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INSTRUCTION NO. 4-28-09

Ladies and gentlemen, you are now going to hear the continued cross examination of Mr. Robert Locke. Mr. Locke's cross-examination will continue but only on the area of his special relationship with the United States Attorney's Office and the prosecution team, including federal agents. Before the examination continues I am going to explain to you why the government will not be allowed to do redirect examination of Mr. Locke and why you can not consider any proof offered by Mr. Locke in deciding any issue regarding Mr. Bettacchi. I will also explain why you should consider any proof offered by Mr. Locke with skepticism.

The United States Attorney and the Department of Justice are representatives not of an ordinary party to a controversy, but of a sovereign whose obligation to govern impartially is the source of its legitimacy to govern at all and whose interest, therefore, in a criminal prosecution is not that it shall win a case but that justice shall be done. The conduct of any criminal case has a defined process. The process is governed by the United States Constitution, the laws enacted by the United States Congress, and Rules of Criminal Procedure recommended by the United States Supreme Court and adopted by the United States Congress. Each case is also governed by various orders of the presiding court setting forth a detailed procedural plan, and rulings on specific legal issues that arise in the case.

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In this case, the Department of Justice and the United States Attorney's Office have violated their constitutional obligations to the defendants, they have violated the Federal Rules of Criminal Procedure, and they have violated orders of the Court. The United States Supreme Court has determined that when a defendant is on trial in the federal court, prosecutors have a constitutional obligation to turn over to the defendant evidence that is favorable to the accused either because it is exculpatory or because it is impeaching, that is, the proof may provide information that undermines the credibility of any witness called by the prosecution in the case. The government and its agents cannot suppress any such proof either willfully or inadvertently. The rules of criminal procedure place an obligation on the government and its agents, to produce certain kinds of evidence or proof if it is requested by the defendants or ordered by the court. The suppression by the prosecution of evidence favorable to an accused violates the due process of the law where the evidence is material to the question of guilt, irrespective of the good faith or bad faith of the prosecution. Prosecutors have an affirmative duty to comply with the Constitution, the Federal Rules of Criminal Procedure and the orders of the court. That duty includes the affirmative responsibility to learn of any evidence favorable to the accused and to disclose such evidence in a timely manner so that it can be effectively used by the accused. The government has violated its solemn obligation and

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duty in this case by suppressing or withholding material proof pertinent to the credibility of Robert Locke. As a sanction for this inexcusable dereliction of duty the Court has entered an order that prohibits consideration of any proof offered by Robert Locke in the case brought against Robert Bettacchi.

Thus, you may not consider testimony of Robert Locke when you decide the charges pending against Robert Bettacchi. Locke's testimony is stricken in its entirety as it relates to Robert Bettacchi.

Having made this ruling the court does not mean to suggest that you should give any more credence to Robert Locke's testimony as to any of the other defendants. Indeed, you should examine Locke's entire testimony with great scepticism and with greater caution than that of other witnesses. In evaluating his testimony you should consider the bias that he has displayed toward W.R. Grace, his relationship with the prosecution team and the extent to which those matters may have influenced his testimony.

You will have to decide what weight to give to Locke's testimony if any but you should be very cautious about making a determination of criminal liability for any defendant based upon his proof.

The issues I have described have been fully addressed by the Court, and an adequate remedy is in place to allow the trial to move forward. It remains your duty to give dispassionate

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consideration to the proof in the record, within the confines of my instructions to you, and to reach a verdict based on the facts before you and not on any other ground.

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