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11 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 vs.

15 MITCHELL D. McBRIDE,
16 KIMBERLY McBRIDE,
17 DICK E. BUTCHER,

18 Defendants.

Case No. CR 04-0064-S-EJL

PRETRIAL MEMORANDUM

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21 COMES NOW, George W. Breitsameter, Assistant United States Attorney for the
22 District of Idaho, and offers this Pretrial Memorandum for benefit of Court and Counsel.

23 I. STATUS OF THE CASE

24 On March 11, 2004, the Federal Grand Jury for the District of Idaho returned a sixty-one
25 count Indictment against the defendants, Mitchell D. McBride, Kimberly McBride, Irene
26 McBride, and Dick E. Butcher.

1 On April 6, 2004, the defendants appeared before Chief United States Magistrate Judge
2 Larry M. Boyle. The Court appointed counsel for all defendants and pleas of not guilty were
3 entered. Trial was scheduled to commence on June 1, 2004, before United States District Judge
4 Edward J. Lodge in Boise, Idaho. The Court entered a procedural order requiring that all pre-
5 trial motions be filed within twenty-eight days after arraignment. No pre-trial motions have
6 been filed by any of the defendants.

7 On May 19, 2004, the Court granted a motion to continue the trial and trial was
8 rescheduled for August 10, 2004.

9 On July 27, 2004, the Government filed a motion to dismiss Irene McBride and to
10 dismiss Counts 14, 20, 47 and 58.

11 On July 29, 2004, the trial date was vacated and reset for August 9, 2004.

12 The government has provided the defendants with complete discovery including
13 photocopies of relevant documents, access to all investigative materials, and copies of tape
14 recordings in the possession of the government. In addition, the defendants have received copies
15 of the trial exhibits, which the government intends to introduce in its case-in-chief for
16 approximately three (3) months.

17 II. STATUTES

18 The Indictment charges the defendants with mail fraud, in violation of Section 1341 of
19 Title 18, which provides, in part, that:

20 Whoever, having devised or intending to devise any scheme or
21 artifice to defraud, or for obtaining money or property by means of
22 false or fraudulent pretenses, representations, or promises, . . . and
23 for the purpose of executing such scheme or artifice or attempting
24 so to do, placed in any post office or authorized depository for
25 mail matter, any matter or thing whatever to be sent or delivered
26 by the Postal Service or takes or receives therefrom, or deposits or
27 causes to be deposited any matter or thing whatever to be sent or
28 delivered by any private or commercial interstate carrier . . . shall
be guilty of an offense against the United States.

shall be guilty of an offense against the United States.

1 Nyssa, Oregon (Count 39); D. Schutte of Boise, Idaho (Count 48); G. Shaffer of Meridian,
2 Idaho (Count 50); and F. Weston of Boise, Idaho (Count 60). In addition, Butcher received
3 funds from approximately twenty-five other clients on pre-need contracts.

4 Dick Butcher entered into "Funeral Trust Agreement" with the above clients, wherein
5 he acknowledged Idaho law requires that funds received on pre-arranged funerals be held in
6 trust. Critical documents related to the pre-arranged funeral contracts went through the mail,
7 including correspondence with clients assuring them that the pre-need funds will remain in
8 trust.

9 Mardi Butcher Skinner was married to Dick Butcher for approximately twenty-five
10 years. She assisted Dick Butcher in the establishment of Riverside and in its subsequent
11 operation. Ms. Skinner will explain that pre-need services with trust agreements were
12 frequently set up for services that cost less than one thousand dollars (\$1,000.00), because
13 insurance was generally not available for services in this amount. Ms. Skinner will
14 acknowledge that funds received for pre-arranged services were not always deposited into trust
15 accounts because Riverside experienced cash flow problems.

16 In spring 2000, personal and legal problems prompted Dick Butcher to sell Riverside.
17 On June 1, 2000, Mitchell and Kimberly McBride purchased the assets of Riverside. The
18 balance in the pre-arranged trust account on that date was approximately four thousand six
19 hundred dollars (\$4,600.00). The account balance for funds received on pre-arranged funeral
20 services should have been approximately twenty thousand dollars (\$20,000.00). Mitch
21 McBride was provided a list of all of the pre-arranged clients, including those where funds had
22 been received and misapplied by Dick Butcher.

23 Mitchell McBride continued to be make pre-arranged funeral services available to
24 clients. The services were marketed to potential clients by direct mailers. After the mailers
25 were received at Riverside, sales representatives contacted the potential client to discuss the
26 services. Employees of Riverside, including Paul Kerr and Irene McBride, marketed the pre-
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1 arranged funeral services to potential clients under the direction and supervision of Mitchell
2 McBride.

3 When a contract was entered into for pre-arranged funeral services, a variety of
4 standard paperwork was prepared, including. This paperwork included: a Pre-arranged Funeral
5 Service Contract; a Notice Regarding Delivery of Merchandise; and a Payment Summary. The
6 contract provided that

7 "[t]he first 10% of your contract is retained to cover necessary
8 expenses and . . . The last 90% of the contract amount will be
9 deposited in trust in accordance with state law. Funds may be
withdrawn from the trust a) when we deliver the service, or b) if
you cancel this contract."

10 Clients relied upon these representations, as well as verbal assurances, that funds paid
11 for pre-need services would be held in trust. These clients would not have entered into the
12 contract nor made payments thereon, had they known that such funds would not be held in
13 trust or would be dissipated. Furthermore, clients did not authorize Mitchell or Kimberly
14 McBride to use trust funds for personal or business expenses.

15 In December, 2002, the Bureau of Occupational Licensing, hereinafter referred to as the
16 "Bureau", received a complaint that trust funds maintained by Riverside for pre-arranged
17 funeral services purposes had been misapplied.

18 On January 24, 2003, Cindy Rowland, a Bureau investigator, interviewed Mitchell
19 McBride at Riverside. An employee of Riverside was also present at the meeting. Mitchell
20 McBride made various false representations to the investigator concerning the pre-arranged
21 funeral contracts. For example, Mitchell McBride claimed the contracts were in storage when,
22 in fact, many of the contracts were located at Riverside. McBride also misrepresented the
23 number of pre-arranged funeral contracts by falsely claiming to the investigator that there were
24 about thirty (30) such agreements.

25 After the meeting with the investigator, Mitchell McBride told Riverside employees
26 that he needed to "filter" the contract files for pre-arranged funeral services before he disclosed
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1 them to the state investigator. Riverside employees were concerned that Mitchell McBride
2 would destroy the pre-arranged contract files, so they photocopied the files and provided them
3 to the investigator without the Mr. McBride's knowledge.

4 On February 24, 2003, Mitchell McBride was again interviewed by the investigator.
5 Mr. McBride appeared shocked when the investigator produced copies of the pre-need contract
6 files. Mr. McBride later admitted that the trust fund was depleted and that no funds were
7 available to pay the outstanding obligations for pre-arranged funeral services. Mitchell and
8 Kimberly McBride filed a petition for bankruptcy on September 11, 2002.

9 A subsequent review of the files revealed that Riverside had pre-arranged contracts for
10 approximately 231 clients with an outstanding trust balance of approximately one hundred
11 eighty-six thousand dollars (\$186,000.00). The trust funds were completely depleted by
12 Mitchell and Kimberly McBride.

13 An analysis of trust account bank records revealed that in some instances after client
14 funds were received, the funds were initially deposited into a separate trust account but later
15 diverted to personal and business purposes of Mitchell and Kimberly McBride. Analysis also
16 revealed that other payments for pre-need contracts were not deposited into the trust account
17 but immediately diverted to pay personal and business expenses of Mitchell and Kimberly
18 McBride. This bank account analysis will establish that Mitchell and Kimberly McBride
19 diverted client trust funds on a regular and routine basis.

20 Clients of Riverside will establish that they received various pre-need documents
21 through the mail. In addition, they mailed various correspondence, including payments to
22 Riverside, through the mail.

23 In summary, the government anticipates calling approximately seventy-five witnesses
24 in its case-in-chief. Approximately fifty-five of the witnesses are victims of the offense or
25 family members of the victims. The remaining witnesses are former Riverside employees or
26 other witnesses who will establish the defendants' role in the scheme. Testimony from these
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1 witnesses will take approximately three (3) days to complete. The government will be
2 represented by AUSA George Breitsameter and Ben Groebner, a legal extern, who will assist in
3 the examination of some of the victim-witnesses.

4 V. LEGAL ISSUES

5 A. ADMISSIBILITY OF TESTIMONY CONCERNING STATE LAW

6 The Government intends to elicit testimony from Steve Gordon, the Chairman of the
7 Idaho State Board of Morticians, regarding provisions in Idaho law for the deposit of funds
8 received on pre-need contracts into trust accounts. In addition, the government intends to seek
9 to introduce the contract for pre-arranged funeral services which was prepared by the
10 defendants and provided to clients, which references provisions in Idaho law for the
11 maintenance of funds received in trust accounts.

12 Such testimony and evidence is admissible in order to establish the background of the
13 defendants' fraudulent conduct. U.S. v. Brown, 912 F2d 1040, 1042 (9th Cir. 1990).

14 B. SENTENCING ISSUES AFTER AMELINE.

15 In light of the decision by the Ninth Circuit in United States v. Ameline, Docket No.
16 02-30326, filed July 21, 2004, the Government respectfully requests that the jury be instructed
17 to determine beyond a reasonable doubt whether certain sentencing facts exist, which increase
18 the level of punishment. For example, Mitchell McBride may be subject to the following
19 upward adjustments under the sentencing guidelines, which would increase his sentencing
20 guideline range:

21	Section 1 B1.1	More than Minimal Planning
22	Sections 2 B 1.1/or 2F1.1	Loss Calculation
23	Section 3A1.1	Vulnerable Victim
24	Section 3 B1.3	Abuse of a Position of Trust
25	Section 3 B1.1	Aggravating Role for Organizer, leader, manager or 26 supervisor. Section 3 C1.1 Obstruction of Justice.

1 The government respectfully submits that these issues should be decided by the trial
2 jury in a bifurcated manner on counts which it has returned verdicts of guilty.

3 DATED this 4th day of August, 2004.

4 THOMAS E. MOSS
5 United States Attorney

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8 GEORGE W. BREITSAMETER
9 Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee in the office of the United States Attorney and that a true and correct copy of the foregoing PRETRIAL MEMORANDUM was served on all parties named below this 4th day of August, 2004.

United States Mail, postage prepaid

Hand delivery

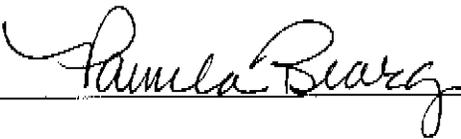
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Steven L. Gordon

Objective Expert Witness

Experience

- Professional
- Mortician - Licensed 1983, M-684
- Pre-need - Licensed 1991, MCA 65
- Licensed to sell insurance in the state of Idaho
- Idaho State Board Of Morticians - appointed to the State Board of Morticians by Governor Kempthorne. I am currently serving my second three-year term on the Board, and I am the chairman of the Mortician's Board at this time.
- I have recently been appointed to the National Conference Of Funeral Service Examining Boards education committee. This committee writes the National Board for students just coming out of Mortuary School.

- 1982 until the present, worked as a mortician at the Alden-Waggoner Funeral Chapel, 5400 Fairview Ave, Boise, ID 83706
- Past seven years I have co-managed Alden-Waggoner Funeral Chapel with Myrna J. Gordon.
- Co-owner of Alden-Waggoner Funeral Chapel for seven years.

- I fulfill a wide range of duties at the funeral home (including owner/manager, funeral director, embalmer, pre-need arrangements and sales, bookkeeping, computer work, etc.).

Duties

Education

- 1975 Graduated from Ames High School, Ames, Iowa
- 1979 Bachelor of Arts Degree from North Central Bible College, Mpls., MN
- 1982 Bachelor of Science Degree University of Minnesota, Mpls., MN