

1 that you would see and hear during this trial would support
2 that verdict. And I said that I would ask you to return the
3 verdict of guilty for the simplest possible reason in the
4 world, they did it.

5 We have met our burden, Ladies and Gentlemen. It is time
6 for you to do your job. Thank you very much.

7 THE COURT: Thank you.

8 We'll take a short break at this time and then we'll come
9 back, I'll read you these final instructions, and you will have
10 a copy of the final instructions to go along with my reading
11 them to you. But as you go upstairs, don't discuss the case
12 among yourselves until I give it to you, and that will be just
13 a few minutes or so.

14 So we'll take a break at this time.

15 (A recess was held at 10:50 A.M.)

16 (Trial resumed, 11:10 A.M.)

17 (Jury not present)

18 THE COURT: All right, let's go get the jury.

19 I did ask the alternate juror if he wouldn't like to sit
20 here and listen to me read these instructions, and oddly enough
21 he said no.

22 MR. VONDRAK: No accounting for taste.

23 THE COURT: I guess. So when they come out I'm going
24 to excuse him. If they all make it down the stairs.

25 (Jury present)

1 THE COURT: You may be seated.

2 Those are the instructions you have with you, ladies and
3 gentlemen. As I read them to you I would like for you to read
4 along with me.

5 And I mention this to the alternate. You certainly have
6 the right to sit there and listen to me read all these
7 instructions, but you don't have to. And, to my amazement, as
8 I said, you have chosen not to have me just read these to you.
9 Thank you very much for your attention, sir.

10 ALTERNATE JUROR: Thank you.

11 THE COURT: You may be excused.

12 (Alternate juror excused)

13 FINAL JURY INSTRUCTIONS

14 INSTRUCTION NO. 1

15 Members of the jury, the evidence and arguments in this
16 case have been completed, and I will now instruct you as to the
17 law applicable to this case. It is your duty to follow all of
18 the instructions.

19 You must not question any rule of law stated in these
20 instructions. Regardless of any opinion you may have as to
21 what the law ought to be, you must base your verdict upon the
22 law as it is set out herein.

23 It is your duty to determine the facts from the evidence
24 in this cause. You are to apply the law given to you in these
25 instructions to the facts and in this way decide the case.

1 Perform these duties fairly and impartially. Do not
2 allow sympathy, prejudice, fear, or public opinion to influence
3 you.

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

7 INSTRUCTION NO. 2

8 If in these instructions any rule, direction, or idea be
9 stated in varying ways, no emphasis thereon is intended by me
10 and none must be inferred by you. For that reason, you are not
11 to single out any certain sentence or any individual point or
12 instruction and ignore the others, but you are to consider all
13 the instructions as a whole, and you are to regard each
14 instruction in light of all the others.

15 INSTRUCTION NO. 3

16 Opening statements of counsel are for the purpose of
17 acquainting you in advance with the facts counsel expect the
18 evidence to show. Closing arguments of counsel are for the
19 purpose of discussing the evidence.

20 During the course of the trial it often becomes the duty
21 of counsel to make objections and for me to rule on them in
22 accordance with the law. The fact that counsel made objections
23 should not influence you in any way.

24 INSTRUCTION NO. 4

25 You are the sole judges of the credibility -- that is,

1 the believability -- of the witnesses. Reconcile their
2 testimony on the theory that all are accurate and truthful, if
3 you can; but if you cannot, then you must determine whom you
4 will believe and whom you will not believe and what is the
5 truth.

6 In determining the credibility of the witnesses, you may
7 take into consideration their interest or lack of interest in
8 the result of this case; their manner and bearing on the
9 witness stand; their means or lack of means of knowing the
10 facts about which they have testified; how far, if at all, they
11 are either supported or contradicted by other evidence; their
12 power of memory or the lack thereof; inconsistent statements
13 made by them, if any; and from all the evidence you will give
14 to each witness the credit to which he or she is entitled.

15 Inconsistencies or discrepancies in the testimony of a
16 witness, or between the testimony of different witnesses, may
17 or may not cause you to discredit such testimony. Two or more
18 persons witnessing an incident or a transaction may see or hear
19 it differently; an innocent misrecollection, like failure of
20 recollection, is not an uncommon experience.

21 In weighing the effect of any discrepancy, you may consider
22 whether it pertains to a matter of importance or an unimportant
23 detail, and whether the discrepancy results from innocent error
24 or intentional falsehood.

25 INSTRUCTION NO. 5.

1 You should use your common sense in weighing the evidence
2 and consider the evidence in light of your own observations in
3 life.

4 In our lives, we often look at one fact and conclude from
5 it that another fact exists. In law we call this an
6 "inference." A jury is allowed to make reasonable inferences.
7 Any inferences you make must be reasonable and must be based on
8 the evidence in the case.

9 INSTRUCTION NO. 6

10 The evidence consists of the sworn testimony of the
11 witnesses, the exhibits received in evidence, stipulations by
12 counsel, and judicially noticed facts.

13 You are to consider only the evidence received in this
14 case. You should consider this evidence in light of your own
15 observations and experiences in life. You may draw such
16 reasonable inferences as you believe to be justified from
17 proved facts.

18 Certain things are not evidence. These include the
19 following:

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

23 Second, anything that you might have seen or heard outside
24 the courtroom is not evidence and must be entirely disregarded.
25 This includes any press, radio, or television reports you might

1 have read, seen, or heard. Such reports are not evidence and
2 your verdict must not be influenced in any way by such
3 publicity.

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

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

12 INSTRUCTION NO. 7

13 Some of you might have heard the phrases "circumstantial
14 evidence" and "direct evidence." Direct evidence is the
15 testimony of someone who claims to have personal knowledge of
16 the commission of the crime that has been charged, such as an
17 eyewitness. Circumstantial evidence is the proof of a series
18 of facts that tends to show whether the defendant is guilty or
19 not guilty.

20 The law makes no distinction between the weight to be
21 given to either direct or circumstantial evidence. You should
22 decide how much weight to give to any evidence. All the
23 evidence in this case, including circumstantial evidence,
24 should be considered by you in reaching your verdict.

25 INSTRUCTION NO. 8

1 Each defendant is presumed to be innocent of the charge.
2 This presumption remains with the defendants throughout every
3 stage of the trial and during your deliberations on the
4 verdict, and is not overcome unless from all the evidence in
5 the case you are convinced beyond a reasonable doubt that each
6 defendant is guilty.

7 The Government has the burden of proving the guilt of
8 each defendant beyond a reasonable doubt, and this burden
9 remains on the Government throughout the case. No defendant is
10 required to prove his innocence or to produce any evidence.

11 INSTRUCTION NO. 9.

12 The indictment charges that the offenses were committed "at
13 least as early as... and continuing until" a certain date, "in
14 or about" a certain date, "in or about... through at least" a
15 certain date, and "as early as... through at least" a certain
16 date. Although the evidence need not establish with certainty
17 the exact date of an alleged offense, it must establish that
18 the offense was committed on a date reasonably near the dates
19 charged.

20 INSTRUCTION NO. 10

21 This is a criminal case brought by the United States of
22 America by way of a Grand Jury Indictment. The Indictment in
23 this case is the formal method of accusing each defendant of a
24 crime and placing him on trial. It is not evidence against the
25 defendants and does not create any inference of guilt.

1 In summary, each of the defendants is charged in Count
2 One with conspiracy to suppress and eliminate competition by
3 fixing the prices at which ready mixed concrete was sold in the
4 Indianapolis, Indiana, metropolitan area, in violation of
5 Section 1 of the Sherman Act.

6 Chris A. Beaver is charged in Count Three and Ricky J.
7 Beaver is charged in Count Four with making a false statement,
8 in violation of Title 18, United States Code, Section 1001.

9 More specifically, the Indictment as it pertains to the
10 defendants now before the Court, reads as follows:

11 INDICTMENT

12 COUNT ONE -- SHERMAN ACT CONSPIRACY.

13 The Grand Jury charges that:

14 I.

15 DESCRIPTION OF THE OFFENSE

16 1. The following corporations and individuals are hereby
17 indicted and made defendants on the charge stated below:

18 A. MA-RI-AL CORPORATION, d/b/a BEAVER MATERIALS, CORP.;

19 B. CHRIS A. BEAVER;

20 C. RICKY J. BEAVER a/k/a RICK BEAVER;

21 * * *

22 2. Beginning at least as early as July, 2000 and
23 continuing until May 25, 2004, the exact dates being unknown to
24 the Grand Jury, the defendants and co- conspirators Irving
25 Materials, Inc., Builder's Concrete and Supply Co., Inc. and

1 other corporations and individuals entered into and engaged in
2 a combination and conspiracy to suppress and eliminate
3 competition by fixing the prices at which ready mixed concrete
4 was sold in the Indianapolis, Indiana metropolitan area.

5 * * *

6 The combination and conspiracy engaged in by the defendants
7 and their co- conspirators was in unreasonable restraint of
8 interstate trade and commerce in violation of Section 1 of the
9 Sherman Act (15 U.S.C. Section 1).

10 3. The charged combination and conspiracy consisted of
11 a continuing agreement, understanding, and concert of action
12 among the defendants and their co- conspirators, the
13 substantial terms of which were to fix and maintain the prices
14 at which ready mixed concrete was sold in the Indianapolis,
15 Indiana metropolitan area.

16 II

17 MEANS AND METHODS OF CONSPIRACY

18 4. For the purpose of forming and carrying out the
19 charged combination and conspiracy, the defendants and their
20 co-conspirators did those things that they combined and
21 conspired to do, including, among other things:

22 A. attending and participating in meetings among
23 competing ready mixed concrete producers to discuss the prices
24 at which ready mixed concrete was sold in the Indianapolis,
25 Indiana, metropolitan market. These meeting were held at

1 various locations, including, but not limited to, a horse barn
2 owned by a co-conspirator, Gus B. Nuckols III a/k/a Butch
3 Nuckols, president of Builder's Concrete and Supply Co., Inc.;

4 B. agreeing during those meetings and discussions to
5 increase prices of ready mixed concrete to be sold in the
6 Indianapolis, Indiana, metropolitan market;

7 C. agreeing during those meetings and discussions to
8 limit or eliminate discounts and implement surcharges applied
9 to ready mixed concrete sold in the Indianapolis, Indiana,
10 metropolitan market;

11 D. issuing price announcements and prices quotations in
12 accordance with the agreements reached;

13 E. selling ready mixed concrete pursuant to those
14 agreements at collusive and noncompetitive prices;

15 F. accepting payment for ready mixed concrete sold at the
16 agreed upon collusive and noncompetitive prices;

17 G. contacting co-conspirators to discuss the price of
18 ready mixed concrete sold by co-conspirators for the purpose of
19 monitoring and enforcing adherence to the price agreements;

20 H. attempting to conceal the conspiracy and
21 conspiratorial contacts through various means.

22 III

23 DEFENDANTS AND CO-CONSPIRATORS

24 5. MA-RI-AL CORPORATION, d/b/a BEAVER MATERIALS, Corp.
25 ("BEAVER"), is an Indiana corporation with its headquarters in

1 Noblesville, Indiana. During the period covered by this Count,
2 BEAVER was engaged in the manufacture and sale of ready mixed
3 concrete in the Indianapolis, Indiana, metropolitan area and
4 elsewhere.

5 6. During the period covered by this Count, defendant
6 CHRIS A. BEAVER was the Operations Manager for defendant
7 BEAVER.

8 7. During the period covered by this Count, defendant
9 RICKY J. BEAVER a/k/a RICK BEAVER was the Commercial Sales
10 Manager for defendant BEAVER.

11 * * *

12 9. Various co-conspirators, not made defendants in this
13 Count, participated in the offense charged in this Count and
14 performed acts and made statements in furtherance of the
15 charged offense.

16 10. Whenever in this Count reference is made to any act,
17 deed, or transaction of any corporation, such allegation shall
18 be deemed to mean that the corporation engaged in such act,
19 deed, or transaction by or through its officers, directors,
20 agents, employees, or representatives while they were actively
21 engaged in the management, direction, control, or transaction
22 of its business or affairs.

23 IV

24 TRADE AND COMMERCE

25 11. Ready mixed concrete is a product whose ingredients

1 include cement, aggregate (sand and gravel), water, and, at
2 times, other additives. Ready mixed concrete is made on demand
3 and, if necessary, is shipped to work sites by concrete mixer
4 trucks. Ready mixed concrete is purchased by do-it yourself
5 and commercial customers, as well as local, state, and federal
6 governments for use in various construction projects,
7 including, but not limited to, sidewalks, driveways, bridges,
8 tunnels, and roads.

9 12. During the time period covered by this Count, the
10 corporate conspirators purchased substantial quantities of
11 equipment and supplies necessary to the production and
12 distribution of ready mixed concrete, which equipment and
13 supplies were shipped into Indiana from points of origin
14 outside Indiana.

15 13. During the period covered by this Count, the
16 activities of the defendants and co-conspirators that are the
17 subject of this Count were within the flow of, and
18 substantially affected, interstate trade and commerce.

19 V. JURISDICTION AND VENUE.

20 14. The combination and conspiracy charged in this Count
21 was carried out, in part, in the Southern District of Indiana
22 within the five years preceding the return of this Count.

23 ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE,
24 SECTION 1.

* * *

1 COUNT THREE -- FALSE STATEMENT

2 The Grand Jury charges that:

3 1. CHRIS A. BEAVER is hereby indicted and made a
4 defendant on the charge stated below.

5 2. From at least as early as July, 2000 through at least
6 May 25, 2004, defendant CHRIS A. BEAVER was the Operations
7 Manger for MA-RI-AL CORPORATION, d/b/a BEAVER MATERIALS, Corp.

8 3. In October, 2003, CHRIS A. BEAVER attended a
9 meeting at a horse barn which was owned by Gus B. Nuckols III
10 a/k/a Butch Nuckols, president of Builder's Concrete and Supply
11 Co., Inc. That meeting was attended by representatives of
12 Irving Materials, Inc., Builder's Concrete and Supply Co., Inc.
13 and other corporate co- conspirators in the conspiracy which
14 the subject of Count One of this Indictment. During that
15 meeting, and while CHRIS A. BEAVER was present, the
16 coconspirators agreed to fix the price of ready mixed concrete
17 sold in the Indianapolis, Indiana metropolitan area. At
18 various other times between July, 2000 and May 25, 2004, CHRIS
19 A. BEAVER participated in discussions about prices or discount
20 amounts of ready mixed concrete with representatives of other
21 corporate co-conspirators in the conspiracy which is the
22 subject of Count One of this Indictment.

23 4. On May 25, 2004, in the Southern District of
24 Indiana, defendant CHRIS A. BEAVER knowingly and willfully made
25 a false statement which was material to a matter within the

1 jurisdiction of the executive branch of the Government of the
2 United States. Specifically, in connection with an
3 investigation by the Midwest Field Office of the Antitrust
4 Division, United States Department of Justice, CHRIS A. BEAVER
5 was interviewed by agents of the Federal Bureau of
6 Investigation and the Indiana State Police. During that
7 interview, CHRIS A. BEAVER falsely stated that he was unaware
8 of any representative of a ready mixed concrete company being
9 involved in pricing discussions with competitors.

10 ALL IN VIOLATION OF TITLE 18, UNITED STATES CODE,
11 SECTION 1001.

12 COUNT FOUR -- FALSE STATEMENT

13 The Grand Jury charges that:

14 1. RICKY J. BEAVER a/k/a RICK BEAVER is hereby indicted
15 and made a defendant on the charge stated below.

16 2. From at least as early as July, 2000 through at least
17 May 25, 2004, defendant RICKY J. BEAVER a/k/a RICK BEAVER was
18 the Commercial Sales Manager for MA-RI-AL CORPORATION, d/b/a
19 BEAVER MATERIALS, Corp.

20 3. Between late 2002 and early 2003, RICKY J. BEAVER
21 a/k/a RICK BEAVER attended a meeting at an Indianapolis-area
22 hotel. That meeting was attended by representatives of Irving
23 Materials, Inc., Builder's Concrete and Supply Co., Inc., and
24 other corporate co-conspirators in the conspiracy which the
25 subject of Count One of this Indictment. During that meeting,

1 and while RICKY J. BEAVER a/k/a RICK BEAVER was present, the
2 coconspirators agreed to fix the price of ready mixed concrete
3 sold in the Indianapolis, Indiana metropolitan area. At
4 various other times between July, 2000 and May 25, 2004, RICKY
5 J. BEAVER a/k/a RICK BEAVER participated in discussions about
6 prices or discount amounts of ready mixed concrete with
7 representatives of other corporate co-conspirators in the
8 conspiracy which is the subject of Count One of this
9 Indictment.

10 4. On May 25, 2004, in the Southern District of
11 Indiana, defendant RICKY J. BEAVER a/k/a RICK BEAVER knowingly
12 and willfully made a false statement which was material to a
13 matter within the jurisdiction of the executive branch of the
14 Government of the United States. Specifically, in connection
15 with an investigation by the Midwest Field Office of the
16 Antitrust Division, United States Department of Justice, RICKY
17 J. BEAVER a/k/a RICK BEAVER was interviewed by agents of the
18 Federal Bureau of Investigation and the Indiana State Police.
19 During that interview, RICKY J. BEAVER a/k/a RICK BEAVER
20 falsely stated that he was unaware of any representative of a
21 ready mixed concrete company being involved in pricing
22 discussions with competitors.

23 ALL IN VIOLATION OF TITLE 18, UNITED STATES CODE,
24 SECTION 1001.

25 INSTRUCTION NO. 11

1 Count One of the Indictment charges a violation of Section
2 1 of the Sherman Act, which provides that:

3 Every contract, combination in the form
4 of trust or otherwise, or conspiracy, in
5 restraint of trade or commerce among the
6 several States... is declared to be illegal."

7 The purpose of the Sherman Act is to preserve and advance
8 our system of free enterprise by encouraging, to the fullest
9 extent practicable, free and open competition in the
10 marketplace, and by preventing unreasonable restraint or
11 monopolization of any business or industry, so that the
12 consuming public may receive better goods and services at a
13 lower cost.

14 The term "person" includes individuals, corporations,
15 partnerships, and every other association or organization of
16 every kind and character.

17 INSTRUCTION NO. 12

18 In order to convict a defendant of conspiracy to fix
19 prices as charged in Count One of the Indictment, the
20 Government must prove beyond a reasonable doubt the following
21 propositions:

22 (1) That the conspiracy described in the
23 Indictment was knowingly formed and was in
24 existence around the time alleged;

25 (2) That a defendant knowingly -- that is,

1 voluntarily and intentionally -- became a
2 member of the conspiracy; and.

3 (3) That the conspiracy described in Count One of the
4 indictment either affected interstate
5 commerce in goods or services or occurred
6 within the flow of interstate commerce in goods
7 and services.

8 If you find from your consideration of all the evidence
9 that each of these propositions has been proved beyond a
10 reasonable doubt, then you should find the defendant guilty of
11 Count One.

12 If, on the other hand, you find from your consideration
13 of all the evidence that any of these propositions has not been
14 proved beyond a reasonable doubt, then you should find the
15 defendant not guilty of Count One.

16 INSTRUCTION NO. 13

17 Count One of the Indictment charges a conspiracy among
18 certain individuals, some of whom are not named as
19 co-conspirators because the Indictment says that the grand
20 jurors do not know who they are. A person cannot conspire with
21 himself and therefore you cannot find a defendant guilty of
22 conspiracy unless you find beyond a reasonable doubt that he
23 participated in the conspiracy as charged.

24 INSTRUCTION NO. 14

25 A conspiracy is an agreement between two or more persons

1 to accomplish an unlawful purpose. A conspiracy may be
2 established even if its purpose was not accomplished.

3 A conspiracy is a kind of "partnership" and under the
4 law each member is an agent or partner of every other member,
5 and each member is bound by or responsible for the acts of
6 every other member done to further their agreement. The
7 "agreement or understanding" need not be express or formal, be
8 in writing, or cover all of the details of how it is to be
9 carried out. Nor is it necessary that the members have
10 directly stated between themselves the details or purpose of
11 the scheme.

12 In deciding whether the charged conspiracy exists, you
13 may consider the actions and statements of every one of the
14 alleged participants. An agreement may be proved from all the
15 circumstances and the words and conduct of all the alleged
16 participants which are shown by the evidence. However, mere
17 presence at the scene of an alleged transaction or event, or
18 mere similarity of conduct among various persons, and the fact
19 that they may have associated with each other and may have
20 assembled together and discussed common aims and interests,
21 does not necessarily establish proof of the existence of a
22 conspiracy.

23 To be a member of a conspiracy, a defendant need not
24 join at the beginning or know all the other members or the
25 means by which the purpose of the conspiracy was to be

1 accomplished. The Government must prove beyond a reasonable
2 doubt that the defendant was aware of the common purpose, and
3 was a willing participant in the charged conspiracy, with the
4 intent to advance the purpose of the conspiracy. However, a
5 person who has no knowledge of a conspiracy, but who happens to
6 act in a way that advances some object or purpose of a
7 conspiracy, does not thereby become a member. In addition,
8 neither mere association with conspirators, nor knowledge that
9 something illegal was going on, standing alone, will show that
10 any particular defendant was a member of a conspiracy.

11 In deciding whether a particular defendant actually
12 joined the charged conspiracy, you must base your decision only
13 on what the defendant did or said. In determining what a
14 defendant did or said, you may consider the defendant's own
15 words or acts. You may also consider the words and acts of
16 other persons to decide what the defendant did or said, and you
17 may use them to help you understand what the defendant did or
18 said.

19 If it is established beyond a reasonable doubt that a
20 conspiracy existed and that a defendant was a member, then the
21 acts and declarations of any other member of that particular
22 conspiracy, done in furtherance of the objects of the
23 conspiracy and during its existence, may be considered as
24 evidence against the defendant. However, statements by any
25 alleged conspirator, which are not in furtherance of the

1 conspiracy, or made before its existence or after its
2 termination, may not be so considered.

3 INSTRUCTION NO. 15.

4 Count One of the Indictment charges the defendants with
5 conspiring to fix prices. A conspiracy to fix prices is an
6 agreement or mutual understanding between two or more
7 competitors to fix, control, raise, lower, maintain, or
8 stabilize the prices charged or to be charged for products or
9 services.

10 A price-fixing conspiracy is commonly thought of as an
11 agreement to establish the same price; however, prices may be
12 fixed by other ways. Prices are fixed if a target or goal for
13 prices is agreed upon or if, by agreement, various guidelines
14 or formulas are to be used in computing the prices. Thus, any
15 agreement to stabilize prices, to set a specific price, to
16 maintain a specific price, to eliminate or limit discounts, to
17 establish a fixed spread between wholesale and retail prices,
18 to establish a fixed spread between the prices of different
19 sellers, or to set other conditions of sale relating to price,
20 is illegal.

21 The aim and result of every price-fixing agreement, if
22 successful, is the elimination of one form of competition.
23 Therefore, if you find that a price-fixing conspiracy has been
24 established, it does not matter whether the prices agreed upon
25 were too high or too low or reasonable or unreasonable. It is

1 not for you to determine whether particular price-fixing
2 schemes are wise or unwise, healthy or destructive.

3 Evidence that the defendants and alleged co-conspirators
4 actually competed with each other has been admitted to assist
5 you in deciding whether they actually entered into an agreement
6 or mutual understanding to fix prices. If the conspiracy
7 charged in Count One of the Indictment is proved, it is no
8 defense that the conspirators actually competed with each other
9 in some manner or that they did not conspire to eliminate all
10 competition. Similarly, the conspiracy is unlawful even if it
11 did not extend to all products sold by the conspirators or did
12 not affect all of their customers.

13 If you should find that the defendants entered into an
14 agreement to fix prices, the fact that the defendants or their
15 co-conspirators did not abide by the agreement, or that one or
16 more of them may not have lived up to some aspect of the
17 agreement, or that they may not have been successful in
18 achieving their objectives, is no defense. The agreement is
19 the crime, even it is never carried out.

20 Similarity of competitive business practices of the
21 defendants and alleged co-conspirators, or the mere fact that
22 they may have charged identical prices for the same goods, does
23 not alone establish an agreement or mutual understanding to fix
24 prices, since such practices may be consistent with ordinary
25 and proper competitive behavior in a free and open market.

1 A person may lawfully charge prices identical to those
2 charged by competitors and still not violate the Sherman Act.
3 A person may follow and conform exactly to the price policies
4 and price changes of competitors; and such conduct, without
5 more, would not be violative of the law, unless you find it was
6 done pursuant to an agreement or mutual understanding between
7 two or more persons, as charged in Count One of the Indictment.

8 Nevertheless, you may consider such facts and
9 circumstances along with all other evidence in determining
10 whether the similarity or identity of prices resulted from the
11 independent acts or business judgment of the defendants freely
12 competing in the open market, or whether it resulted from an
13 agreement or mutual understanding between the defendants and
14 one or more competitors.

15 INSTRUCTION NO. 16

16 The Sherman Act makes unlawful certain agreements that,
17 because of their harmful effect on competition, are
18 conclusively presumed to be an unreasonable restraint on trade
19 and are per se illegal without inquiry about the precise harm
20 they have caused or the business excuse for their use.
21 Included in this category of unlawful agreements are agreements
22 to fix prices. Therefore, if you find that the conspiracy
23 charged in Count One of the Indictment existed and that one or
24 more of the defendants was a member of that conspiracy, you
25 need not be concerned with whether the agreement was reasonable

1 or unreasonable, or with the justifications for the agreement,
2 or with the harm done by it.

3 It is not a defense that the parties might have acted
4 with good motives, or might have thought that what they were
5 doing was legal, or that the conspiracy might have had some
6 good results. If you find that the conspiracy charged in Count
7 One of the Indictment existed beyond a reasonable doubt, it was
8 illegal. If you find that the Government has failed to prove
9 the charged conspiracy beyond a reasonable doubt, the
10 defendants should be found not guilty of Count One.

11 INSTRUCTION NO. 17

12 An essential element of an offense prohibited by the
13 Sherman Act is that the alleged unlawful conduct must involve
14 interstate trade or commerce. The Government must prove beyond
15 a reasonable doubt that the conspiracy charged in Count One of
16 the Indictment either occurred in the flow of interstate
17 commerce or affected interstate commerce in goods and services.
18 Proof of interstate commerce as to one defendant or
19 co-conspirator in the conspiracy charged in Count One of the
20 Indictment satisfies the interstate commerce element as to
21 every defendant.

22 The term "interstate commerce" includes transactions or
23 commodities that are moving across state lines or that are in a
24 continuous flow of commerce from the commencement of their
25 journey until their final destination in a different state. If

1 the conduct challenged in Count One of the Indictment involves
2 transactions that are in the flow of commerce, the interstate
3 commerce element is satisfied, and the size of any such
4 transaction is of no significance. The conspiracy charged in
5 Count One of the Indictment therefore would have occurred in
6 the flow of interstate commerce if at least one defendant or
7 one co-conspirator, in carrying out the charged conspiracy,
8 crossed state lines or purchased equipment or supplies, which
9 are used in the sales of ready mixed concrete, across state
10 lines.

11 The term "interstate commerce" also includes
12 transactions that are entirely within a state and are not part
13 of a larger interstate transaction, if the conduct challenged
14 in Count One of the Indictment has had an effect on some other
15 appreciable activity demonstrably in interstate commerce. In
16 determining whether the charged conspiracy has had an effect on
17 some other appreciable activity in interstate commerce, you may
18 add together the total amount of all of the interstate
19 transactions.

20 Although the Government must prove that the conspiracy
21 charged in Count One of the Indictment either affected
22 interstate commerce or occurred within the flow of interstate
23 commerce in goods or services, the Government's proof need not
24 quantify any adverse impact of the charged conspiracy or show
25 that the charged conspiracy had any anticompetitive effect. It

1 is a question of fact for the jury to determine whether the
2 defendants' conduct charged in Count One of the Indictment
3 involved interstate commerce.

4 INSTRUCTION NO. 18

5 The intent necessary to support a conviction for
6 conspiracy is that the defendant intended to join and associate
7 with the criminal design and purpose of the conspiracy. This
8 intent is more than knowledge, acquiescence, carelessness,
9 indifference, or lack of concern, but, rather, is informed and
10 interested cooperation.

11 If a defendant, with an understanding of the unlawful
12 character of the conspiracy, knowingly and willfully joins to
13 the conspiracy on one occasion, that is sufficient to convict
14 him of conspiracy even though he had not participated at
15 earlier stages in the scheme and even though he played only a
16 minor part in the conspiracy.

17 In order to establish the offense charged in Count One
18 of the Indictment, it is not necessary for the Government to
19 prove that a defendant knew that a conspiracy to fix prices and
20 allocate sales volumes is a violation of the law.

21 INSTRUCTION NO. 19.

22 In making a judgment in this case on the guilt or innocence
23 of the defendants now here on trial, you should not be
24 concerned with whether or not or why others may or may not have
25 been made defendants in this case. These are not matters for

1 you to surmise or speculate upon. You are to consider only
2 what is in evidence here before you as it relates to the guilt
3 or innocence of the defendants now on trial.

4 INSTRUCTION NO. 20

5 Defendant MA-RI-AL CORPORATION, d/b/a BEAVER MATERIALS
6 CORP., is a corporation. A corporation may be found guilty of
7 a criminal offense.

8 A corporation can act only through its agents -- that
9 is, its directors, officers, employees, and other persons
10 authorized to act for it.

11 To find MA-RI-AL guilty of conspiracy to suppress and
12 eliminate competition by fixing the prices at which ready mixed
13 concrete was sold in the Indianapolis, Indiana metropolitan
14 area in violation of Section 1 of the Sherman Act as charged in
15 Count One of the Indictment, the Government must prove beyond a
16 reasonable doubt the following:

17 (1) Each essential element of the crime
18 charged against MA-RI-AL
19 CORPORATION, d/b/a BEAVER MATERIALS CORP., as
20 outlined in Instruction 12, was committed by
21 one or more of its agents;

22 (2) In committing the offense, the agent or
23 agents intended, at least in part, to benefit
24 MA-RI-AL CORPORATION, d/b/a BEAVER MATERIALS
25 CORP; and

1 employee of Shelby Gravel, Inc. ("Shelby"). Shelby has applied
2 for and been granted Corporate Leniency from the Government
3 under the Government's Corporate Leniency Program. Under the
4 Leniency Agreement, Richard Haehl and his company, Shelby, will
5 not be prosecuted as long as they comply with their obligations
6 under the Leniency Agreement. In entering this agreement,
7 Shelby, along with Richard Haehl, have stated that they were
8 involved in the commission of the offense as charged against
9 the defendants in Count One of the Indictment. You may give
10 Richard Haehl's testimony such weight as you feel it deserves,
11 keeping in mind that it must be considered with caution and
12 great care.

13 INSTRUCTION NO. 23

14 Chris A. Beaver is charged in Count Three of the
15 Indictment, and Ricky J. Beaver is charged in Count Four of the
16 Indictment, with making a false statement in violation of Title
17 18, United States Code, Section 1001.

18 Section 1001 provides, in pertinent part, that a person
19 commits the crime of making a false statement when he...

20 "...knowingly and willfully... makes
21 any materially false, fictitious, or fraudulent
22 statement or representation."

23 INSTRUCTION NO. 24.

24 In order to convict a defendant of making a false
25 statement, in violation of Title 18, United States Code,

1 Section 1001, as charged in Counts Three and Four of the
2 Indictment, the Government must prove beyond a reasonable doubt
3 the following elements:

- 4 (1) The defendant made a false statement;
- 5 (2) The statement was material;
- 6 (3) The statement was made knowingly and willfully; and.
- 7 (4) The statement was made in a matter within the
8 jurisdiction of the executive branch of the government of the
9 United States.

10 If you find from your consideration of all the evidence
11 that each of these propositions has been proved beyond a
12 reasonable doubt, then you should find the defendant guilty.

13 If, on the other hand, you find from your consideration
14 of all the evidence that any of these propositions has not been
15 proved beyond a reasonable doubt, then you should find the
16 defendant not guilty.

17 INSTRUCTION NO. 25

18 A statement is false or fictitious if untrue when made
19 and then known to be untrue by the person making it.

20 INSTRUCTION NO. 26

21 A statement is material if it had the effect of
22 influencing the action of the agents or officers who
23 investigated this matter, specifically, the Federal Bureau of
24 Investigation, or if the statement was capable or had the
25 potential to do so.

1 It is not necessary that the statement actually had that
2 influence or was relied upon by the agents or officers
3 investigating this matter as long as it had the potential or
4 capability to do so.

5 INSTRUCTION NO. 27

6 When the word "knowingly" is used in these instructions,
7 it means that the defendant realized what he was doing and was
8 aware of the nature of his conduct, and did not act through
9 ignorance, mistake, or accident. Knowledge may be proved by
10 the defendant's conduct, and by all the facts and circumstances
11 surrounding the case.

12 INSTRUCTION NO. 28

13 The term "willfully," as used in these instructions,
14 means that a defendant knowingly performed an act, deliberately
15 and intentionally, as contrasted with accidentally, carelessly,
16 or unintentionally.

17 INSTRUCTION NO. 29.

18 The FBI is a part of the executive branch of the government
19 of the United States, and statements concerning pricing
20 discussions among competitors in the ready mixed concrete
21 industry are within the jurisdiction of that branch.

22 INSTRUCTION NO. 30

23 Each Count of the Indictment charges each defendant
24 named in that Count with having committed a separate offense.

25 You must give separate consideration both to each Count

1 and to each defendant. You must consider each Count and the
2 evidence relating to it separate and apart from every other
3 Count.

4 Although the defendants are being tried jointly, you
5 must give separate consideration to each defendant. In doing
6 so you must analyze what the evidence in the case shows with
7 respect to each defendant, leaving out of consideration any
8 evidence admitted solely against some other defendant or
9 defendants. Each defendant is entitled to have his case
10 decided on the evidence and the law applicable to him.

11 You should return a separate verdict as to each
12 defendant and as to each Count. Your verdict of guilty or not
13 guilty of an offense charged in one Count should not control
14 your decision as to that defendant under any other Count.

15 Each of these instructions shall be considered by you as
16 applying to each Count, unless otherwise stated therein.

17 INSTRUCTION NO. 31

18 It is necessary that every essential element of the
19 crime charged in the Indictment in this case be proved by
20 evidence beyond a reasonable doubt, but it is not necessary
21 that each subsidiary or non-essential fact be proved beyond a
22 reasonable doubt.

23 INSTRUCTION NO. 32

24 A lawyer who calls a witness to testify in a criminal
25 trial may properly conduct interviews of such a witness before

1 he or she takes the witness stand at trial. It is not only
2 proper for counsel to conduct such interviews, it is counsel's
3 duty to do so. This is because lawyers are charged with the
4 duty of representing the evidence in the case to the jury in an
5 orderly and proper manner. Accordingly, you are advised that
6 there is nothing improper in a lawyer interviewing a witness
7 before he or she testifies.

8 INSTRUCTION NO. 33

9 You have heard testimony from Allyn Beaver. You should
10 judge his testimony in the same way that you judge the
11 testimony of any other witness.

12 INSTRUCTION NO. 34

13 The law does not compel a defendant in a criminal case
14 to take the witness stand and testify. No presumption of guilt
15 should be raised, and no inference of any kind should be drawn,
16 from the fact that a defendant has not testified.

17 The law never imposes upon a defendant in a criminal
18 case the burden or duty of calling any witnesses, or producing
19 any evidence.

20 INSTRUCTION NO. 35

21 I instruct you that the matter of the penalty to be
22 imposed or the disposition to be made of this case if a verdict
23 of guilty is reached is not before you, the jury, but that this
24 is a matter for the Court to determine or fix.

25 INSTRUCTION NO. 36

1 Neither by these instructions, nor by any ruling or
2 remark that I have made, do I mean to indicate any opinion as
3 to the facts or as to what your verdict should be. You are the
4 sole and exclusive judges of the facts.

5 INSTRUCTION NO. 37

6 During this trial I permitted you to take notes. Many
7 courts do not permit note-taking by jurors, and a word of
8 caution is in order. There is always a tendency to attach
9 undue importance to matters that one has written down. Some
10 testimony that is considered unimportant at the time presented,
11 and thus not written down, might take on greater importance
12 later in the trial in light of all the evidence presented.

13 Therefore, you are instructed that your notes are only a
14 tool to aid your own individual memory and you should not
15 compare your notes with other jurors' in determining the
16 content of any testimony or in evaluating the importance of any
17 evidence. Your notes are not evidence, and are by no means a
18 complete outline of the proceedings or a list of the highlights
19 of the trial. Above all, your memory should be your greatest
20 asset when it comes time to deliberate and render a decision in
21 this case.

22 If you did takes notes, you must leave your notes in the
23 jury room after your verdict has been returned.

24 INSTRUCTION NO. 38

25 The verdict must represent the considered judgment of

1 each juror. Your verdict, whether it be guilty or not guilty,
2 must be unanimous.

3 You should make every reasonable effort to reach a
4 verdict. In doing so, you should consult with one another,
5 express your own views, and listen to the opinions of your
6 fellow jurors. Discuss your differences with an open mind. Do
7 not hesitate to re-examine your own views and change your
8 opinion if you come to believe it is wrong. But you should not
9 surrender your honest beliefs about the weight or effect of
10 evidence solely because of the opinion of your fellow jurors or
11 for the purpose of returning a unanimous verdict.

12 The twelve of you should give fair and equal
13 consideration to all the evidence and deliberate with the goal
14 of reaching an agreement that is consistent with the individual
15 judgment of each juror.

16 You are impartial judges of the facts. Your sole
17 interest is to determine whether the Government has proved its
18 case beyond a reasonable doubt.

19 INSTRUCTION NO. 39

20 It is necessary from this time until you are discharged
21 to remain together in a group and in charge of the Bailiff.
22 You are not, during your deliberations, to talk with anyone,
23 other than your fellow jurors and the Bailiff. Make known to
24 the Bailiff any of your wants, and, if you wish to communicate
25 with me, place your questions in writing and the Bailiff will

1 contact me if necessary.

2 When you go to the jury room, elect one of your number
3 as foreperson. It is the duty of the foreperson to see that
4 your discussions are orderly and that each juror has the
5 opportunity to discuss and vote on each matter before you. The
6 authority of the foreperson is otherwise the same as that of
7 any other juror.

8 These instructions are all in writing and I will send
9 them to the jury room for your use in your deliberations upon
10 your verdicts. You also will be permitted to have the exhibits
11 with you for your use in your deliberations.

12 INSTRUCTION NO. 40

13 Forms of verdict have been prepared for you.

14 (Forms of verdict read)

15 Take these forms to the jury room and, when you have
16 reached unanimous agreement on the verdicts, your foreperson
17 will fill in, date, and sign the appropriate form or forms, and
18 return it or them with you into open Court.

19 UNITED STATES DISTRICT COURT
20 SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

21 UNITED STATES OF AMERICA,)
22)
23 Plaintiff,) CAUSE NO. IP 06-CR-1, 2, 3
24)
25 -v-)
26)
27 MA-RI-AL CORPORATION, d/b/a)
28 BEAVER MATERIALS, CORP.; et al.)
29 CHRIS A. BEAVER; and RICKY J.)
30 BEAVER a/k/a RICK BEAVER,)

1)
 Defendants.)

2

3 VERDICT FOR COUNT ONE.

4 As to the crime of conspiracy to suppress and eliminate
 5 competition by fixing the prices at which ready mixed concrete
 6 was sold in the Indianapolis, Indiana, metropolitan area, in
 7 violation of Title 15, United States Code, Section 1, as
 8 charged in Count One of the Indictment, we, the Jury, find the
 9 defendant:

10 Ma-Ri-Al Corporation, d/b/ Beaver Materials Corp.	Not Guilty	Guilty
12 Chris A. Beaver	Not Guilty	Guilty
13 Ricky J. Beaver a/k/a Rick Beaver _____	Not Guilty	Guilty

15 _____ Date
 FOREPERSON

16 UNITED STATES DISTRICT COURT
 17 SOUTHERN DISTRICT OF INDIANA
 INDIANAPOLIS DIVISION

18 UNITED STATES OF AMERICA,)
)
 19 Plaintiff,) CAUSE NO. IP 06-CR-1, 2, 3
) Indianapolis, Indiana
 20 -v-)
)
 21 MA-RI-AL CORPORATION, d/b/a)
 BEAVER MATERIALS, CORP.; et al.)
 22 CHRIS A. BEAVER; and RICKY J.)
 BEAVER a/k/a RICK BEAVER,)
 23 Defendants.)

24 VERDICT FOR COUNT THREE.

25 As to the crime of making a false statement, in violation

1 of Title 18, Section 1001, we, the Jury, find the defendant:

2	Chris A Beaver	_____	_____
3		Not Guilty	Guilty

4	_____	_____
5	FOREPERSON	Date

6
7

8 UNITED STATES DISTRICT COURT
 9 SOUTHERN DISTRICT OF INDIANA
 INDIANAPOLIS DIVISION

10	UNITED STATES OF AMERICA,)	
	Plaintiff,)	CAUSE NO. IP 06-CR-1, 2, 3
11	-v-)	
)	
12	MA-RI-AL CORPORATION, d/b/a)	
	BEAVER MATERIALS, CORP.; et al.))	
13	CHRIS A. BEAVER; and RICKY J.)	
	BEAVER a/k/a RICK BEAVER,)	
14	Defendants.)	

15 VERDICT FOR COUNT FOUR

16 As to the crime of making a false statement, in violation
17 of Title 18, Section 1001, we, the Jury, find the defendant:

18	Ricky J. Beaver a/k/a Rick Beaver	_____	_____
19		Not Guilty	Guilty

20	_____	_____
21	FOREPERSON	Date

22 THE COURT: Do we have a bailiff here to be sworn?
23 Yes.

24 (Bailiffs sworn)

25 THE COURT: All right, gentlemen, you may lead the

1 jury upstairs to begin their deliberation.

2 (The Jury retired to deliberate at 11:52 A.M.)

3 THE COURT: You may be seated.

4 Gentlemen, you are free now to go on about your business,
5 but I would rather you didn't stray too far away from the
6 courthouse. Let us know what your phone numbers are and how to
7 get in touch with you so that when the jury does return we
8 don't have to wait half the day for you.

9 All right, thank you very much.

10 (The court recessed at 11:55 A.M.)

11 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
12 FROM THE RECORD OF THE PROCEEDINGS IN THE ABOVE
13 MATTER.

13

14

GLEN L. CUNNINGHAM
OFFICIAL COURT REPORTER

DATE

15

16

17

PATRICIA CLINE
OFFICIAL COURT REPORTER

DATE

18

19

20

21

22

23

24

25