



1 Respectfully submitted this 29<sup>th</sup> day of July, 2004.

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1 CERTIFICATE OF SERVICE

2 I HEREBY CERTIFY that I am an employee of the United States Attorney's Office for the  
3 District of Idaho , and that a copy of the foregoing GOVERNMENT'S PROPOSED JURY  
4 INSTRUCTIONS AND SPECIAL VERDICT FORMS were served on all parties named below  
5 this 29<sup>th</sup> day of July, 2004.

6  United States Mail, postage prepaid

7  Hand delivery

8  Facsimile Transmission

9  Federal Express

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INSTRUCTION NO. \_\_\_\_\_

Ladies and gentlemen: You now are the jury in this case, and I want to take a few minutes to tell you something about your duties as jurors and to give you some instructions. These are preliminary instructions. At the end of the trial I will give you more detailed instructions. Those instructions will control your deliberations.

You should not take anything I may say or do during the trial as indicating what I think of the evidence or what your verdict should be.

Ninth Circuit Model Jury  
Instructions, § 1.1

INSTRUCTION NO. \_\_\_\_\_

This is a criminal case brought by the United States Government. The Government charges the Defendants with Mail Fraud.

The charges against the Defendants are contained in the Indictment. The Indictment is simply the description of the charges made by the Government against the Defendants; it is not evidence of anything.

These instructions are preliminary and the instructions I will give at the end of the case will control.

The Defendants have plead not guilty to the charges and are presumed innocent unless and until proved guilty beyond a reasonable doubt. A Defendant has the right to remain silent and never has to prove innocence or present any evidence.

Ninth Circuit Model Jury  
Instructions, § 1.2  
(As Modified)

INSTRUCTION NO. \_\_\_\_\_

The evidence from which you are to decide what the facts are consists of (1) the sworn testimony of witnesses, both on direct and cross-examination, regardless of who called the witness; (2) the exhibits which have been received into evidence; and (3) any facts to which all the lawyers have agreed or stipulated.

Ninth Circuit Model Jury  
Instructions, § 3.4

INSTRUCTION NO. \_\_\_\_\_

Some evidence is admitted for a limited purpose only. When I instruct you that an item of evidence has been admitted for a limited purpose, you must consider it only for that limited purpose and for no other.

Ninth Circuit Model Jury  
Instructions, § 1.5

INSTRUCTION NO. \_\_\_\_\_

In reaching your verdict you may consider only the testimony and exhibits received into evidence. Certain things are not evidence and you may not consider them in deciding what the facts are. I will list them for you:

1. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers state them, your memory of them controls.

2. Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the question, the objection, or the Court's ruling on it.

3. Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. In addition, some testimony and exhibits have been received only for a limited purpose; where I have given a limiting instruction, you must follow it.

4. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

Ninth Circuit Model Jury  
Instructions, § 3.7

INSTRUCTION NO. \_\_\_\_\_

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect evidence; that is, proof of a chain of facts from which you could find that another fact exists, even though it has not been proved directly. You are to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

Ninth Circuit Model Jury  
Instructions, § 3.8

INSTRUCTION NO. \_\_\_\_\_

There are rules of evidence which control what can be received into evidence. When a lawyer asks a question or offers an exhibit into evidence and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the question may be answered or the exhibit received. If I sustain the objection, the question cannot be answered, and the exhibit cannot be received. Whenever I sustain an objection to a question, you must ignore the question and must not guess what the answer would have been.

Sometimes I may order that evidence be stricken from the record and that you disregard or ignore the evidence. That means that when you are deciding the case, you must not consider the evidence which I told you to disregard.

Ninth Circuit Model Jury  
Instructions, § 1.7

INSTRUCTION NO. \_\_\_\_\_

In deciding the facts of this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

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

1. The opportunity and ability of the witness to see or hear or know the things testified to;
2. The witness' memory;
3. The witness' manner while testifying;
4. The witness' interest in the outcome of the case and any bias or prejudice;
5. Whether other evidence contradicted the witness' testimony;
6. The reasonableness of the witness' testimony in light of all the evidence;

and

7. Any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify.

INSTRUCTION NO. \_\_\_\_\_

I will now say a few words about your conduct as jurors.

Until the trial is over:

First, you are not to discuss this case with anyone, including your fellow jurors, members of your family, people involved in the trial, or anyone else; nor are you allowed to permit others to discuss the case with you. If anyone approaches you and tries to talk to you about the case, please let me know about it immediately;

Second, do not read any news stories or articles or listen to any radio or television reports about the case or about anyone who has anything to do with it;

Third, do not do any research such as consulting dictionaries, searching the Internet or using other reference materials, and do not make any investigation about the case on your own;

Fourth, if you need to communicate with me, simply give a signed note to the bailiff to give to me; and

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

Ninth Circuit Model Jury  
Instructions, § 1.9

INSTRUCTION NO. \_\_\_\_\_

If you wish, you may take notes to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Do not let note taking distract you so that you do not hear other answers by witnesses. When you leave at night, your notes should be left in the envelope in the jury room.

Whether or not you take notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by the notes.

Ninth Circuit Model Jury  
Instructions, § 1.11

INSTRUCTION NO. \_\_\_\_\_

At the end of the trial you will have to make your decision based on what you recall of the evidence. You will not have a written transcript of the trial. I urge you to pay close attention to the testimony as it is given.

Ninth Circuit Model Jury  
Instructions, § 1.10

INSTRUCTION NO. \_\_\_\_

The next phase of the trial will now begin. First, each side may make an opening statement. An opening statement is not evidence. It is simply an outline to help you understand what the party expects the evidence will show. A party is not required to make an opening statement.

The Government will then present evidence and counsel for the Defendants may cross-examine. Then the Defendants may present evidence and counsel for the Government may cross-examine.

After the evidence has been presented, the attorneys will make closing arguments and I will instruct you on the law that applies to the case.

After that, you will go to the jury room to deliberate on your verdict.

Ninth Circuit Model Jury  
Instructions, § 1.12

INSTRUCTION NO. \_\_\_\_\_

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law which applies to this case. A copy of these instructions will be available in the jury room for you to consult.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath promising to do so at the beginning of the case.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. You must not read into these instructions or into anything the Court may have said or done any suggestion as to what verdict you should return -- that is a matter entirely up to you.

Ninth Circuit Model Jury  
Instructions, § 3.1

INSTRUCTION NO. \_\_\_\_\_

Of necessity, these instructions are written in somewhat formalistic language. If, as I proceed to read them, you miss a portion or do not understand a portion, do not allow that to trouble you or prevent you from following the remainder of the instructions. You will be able to take these instructions into the jury room and review them as you deliberate. However, please give these instructions your closest attention as I read them, and do your best to follow along even though the instructions sometimes may appear to be complex.

INSTRUCTION NO. \_\_\_\_\_

The Indictment is not evidence. The Defendants have pleaded not guilty to the charges. The Defendants are presumed to be innocent and do not have to testify or present any evidence to prove innocence. The Government has the burden of proving every element of the charges beyond a reasonable doubt.

Ninth Circuit Model Jury  
Instructions, § 3.2

INSTRUCTION NO. \_\_\_\_\_

Proof beyond a reasonable doubt is proof that leaves you firmly convinced that a Defendant is guilty. It is not required that the Government prove guilty beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If, after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the Defendant is guilty, it is your duty to find a Defendant not guilty. On the other hand, if, after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that a Defendant is guilty, it is your duty to find the Defendant guilty.

Ninth Circuit Model Jury  
Instructions, § 3.5

INSTRUCTION NO. \_\_\_\_\_

A separate crime is charged against one or more of the Defendants in each count. The charges have been joined for trial. You must decide the case of each Defendant on each crime charged against the Defendant separately. Your verdict on any count as to any Defendant should not control your verdict on any other count or as to any other Defendant.

All of the instructions apply to each Defendant and to each count.

Ninth Circuit Model Jury  
Instructions, § 3.14

INSTRUCTION NO. \_\_\_\_\_

An act is done knowingly if the Defendant is aware of the act and does not act or fail to act through ignorance, mistake, or accident. The Government is not required to prove that the Defendant knew that his acts or omissions were unlawful. You may consider evidence of the Defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the Defendant acting knowingly.

Ninth Circuit Model Jury  
Instructions, § 5.6

INSTRUCTION NO. \_\_\_\_\_

The phrase "a scheme or artifice to defraud", as it applies to this case, means any deliberate plan of action or course of conduct by which someone intends to deceive or to cheat another or by which someone intends to deprive another of something of value.

The terms "false or fraudulent pretenses, representations, or promises" means a statement or an assertion which concerns a material or important fact or a material or important aspect of the matter in question and that was either known to be untrue at the time that it was made or used, or that was made or used with reckless indifference as to whether it was, in fact, true or false, and made or used with the intent to defraud. A material fact is a fact that would be of importance to a reasonable person in making a decision about a particular matter or transaction.

The term "false or fraudulent pretenses, representations, or promises" includes actual, direct false statements as well as half-truths, and includes the knowing concealment of facts that are material or important to the matter in question and that were made or used with the intent to defraud.

It is not necessary for the Government to prove that the Defendant was actually successful in defrauding anyone. It is not necessary for the Government to prove that anyone lost any money or property as a result of the scheme or plan to defraud.

*Devitt, Blackmar & O'Malley,*  
4th Ed., § 40.13

INSTRUCTION NO. \_\_\_\_\_

To act with an intent to defraud means to act knowingly and with the intention or the purpose to deceive or to cheat.

An intent to defraud is accompanied, ordinarily, by a desire or a purpose to bring about some gain or benefit to oneself or some other person or by a desire or a purpose to cause some loss to some person.

*Devitt, Blackmar & O'Malley,*  
4th Ed., § 40.14

INSTRUCTION NO. \_\_\_\_\_

Each transmission through the mail to advance or to further, or to carry out the scheme or plan to defraud may be a separate violation of the mail fraud statute.

*Devitt, Blackmar & O'Malley,*  
4th Ed., § 40.15  
(As modified)

INSTRUCTION NO. \_\_\_\_\_

The Indictment charges the Defendants with mail fraud, in violation of Section 1341 of Title 18 of the United States Code, which provides, in part, that:

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

18 U.S.C. § 1341

INSTRUCTION NO. \_\_\_\_\_

In order to sustain its burden of proof for the crime of using the mails or a private or commercial interstate carrier to further a scheme or plan to defraud or a scheme or plan to obtain money or property by means of false or fraudulent pretenses, representations, or promises, as charged in the Indictment, the Government must prove the following three (3) essential elements beyond a reasonable doubt:

First, the Defendants knowingly devised or knowingly participated in a scheme or artifice to defraud or to obtain money or property by means of false or fraudulent pretenses, representations, or promises;

Second, the Defendants did so with the intent to defraud; and

Third, in advancing, or furthering, or carrying out this scheme to defraud or scheme to obtain money or property by means of false or fraudulent pretenses, representations or promises, the Defendants used a private or commercial interstate carrier or caused a carrier to be used.

*Devitt, Blackmar & O'Malley*  
(4th Ed.), § 40.03

## INSTRUCTION NO. \_\_\_\_\_

As to the Indictment, the Government must prove that the Defendants transmitted or caused to be transmitted the following mail for the purpose of executing such scheme or artifice.

COUNT & DEFENDANT	NAME OF CLIENT	DATE OF CONTRACT	TOTAL AMOUNT PAID	ARTICLES MAILED	DATE OF MAILING
1/Mitchell McBride	J. Allmon	07/17/01	995.00	Monthly payments	08/01/01
2/Dick Butcher	J. and V. Baker	12/27/99	3,390.00	Letter	11/18/00
3/Mitchell McBride	J. C. Burkhard	12/04/01	995.00	Letter	12/04/01
4/Mitchell McBride	J. L. and W. Calderwood	6/27/01	390.00	Letter	09/04/01
5/Mitchell McBride	V. and L. H. Campbell	06/01/01	1,930.00	Letter	06/25/01
6/Mitchell McBride	M. and G. Christensen	05/30/01	1,790.00	Letter	06/05/01
7/Mitchell McBride	D. and G. Conradi	06/13/01	1,930.00	Letter	06/16/01
8/Mitchell McBride	J. and C. Cornwell	05/22/01	1,990.00	Letter	05/23/01
9/Mitchell McBride	G. and N. Cudaback	04/19/01	900.00	Mailer	03/01/02
10/Mitchell McBride	D. and M. Deary	06/29/01	1,190.00	Letter	07/26/01
11/Mitchell McBride	E. Eldredge	06/27/01	995.00	Letter	06/27/01
12/Mitchell McBride	J. and K. Evers	05/11/01	1,990.00	Letter	02/14/02
13/Mitchell and Kimberly McBride	V. E. Fenner	08/07/00	850.00	Letter	11/10/00
15/Mitchell McBride	M. Gehrke	06/05/01	1,155.00	Letter	06/05/01
16/Mitchell McBride	Y. and H. Gray	03/20/01	790.00	Payments	08/10/01
17/Mitchell McBride	B. Gunderson	04/30/01	995.00	Letter	05/04/01
18/Mitchell and Kimberly McBride	V. and H. Hall	12/11/02	1,190.00	Mailer	12/11/02
19/Mitchell McBride	D. and O. L. Hanna	08/16/01	2,310.00	Letter	08/20/01
21/Mitchell McBride	B. Hayes	05/18/01	760.00	Letter	07/17/01
22/Mitchell McBride	E. Heavin	10/17/01	995.00	Letter	09/05/02
23/Mitchell McBride	M. Heffner	04/20/01	995.00	Letter	04/20/01

COUNT & DEFENDANT	NAME OF CLIENT	DATE OF CONTRACT	TOTAL AMOUNT PAID	ARTICLES MAILED	DATE OF MAILING
24/Mitchell McBride	L. R. and L. M. Henslee	06/11/01	1,195.00	Payments	08/08/01
25/Mitchell McBride	F. Hicks	09/02/02	595.00	Letter	09/02/02
26/Dick Butcher	G. and H. Hughes	03/29/99	1,720.00	Letter	03/29/99
27/Mitchell McBride	J. and Y. Huls	10/23/01	1,300.00	Letter	01/07/02
28/Mitchell McBride	C. and R. Ives	03/27/01	1,890.00	Payment	09/06/01
29/Mitchell McBride	P. Jeffers	08/07/01	1,195.00	Payments	03/07/02
30/Mitchell McBride	H. and C. Jensen	04/30/01	1,990.00	Payments	09/04/01
31/Mitchell McBride	T. B. Justeson	04/19/01	450.00	Letter with contract	04/19/01
32/Dick Butcher	G. A. and M. E. Kendall	04/26/98	1,700.00	Letter	12/02/99
33/Mitchell McBride	L. Kerr	06/17/01	1,155.00	Letter	06/17/01
34/Mitchell McBride	T. Lund	02/06/01	600.00	Payment History	05/06/02
35/Mitchell McBride	C. and P. McCrary	11/05/01	1,930.00	Letter	11/05/01
36/Mitchell McBride	P. McCrary	11/05/01	965.00	Letter	11/05/01
37/Mitchell McBride	G. and D. Milar	02/27/01	1,310.00	Letter	02/27/02
38/Mitchell McBride	L. H. Mitchell	08/14/01	1,195.00	Letter	08/14/01
39/Dick Butcher and Mitchell McBride	T. T. Morinaka	11/16/99	450.00	Payments	10/06/00
40/Mitchell McBride	A. J. and C. Mowry	07/10/01	2,310.00	Letter	07/10/01
41/Mitchell McBride	A. and J. Norris	11/13/01	2,310.00	Letter	11/13/01
42/Mitchell McBride	B. Ogden	07/25/01	1,195.00	Payment	09/30/01
43/Mitchell McBride	K. Parks	09/11/01	995.00	Letter	09/17/01
44/Mitchell McBride	M. A. Phillips	06/06/01	1,195.00	Letter	06/11/01
45/Mitchell McBride	M. Runge	08/15/01	995.00	Letter	12/30/02
46/Mitchell McBride	P. Russell	05/18/01	995.00	Payment History	05/24/02
48/Dick Butcher	D. Schutte	10/09/99	850.00	Letter	04/21/00
49/Mitchell McBride	R. and F. Sellars	06/14/01	995.00	Letter	06/25/01
50/Dick Butcher	G. Shaffer	04/06/99	1,075.00	Letter	04/21/00

COUNT & DEFENDANT	NAME OF CLIENT	DATE OF CONTRACT	TOTAL AMOUNT PAID	ARTICLES MAILED	DATE OF MAILING
51/Mitchell McBride	R. M. Sheets	05/17/01	995.00	Letter	05/15/02
52/Mitchell McBride	J. Shuter	05/30/01	4,240.00	Letter	05/30/01
53/Mitchell McBride	L. and B. Stanley	04/23/01	770.00	Letter	05/04/01
54/Mitchell McBride	C. and M. Sundquist	09/07/01	2,390.00	Letter	09/17/01
55/Mitchell McBride	H. Symons	10/28/01	995.00	Letter	10/28/01
56/Mitchell McBride	J. and J. Thomas	07/24/01	2,310.00	Letter	08/15/01
57/Mitchell McBride	L. Vaughn	09/27/01	965.00	Letter	10/05/01
59/Mitchell McBride	J. Watterson	09/20/00	965.00	Letter and Contract	08/21/00
60/Dick Butcher	F. Weston	01/05/00	850.00	Letter	01/05/00
61/Mitchell McBride	V. Wise	08/24/01	965.00	Postcard	08/11/01

INSTRUCTION NO. \_\_\_\_\_

The use of a private or commercial interstate carrier is an essential element of the offense of mail fraud as charged in the Indictment.

The Government is not required to prove that the Defendants actually used a private or commercial interstate carrier or that the Defendants even intended that such a carrier would be used to further, or to advance, or to carry out the scheme or plan to defraud or scheme or plan to obtain money or property by false or fraudulent pretenses, representations, or promises.

The Government must prove beyond a reasonable doubt, however, that a private or commercial interstate carrier was, in fact, used in some manner to further, or to advance, or to carry out the scheme to defraud or scheme to obtain money or property by false or fraudulent pretenses, representations or promises. The Government must also prove that the use of such a carrier would follow in the ordinary course of business or events or that the use of the carrier by someone was reasonably foreseeable.

It is not necessary for the Government to prove that the item transmitted by a private or commercial interstate carrier was false or fraudulent or contained any false or fraudulent statement, representation, or promise, or contained any request for money or thing of value.

The Government must prove beyond a reasonable doubt, however, that the use of the carrier furthered, or advanced, or carried out, in some way, the scheme or plan to defraud or scheme or plan to obtain money or property by means of false or fraudulent pretenses, representations or promises.

*Devitt, Blackmar & O'Malley*  
(4th Ed.), § 40.04  
(As Modified)

INSTRUCTION NO. \_\_\_\_\_

Under the doctrine of "lulling communications," as applied to mail fraud violations with which these Defendants are charged, the use of a communication, even after money has been received, for the purpose of assisting in retaining the money, or to convey to victims assurances calculated to lull them into inaction and to postpone, perhaps indefinitely, their taking action in respect to their investment, is within purview of the statutes condemning the use of the mails for purposes of executing a scheme to defraud.

Thus, communications which lull victims into a false sense of security, which postpone inquiries or complaints, which convey the impression of regularity, which promote or prolong the scheme or which make the transaction less suspect and thus delay the discovery of the fraud, are communications in furtherance of the fraudulent scheme under the mail fraud statute.

A mailing also satisfies this requirement when it is a normal concomitant of a transaction that is essential to the scheme.

*United States v. Sampson*, 371 U.S.  
75 (1962)  
*United States v. Tackett*, 646 F.2d  
1240, 1243 (8th Cir. 1981)  
*United States v. Clark*, 649 F.2d  
534, 542 (7th Cir. 1981)  
*United States v. Georgalis*, 631  
F.2d 1199, 1204-05 (5th Cir. 1980)  
*United States v. Rauhoff*, 525 F.2d  
1170, 1176 (5th Cir. 1975)  
(As Modified)

INSTRUCTION NO. \_\_\_\_\_

Idaho law provides that eighty-five percent (85%) of funds received for pre-need funeral services shall be deposited into a trust account. Funds deposited in trust shall be identified in the records of the trustee by the name of the purchaser and beneficiary and adequate records shall be maintained to allocate all earnings to each prearrangement sales contract.

*Idaho Code 54-1134*

INSTRUCTION NO. \_\_\_\_\_

Intent ordinarily may not be proved directly because there is no way of fathoming or scrutinizing the operations of the human mind. But you may infer the Defendants' intent from the surrounding circumstances. You may consider any statement made and any act done or omitted by the Defendants, and all other facts and circumstances in evidence which indicate his or her state of mind.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. As I have said, it is entirely up to you to decide what facts to find from the evidence.

*Devitt and Blackmar, Vol. 1*  
§ 14.13

INSTRUCTION NO. \_\_\_\_\_

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

*Devitt, Blackmar, Wolff &  
O'Malley, 4th Ed., § 13.05*

INSTRUCTION NO. \_\_\_\_

Certain charts and summaries have been received into evidence. Charts and summaries are only as good as the underlying supporting material. You should, therefore, give them only such weight as you think the underlying material deserves.

Ninth Circuit Model Jury  
Instructions, § 4.19

INSTRUCTION NO. \_\_\_\_\_

The punishment provided by law for this crime is for the Court to decide. You may not consider punishment in deciding whether the Government has proved its case against the Defendants beyond a reasonable doubt.

Ninth Circuit Model Jury  
Instructions, § 7.4

INSTRUCTION NO. \_\_\_\_\_

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

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict, whether guilty or not guilty, must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

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

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

Ninth Circuit Model Jury  
Instructions, § 7.1

INSTRUCTION NO. \_\_\_\_\_

Your verdict must be based solely on the evidence and on the law as I have given it to you in these instructions. However, nothing that I have said or done is intended to suggest what your verdict should be -- that is entirely for you to decide.

Ninth Circuit Model Jury  
Instructions, § 7.2

INSTRUCTION NO. \_\_\_\_\_

A verdict form has been prepared for you. [Any explanation of the verdict form may be given at this time.] After you have reached unanimous agreement on a verdict, your foreperson will fill in the form that has been given to you, sign and date it, and advise the bailiff that you are ready to return to the courtroom.

Ninth Circuit Model Jury  
Instructions, § 7.5

INSTRUCTION NO. \_\_\_\_\_

If it becomes necessary during your deliberations to communicate with me, you may send a note through the bailiff signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing; and I will respond to the jury concerning the case only in writing, or here in open court. If you sent out a question, I will consult with the lawyers before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone -- including me -- how the jury stands, numerically or otherwise, on the question of the guilt of the Defendants until after you have reached a unanimous verdict or have been discharged.

Ninth Circuit Model Jury  
Instructions, § 7.6

1 THOMAS E. MOSS  
2 UNITED STATES ATTORNEY  
3 GEORGE W. BREITSAMETER  
4 ASSISTANT UNITED STATES ATTORNEY  
5 DISTRICT OF IDAHO  
6 MK PLAZA, PLAZA IV  
7 800 PARK BLVD., SUITE 600  
8 BOISE, IDAHO 83712  
9 TELEPHONE: (208) 334-1211  
10 FACSIMILE: (208) 334-1413

11 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

12 UNITED STATES OF AMERICA, )

13 Plaintiff, )

14 vs. )

15 MITCHELL D. McBRIDE, )

16 Defendant. )

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Case No. CR 04-0064-S-EJL

SPECIAL VERDICT

17  
18 We, the jury, unanimously find the defendant, MITCHELL D. McBRIDE

19 I. COUNTS 1 THROUGH 61, MAIL FRAUD

20  
21 \_\_\_\_\_ Not Guilty      \_\_\_\_\_ Guilty      as to Count One of the Indictment

22  
23 \_\_\_\_\_ Not Guilty      \_\_\_\_\_ Guilty      as to Count Three of the Indictment

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25 \_\_\_\_\_ Not Guilty      \_\_\_\_\_ Guilty      as to Count Four of the Indictment

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28 SPECIAL VERDICT -- 1

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____	Not Guilty	____	Guilty	as to Count Five of the Indictment
____	Not Guilty	____	Guilty	as to Count Six of the Indictment
____	Not Guilty	____	Guilty	as to Count Seven of the Indictment
____	Not Guilty	____	Guilty	as to Count Eight of the Indictment
____	Not Guilty	____	Guilty	as to Count Nine of the Indictment
____	Not Guilty	____	Guilty	as to Count Ten of the Indictment
____	Not Guilty	____	Guilty	as to Count Eleven of the Indictment
____	Not Guilty	____	Guilty	as to Count Twelve of the Indictment
____	Not Guilty	____	Guilty	as to Count Thirteen of the Indictment
____	Not Guilty	____	Guilty	as to Count Fifteen of the Indictment
____	Not Guilty	____	Guilty	as to Count Sixteen of the Indictment
____	Not Guilty	____	Guilty	as to Count Seventeen of the Indictment
____	Not Guilty	____	Guilty	as to Count Eighteen of the Indictment

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_____ Not Guilty	_____ Guilty	as to Count Nineteen of the Indictment
_____ Not Guilty	_____ Guilty	as to Count Twenty-one of the Indictment
_____ Not Guilty	_____ Guilty	as to Count Twenty-two of the Indictment
_____ Not Guilty	_____ Guilty	as to Count Twenty-three of the Indictment
_____ Not Guilty	_____ Guilty	as to Count Twenty-four of the Indictment
_____ Not Guilty	_____ Guilty	as to Count Twenty-five of the Indictment
_____ Not Guilty	_____ Guilty	as to Count Twenty-seven of the Indictment
_____ Not Guilty	_____ Guilty	as to Count Twenty-eight of the Indictment
_____ Not Guilty	_____ Guilty	as to Count Twenty-nine of the Indictment
_____ Not Guilty	_____ Guilty	as to Count Thirty of the Indictment
_____ Not Guilty	_____ Guilty	as to Count Thirty-one of the Indictment
_____ Not Guilty	_____ Guilty	as to Count Thirty-three of the Indictment
_____ Not Guilty	_____ Guilty	as to Count Thirty-four of the Indictment

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_____ Not Guilty	_____ Guilty	as to Count Thirty-five of the Indictment
_____ Not Guilty	_____ Guilty	as to Count Thirty-six of the Indictment
_____ Not Guilty	_____ Guilty	as to Count Thirty-seven of the Indictment
_____ Not Guilty	_____ Guilty	as to Count Thirty-eight of the Indictment
_____ Not Guilty	_____ Guilty	as to Count Thirty-nine of the Indictment
_____ Not Guilty	_____ Guilty	as to Count Forty of the Indictment
_____ Not Guilty	_____ Guilty	as to Count Forty-one of the Indictment
_____ Not Guilty	_____ Guilty	as to Count Forty-two of the Indictment
_____ Not Guilty	_____ Guilty	as to Count Forty-three of the Indictment
_____ Not Guilty	_____ Guilty	as to Count Forty-four of the Indictment
_____ Not Guilty	_____ Guilty	as to Count Forty-five of the Indictment
_____ Not Guilty	_____ Guilty	as to Count Forty-six of the Indictment
_____ Not Guilty	_____ Guilty	as to Count Forty-nine of the Indictment

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\_\_\_\_ Not Guilty    \_\_\_\_ Guilty    as to Count Fifty-one of the Indictment

\_\_\_\_ Not Guilty    \_\_\_\_ Guilty    as to Count Fifty-two of the Indictment

\_\_\_\_ Not Guilty    \_\_\_\_ Guilty    as to Count Fifty-three of the Indictment

\_\_\_\_ Not Guilty    \_\_\_\_ Guilty    as to Count Fifty-four of the Indictment

\_\_\_\_ Not Guilty    \_\_\_\_ Guilty    as to Count Fifty-five of the Indictment

\_\_\_\_ Not Guilty    \_\_\_\_ Guilty    as to Count Fifty-six of the Indictment

\_\_\_\_ Not Guilty    \_\_\_\_ Guilty    as to Count Fifty-seven of the Indictment

\_\_\_\_ Not Guilty    \_\_\_\_ Guilty    as to Count Fifty-nine of the Indictment

\_\_\_\_ Not Guilty    \_\_\_\_ Guilty    as to Count Sixty-one of the Indictment

If you find the defendant, MITCHELL D. McBRIDE, guilty as to any counts, you must unanimously agree as to the following:

What is the loss amount? \_\_\_\_\_

The loss amount is defined as the fair market value of the property unlawfully taken or destroyed; or, if the fair market value is impracticable to determine or inadequately measures the harm, the cost to the victim of replacing that property.

Did the offense involve "more than minimal planning"?

Yes or No? \_\_\_\_\_

1 "More than minimal planning" means more planning than is typical for commission of the  
2 offense in a simple form. "More than minimal planning" may also exist if significant affirmative  
3 steps were taken to conceal the offense during the commission of the offense. "More than  
4 minimal planning" is deemed present in any case involving repeated acts over a period of time,  
5 unless it is clear that each instance was purely opportune.

6 Did the defendant, MITCHELL D. McBRIDE, know or should have known that a victim  
7 of the offense was a "vulnerable victim"?

8 Yes or No? \_\_\_\_\_

9 A "vulnerable victim" means a person (a) who is a victim of the offense of conviction; and  
10 (b) who is unusually vulnerable due to age, physical or mental condition, or who is otherwise  
11 particularly susceptible to the criminal conduct.

12 Was the defendant, MITCHELL D. McBRIDE, an organizer, leader, manager, or  
13 supervisor in any criminal activity?

14 Yes or No? \_\_\_\_\_

15 Did the defendant, MITCHELL D. McBRIDE, obstruct or impede the administration of  
16 justice?

17 Yes or No? \_\_\_\_\_

18  
19 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

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22 FOREPERSON



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What is the loss amount? \_\_\_\_\_

The loss amount is defined as the fair market value of the property unlawfully taken or destroyed; or, if the fair market value is impracticable to determine or inadequately measures the harm, the cost to the victim of replacing that property.

Did the offense involve "more than minimal planning"?

Yes or No? \_\_\_\_\_

"More than minimal planning" means more planning than is typical for commission of the offense in a simple form. "More than minimal planning" may also exist if significant affirmative steps were taken to conceal the offense during the commission of the offense. "More than minimal planning" is deemed present in any case involving repeated acts over a period of time, unless it is clear that each instance was purely opportune.

Did the defendant, KIMBERLY McBRIDE, know or should have known that a victim of the offense was a "vulnerable victim"?

Yes or No? \_\_\_\_\_

A "vulnerable victim" means a person (a) who is a victim of the offense of conviction; and (b) who is unusually vulnerable due to age, physical or mental condition, or who is otherwise particularly susceptible to the criminal conduct.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
FOREPERSON

1 THOMAS E. MOSS  
2 UNITED STATES ATTORNEY  
3 GEORGE W. BREITSAMETER  
4 ASSISTANT UNITED STATES ATTORNEY  
5 DISTRICT OF IDAHO  
6 MK PLAZA, PLAZA IV  
7 800 PARK BLVD., SUITE 600  
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9 TELEPHONE: (208) 334-1211  
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11 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

12 UNITED STATES OF AMERICA, )

13 Plaintiff, )

14 vs. )

15 DICK E. BUTCHER, )

16 Defendant. )

---

Case No. CR 04-0064-S-EJL

SPECIAL VERDICT

17  
18 We, the jury, unanimously find the defendant, DICK E. BUTCHER

19 I. COUNTS 2 THROUGH 60, MAIL FRAUD

20  
21 \_\_\_\_\_ Not Guilty \_\_\_\_\_ Guilty as to Count Two of the Indictment

22  
23 \_\_\_\_\_ Not Guilty \_\_\_\_\_ Guilty as to Count Twenty-six of the Indictment

24  
25 \_\_\_\_\_ Not Guilty \_\_\_\_\_ Guilty as to Count Thirty-two of the Indictment

26  
27  
28 SPECIAL VERDICT -- 1

1        \_\_\_ Not Guilty        \_\_\_ Guilty        as to Count Thirty-nine of the Indictment

2  
3        \_\_\_ Not Guilty        \_\_\_ Guilty        as to Count Forty-eight of the Indictment

4  
5        \_\_\_ Not Guilty        \_\_\_ Guilty        as to Count Fifty of the Indictment

6  
7        \_\_\_ Not Guilty        \_\_\_ Guilty        as to Count Sixty of the Indictment

8  
9        If you find the defendant, DICK E. BUTCHER, guilty as to any counts, you must  
10        unanimously agree as to the following:

11                                What is the loss amount?        \_\_\_\_\_

12                The loss amount is defined as the fair market value of the property unlawfully taken or  
13        destroyed; or, if the fair market value is impracticable to determine or inadequately measures the  
14        harm, the cost to the victim of replacing that property.

15                Did the offense involve "more than minimal planning"?

16                                Yes or No?        \_\_\_\_\_

17                "More than minimal planning" means more planning than is typical for commission of the  
18        offense in a simple form. "More than minimal planning" may also exist if significant affirmative  
19        steps were taken to conceal the offense during the commission of the offense. "More than  
20        minimal planning" is deemed present in any case involving repeated acts over a period of time,  
21        unless it is clear that each instance was purely opportune.

22                Did the defendant, DICK E. BUTCHER, know or should have known that a victim of the  
23        offense was a "vulnerable victim"?

24                                Yes or No?        \_\_\_\_\_

1 A "vulnerable victim" means a person (a) who is a victim of the offense of conviction; and  
2 (b) who is unusually vulnerable due to age, physical or mental condition, or who is otherwise  
3 particularly susceptible to the criminal conduct.

4 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

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28 SPECIAL VERDICT -- 3