

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

PHILLIP C. LATHROP,

Defendant.

FINAL PRETRIAL  
CONFERENCE ORDER

08-cr-124-bbc

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On February 2, 2009, this court held the final pretrial conference hearing. Defendant Phillip Lathrop was present with his attorney, Christopher Van Wagner. The government was represented by Assistant United States Attorney Daniel Graber.

Prior to the hearing, the court provided the parties with a draft voir dire questions. The government asked for two additional questions on forfeiture and insurance, both of which I added. A copy of the final version of the voir dire questions is attached to this order.

Prior to the hearing, the court provided the parties with a set of the universe of jury instructions. The government asked the court to add several pattern instructions and to modify a few of the forfeiture instructions and the forfeiture verdict form. Lathrop did not feel strongly about these changes, so I made them. The government also asked the court to change its definition of “maliciously,” which is the mens rea required by the arson charge. Lathrop objected for the record but did not evince strong opposition. The cases cited by the government in a post-hearing letter establish that all of the circuits that have defined the term have used the government’s proposed definition, which is derived from common law. Accordingly, I have granted the government’s request.

Next we discussed *in limine* issues. The government filed a notice of intent to offer evidence (dkt. 33) and a supplement (dkt. 38). Lathrop disputes the admissibility of drug trafficking evidence

in this arson/mail fraud prosecution. Lathrop also disputes the government's proffer in its supplementary notice of Lathrop's alleged prior conviction in Illinois, asserting that he has received a "conditional discharge" that removes this matter from the scope of Rule 609.

The government also filed a seven-part motion in limine. *See* dkt. 43. Lathrop does not dispute parts 1, 3, or 6. He disputes parts 2 and 4, regarding the admissibility of penalties he faces if convicted and the federal penalties the government's event witness would face absent his plea deal (the government does not seek to exclude the state penalties this witness would face). Lathrop objects to part 5, (exclude fact that no fingerprints were found on the accelerant canisters) and 7 (exclude evidence of cocaine sales by government witnesses).

Lathrop moved *in limine* to exclude as hearsay the event witness's out-of-court statements to others that implicate Lathrop in the arson. *See* dkt. 53. The government opposes this motion.

The parties predict that this trial could last four days. We agreed to seat two alternate jurors. The parties are aware that they must present their evidence on the ELMO. Lathrop is free on bond, so street clothes for trial are not an issue. The parties had no other matters to bring to the court's attention.

Entered this 4<sup>th</sup> day of February, 2009.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge

Voir Dire: United States v. Lathrop, 08-cr-128-bbc

Statement of the case: This is a criminal case, in which the defendant, Phillip Lathrop, is charged with hiring someone to set fire to a bar he owned in Hayward named Player's Sports Bar & Grill, and then fraudulently collecting insurance proceeds from Capitol Indemnity insurance company for the damage caused by the fire. The defendant has entered a plea of not guilty to these charges.

1. Have any of you heard of this case before today? Would this affect your ability to serve impartially as a juror in this case?

2. Scheduling: this case will begin today and could last until this Thursday. Are any of you actually unable to sit as jurors because of this schedule?

3. Is there anything about the nature of the charges in this case that might affect your ability to be impartial in this case?

4. The court reads Federal Criminal Jury Instructions of the Seventh Circuit:

**Presumption of Innocence.** The defendant is presumed to be innocent of the charges. This presumption remains with the defendant throughout every stage of the trial and during your deliberations on the verdict, and is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that the defendant is guilty.

**Burden of Proof.** The government has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on the government throughout the case. The defendant is not required to prove his innocence or to produce any evidence.

**Indictment Not Evidence.** The indictment in this case is the formal method of accusing the defendant of crimes and placing the defendant on trial. It is not evidence against the defendant and does not create any implication of guilt.

The defendant has an absolute right not to testify. The fact that the defendant does not testify cannot be considered by you in any way in arriving at your verdict.

Would any of you be unable or unwilling to follow these instructions?

5. Ask the Assistant U.S. Attorney to introduce himself and the case agent. Ask defense counsel to introduce himself and the defendant. Ask whether jurors know them.

6. Invite each juror, in turn, to rise, and provide the following information:

Name, age, and city or town of residence.

Marital status and number of children, if any.

Current occupation (former if retired).

Current (or former) occupation of your spouse.

Any military service, including branch, rank and approximate date of discharge.

Level of education, and major areas of study, if any.

Memberships in any groups or organizations.

Hobbies and leisure-time activities.

Favorite types of reading material.

Favorite types of television shows.

Whether you regularly listen to talk radio, and if so, which programs.

7. Do any of you in the jury box know each other from before today?

8. Have any of you or members of your family ever worked for, held accounts with or had any other dealings with Player's Sports Bar & Grill or Capitol Indemnity Corporation?

9. You may hear from witnesses who have agreed to testify for the government in exchange for benefits such as immunity from federal prosecution. Do any of you have such strong feelings about the government immunizing witnesses to obtain their testimony that it would affect your ability to be fair and impartial in this case?

10. Do any of you hold strong feelings, either for or against, the federal asset forfeiture laws of the United States that allow the government to seize a person's money or property if it proves certain facts about the unlawful receipt of that money or property?  
[*Sidebar if necessary*]

11. Have any of you, your family members or close friends ever been the victim of any sort of a fire at home or work? Would this affect your ability to be impartial in this case?

12. Have any of you or your family members family ever owned or operated a bar, tavern or restaurant? Would this affect your ability to be impartial in this case?

13. Have any of you or your family members family ever been self-employed in a business that had insurance coverage for its property, building and contents?

14. Have any of you or your family members ever had any negative experience with an insurance company? Would this affect your ability to be impartial in this case?

15. Do any of you, by virtue of past dealings with the United States government, or for any reason, have any bias for or against the government in a criminal case?

16. Have any of you, your relatives, or close friends ever worked for the local, county, state, or federal government? Would this affect your ability to be impartial in this case?

17. Have any of you, your relatives, or close friends ever worked for, or had other professional contact with any law enforcement, investigative or security company or agency, any prosecutor's office, or any prison? Would this affect your ability to be impartial in this case?

18. Would any of you judge the credibility of a witness who was a law enforcement officer or government employee differently from other witnesses solely because of his or her official position?

19. Would any of you judge the credibility of a witness who was Native American differently from other witnesses solely because of his or her ethnic heritage?

20. If the defendant were to choose to testify, would any of you judge the defendant's credibility differently from other witnesses solely because it was the defendant who was testifying?

21. Have any of you, your relatives, or close friends ever been accused of, or convicted of any criminal offense? [Sidebar if necessary]. Would this affect your ability to be impartial in this case?

22. Have any of you, your relatives, or close friends ever been the victim of any crime? Would this affect your ability to be impartial in this case?

23. Have any of you, your relatives, or close friends ever been a plaintiff or a defendant in any civil trial? Is there anything about this experience that might affect your ability to be impartial in this case?

24. Have any of you, your relatives, or close friends ever been a witness in a trial? Is there anything about this experience that might affect your ability to be impartial in this case?

25. Have any of you, your relatives, or close friends ever had any negative experience with any lawyer, any court, or any legal proceeding that would affect your ability to be impartial in this case?

26. How many of you have served previously as a juror in another case? Please tell us in which court you served, approximately when, the type of cases you heard, whether you were foreperson, and the verdicts.

27. If at the conclusion of the trial you were to be convinced of the defendant's guilt beyond a reasonable doubt, is there any one of you who would not, or could not, return a verdict of guilty?

28. If at the conclusion of the trial you were not to be convinced of the defendant's guilt beyond a reasonable doubt, is there any one of you who would not, or could not, return a verdict of not guilty?

29. The court will instruct you on the law to be applied in this case. You are required to accept and follow the court's instructions in that regard, even though you may disagree with the law. Is there any one of you who cannot accept this requirement?

30. Do you know of any reason whatever, either suggested by these questions or otherwise, why you could not sit as a trial juror with absolute impartiality to all the parties in this case?

## JUROR BACKGROUND INFORMATION

When asked to do so by the court, please stand and provide the following information about yourself:

Name, age, and city or town of residence.

Marital status and number of children, if any.

Current occupation (former if retired).

Current (or former) occupation of your spouse.

Any military service, including branch, rank and approximate date of discharge.

Level of education, and major areas of study, if any.

Memberships in any groups or organizations.

Hobbies and leisure-time activities.

Favorite types of reading material.

Favorite types of television shows.

Whether you regularly listen to talk radio, and if so, which programs.

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

JURY INSTRUCTIONS

v.

08-cr-124-bbc

PHILLIP C. LATHROP,

Defendant.

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Members of the jury, you have seen and heard all the evidence and the arguments of the attorneys. Now I will instruct you on the law.

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

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

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, fear or public opinion to influence you. Do not allow any person's race, color, religion, national ancestry or sex to influence you.

Nothing I say now and nothing I said or did during the trial is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence and stipulations.

A stipulation is an agreement between both sides that certain facts are true.

I have taken judicial notice of certain facts that may be regarded as matters of common knowledge. You may accept those facts as proved, but you are not required to do so.

You are to decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all, as well as what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, you may consider among other things: the witness's age; the witness's intelligence; the ability and opportunity the witness had to see, hear, or know the things the witness testified about; the witness's memory; any interest, bias, or prejudice the witness may have; the manner of the witness while testifying; and the reasonableness of the witness's testimony in light of all the evidence in the case.

You should judge the defendant's testimony in the same way that you judge the testimony of any other witness.

You should use common sense in weighing the evidence. Consider the evidence in light of your own observations in life. You are allowed to draw reasonable inferences from facts. In other words, you may look at one fact and conclude from it that another fact exists. Any inferences you make must be reasonable and must be based on the evidence in the case.

Some of you have heard the phrases "circumstantial evidence" and "direct evidence." Direct evidence is the testimony of someone who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a series of facts that tend to show whether the defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. You should decide how much weight to give to any evidence. You should consider all the evidence in the case, including the circumstantial evidence, in reaching your verdict.

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

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

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

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

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

It is proper for a lawyer to interview any witness in preparation for trial.

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

You have received evidence of statements said to be made by the defendant to \_\_\_\_\_ . You must decide whether the defendant made any of the statements attributed to him. If you find that a defendant did make the statement, then you must decide what weight, if any, you believe the statement deserves. In making this decision, you should consider all matters in evidence having to do with the statement, including those concerning the defendant himself, and the circumstances under which the statement was made.

The defendant has an absolute right not to testify. In arriving at your verdict, you must not consider the fact that the defendant did not testify.

You have heard evidence of acts of defendant other than those charged in the indictment. Specifically, you've heard evidence that the defendant \_\_\_\_\_. You may consider this evidence only on the question \_\_\_\_\_. You should consider this evidence only for these limited purposes.

You have heard evidence that \_\_\_\_\_ have been convicted of crimes. You may consider this evidence only in deciding whether the testimony

of any of these witnesses is truthful in whole, in part, or not at all. You may not consider this evidence for any other purpose.

You have heard evidence that the defendant has been convicted of crimes. You may consider this evidence only in deciding whether the testimony of any of these witnesses is truthful in whole, in part, or not at all. You may not consider this evidence for any other purpose. A conviction of another crime is not evidence of the defendant's guilty of any other crime for which the defendant is now charged.

You have heard evidence about the character trait of \_\_\_\_\_ for untruthfulness. You should consider this evidence in deciding the weight that you will give to their testimony.

You have heard evidence that before the trial, witnesses made statements that may be inconsistent with their testimony here in court. If you find that it is inconsistent, you may consider the earlier statement only in deciding the truthfulness and accuracy of that witness's testimony in this trial. You may not use it as evidence of the truth of the matters contained in that prior statement. If that statement was made under oath, you may also consider it as evidence of the truth of the matters contained in that prior statement.

A statement made by a defendant before trial that is inconsistent with the defendant's testimony here in court may be used by you as evidence of the truth of the matters contained in it, and also in deciding the truthfulness and accuracy of the defendant's testimony in this trial.

You have heard evidence about a number of the witnesses that may affect your evaluation of their testimony:

\_\_\_\_\_ have admitted lying under oath.

You have heard testimony that \_\_\_\_\_ have received benefits from the government in connection with this case. Specifically, they received

reduced charges or were not charged with all the crimes they could have been charged with or both and they have the possibility of reduced sentences.

You have heard testimony from \_\_\_\_\_, who each stated that he or she was involved in the commission of the alleged crimes charged against the defendant.

The witnesses \_\_\_\_\_ have pleaded guilty to crimes arising out of the same allegations for which the defendants are now on trial.

The witness \_\_\_\_\_, has received immunity; that is, a promise from the government that any testimony or other information she provided would not be used against her in a criminal case.

You may give the testimony of these witnesses such weight as you believe it deserves, keeping in mind that it must be considered with caution and great care. Moreover, the guilty pleas of witnesses \_\_\_\_\_ cannot be considered as evidence against the defendants on trial now.

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

Certain summaries are in evidence. They truly and accurately summarize the contents of voluminous books, records or documents, and should be considered together with and in the same way as all other evidence in the case.

Certain summaries are in evidence. Their accuracy has been challenged by [the government] [the defendant]. Thus, the original materials upon which the exhibits are based have also been admitted into evidence so that you may determine whether the summaries are accurate.

You have heard recorded conversations. These recorded conversations are proper evidence and you may consider them, just as any other evidence. When the recordings were played during the

trial, you were furnished transcripts of the recorded conversations prepared by government agents. The recordings are the evidence, and the transcripts were provided to you only as a guide to help you follow as you listen to the recordings. The transcripts are not evidence of what was actually said or who said it. It is up to you to decide whether the transcripts correctly reflect what was said and who said it. If you noticed any difference between what you heard on the recordings and what you read in the transcripts, you must rely on what you heard, not what you read. And if after careful listening, you could not hear or understand certain parts of the recordings, you must ignore the transcripts as far as those parts are concerned.

I am providing you with the recordings and a player. You are not required to play the tapes, in part or in whole. You may rely, instead, on your recollections of these recordings as you heard them at trial. If you do decide to listen to a tape recording and wish to have the transcript corresponding to that recording, ask the Marshal in writing and the transcript will be given to you. You may choose to listen to the cassette without the transcript.

#### THE INDICTMENT

The defendant is charged in the indictment as follows:

*[court reads the indictment].*

The indictment in this case is the formal method of accusing the defendant of crimes and placing the defendant on trial. It is not evidence against the defendant and does not create any implication of guilt.

The defendant is not on trial for any act or any conduct not charged in the indictment.

The defendant is presumed to be innocent of the charges. This presumption continues during every stage of the trial and your deliberations on the verdict. It is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that the defendant is guilty as charged.

The government has the burden of proving the guilt of the defendant beyond a reasonable doubt. This burden of proof stays with the government throughout the case. The defendant is never required to prove his innocence or to produce any evidence at all.

The indictment charges that the offenses were committed "on or about" certain dates. The government must prove that the offenses happened reasonably close to those dates but it is not required to prove that the alleged offenses happened on those exact dates.

#### THE ELEMENTS OF ARSON: COUNT 1

The defendant is charged in Count 1 with arson. To sustain this charge, the government must prove these elements beyond a reasonable doubt:

First, the property identified in Count 1 engaged in activity that affected interstate commerce;

Second;, the defendant caused this property to be damaged by fire;

Third, the defendant did so maliciously.

If you find from your consideration of all the evidence that each of these elements has been proved beyond a reasonable doubt, then you should find the defendant guilty of Count 1.

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you must find the defendant not guilty of Count 1.

A person acts "maliciously" if he intentionally does something that is likely to damage property or harm people or if he willfully disregards the likelihood of that damage or harm will result from his acts.

The term "interstate commerce" means commerce or business that affects more than one state. Interstate commerce includes a commercial or business activity that occurs within one state but that has a continuing and substantial effect on commerce and business in another state. A business that sells food or drinks that have been brought in from another state is a business

that is engaged in an activity that affects interstate commerce. The government does not need to prove that the defendant knew that the property identified in Count 1 engaged in activity that affected interstate commerce.

#### THE ELEMENTS OF MAIL FRAUD: COUNTS 2, 3, 4 AND 5

The defendant is charged in Counts 2, 3, 4 and 5 with mail fraud. To sustain any of these charges, the government must prove these elements beyond a reasonable doubt:

First, the defendant knowingly devised the scheme to defraud as described in Paragraphs 1 through 9 of Count 2;

Second, the fraudulent representations made by the defendant as part of the scheme were material;

Third, the defendant acted knowingly and with the intent to defraud; and,

Fourth, that for the purpose of carrying out the scheme or attempting to do so, the defendant used or caused the use of the United States Mails in the manner charged in the particular count that you are considering.

If you find from your consideration of all the evidence that each of these elements has been proved beyond a reasonable doubt as to a particular count, then you should find the defendant guilty of that count.

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt as to a particular count, then you must find the defendant not guilty of that count.

A scheme is a plan or course of action formed with the intent to accomplish some purpose. A scheme to defraud is a scheme that is intended to deceive or cheat another and to obtain property.

Before you may find that the charged scheme existed, you must find that one or more of the acts or representations charged as having been in furtherance of the scheme has been proved beyond a reasonable doubt. Although it is not necessary that the government prove all of the material acts or representations charged in paragraphs 1 - 9 of Count 2, it must

prove at least one of them beyond a reasonable doubt to establish the existence of the scheme to defraud. Before you may find that the government has met this burden, you must unanimously agree on at least one of the specified material representations or promises. It is not enough for some of you to agree that the defendant made one particular material false representation and the rest of you agree that the defendant made another.

A representation can be false in several ways. First, a representation is false if the defendant knew that it was untrue at the time he made it. Second, a representation is false if the defendant made it with reckless indifference as to whether it was true or false, provided that the defendant made it with intent to defraud. Third, a representation is false when it constitutes a half-truth or effectively omits or conceals a material fact, provided that the defendant made or used the half-truth, omission, or concealment with intent to defraud.

A false representation is “material” if it has the natural tendency to influence, or is capable of influencing, the decision of the person to whom it is addressed.

The phrase "intent to defraud" means that the acts charged were done knowingly with the intent to deceive or cheat the victim in order to cause a gain of money or property to the defendant.

Good faith, or the absence of an intent to defraud, is a complete defense to the charge of wire fraud. The good faith defense requires a genuine belief by the defendant that the representations or promises alleged to be fraudulent were true at the time he made them. *[A defendant's honest and genuine belief that he will be able to perform in the future what he promised in the past is not a defense to mail fraud if the defendant also knowingly made false and fraudulent representations.]* The burden of proving good faith does not rest with the defendant because the defendant does not have any obligation to prove anything in this case.

It is the government's burden to prove to you, beyond a reasonable doubt, that the defendant acted with the specific intent to defraud as alleged in Counts 2 through 5 of the indictment.

The government is not required to produce direct evidence to establish the defendant's intent. The government may prove the defendant's intent by means of circumstantial evidence alone. In determining the defendant's intent, you may consider all of his statements, acts and omissions, as well as all other facts and circumstances in evidence that indicate the defendant's state of mind.

As used throughout these instructions, all forms of the verb "to know" and the adverb "knowingly" mean that a defendant realized what he was doing and was aware of the nature of his conduct and did not act through ignorance, mistake or accident. Knowledge may be proved by a defendant's conduct and by all the facts and circumstances surrounding the case.

An offense may be committed by more than one person. A defendant's guilt may be established without proof that the defendant personally performed every act constituting the crime charged.

If the defendant knowingly caused the acts of another, the defendant is responsible for those acts as though he personally committed them.

Any person who knowingly aids, counsels, commands, induces or procures the commission of an offense may be found guilty of that offense. However, that person must knowingly associate himself with the criminal activity, participate in the activity, and try to make it succeed.

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

A verdict form has been prepared for you. [*Court reads the verdict form*]

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

Each count of the indictment charges the defendant with having committed a separate offense. You must consider each count and the evidence relating to it separate and apart from every other count. Your verdict of guilty or not guilty of an offense charged in one count should not control your decision as to any other count.

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

The twelve of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement consistent with the individual judgment of each juror. You are impartial judges of the facts. Your only interest is to determine whether the government has proved its case beyond a reasonable doubt.

If it becomes necessary during your deliberations to communicate with the court, you may send a note by a 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 the court by any means other than a signed writing, and the court will never communicate with any member of the jury on any subject touching the merits of the case otherwise than in writing, or orally here in open court. You will note from the oath about to be taken by the bailiffs that they

too, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case. You must not reveal to any person, including the court, your numerical split on any verdict question until you have reached a unanimous verdict on every defendant and every count.

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

---

UNITED STATES OF AMERICA,

Plaintiff,

v.

PHILLIP C. LATHROP,

Defendant.

VERDICT

08-cr-124-bbc

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COUNT 1

We, the Jury in the above-entitled cause, find the defendant, Phillip C. Lathrop,

\_\_\_\_\_  
("Guilty" or "Not Guilty")

of the offense charged in Count 1 of the indictment.

COUNT 2

We, the Jury in the above-entitled cause, find the defendant, Phillip C. Lathrop,

\_\_\_\_\_  
("Guilty" or "Not Guilty")

of the offense charged in Count 2 of the indictment.

COUNT 3

We, the Jury in the above-entitled cause, find the defendant, Phillip C. Lathrop,

\_\_\_\_\_  
("Guilty" or "Not Guilty")

of the offense charged in Count 3 of the indictment.

COUNT 4

We, the Jury in the above-entitled cause, find the defendant, Phillip C. Lathrop,

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("Guilty" or "Not Guilty")

of the offense charged in Count 4 of the indictment.

COUNT 5

We, the Jury in the above-entitled cause, find the defendant, Phillip C. Lathrop,

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("Guilty" or "Not Guilty")

of the offense charged in Count 5 of the indictment.

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Presiding Juror

Madison, Wisconsin

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

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

JURY INSTRUCTIONS:  
FORFEITURE

08-cr-124-bbc

PHILLIP C. LATHROP,

Defendant.

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Now that you have returned a guilty verdict as to at least one of Counts 2 through 5, you have one more task to perform. 18 U.S.C. § 981 provides that a person who is convicted of mail fraud shall forfeit to the United States all property, real or personal, that constitutes the proceeds of the mail fraud scheme or is derived from the proceeds of the mail fraud scheme. Therefore, the government is entitled to a personal money judgment against a defendant for an amount equal to the proceeds that defendant obtained from the mail fraud scheme.

In this case, the government is seeking forfeiture from the defendant as alleged in Count 6:

*[Court reads Count 6]*

Your previous finding that the defendant is guilty of mail fraud is binding on you now. Therefore, you need not discuss in your forfeiture deliberations whether the defendant is guilty or not guilty of mail fraud. The question before you is whether the government has proved that there is a connection between the mail fraud scheme of which you have found the defendant guilty and the money that Count 6 alleges shall be forfeited to the United States.

Where, as here, the government has requested forfeiture in the form of a money judgment, it is your duty to determine how much money constitutes the proceeds of the mail fraud scheme. “Proceeds” are property of any kind obtained directly or indirectly, as the result of the commission of the offense giving rise to forfeiture, and any property traceable thereto, and are not limited to the net gain or profit realized from the offense

The government must prove its case for forfeiture by a preponderance of the evidence. To establish by a preponderance of the evidence that money constitutes the proceeds of the mail fraud scheme, the government must prove that it is more likely than not that the money was derived from the mail fraud scheme.

You are to determine only if the defendant’s rights, title and interests, if any, in the proceeds should be forfeited. You are not called upon to determine whether or not any other person has any right, title or interest in this money. That is a matter to be determined by the court in further proceedings, if necessary. You need only determine whether or not the government has proved by a preponderance of the evidence that the defendant's interest in this money, if any, is forfeitable under the laws that I have described to you.

All of the instructions previously given to you concerning your consideration of the evidence, the credibility or believability of the witnesses, your duty to deliberate together and the necessity of an unanimous verdict, will all continue to apply during your deliberations concerning the forfeiture claims. Keep in mind, however, that the government’s burden of proof is different in this portion of the case.

A special verdict form has been prepared for your use. The first question asks whether the government has proved that the dollar amount specified in Count 6 is forfeit to the United States. If you unanimously agree that the government has proved this amount by a preponderance of the evidence, then you should answer this question “Yes.” If you find that the government has not proved this amount, or if you cannot unanimously agree that the government has proved this amount, then you should answer this question “No.”

If you answer the first question “Yes,” then you do not need to answer the second question. If you answer the first question “No,” then you must answer the second question by writing in the dollar amount that you unanimously find to constitute the proceeds of defendant’s mail fraud scheme. Then the foreperson must sign and date the special verdict form.

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

PHILLIP C. LATHROP,

Defendant.

SPECIAL VERDICT:

FORFEITURE

08-cr-124-bbc

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Question No. 1

Has the government proved that the proceeds of the defendant's mail fraud scheme charged in Counts 2 through 5 amount to \$253, 038.39?

\_\_\_\_\_  
("Yes" or "No")

If you answered "Yes" to Question No. 1, then do not answer Question No. 2. If you answered "No" to Question No. 1, then answer Question No. 2.

Question No. 2

What dollar amount, if any, constitutes the proceeds from the defendant's mail fraud scheme charged in Counts 2 through 5?

\$ \_\_\_\_\_

\_\_\_\_\_  
Presiding Juror

Madison, Wisconsin

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