

The second offense alleged to be an "objective" of the conspiracy in Count 7 is killing or attempting to kill another person with the intent to prevent communication by that person to a law enforcement officer of information relating

to the commission or possible commission of a federal offense. This offense has the following elements:

One, a person murdered or attempted to murder the individual in question; and

Two, the murder was committed or was to be committed with intent to prevent an individual from communicating to a federal law enforcement officer about the commission or possible commission of a federal offense.

3. Witness tampering to prevent testimony

The third offense alleged to be an "objective" of the conspiracy in Count 7 is knowingly using intimidation, physical force, threats, or otherwise corruptly to persuade another person with the intent to influence, delay, or prevent testimony of a person at an official proceeding. This offense has the following elements:

One, a person knowingly used intimidation or physical force against a witness or potential witness; and

Two, the person did so with intent to influence, delay, or prevent testimony of the witness at an official proceeding.

4. Witness tampering to prevent reporting of a crime

The fourth offense alleged to be an "objective" of the conspiracy in Count 7 is knowingly using intimidation, physical force, threats, or otherwise corruptly to persuade another person with the intent to hinder, delay, or prevent communication

to a law enforcement officer of information relating to the commission or possible commission of a federal offense. This offense has the following elements:

One, a person knowingly used intimidation or physical force against an individual; and

Two, the person did so with intent to influence, delay, or prevent the individual from communicating to a law enforcement officer information relating to the commission or possible commission of a federal offense.

Definitions applicable to witness tampering objectives

For purposes of the **third** and **fourth** "objectives" of the conspiracy, the following definitions apply:

To "intimidate" someone means intentionally to say or do something that would cause a person of ordinary sensibilities to be fearful of harm to himself or another. It is not necessary for the prosecution to prove that the individual was actually frightened.

To "use physical force" against someone means to take physical action against that person. "Use of physical force" includes confinement.

To "act with intent to influence" the testimony of a person means to act for the purpose of getting that person to change, or color, or shade his or her testimony in some way. It is not necessary for the prosecution to prove that the person's testimony was, in fact, changed in any way.

5. Soliciting a violent felony

The fifth offense alleged to be an "objective" of the conspiracy in Count 7 is soliciting a person to engage in a violent felony in violation of federal law. This offense has the following elements:

One, a person intended another to commit a violent felony; and

Two, the circumstances are strongly corroborative of that intent; and

Three, the person actually solicited, commanded, induced, or otherwise endeavored to persuade the other to commit the violent felony.

Definitions applicable to soliciting a violent felony

For purposes of this "objective," a "violent felony" is a felony offense that has as an element the use, attempted use, or threatened use of physical force against property or against the person of another. Murder of a witness is a violent felony.

Also, it would be sufficient if the prosecution proved that the person actually solicited, or commanded, or induced, or otherwise endeavored to persuade another to commit a violent felony. The prosecution would not have to prove that the person actually did *all* of these things. To "solicit" someone means to urge him strongly, or entice him, or lure him into doing something. To "command" someone means to order, enjoin, or bid with authority or influence that the person do something. To "induce" someone means to move him to do something by persuasion or influence. "Otherwise endeavored to persuade" means that the person seriously sought to persuade another to engage in criminal conduct. The prosecution *would not have to prove* that the violent felony the person solicited was actually committed by the other person.

Again, to find the defendant guilty of the "conspiracy" charge in **Count 7**, you do not have to find that any offense alleged to be an objective of that conspiracy was actually committed by the defendant or anyone else.

FINAL INSTRUCTION NO. 9 - COUNTS 8 THROUGH 12: CONSPIRACY MURDER

Counts 8 through 12 of the Indictment charge Mr. Honken with the murder of five people while engaging in a drug-trafficking conspiracy ("conspiracy murder"). These charges are based on the alleged murders, in 1993, of Gregory Nicholson, Lori Duncan, Amber Duncan, Kandi Duncan, and Terry DeGeus. These Counts allege that, on or about July 25, 1993, in the case of Nicholson and the Duncans, and November 5, 1993, in the case of DeGeus, while Honken was knowingly engaging in a conspiracy to commit drug-trafficking offenses, Honken intentionally killed or aided and abetted the intentional killing of the named individuals, and that such killing resulted. You must give separate consideration to each "conspiracy murder" charge against the defendant and return a separate, unanimous verdict on each of these charges.

For you to find the defendant guilty of a particular Count of "conspiracy murder," the prosecution must prove *all* of the following essential elements beyond a reasonable doubt as to that Count:

One, the defendant was engaged in a conspiracy to commit a drug crime between 1992 and 1998.

> This element requires the prosecution to prove the existence of a conspiracy. The requirements for proof of the existence of a conspiracy are explained in Preliminary Jury Instruction No. 8, and additional general instructions on determination of the "nature" of a conspiracy were provided in Final Jury Instruction No. 6.

> The Indictment charges that this conspiracy had one or more of the following four objectives: (1) the distribution of actual (pure) methamphetamine; (2) the distribution of a methamphetamine mixture; (3) the manufacture of actual (pure) methamphetamine; (4) the manufacture of a methamphetamine mixture.
>
> To assist you in determining whether there was an agreement to commit the offenses alleged to be objectives of this conspiracy, you should consider the elements of those objectives. I will explain the elements of the objectives of this conspiracy in Final Jury Instruction No. 10. Keep in mind that a conspiracy requires proof of an agreement to commit certain offenses, not that those offenses were actually committed by the defendant or anyone else.
>
> Proof that the defendant was "engaged in" the conspiracy means proof that the defendant was guilty of the conspiracy.

Two, the drug conspiracy involved 100 grams or more of actual (pure) methamphetamine or 1000 grams or more of a methamphetamine mixture.

> In considering whether the conspiracy "involved" 100 grams or more of actual (pure) methamphetamine or 1000 grams or more of a methamphetamine mixture, you must consider the total quantity, in grams, of methamphetamine involved in the offense. This quantity may include quantities seized, quantities actually manufactured, quantities attempted to be manufactured, quantities distributed, and quantities possessed with intent to be distributed. The total quantity involved in the conspiracy is the total of *all* quantities involving the defendant and all other co-conspirators. You do not need to determine a specific drug amount, but you must unanimously agree that the prosecution has proved that the

> conspiracy involved 100 grams or more of actual (pure) methamphetamine or 1000 grams or more of a methamphetamine mixture.

Three, while engaging in the drug conspiracy, the defendant either intentionally killed, or aided and abetted the intentional killing of, the victim named in the Count in question.

> **Count 8** alleges the killing of Gregory Nicholson on on or about July 25, 1993. **Count 9** alleges the killing of Lori Duncan on or about July 25, 1993. **Count 10** alleges the killing of Amber Duncan on or about July 25, 1993. **Count 11** alleges the killing of Kandi Duncan on or about July 25, 1993. **Count 12** alleges the killing of Terry DeGeus on or about November 5, 1993.
>
> The prosecution must prove that the defendant *either* (1) intentionally killed the victim himself, *or* (2) aided and abetted another person to kill the victim. You must unanimously agree on which alternative has been proved beyond a reasonable doubt in order to find the defendant guilty of this offense.
>
> The defendant "intentionally killed" the victim, if the prosecution has proved beyond a reasonable doubt that the defendant did kill the victim himself and acted with the purpose of causing the victim's death.
>
> The defendant "aided and abetted the killing" of the victim, if the prosecution has proved beyond a reasonable doubt that the defendant (1) knew that the killing was being committed or going to be committed; and (2) knowingly acted in some way to cause, encourage, or aid in the killing of the victim; and (3) acted with the purpose of causing the victim's death.

Four, the killing of the named victim actually resulted.

If the prosecution fails to prove these elements beyond a reasonable doubt as to a particular Count of "conspiracy murder," then you must find the defendant not guilty of that Count. However, if the prosecution proves *all* of these elements beyond a reasonable doubt as to a particular Count of "conspiracy murder," then you must find the defendant guilty of that Count.

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FINAL INSTRUCTION NO. 10 - COUNTS 8 THROUGH 12: OBJECTIVES OF THE CONSPIRACY

To assist you in determining whether there was an agreement to commit one or more of the offenses alleged to be "objectives" of the conspiracy charged in **Counts 8 through 12**, you should consider the elements of these offenses. The elements of the "objectives" are set out below.

1. & 2. Distribution of a controlled substance

The **first** and **second** "objectives" of the conspiracy alleged in Counts 8 through 12 are the distribution of actual (pure) methamphetamine and the distribution of a methamphetamine mixture. The offense of distribution of a controlled substance has the following elements:

One, a person intentionally distributed the controlled substance in question to another; and

Two, at the time of the distribution, the person knew that what he or she was distributing was a controlled substance.

3. & 4. Manufacture of a controlled substance

The **third** and **fourth** "objectives" of the conspiracy alleged in Counts 8 through 12 are the manufacture of actual (pure) methamphetamine and the manufacture of a methamphetamine mixture. The offense of manufacture of a controlled substance has the following elements:

One, a person manufactured the controlled substance in question; and

Two, that person knew that he or she was, or intended to be, manufacturing a controlled substance.

Again, to find the defendant guilty of the "conspiracy" involved in **Counts 8 through 12**, you do not have to find that any offense alleged to be an objective of that conspiracy was actually committed by the defendant or anyone else.

FINAL INSTRUCTION NO. 11 - COUNTS 13 THROUGH 17: CCE MURDER

Counts 13 through 17 of the Indictment charge Mr. Honken with the murder of five people while engaging in a continuing criminal enterprise ("CCE murder"). These charges are based on the alleged murders, in 1993, of Gregory Nicholson, Lori Duncan, Amber Duncan, Kandi Duncan, and Terry DeGeus. These Counts allege that, on or about July 25, 1993, in the case of Nicholson and the Duncans, and November 5, 1993, in the case of DeGeus, while Honken was engaging in a "continuing criminal enterprise" (CCE), Honken intentionally killed or aided and abetted the intentional killing of the named individuals, and that such killing resulted. You must give separate consideration to each "CCE murder" charge against the defendant and return a separate, unanimous verdict on each of these charges.

For you to find the defendant guilty of a particular Count of "CCE murder," the prosecution must prove *all* of the following essential elements beyond a reasonable doubt as to that Count:

One, the defendant was engaging in a continuing criminal enterprise (CCE).

> To prove this element, the prosecution must first prove the existence of a CCE. The requirements for proof of the existence of a CCE are the following: (a) an organizer, supervisor, or manager of the CCE committed a felony violation of the federal controlled substances laws; (b) that violation was part of a continuing series of three or more related felony violations of the federal controlled substances laws; (c) the series of related violations were undertaken by the organizer, supervisor,

or manager in concert with five or more other persons; (d) the organizer, supervisor, or manager organized, supervised, or managed those five or more other persons; and (e) the organizer, supervisor, or manager obtained substantial income, money, or other property from the series of violations.

I must now explain these requirements for proof of the existence of a CCE in more detail. Requirements (a) and (b) require the commission of a violation of the federal controlled substances laws as part of a series of three or more such related felony violations. The violations are "related" if they are driven by a single impulse and operated by continuous force. You must unanimously agree on which violations constituted the series of three or more "related" violations. The Indictment charges that the following offenses were part of the series of three or more related felony violations:

(1) between 1992 and 2000, the participants distributed methamphetamine on specific unknown dates;

(2) between 1992 and 2000, the participants possessed with intent to distribute methamphetamine on specific unknown dates;

(3) on March 17, 1993, Gregory Nicholson possessed with intent to distribute 143.89 grams or more of actual (pure) methamphetamine;

(4) between 1992 and 2000, the participants conspired with each other to manufacture, distribute, and possess with intent to distribute 100 grams or more of actual (pure) methamphetamine or 1000 grams or more of a methamphetamine mixture;

(5) between 1992 and 2000, the participants used a communication facility, specifically the telephone and mail, to facilitate the commission of felony drug offenses;

(6) during about September 1995, Honken had a mailbox established in the name of Cytomex Company at 924 6th Street, Urbandale, Iowa, and thereafter used the United States Mail to facilitate a conspiracy to manufacture 100 grams or more of actual (pure) methamphetamine, by ordering glassware, equipment, and books using this address or the address of Jay Lein;

(7) between 1992 and 1993, Honken and Timothy Cutkomp operated a methamphetamine-producing laboratory in Arizona using the name "Printed Circuit Technology" and manufactured 100 grams or more of actual (pure) methamphetamine;

(8) on specific unknown dates between 1992 and 1993, the participants manufactured 100 grams or more of actual (pure) methamphetamine;

(9) between the fall of 1995 and February 7, 1996, the participants operated a laboratory at Honken's house at 1104 16th Street, NE, in Mason City, Iowa, using the name Cytomex Company, and attempted to manufacture 100 grams or more of actual (pure) methamphetamine;

(10) during about 1995 and 1996, at #5 19th Street South, Clear Lake, Iowa, Honken knowingly and intentionally possessed chemicals, equipment, and materials which may be used to manufacture methamphetamine, MDMA, or a listed chemical, knowing, intending, or having reasonable cause to believe that the chemicals, equipment, and materials would be used to manufacture a controlled substance or a listed chemical;

(11) on or about October 17, 1995, Honken had an individual purchase a cylinder of hydrogen gas which Honken subsequently possessed along with other chemicals, equipment, and materials, knowing, intending, or having reasonable cause to believe the gas would be

used to manufacture a controlled substance or listed chemical;

(12) on or about January 22, 1996, Timothy Cutkomp and Honken knowingly and intentionally possessed manganese chloride and other chemicals, equipment, and materials that may be used to manufacture methamphetamine or a listed chemical, knowing, intending, or having reasonable cause to believe the chemical, equipment, and materials would be used to manufacture a controlled substance or a listed chemical;

(13) on or about February 7, 1996, at defendant's residence at 1104 16th Street, NE, Mason City Iowa, one or more participants possessed a three-neck, round bottom flask and other chemicals and equipment, knowing, intending, and having reasonable cause to believe the materials would be used to manufacture methamphetamine or a listed chemical.

To assist you in determining whether any of these alleged violations occurred, you should consider the elements of the alleged violations. I will explain the elements of the alleged violations in Final Jury Instruction No. 12. You must unanimously agree on which violations constitute the series of three or more violations in order to find that the CCE existed.

Next, requirements (c) and (d) for proof of the existence of a CCE require proof that the series of related violations were undertaken by an organizer, supervisor, or manager in concert with five or more other persons and that the organizer, supervisor, or manager organized, supervised, or managed those five or more other persons. To act "in concert" means to act pursuant to a common design or plan. There may be more than one organizer, supervisor, or manager of the CCE. You must unanimously agree that there was an organizer,

supervisor, or manager and at least five *other* people, or a total of at least six people, involved in the CCE. The prosecution alleges that Dustin Honken was the organizer, supervisor, or manager of Jeff Honken, Tim Cutkomp, Angela Johnson, Greg Nicholson, and Terry DeGeus.

Requirement (e) for proof of the existence of a CCE requires the prosecution to prove beyond a reasonable doubt that the organizer, supervisor, or manager obtained a substantial income, money, or other property from the series of violations. To decide whether this requirement has been proved, you may consider all money or property that passed through the participants' hands as a result of illegal drug dealings, not just profit, to determine whether the amount was "substantial." "Substantial" means of real worth and importance, of considerable value, or valuable.

In addition to the existence of the CCE, element *one* of "CCE murder" requires the prosecution to prove beyond a reasonable doubt that the defendant was "engaging in" the CCE. Engaging in" a CCE means actually guilty of the CCE offense; in other words, the defendant must have been the person who committed one or more violations in the series of violations, acted as an organizer, supervisor, or manager of five or more other participants in the CCE, and obtained a substantial income, money, or other property from the series of violations.

Two, the defendant intentionally killed, or aided and abetted the intentional killing of, the victim named in the Count in question.

Count 13 alleges the killing of Gregory Nicholson on on or about July 25, 1993. **Count 14** alleges the killing of Lori Duncan on or about July 25, 1993. **Count 15** alleges the killing of Amber Duncan on or about July 25, 1993. **Count 16** alleges the killing of Kandi

> Duncan on or about July 25, 1993. **Count 17** alleges the killing of Terry DeGeus on or about November 5, 1993.
>
> The prosecution must prove that the defendant *either* (1) intentionally killed the victim himself, *or* (2) aided and abetted another person to kill the victim. You must unanimously agree on which alternative has been proved beyond a reasonable doubt in order to find the defendant guilty of this offense.
>
> The defendant "intentionally killed" the victim, if the prosecution has proved beyond a reasonable doubt that the defendant did kill the victim himself and acted with the purpose of causing the victim's death.
>
> The defendant "aided and abetted the killing" of the victim, if the prosecution has proved beyond a reasonable doubt that the defendant (1) knew that the killing was being committed or going to be committed; and (2) knowingly acted in some way to cause, encourage, or aid in the killing of the victim; and (3) acted with the purpose of causing the victim's death.

Three, the killing of the named victim was connected to the continuing criminal enterprise (CCE).

> The killing must be more than simply contemporaneous with the ongoing CCE. Instead, it must be substantively connected to the CCE. Therefore, the murder must have furthered some purpose of the CCE, for example, by silencing a potential informant or witness, or by settling a drug-related dispute.

If the prosecution fails to prove these elements beyond a reasonable doubt as to a particular Count of "CCE murder," then you must find the defendant not guilty of that Count. However, if the prosecution proves *all* of these elements beyond a

reasonable doubt as to a particular Count of "CCE murder," then you must find the defendant guilty of that Count.

FINAL INSTRUCTION NO. 12 - COUNTS 13 THROUGH 17: ELEMENTS OF OFFENSES INVOLVED IN THE CCE

To assist you in determining whether any of the violations alleged to be part of the CCE occurred, you should consider the elements of the alleged violations. The elements of the alleged violations are set out below.

1. Distribution of methamphetamine

The **first** violation alleged to be part of the CCE is distribution of methamphetamine. This violation has the following elements:

One, a member of the CCE intentionally distributed methamphetamine to another; and

Two, at the time of the distribution, the member of the CCE knew that what he or she was distributing was a controlled substance.

2. & 3. Possession with intent to distribute methamphetamine

The **second** and **third** violations alleged to be part of the CCE are possession with intent to distribute methamphetamine. These violations have the following elements:

One, a member of the CCE was in possession of a controlled substance; and

Two, the member of the CCE knew that he or she was, or intended to be, in possession of a controlled substance; and

Three, the member of the CCE intended to distribute some or all of the controlled substance to another person.

4. Conspiracy to manufacture, distribute, and possess with intent to distribute methamphetamine

The **fourth** violation alleged to be part of the CCE is conspiracy to manufacture, distribute, and possess with intent to distribute methamphetamine. This conspiracy violation has the following elements:

One, between about 1992 and 2000, two or more persons reached an agreement or came to an understanding to manufacture, distribute, or possess with intent to distribute methamphetamine; and

Two, the person alleged to be a member of the conspiracy voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while the agreement was still in effect; and

Three, at the time that the person in question joined in the agreement or understanding, he or she knew the purpose of the agreement or understanding.

To assist you in determining whether there was an agreement to manufacture methamphetamine, you should consider the elements of violations **7, 8, and 9**. To assist you in determining whether there was an agreement to distribute methamphetamine, you should consider the elements of violation **1**. To assist you in determining whether there was an agreement to possess with intent to distribute methamphetamine, you should consider the elements of violations **2 and 3**.

5. & 6. Using a communication facility to facilitate drug-trafficking

The **fifth** and **sixth** violations alleged to be part of the CCE are use of a communication facility, either a telephone or the United States Mail, to cause or facilitate a drug-trafficking crime. These violations have the following elements:

One, a member of the CCE knowingly used a "communication facility"; and

Two, the member of the CCE did so with the intent to commit or facilitate the commission of a felony drug offense.

For purposes of this violation, a "communication facility" includes the telephone and the United States Mail. To "facilitate" the commission of an offense means to make the offense easier or less difficult or to assist or aid the commission of the offense. It is sufficient if the CCE member's use of the telephone or mail facilitated either that member's own or another person's commission of the offense.

7., 8. & 9. Manufacturing methamphetamine

The **seventh**, **eighth**, and **ninth** violations alleged to be part of the CCE are manufacturing or attempting to manufacture methamphetamine. Manufacturing methamphetamine has the following elements:

One, a member of the CCE manufactured methamphetamine; and

Two, the member of the CCE knew that he or she was, or intended to be, manufacturing a controlled substance.

A person may be found guilty of manufacturing methamphetamine, even if he or she only attempted, but did not succeed, in manufacturing methamphetamine. Attempt to manufacture methamphetamine has the following elements:

One, a member of the CCE intended to manufacture methamphetamine;

Two, the member of the CCE knew that the material that he or she intended to manufacture was a controlled substance; and

Three, the member of the CCE voluntarily and intentionally carried out some act that was a substantial step toward manufacturing methamphetamine.

For purposes of an attempt, "a substantial step" must be something more than mere preparation, yet may be less than the last act necessary before the actual commission of the crime of manufacturing methamphetamine. In order for behavior to be punishable as an attempt, it need not be incompatible with innocence, yet it must be necessary to the consummation or completion of the crime and be of such a nature that a reasonable observer, viewing it in context, could conclude beyond a reasonable doubt that it was undertaken in accordance with a design to manufacture a controlled substance. Crimes such as attempt to manufacture methamphetamine require a person to engage in numerous preliminary steps that brand the enterprise as criminal. However, evidence that a participant in the CCE ordered, received, or possessed the specific chemicals and equipment necessary to manufacture methamphetamine is sufficient to support a finding that the participant took "a substantial step" toward manufacturing a controlled substance.

10., 11., 12. & 13. Possession of equipment to manufacture a controlled substance

The **tenth**, **eleventh**, **twelfth**, and **thirteenth** violations alleged to be part of the CCE are possession of chemicals, equipment, or materials with intent to

manufacture methamphetamine or MDMA. These violations have the following elements:

One, a member of the CCE was in possession of a three-neck, round-bottomed flask or other equipment designed or modified to manufacture a controlled substance, including methamphetamine or MDMA, or was in possession of chemicals or other materials to be used to manufacture a controlled substance, including methamphetamine or MDMA; and

Two, the member of the CCE knew the he or she was in possession of the items in question; and

Three, the member of the CCE intended to manufacture methamphetamine or MDMA.

Remember that you must unanimously agree on which violations constitute the series of three or more violations in order to find that the CCE existed.

FINAL INSTRUCTION NO. 13 - RECORDED CONVERSATIONS

As part of the evidence in this case, you heard audiotape recordings of intercepted conversations. The conversations on the recording were legally recorded, and you may consider the recordings just like any other evidence.

The audiotape recordings were accompanied by typed transcripts. The transcripts attempted to identify the speakers engaged in the conversation. However, the identity of the speakers as set out in a transcript is not evidence; rather, it is merely the opinion of the person who transcribed the tape.

You are specifically instructed that whether a transcript correctly or incorrectly reflects the conversation or the identity of the speakers is entirely for you to decide based upon what you may have heard about the preparation of the transcript and upon your own examination of the transcript in relation to what you heard on the recording. If you decide that a transcript was in any respect incorrect or unreliable, you should disregard it to that extent.

Differences in meaning between what you heard in a recording and read in a transcript, if available, may have been caused by such things as the inflection in a speaker's voice. You should, therefore, rely on what you heard rather than what you read when there was a difference.

FINAL INSTRUCTION NO. 14 - IMPEACHMENT

In Preliminary Instruction No. 17, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be "impeached."

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony. If earlier statements of a witness were admitted into evidence, they were not admitted to prove that the contents of those statements were true. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness, and therefore whether they affect the credibility of that witness.

You have heard testimony identifying the defendant. Identification testimony is, in essence, the expression of an opinion or a belief by the witness. Usually the witness identifies the offender by the sense of sight—but this is not necessarily so, and other senses may be used. In considering the weight to give an identification, consider the following: (1) the witness's opportunity to observe the person who committed the crime at the time the offense was committed; (2) whether the identification is the product of the witness's own recollection; (3) whether the witness has made inconsistent identifications; (4) the length of time between the

occurrence of the crime and the identification by the witness; and (5) the credibility of the witness. You must be satisfied that the government has proved beyond a reasonable doubt that the defendant is the same person who committed a crime charged. In making that determination, consider all of the evidence, including any identification testimony.

You may have heard evidence that certain witnesses have each been convicted of a crime. You may use that evidence only to help you decide whether or not to believe these witnesses and how much weight to give their testimony.

You should treat the testimony of certain witnesses with greater caution and care than that of other witnesses:

1. You may have heard evidence that one or more witnesses are testifying pursuant to plea agreements and hope to receive reductions in their sentences in return for their cooperation with the government in this case. If the prosecutor handling such a witness's case believes the witness has provided "substantial assistance," the prosecutor can file a motion to reduce the witness's sentence. The judge has no power to reduce a sentence for such a witness for substantial assistance unless the U.S. Attorney files a motion requesting such a reduction. If the motion for reduction of sentence for substantial assistance is filed by the U.S. Attorney, then it is up to the judge to decide whether to reduce the sentence of that witness at all, and if so, how much to reduce it. You may give the testimony of such witnesses such weight as you think it deserves. Whether or not testimony of a witness may have

been influenced by the witness's hope of receiving a reduction in sentence is for you to decide.

2. You also may have heard testimony from one or more witnesses that they participated in the crime charged against the defendant. Their testimony was received in evidence and you may consider it. You may give the testimony of such witnesses such weight as you think it deserves. Whether or not the testimony of such a witness may have been influenced by the witness's desire to please the government or to strike a good bargain with the government about the witness's own situation is for you to determine.

3. You also may have heard evidence that one or more witnesses are testifying in the hope that the government will not file charges against them. The testimony of such witnesses was received in evidence and you may consider it. You may give the testimony of such witnesses such weight as you think it deserves. Whether or not the testimony of such a witness may have been influenced by the witness's hope that the government will not file charges against the witness is for you to determine.

4. You also may have heard evidence that one or more witnesses had an arrangement with the government under which the witnesses received a specified benefit for providing information to the government. The testimony of such witnesses was received in evidence and you may consider it. You may give the testimony of such a witness such weight as you think it deserves. Whether or not testimony of a witness may have been influenced by receiving such a benefit is for you to decide.

5. You also may have heard evidence that one or more witnesses used or were addicted to addictive drugs during the period of time about which the witness testified. You should consider whether the testimony of such a witness might have been affected by the witness's drug use at the time of the events about which the witness testified. You should not convict the defendant upon the unsupported testimony of such a witness, unless you believe that witness's testimony beyond a reasonable doubt.

If you believe that a witness has been discredited or impeached, it is your exclusive right to give that witness's testimony whatever weight you think it deserves.

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FINAL INSTRUCTION NO. 15 - PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

Dustin Lee Honken is presumed innocent and, therefore, not guilty. This presumption of innocence requires you to put aside all suspicion that might arise from the arrest or charge of this defendant or the fact that he is here in court. The presumption of innocence remains with the defendant throughout the trial. That presumption alone is sufficient to find him not guilty. The presumption of innocence may be overcome as to the defendant only if the prosecution proves, beyond a reasonable doubt, *all* of the elements of an offense charged against him. Therefore, Dustin Lee Honken is presumed to be innocent of each offense charged against him unless and until, after hearing all of the evidence and the arguments of the attorneys, you unanimously conclude that the prosecution has proved his guilt beyond a reasonable doubt on that offense.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to the defendant, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. Therefore, the fact that the defendant did not testify must not be discussed or considered by you in any way when deliberating and arriving at your verdict. A defendant is not even obligated to produce any evidence by cross-examining the witnesses who are called to testify by the prosecution.

Unless the prosecution proves beyond a reasonable doubt that the defendant has committed each and every element of a charged offense, you must find him not guilty of that offense.

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FINAL INSTRUCTION NO. 16 - REASONABLE DOUBT

A reasonable doubt may arise from the evidence produced by either the prosecution or the defendant, keeping in mind that the defendant never has the burden or duty of calling any witnesses or producing any evidence. It may also arise from the prosecution's lack of evidence. A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the more serious and important transactions of life. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

FINAL INSTRUCTION NO. 17 - DUTY TO DELIBERATE

A verdict must represent the considered judgment of each juror. Your verdict must be unanimous. It is your duty to consult with one another and to deliberate with a view to reaching agreement if you can do so without violence to your individual judgment. Of course, you must not surrender your honest convictions as to the weight or effect of the evidence solely because of the opinions of other jurors or for the mere purpose of returning a verdict. Each of you must decide the case for yourself; but you should do so only after consideration of the evidence with your fellow jurors.

In the course of your deliberations you should not hesitate to re-examine your own views, and to change your opinion if you are convinced it is wrong. To bring twelve minds to an unanimous result, you must examine the questions submitted to you openly and frankly, with proper regard for the opinions of others and with a willingness to re-examine your own views.

Remember that if, in your individual judgment, the evidence fails to establish the defendant's guilt beyond a reasonable doubt on a charged offense, then the defendant should have your vote for a "not guilty" verdict on that offense. If all of you reach the same conclusion, then the verdict of the jury must be "not guilty" for the defendant on that offense. Of course, the opposite also applies. If, in your individual judgment, the evidence establishes the defendant's guilt beyond a reasonable doubt on a charged offense, then your vote should be for a "guilty" verdict against the defendant on that offense, and if all of you reach that conclusion,

then the verdict of the jury must be "guilty" for the defendant on that offense. As I instructed you earlier, the burden is upon the prosecution to prove beyond a reasonable doubt every essential element of a charged offense.

You must you return a separate, unanimous verdict against the defendant on each offense.

Remember, also, that the question before you can never be whether the government wins or loses the case. The government, as well as society, always wins, regardless of whether your verdict is not guilty or guilty, when justice is done.

Finally, remember that you are not partisans; you are judges—judges of the facts. Your sole interest is to seek the truth from the evidence. You are the judges of the credibility of the witnesses and the weight of the evidence.

You may conduct your deliberations as you choose. However, I suggest that you carefully consider all of the evidence bearing upon the questions before you. You may take all the time that you feel is necessary.

There is no reason to think that another trial would be tried in a better way or that a more conscientious, impartial, or competent jury would be selected to hear it. Any future jury must be selected in the same manner and from the same source as you. If you should fail to agree on a verdict, the case is left open and must be disposed of at some later time.

FINAL INSTRUCTION NO. 18 - DUTY DURING DELIBERATIONS

There are certain rules you must follow while conducting your deliberations and returning your verdict:

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

Second, you may not consider punishment of defendant Dustin Lee Honken in any way during this "merits phase" in deciding whether the prosecution has proved its case beyond a reasonable doubt.

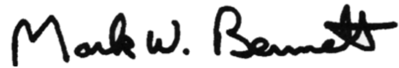
Third, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible, either in writing or orally in open court. *Remember that you should not tell anyone—including me—how your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

Fourth, your verdict must be based solely on the evidence and on the law in these instructions. *The verdict against the defendant on each offense, whether not guilty or guilty, must be unanimous*. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

Finally, I am giving you the verdict form. A verdict form is simply the written notice of the decision that you reach in this case. You will take the verdict form to the jury room. When you have reached a unanimous verdict, your

foreperson must complete one copy of the verdict form and all of you must sign that copy, using your juror numbers in the first signature box, then using your signatures, in the same order, in the second signature box, to record your individual agreement with the verdict and to show that it is unanimous. The foreperson must bring the signed verdict form to the courtroom when it is time to announce your verdict. When you have reached a verdict, the foreperson will advise the Court Security Officer that you are ready to return to the courtroom.

DATED this 7th day of October, 2004.



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

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

UNITED STATES OF AMERICA, Plaintiff, vs. DUSTIN LEE HONKEN, Defendant.	No. CR 01-3047-MWB **VERDICT FORM**

As to defendant Dustin Lee Honken, we, the Jury, unanimously find as follows:

COUNTS 1 THROUGH 5: WITNESS TAMPERING							
Step 1: Verdict	On each charge of witness tampering, as charged in **Counts 1 through 5** of the Indictment and explained in Final Jury Instruction No. 4, please mark your verdict. (If you found the defendant "not guilty" of a particular count of witness tampering, do not consider the question in **Step 2** for that count. However, if you found the defendant "guilty" of a particular count of witness tampering, please answer the question in **Step 2** of this section of the Verdict Form for that count.)	**VICTIMS AND COUNTS**					
		Gregory Nicholson	**Lori Duncan**	**Kandi Duncan**	**Amber Duncan**	**Terry DeGeus**
		Count 1	**Count 2**	**Count 3**	**Count 4**	**Count 5**
		___ Not guilty ___ Guilty	___ Not guilty ___ Guilty	___ Not guilty ___ Guilty	___ Not guilty ___ Guilty	___ Not guilty ___ Guilty
Step 2: Prohibited Intent	For each count of witness tampering for which you found the defendant "guilty," please indicate the prohibited intent or intents for the murder of that witness. (Where more than one intent was alleged, you may find more than one prohibited intent, so long as you unanimously agree that each such intent has been proved beyond a reasonable doubt.)					
	Intent to prevent the victim from attending or providing testimony at a federal criminal case against Honken					
	Intent to retaliate against the victim for providing information to law enforcement officers relating to the commission or possible commission of federal drug-trafficking offenses					
	Intent to prevent the victim from communicating to a law enforcement officer information relating to the commission or possible commission by Honken of federal drug-trafficking offenses					
	Intent to prevent the victim from communicating to a law enforcement officer information relating to the commission or possible commission by Honken of federal offenses, including witness tampering and violation of conditions of pretrial release					

COUNT 6: SOLICITING THE MURDER OF A WITNESS		
Step 1: Verdict	On the charge of soliciting the murder of a witness, as charged in **Count 6** of the Indictment and explained in Final Jury Instruction No. 5, please mark your verdict. (If you found the defendant "not guilty," do not consider the question in **Step 2**. Instead, go on to consider your verdict on **Count 7**. However, if you found the defendant "guilty," please answer the question in **Step 2** of this section of the Verdict Form.)	____ Not Guilty ____ Guilty
Step 2: Person(s) Solicited & Intended Victim(s)	If you found the defendant "guilty" of soliciting the murder of a witness in **Count 6**, please indicate the person or persons the defendant solicited to murder Timothy Cutkomp. (So long as you unanimously agree, you may find that Dean Donaldson, or Anthony Altimus, or both were solicited to murder Timothy Cutkomp.)	
	_____ Dean Donaldson was solicited to murder Timothy Cutkomp	
	_____ Anthony Altimus was solicited to murder Timothy Cutkomp	

COUNT 7: CONSPIRACY TO TAMPER WITH WITNESSES AND TO SOLICIT THE MURDER OF WITNESSES		
Step 1: Verdict	On the charge of conspiracy to tamper with witnesses and to solicit the murder of witnesses, as charged in **Count 7** of the Indictment and explained in Final Jury Instruction No. 7, please mark your verdict. (If you found the defendant "not guilty," do not consider the questions in **Steps 2 and 3**. Instead, go on to consider your verdict on **Counts 8 through 12**. However, if you found the defendant "guilty," please answer the questions in **Steps 2 and 3** of this section of the Verdict Form.)	____ Not Guilty ____ Guilty
Step 2: Objective(s) Of The Conspiracy	If you found the defendant "guilty" of the conspiracy charged in **Count 7**, please indicate which one or more of the following offenses were "objectives" of the conspiracy. (You must unanimously agree on which offense or offenses were objectives of the conspiracy. In deciding whether an offense was an "objective" of the conspiracy, you should consider its elements. The elements of the "objectives" are set out in **Final Jury Instruction No. 8.**)	
	_____ (1) killing or attempting to kill another person with the intent to prevent the attendance or testimony of that person at an official proceeding	
	_____ (2) killing or attempting to kill another person with the intent to prevent communication by that person to a law enforcement officer of information relating to the commission or possible commission of a federal offense	

	_____ (3) knowingly using intimidation, physical force, threats, or otherwise corruptly to persuade another person with the intent to influence, delay, or prevent testimony of a person at an official proceeding
	_____ (4) knowingly using intimidation, physical force, threats, or otherwise corruptly to persuade another person with the intent to hinder, delay, or prevent communication to a law enforcement officer of information relating to the commission or possible commission of a federal offense
	_____ (5) soliciting a person to engage in a violent felony in violation of federal law.
Step 3: Overt Act(s)	If you found the defendant "guilty" of the conspiracy charged in **Count 7**, please indicate which one or more of the "overt acts" alleged were committed in furtherance of the conspiracy. (The "overt acts" alleged are listed in **Final Jury Instruction No. 7**, element **four**, beginning on page 59. You must unanimously agree on which "overt act" or "overt acts" were objectives of the conspiracy.)

	_____ (1)	_____ (6)	_____ (11)	_____ (16)
	_____ (2)	_____ (7)	_____ (12)	_____ (17)
	_____ (3)	_____ (8)	_____ (13)	_____ (18)
	_____ (4)	_____ (9)	_____ (14)	_____ (19)
	_____ (5)	_____ (10)	_____ (15)	

COUNTS 8 THROUGH 12: "CONSPIRACY MURDER"

		VICTIMS AND COUNTS				
Step 1: Verdict	On each charge of "conspiracy murder," as explained in Final Jury Instruction No. 9, please mark your verdict. (If you found the defendant "not guilty" of a particular count of "conspiracy murder," do not consider the questions in **Steps 2 and 3** for that count. However, if you found the defendant "guilty" of a particular count, please answer the questions in **Steps 2 and 3** of this section of the Verdict Form for that count.)	**Gregory Nicholson**	**Lori Duncan**	**Amber Duncan**	**Kandi Duncan**	**Terry DeGeus**
		Count 8	**Count 9**	**Count 10**	**Count 11**	**Count 12**
		___ Not guilty ___ Guilty	___ Not guilty ___ Guilty	___ Not guilty ___ Guilty	___ Not guilty ___ Guilty	___ Not guilty ___ Guilty

Step 2: Objective(s) and Quantity Of Methamphetamine	If you found the defendant "guilty" of a particular count of "conspiracy murder," please indicate which one or more of the following offenses were "objectives" of the underlying conspiracy. (To assist you in determining whether an offense was an objective of the underlying conspiracy, the elements of the objectives are set out in **Final Jury Instruction No. 10.**)	**VICTIMS AND COUNTS**				
		Gregory Nicholson	**Lori Duncan**	**Amber Duncan**	**Kandi Duncan**	**Terry DeGeus**
		Count 8	**Count 9**	**Count 10**	**Count 11**	**Count 12**
	Distribution of 100 grams or more of actual (pure) methamphetamine					
	Distribution of less than 100 grams of actual (pure) methamphetamine					
	Distribution of 1000 grams or more of a methamphetamine mixture					
	Distribution of less than 1000 grams of a methamphetamine mixture					
	Manufacture of 100 grams or more of actual (pure) methamphetamine					
	Manufacture of less than 100 grams of actual (pure) methamphetamine					
	Manufacture of 1000 grams or more of a methamphetamine mixture					
	Manufacture of less than 1000 grams of a methamphetamine mixture					

Step 3: Alternative	If you found the defendant "guilty" of a particular count of "conspiracy murder," please also indicate whether you find the defendant guilty of intentionally killing the victim or aiding and abetting another person to kill the victim. (You must unanimously agree on which alternative has been proved beyond a reasonable doubt.)	**VICTIMS AND COUNTS**				
		Gregory Nicholson	**Lori Duncan**	**Amber Duncan**	**Kandi Duncan**	**Terry DeGeus**
		Count 8	**Count 9**	**Count 10**	**Count 11**	**Count 12**
	Intentionally killing the victim					
	Aiding and abetting another to kill the victim					

COUNTS 13 THROUGH 17: "CCE MURDER"

Step 1: Verdict	On each charge of "CCE murder," as explained in Final Jury Instruction No. 11, please mark your verdict. (If you found the defendant "not guilty" of a particular count of "CCE murder," do not consider the questions in **Steps 2 and 3** for that count. However, if you found the defendant "guilty" of a particular count, please answer the questions in **Steps 2 and 3** of this section of the Verdict Form for that count.)	**VICTIMS AND COUNTS**				
		Gregory Nicholson	**Lori Duncan**	**Amber Duncan**	**Kandi Duncan**	**Terry DeGeus**
		Count 13	**Count 14**	**Count 15**	**Count 16**	**Count 17**
		___ Not guilty ___ Guilty	___ Not guilty ___ Guilty	___ Not guilty ___ Guilty	___ Not guilty ___ Guilty	___ Not guilty ___ Guilty

Step 2: Existence Of The CCE: Series Of Violations	If you found the defendant "guilty" of a particular count of "CCE murder," please indicate which of the alleged violations constitute the series of three or more violations that were part of the CCE. (The violations alleged are listed in **Final Jury Instruction No. 11**, element **four**, beginning on page 75. You must unanimously agree on which violations constitute the series.)			
	_____ (1)	_____ (5)	_____ (9)	_____ (13)
	_____ (2)	_____ (6)	_____ (10)	
	_____ (3)	_____ (7)	_____ (11)	
	_____ (4)	_____ (8)	_____ (12)	

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Step 3: Alternative	If you found the defendant "guilty" of a particular count of "CCE murder," please also indicate whether you find the defendant guilty of intentionally killing the victim or aiding and abetting another person to kill the victim. (You must unanimously agree on which alternative has been proved beyond a reasonable doubt.)	**VICTIMS AND COUNTS**				
		Gregory Nicholson	**Lori Duncan**	**Amber Duncan**	**Kandi Duncan**	**Terry DeGeus**
		Count 13	**Count 14**	**Count 15**	**Count 16**	**Count 17**
	Intentionally killing the victim					
	Aiding and abetting another person to kill the victim					

____
Date

JUROR NUMBERS

Foreperson	Juror	Juror
Juror	Juror	Juror
Juror	Juror	Juror
Juror	Juror	Juror

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JUROR SIGNATURES

Foreperson	Juror	Juror
Juror	Juror	Juror
Juror	Juror	Juror
Juror	Juror	Juror