

United States v. Andreas

(N.D. Ill.) (No. 96-762)

Jury Instructions

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1 copy of the instructions in the order in which the parties had
2 agreed to have them read to the jurors?

3 THE COURT: Presumably.

4 MR. DUFFY: Hopefully, Judge. We went through them,
5 and I think they look right. At some point, Judge, I just
6 need to read into the record all of our objections to the
7 instructions by number. We can do it at any time before the
8 jury deliberates. I just want to make sure that I didn't miss
9 any objections.

10 THE COURT: All right. Are both sides ready to
11 proceed, Government?

12 MR. LASSAR: Yes.

13 THE COURT: Mr. Bray?

14 MR. BRAY: Yes, Your Honor.

15 THE COURT: Mr. Weingarten? Mr. Walker?

16 MR. WEINGARTEN: Yes, Your Honor.

17 MR. WALKER: Yes, Your Honor.

18 THE COURT: All right. Bring the jury in.

19 (Jury in.)

20 COURT'S INSTRUCTIONS OF LAW TO THE JURY

21 THE COURT: Good morning, ladies and gentlemen. I do
22 apologize for the delay, but I can assure you we have not been
23 idle. We have been working.

24 All right, ladies and gentlemen. The evidence in
25 this case has now been concluded, and I will now instruct you

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1 as to the law that is applicable to this case, after which you
2 will hear closing arguments. It is your duty to follow all
3 all of the instructions. You must not question any rule of
4 law stated by me in these instructions. Regardless of any
5 opinion you may have as to what the law ought to be, you must
6 base your verdict upon the law given by me. It is your duty
7 to determine the facts from the evidence in this case. You
8 are to apply the law given to you in these instructions to the
9 facts and in this way decide the case.

10 You are the sole judges of the credibility of the
11 witnesses and of the weight to be given to the testimony of
12 each of them. In considering the testimony of any witness,
13 you may take into account his intelligence, his ability and
14 opportunity to observe, his memory, his manner while
15 testifying, any interest, bias, or prejudice he may have, and
16 the reasonableness of his testimony considered in the light of
17 all the evidence in the case.

18 Opening statements of counsel are for the purpose of
19 acquainting you in advance with the facts counsel expect the
20 evidence to show. Closing arguments of counsel are for the
21 purpose of discussing the evidence. Opening statements,
22 closing arguments, and other statements of counsel should be
23 disregarded to the extent they are not supported by the
24 evidence.

25 During the course of trial, it often becomes the duty

1 of counsel to make objections and for me to rule on them in
2 accordance with the law. The fact that counsel made
3 objections should not influence you in any way. It is proper
4 for an attorney to interview any witness in preparation for
5 trial.

6 Each defendant is presumed to be innocent of the
7 charge. This presumption remains with a defendant throughout
8 every stage of the trial and during your deliberations on the
9 verdict and is not overcome unless from all the evidence in
10 the case you are convinced beyond a reasonable doubt that a
11 defendant is guilty. The Government has the burden of proving
12 the guilt of a defendant beyond a reasonable doubt, and this
13 burden remains on the Government throughout the case. A
14 defendant is not required to prove his innocence or to produce
15 any evidence. Excuse me.

16 Although the defendants are being tried jointly, you
17 must give separate consideration to each defendant. In doing
18 so, you must analyze what the evidence in the case shows with
19 respect to each defendant, leaving out of consideration any
20 evidence admitted solely against some other defendant or
21 defendants. Each defendant is entitled to have his case
22 decided on the evidence and the law applicable to him.

23 The evidence consists of the sworn testimony of the
24 witnesses, the exhibits received in evidence, and stipulated
25 or admitted facts. A stipulation is an agreed statement of

1 facts between the parties and you should dis -- I'm sorry --
2 and you should regard agreed statements as true.

3 You are to consider only the evidence received in
4 this case. You should consider this evidence in the light of
5 your own observations and experiences in life. You may draw
6 such reasonable inferences as you believe to be justified from
7 proved facts. You are to disregard any evidence to which I
8 sustained an objection or which I ordered stricken.

9 Anything you may have seen or heard about this case
10 outside the courtroom is not evidence and must be entirely
11 disregarded. You should not be influenced by sympathy,
12 prejudice, fear, or public opinion. You should not be
13 influenced by any person's race, color, religion, national
14 ancestry, or sex.

15 There are two types of evidence, direct and
16 circumstantial. Direct evidence is the testimony of a person
17 who claims to have personal knowledge of the commission of the
18 crime which has been charged, such as an eyewitness.
19 Circumstantial evidence is the proof of a chain of facts and
20 circumstances which tend to show whether a defendant is guilty
21 or not guilty. The law makes no distinction between the
22 weight to be given either direct or circumstantial evidence.
23 Therefore, all of the evidence in the case, including
24 circumstantial evidence, should be considered by you in
25 arriving at your verdict.

1 There have been admitted in evidence certain charts,
2 Defendant Wilson Exhibits 275 and 281. They truly and
3 accurately summarize the contents of voluminous records or
4 documents and should be considered together with and in the
5 same manner as all other evidence in the case.

6 There have been admitted in evidence certain charts,
7 Government Exhibits 43-A, 206, 207, 215, and 246-A, Defendant
8 Andreas Exhibits -- excuse me -- Defendant Andreas Exhibit 572
9 and Defendant Wilson Exhibits 261-A, 262-A, 282, 933, 765,
10 768, 766, 767, 769, 770, 771, 772, and 774. The accuracy of
11 the Government's charts has been challenged by Defendant
12 Andreas and Defendant Wilson. The accuracy of Defendant
13 Andreas' charts and the accuracy of Defendant Wilson's charts
14 has been challenged by the Government. Thus the original
15 materials upon which the exhibits are based have also been
16 admitted into evidence so that you may determine whether the
17 charts are accurate.

18 The audio and videotape recordings that you heard and
19 watched during the trial have been received into evidence.
20 Transcripts were furnished to you as an aid in interpreting
21 these tapes. The transcripts are not evidence. If there is
22 any difference in your mind between what is on the transcript
23 and what is on the tape, you are to consider only what you
24 hear on the tape as the evidence.

25 You've heard tapes involving Mark Whitacre. You are

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1 instructed that during these conversations on tape, Mark
2 Whitacre was acting as a Government agent. This means that
3 nothing he said on those tapes is submitted to you for its
4 truth, and you cannot consider anything Mr. Whitacre said as
5 evidence against the other defendants. In other words, if Mr.
6 Whitacre said on the tapes that there is an agreement, he is
7 speaking as a Government agent, not as an employee of ADM, and
8 the only consideration given his words should be as context
9 for the statements of others on the tapes.

10 Law enforcement officers in the course of an official
11 investigation may use an individual who conceals the fact that
12 he is assisting the Government in its investigation in order
13 to obtain evidence. In addition, it is lawful for a party to
14 conversations and meetings to secretly record those
15 conversations and meetings at the direction of law enforcement
16 officers.

17 If you find from the evidence presented at trial or
18 from reasonable inferences drawn from that evidence that an
19 audio tape in this case was altered or erased, you may give
20 that tape recording such weight as you feel it deserves,
21 keeping in mind that it must be considered with caution.

22 Evidence has been received concerning statements said
23 to have been made by the defendants. It is for you to
24 determine whether the defendants did, in fact, make the
25 statements. If you find that the defendants did make the

1 statements, then you must determine what weight, if any, you
2 feel the statements deserve. In determining what weight, if
3 any, should be given the statements, you should consider all
4 matters in evidence having to do with the statements,
5 including those concerning the defendant's personal
6 characteristics and the conditions under which the statements
7 were made.

8 The indictment in this case charges that beginning on
9 or about -- I'm sorry -- beginning in or about June 1992 and
10 continuing until approximately June 27th, 1995, the defendants
11 and co-conspirators, Ajinomoto Company, Inc., Archer Daniels
12 Midland Company, Kyowa Hakko Company Limited, Sewon America
13 Company, Inc., and other corporations and individuals entered
14 into and engaged in a combination and conspiracy to suppress
15 and eliminate competition by fixing the price -- prices and
16 allocating the sales volumes of lysine offered for sale to
17 customers in the United States and other countries in
18 violation of Section 1 of the Sherman Act. The defendants
19 have denied that they are guilty of the charge.

20 The indictment in this case is the formal method of
21 accusing each defendant of a crime and placing each defendant
22 on trial. It is not evidence against the defendants and does
23 not create any inference of guilt.

24 A person is responsible for conduct which he performs
25 or causes to be performed on behalf of a corporation to the

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1 same extent as though the conduct were performed on his own
2 behalf. However, a person is not responsible for the conduct
3 of others performed on behalf of a corporation merely because
4 that person is an officer, employee, or other agent of a
5 corporation.

6 To find an individual defendant liable for the acts
7 of a subordinate, you must find beyond a reasonable doubt that
8 he was aware of the existence of a conspiracy and that he
9 knowingly authorized, ordered, or consented to the
10 participation of a subordinate in that conspiracy.

11 The indictment charges a violation of Section 1 of
12 the Sherman Act which provides that every contract,
13 combination, or conspiracy in restraint of trade is declared
14 to be illegal. Every person who shall make any contract or
15 engage in any combination or conspiracy hereby declared to be
16 illegal shall be deemed guilty of an offense against the
17 United States. The term "person" includes individuals,
18 corporations, partnerships, and every other association or
19 organization of every kind and character.

20 The indictment charges that the offense was committed
21 beginning in or about June 1992 and continued until
22 approximately June 27th, 1995. Although the evidence need not
23 establish with certainty the exact date of the alleged
24 offense, it must establish that the offense was committed on a
25 date reasonably near the date charged.

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1 You may not consider any evidence or testimony of
2 events occurring on or after November 5th, 1992, as to
3 Defendant Mark E. Whitacre in determining his guilt or
4 innocence. You are not to consider any evidence or testimony
5 concerning fraud or embezzlement as to Defendant Mark E.
6 Whitacre in considering the guilt or innocence of Mr. Whitacre
7 as to the charge before you.

8 In order to establish the offense of conspiracy to
9 fix prices and allocate sales volumes charged in the
10 indictment, the Government must prove these elements beyond a
11 reasonable doubt: one, that the conspiracy described in the
12 indictment was knowingly formed and was in existence at or
13 around the time alleged; two, that the defendant knowingly and
14 intentionally became a member of the conspiracy; and three,
15 that the conspiracy described in the indictment either
16 affected interstate commerce in goods or services or occurred
17 within the flow of interstate commerce in good and services.

18 If you find from your consideration of all the
19 evidence that each of these elements has been proved beyond a
20 reasonable doubt, then you should find the defendant guilty.
21 If, on the other hand, you find from your consideration of all
22 of the evidence that any of these elements has not been proved
23 beyond a reasonable doubt, then you should find the defendant
24 not guilty.

25 The Sherman Act makes unlawful certain agreements

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1 that because of their harmful effect on competition are
2 conclusively presumed to be an unreasonable restraint on trade
3 and are per se illegal without inquiry about the precise harm
4 they have caused or the business excuse for their use.

5 Included in this category of unlawful agreements are
6 agreements to fix prices and allocate sales volumes.

7 Therefore, if you find that the conspiracy charged in the
8 indictment existed and that one or more defendants was a
9 member of that conspiracy, you need not be concerned with
10 whether the agreement was reasonable or unreasonable or the
11 justifications for the agreement or the harm done by it.

12 It is not a defense that the parties thereto may have
13 acted with good motives or may have thought that what they
14 were doing was legal or that the conspiracy may have had some
15 good results. If you find the conspiracy charged in the
16 indictment existed beyond a reasonable doubt, it was illegal.
17 If the Government has failed to prove the charged conspiracy
18 beyond a reasonable doubt, the defendants should be found not
19 guilty.

20 The indictment charges the defendants with conspiring
21 to fix prices. A conspiracy to fix prices is an agreement
22 between two or more competitors to fix, control, raise, lower,
23 maintain, or stabilize the prices charged or to be charged for
24 products or services.

25 A price-fixing conspiracy is commonly thought of as

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1 an agreement to establish the same price. However, prices may
2 be fixed in other ways. Prices are fixed if a target or goal
3 for prices is agreed upon or if by agreement various
4 guidelines or formulas are to be used in computing them. They
5 are fixed because they are agreed upon. Thus any agreement to
6 stabilize prices, to set a specific price, to maintain a
7 specific price, to establish a fixed spread between the prices
8 of different sellers, or to set other conditions of sale
9 relating to price is illegal.

10 Evidence that the defendants and alleged
11 co-conspirators actually competed with each other has been
12 admitted to assist you in deciding whether they actually
13 entered into an agreement to fix prices. If the conspiracy
14 charged in the indictment is proved, it is no defense that the
15 conspirators actually competed with each other in some manner
16 or that they did not conspire to eliminate all competition.
17 Similarly, the conspiracy is unlawful even if it did not
18 extend to all products sold by the conspirators or did not
19 affect all of their customers.

20 If you should find that the defendants entered into
21 an agreement to fix prices, the fact that the defendants or
22 their co-conspirators did not abide by it or that one or more
23 of them may not have lived up to some aspect of the agreement
24 or that they may not have been successful in achieving their
25 objectives is no defense. The agreement is the crime, even if

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1 it is never carried out.

2 Evidence of the prices actually charged by the
3 defendants has been admitted to assist you in deciding whether
4 they entered into an agreement to fix prices. Such evidence
5 may lead you to conclude that the defendants never entered
6 into the agreement charged in the indictment.

7 Similarity of competitive business practices of the
8 defendants and alleged co-conspirators or the mere fact that
9 they may have charged identical prices for the same goods does
10 not alone establish an agreement to fix prices since such
11 practices may be consistent with ordinary and proper
12 competitive behavior in a free and open market.

13 A person may lawfully charge prices identical to
14 those charged by competitors and still not violate the Sherman
15 Act. A person may follow and conform exactly to the price
16 policies and price changes of competitors, and such conduct
17 without more would not be violative of the law unless you find
18 it was done pursuant to an agreement between two or more
19 persons as charged in the indictment.

20 Nevertheless, you may consider such facts and
21 circumstances along with all other evidence in determining
22 whether the similarity or identity of prices resulted from the
23 independent acts or business judgment of the defendants really
24 competing in the open market or whether it resulted from an
25 agreement between the defendants and one or more competitors.

1 The indictment also charges defendants with
2 conspiring with others to allocate sales volumes of lysine. A
3 conspiracy to allocate sales volumes is an agreement between
4 competitors to divide sales of a product among the various
5 competitors. Sales volume allocation exists, for example,
6 where two or more competitors agree among themselves that such
7 competitor will limit its sales to a certain amount.

8 A business concern, however, has the right
9 independently to select its customers, sell its product to
10 whomever it chooses, and determine how much of a product it
11 will sell. A business concern may decide not to solicit or
12 sell to a customer, or decide how much of a product to sell,
13 provided the decision results from an independent business
14 judgment and not from an agreement with a competitor.

15 It is not in itself unlawful for competitors to
16 engage in the process known as price or production
17 coordination. That process occurs when competitors recognize
18 that they have shared economic interests and consequently --
19 excuse me -- follow each other's conduct in setting prices or
20 production levels. As long as the competitors' decisions to
21 follow each other's conduct are the result of independent
22 business judgment rather than an agreement between them, such
23 conduct is not illegal. It is not unlawful for defendants to
24 knowingly charge the same price for a product as the price
25 charged by an alleged cartel as long as their decision to

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1 charge the same price as the alleged cartel is not the result
2 of an agreement to do so.

3 Evidence of meetings, telephone calls, or other
4 contacts between competitors does not by itself prove that
5 there was a conspiracy. Competitors may have legitimate
6 lawful reasons to have contacts with each other. Thus you may
7 not infer the existence of a conspiracy solely from the fact
8 that there were contacts between competitors.

9 Evidence that competitors exchanged information or
10 stated their intentions concerning the prices and quantities
11 of a product which they have sold and produced or the prices
12 and quantities of a product which they intended to sell and
13 produce does not by itself prove that there was a conspiracy,
14 even if the exchange of information was done by agreement.

15 However, if you find the exchange of price or
16 quantity information or the statement of intention regarding
17 price or quantity was part of a conspiracy to fix or control
18 prices or allocate volumes, then it is unlawful. Competitors
19 may have legitimate lawful reasons to exchange information
20 with each other. Thus you may not infer the existence of a
21 conspiracy solely from the fact that the competitors exchanged
22 such information or merely stated their intentions.

23 A conspiracy is a combination of two or more persons
24 to accomplish an unlawful purpose. A conspiracy may be
25 established even if its purpose was not accomplished. In

1 determining whether the alleged conspiracy existed, you may
2 consider the acts and words of all the alleged participants.
3 The agreement may be inferred from all the circumstances and
4 the conduct of all the alleged participants.

5 Only at -- strike that. Only a defendant's own acts
6 and words show whether that particular defendant joined the
7 conspiracy. You may consider the acts and words of all the
8 alleged participants to decide what it was a particular
9 defendant did and said or to help you to understand a
10 defendant's acts and words.

11 To be a member of a conspiracy, a defendant need not
12 join at the beginning nor remain throughout or know all the
13 other members or the means by which the purpose was to be
14 accomplished. The Government must prove beyond a reasonable
15 doubt that he was aware of the common purpose and was a
16 willing participant in the charged conspiracy.

17 The agreement need not be an express or formal
18 agreement, be in writing, or cover all the details of how it
19 is to be carried out, nor is it necessary that the members
20 have directly stated between themselves the details or purpose
21 of the scheme.

22 The conspiracy charged in the indictment includes two
23 different types of conduct, an agreement to fix prices and an
24 agreement to allocate sales volumes. It is not necessary for
25 the Government to prove that the conspiracy charged in the

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1 indictment includes both types of conduct. It will be
2 sufficient if the Government proves beyond a reasonable doubt
3 a conspiracy to commit one of the types of conduct charged in
4 the indictment, but in that event, in order to return a
5 verdict of guilty, you must unanimously agree upon which of
6 the types of conduct was the subject of the conspiracy entered
7 into by a particular defendant. If you cannot agree in that
8 manner, you must find the defendant not guilty of the
9 conspiracy charged.

10 Under the law, a corporation is not capable of
11 conspiring only with its own officers or employees, nor can a
12 corporation's employees conspire only among themselves. Thus
13 collaboration between a corporation and its employees only or
14 among only employees of the corporation cannot constitute a
15 conspiracy in this case. Therefore, if you find that the
16 defendants only conspired with themselves or with their
17 employer, you must find them not guilty.

18 Although the indictment charges a single overall
19 conspiracy, it might be possible to find separate conspiracies
20 regarding distinct parts of this case. Whether there was one
21 conspiracy, two conspiracies, multiple conspiracies, or no
22 conspiracy at all is a fact for you to determine in accordance
23 with these instructions.

24 If you do not find beyond a reasonable doubt that a
25 particular defendant was a member of any conspiracy, you

1 should find that defendant not guilty. If you find beyond a
2 reasonable doubt that there was one overall conspiracy as
3 alleged in the indictment and that a particular defendant was
4 a member of that conspiracy, you should find that defendant
5 guilty.

6 If you find beyond a reasonable doubt that there were
7 two or more conspiracies and that a particular defendant was a
8 member of one or more of these conspiracies, you may find that
9 defendant guilty only if you further find beyond a reasonable
10 doubt that this proven conspiracy was included within the
11 conspiracy alleged in the indictment. If on the other hand
12 the proven conspiracy is not included within the conspiracy
13 alleged in the indictment, you should find that defendant not
14 guilty.

15 If you find that multiple conspiracies existed, you
16 are instructed that evidence relating to any conspiracies not
17 involving the defendants may not be used in determining the
18 guilt or innocence of defendants under any circumstances as to
19 any other conspiracies. In other words, if you find multiple
20 conspiracies, you must compartmentalize the evidence and only
21 consider evidence relating to conspiracies where there may be
22 evidence of defendants' involvement.

23 In considering the charge in the indictment, you must
24 determine whether the evidence shows beyond a reasonable doubt
25 that the defendant knowingly and intentionally became a member

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1 of the charged conspiracy to fix prices and allocate sales
2 volumes. "Knowingly" means that the defendant realized what
3 he was doing and was aware of the nature of his conduct and
4 did not act through ignorance, mistake, or accident.

5 In order to find that the defendant acted knowingly,
6 you must find that he voluntarily and intentionally became a
7 member of the conspiracy charged in the indictment, knowing of
8 its goal and intending to help accomplish it. Knowledge may
9 be proved by the defendant's conduct and all the facts and
10 circumstances surrounding the case. In order to establish the
11 offense charged in the indictment, it is not necessary for the
12 Government to prove that the defendant knew that a conspiracy
13 to fix prices and allocate sales volumes is a violation of the
14 law.

15 Presence at the scene of the crime and knowledge that
16 a crime may be committed by others are not sufficient to
17 establish a defendant's guilt. Mere association with
18 conspirators or those involved in a criminal enterprise is
19 insufficient to prove a defendant's participation or
20 membership in a conspiracy.

21 A person who has no knowledge of a conspiracy but who
22 happens to act in a way which furthers some purpose of the
23 conspiracy does not thereby become a member of the conspiracy.
24 Similarly, knowledge of a conspiracy without participation in
25 the conspiracy is also insufficient to make a person a member.

1 of the conspiracy.

2 An essential element of an offense prohibited by the
3 Sherman Act is that the alleged unlawful conduct must involve
4 interstate trade or commerce. The Government must prove
5 beyond a reasonable doubt that the conspiracy charged in the
6 indictment either occurred in the flow of interstate commerce
7 or affected interstate commerce in goods and services.

8 Proof of interstate commerce as to one defendant or a
9 co-conspirator in the conspiracy charged in the indictment
10 satisfies the interstate commerce element as to every
11 defendant. The term "interstate commerce" includes
12 transactions or commodities that are moving across state lines
13 or that are in a continuous flow of commerce from the
14 commencement of their journey until their final destination in
15 a different state.

16 If the conduct alleged in the -- I'm sorry. Strike
17 that. If the conduct challenged in the indictment involves
18 transactions that are in the flow of commerce, the interstate
19 commerce element is satisfied, and the size of any such
20 transaction is of no significance.

21 The conspiracy charged in the indictment, therefore,
22 would have occurred in the flow of interstate commerce if at
23 least one defendant or one co-conspirator in carrying out the
24 charged conspiracy crossed state lines or transported lysine
25 across state lines.

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1 The term "interstate commerce" also includes
2 transactions that are entirely within a state and are not part
3 of a larger interstate transaction if the conduct challenged
4 in the indictment has had an effect on some other appreciable
5 activity demonstrably in interstate commerce. In determining
6 whether the charged conspiracy has had an effect on some other
7 appreciable activity in interstate commerce, you may add
8 together the total amount of all of the interstate
9 transactions.

10 Although the Government must prove that the
11 conspiracy charged in the indictment either affected
12 interstate commerce or occurred within the flow of interstate
13 commerce in goods or services, the Government's proof need not
14 quantify any adverse impact of the charged conspiracy or show
15 that the charged conspiracy had any anti-competitive effect.
16 It is a question of fact for the jury to determine whether the
17 defendant's conduct charged in the indictment involved
18 interstate commerce.

19 In making a judgment in this case on the guilt or
20 innocence of the defendants now here on trial, you will not be
21 concerned with whether or not or why any others may or may not
22 have been made defendants in this case. These are not matters
23 for you to surmise or speculate upon. You are to consider
24 only what is in evidence here before you as it relates to the
25 guilt or innocence of the defendants now on trial. However,

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1 where the Government promised not to prosecute the co-workers
2 of a witness, you may consider that fact in determining that
3 witness's credibility and bias.

4 You have heard testimony of an expert witness. This
5 testimony is admissible where the subject matter involved
6 requires knowledge, special study, training, or skill not
7 within ordinary experience and the witness is qualified to
8 give an expert opinion. However, the fact that an expert has
9 given an opinion does not mean that it is binding upon you or
10 that you are obligated to accept the expert's opinion as to
11 the facts. You should assess the weight to be given the
12 expert opinion in the light of all the evidence in this case.

13 You have heard testimony from witnesses Hirokazu
14 Ikeda and Alain Crouy, who have received a promise from the
15 Government that they will not be prosecuted. You may give
16 their testimony such weight as you feel it deserves, keeping
17 in mind that it must be considered with caution and great
18 care.

19 You have heard evidence that Government witness
20 Barrie Cox cooperated with the Government pursuant to an
21 agreement that his statements would not be used against him.
22 You may give his testimony such weight as you feel it
23 deserves, keeping in mind that it must be considered with
24 caution and great care.

25 You have heard evidence from witness Barrie Cox

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1 concerning citric acid. Mr. Wilson is not charged with any
2 offense relating to citric acid. That evidence may be
3 considered as evidence of Mr. Wilson's knowledge and intent
4 and to place in context conversations relating to lysine. You
5 may consider the citric acid evidence solely for that limited
6 purpose and may not use it to infer that Mr. Wilson was more
7 likely to engage in unlawful behavior in connection with
8 lysine. You may not consider Mr. Cox's testimony as to
9 Defendant Mark E. Whitacre for any reason or any purpose.

10 You have heard testimony from two witnesses, Kanji
11 Mimoto and Masura Yamamoto, who have pleaded guilty to crimes
12 allegedly arising out of the same occurrence for which the
13 defendants are now on trial. You may give their testimony
14 such weight, if any, as you feel it deserves, keeping in mind
15 that it must be considered with caution and great care.
16 Moreover, the guilty pleas of these individuals and their
17 employers are not to be considered as evidence against the
18 defendants.

19 Evidence that on some former occasion a witness made
20 a statement inconsistent with his testimony in this case may
21 be considered by you only in determining the credibility of
22 the witness and not to establish the truth of the matters
23 contained in that prior statement.

24 The weight to be given to any particular evidence is
25 not necessarily determined by the number of witnesses

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1 testifying on behalf of each side. You are to consider all
2 the evidence in the case in determining the credibility of
3 witnesses. You may find that the testimony of a smaller
4 number of witnesses for one side is more credible than the
5 testimony of a greater number of witnesses for the other side.

6 Each defendant has an absolute right not to testify.
7 The fact that a defendant did not testify should not be
8 considered by you in any way in arriving at your verdict. You
9 should decide this case solely on the evidence presented here
10 in the courtroom. You must completely disregard any press,
11 television, or radio reports which you may have read, seen, or
12 heard. Such reports are not evidence; therefore, you must not
13 be influenced in any manner whatever by such publicity.

14 In determining the guilt or innocence of a defendant,
15 the jury should not give any consideration to the matter of
16 punishment, for this question is exclusively the
17 responsibility of the Judge. The verdict must represent the
18 considered verdict of each juror. Your verdict, whether it be
19 guilty or not guilty, must be unanimous.

20 You should make every reasonable effort to reach a
21 verdict. In doing so, you should consult with one another,
22 express your own views, and listen to the opinions of your
23 fellow jurors. Discuss your differences with an open mind.
24 Do not hesitate to reexamine your own views and change your
25 opinion if you come to believe it is wrong, but you should not

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1 surrender honest beliefs about the weight or effect of
2 evidence solely because of the opinion of your fellow jurors
3 or for the purpose of returning a unanimous verdict.

4 The 12 of you should give fair and equal
5 consideration to all of the evidence and deliberate with the
6 goal of reaching an agreement which is consistent with the
7 individual judgment of each juror. You are impartial judges
8 of the facts. Your sole interest is to determine whether the
9 Government has proved its case beyond a reasonable doubt.
10 Neither by these instructions nor by any ruling or remark
11 which I have made do I mean to indicate any opinion as to the
12 facts or as to what your verdict should be. You are the sole
13 and exclusive judges of the facts.

14 I have one other instruction that I will give you,
15 but I will give you that instruction after you have heard the
16 arguments of counsel which we shall begin momentarily.

17 Is the Government ready to proceed?

18 MR. LASSAR: We just need to set up our easels?

19 THE COURT: So you need a few minutes maybe?

20 MR. LASSAR: Yes, please.

21 THE COURT: All right. We'll take a very brief
22 recess now, ladies and gentlemen. When we come back, we'll
23 begin with the closing arguments.

24 (Jury out.)

25 THE COURT: About how long will you need to set up?

1 THE COURT: Mr. Bray?

2 I might modify a few words, Mr. Weingarten.

3 (Jury entered the courtroom.)

4 THE COURT: Ladies and gentlemen, before we continue
5 on with the closing arguments, I would just like to advise you
6 that during the course of Mr. Lassar's closing argument he made
7 reference to the strength of the evidence in this case as
8 compared to other cases. Such references to other cases are
9 totally irrelevant. So I would instruct you that you should
10 absolutely disregard any statements or references comparing
11 this case to any other case, and you should decide this case
12 solely on the evidence presented in this case without regard to
13 any comparison to any other case.

14 All right. Mr. Bray, you may proceed.

15 MR. BRAY: Thank you, your Honor.

16 CLOSING ARGUMENT ON BEHALF OF DEFENDANT ANDREAS

17 MR. BRAY: Ladies and gentlemen, good afternoon. As
18 you know all too well by now for all the time we spent
19 together, I am John Bray. I am one of the lawyers for Mr.
20 Andreas.

21 We, too -- although Mr. Lassar expressed his gratitude
22 on behalf of everyone, we, too, want to express our gratitude
23 for the service that you have rendered. It's your civic duty,
24 yes, but this is a high performance of civic duty. To spend
25 this amount of time listening to a case of this difficulty and

1 this complexity, and doing so, if I might say, with the
2 diligence and punctuality that makes us all very proud. We
3 thank you.

4 I am here to speak in defense of Michael Andreas. Mr.
5 Andreas is one of three defendants in this case. And as you
6 know, part of the reason the case is so long is that it is
7 three trials in one. It's trials for the verdict, the
8 judgment, the liberty of each of three human beings.

9 This is not a trial about Ajinomoto Corporation. It's
10 not even a trial about ADM as a corporation. It's a trial on
11 personal judgment about each of these individuals. And not a
12 personal judgment about how good they are as businessmen or how
13 tough they are as businessmen or whether they always say the
14 best thing or the most attractive thing or the most effective
15 thing as businessmen. But it's a question about whether they
16 are guilty as charged and proven so beyond a reasonable doubt
17 of one charge, one criminal charge. That and absolutely
18 nothing else. Nothing else is before you except as the
19 instructions you heard at the beginning of today's session.

20 Your job is to determine whether the government has or
21 has not proven beyond a reasonable doubt the elements of a
22 specific criminal offense, one that you have heard described in
23 the instructions as painting essentially a difficult gray area
24 between legitimate business discussion, legitimate business
25 competition, legitimate business exchange of information,