

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

TIMOTHY WHITEAGLE and  
DEBORAH ATHERTON,

Defendants.

ORDER

11-cr-65-wmc

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Following the April 4, 2012 final pretrial conference, the parties submitted additional information and documents at the court's request. This order ties off some of these matters:

First, in response to the court's observation that the jury box won't hold 15 jurors, the parties agree that seating two alternate jurors in the box is better than seating three with one outside the box. *See* dkts. 97, 98 & 99. So, the court will seat two alternate jurors. The defendants will exercise their peremptory challenges separately, *see* dkts. 98 & 99, which means that each defendant has five strikes against the jury and one strike against the alternate pool. This requires the court to qualify 33 jurors (28 for the jury, 5 for the alternate pool).

Second, the parties have provided additional input on the voir dire and jury instructions: The government has pointed out that the voir dire needs to reflect the new trial date and has suggested some minor edits to the jury instructions. *See* dkt. 97. The court has adopted these proposed changes. Atherton has withdrawn her request for a good faith instruction. *See* dkt. 98. Copies of the update versions of the voir dire and jury instructions are attached to this order.

Third, the government has submitted a redacted version of the superseding indictment that removes the severed tax count, renumbers the remaining counts to eliminate numbering gaps and accounts for Clarence Pettibone's post-guilty plea status as a named co-conspirator but not a defendant at trial. *See* dkt. 94-1. The court will use this redacted superseding indictment at trial, unless something changes that requires additional edits.

Finally, the parties have submitted additional arguments on the motions in limine. *See* dkts. 95, 96, 98, 100, 101, 102 and 104 – 09. These issues are before Judge Conley for discussion and decision at the July 17, 2012 final hearing.

Entered this 30<sup>th</sup> day of May, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge