

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA) Criminal No. 00-033
)
v.) Judge Marvin Katz
)
MITSUBISHI CORPORATION,) Violations: 15 U.S.C. § 1 and 18 U.S.C. § 2 (a)
)
Defendant.) Filed: 01-25-01

**GOVERNMENT’S RESPONSE IN OPPOSITION TO DEFENDANT’S
MOTION FOR SPECIFIC ADDITIONAL *BRADY* AND *JENCKS* EVIDENCE**

Defendant has renewed its Motion to the Court for the production of the Government’s notes of all interviews of anticipated Government witnesses, including those notes taken by the Government attorneys during pretrial preparation of its witnesses.¹ The Government has continued to comply with its *Brady* obligation and will have attorney notes in the courtroom as previously ordered by the Court. The Government requests that the renewed motion for attorney notes be denied.

While stating that its motion is not directed to the same *Brady* and *Giglio* issues covered by Mitsubishi’s previous motion to compel, it clearly is. Defendant continues to assert that the Government cannot be relied upon to produce *Brady* material and that, therefore, *Brady* requires the production of all attorney interview notes, even those taken during witness trial preparation interviews. This motion raises no new issues.

¹ Insofar as Mitsubishi seeks additional paralegal notes of interviews of anticipated witnesses, the Government can provide no more notes--all such paralegal notes were produced on January 16, 2001.

Mitsubishi's motion also contains assertions that the Government is not fulfilling its *Brady* requirement which are inaccurate and misleading. For example, Mitsubishi states that the Government has provided "no material concerning its interviews of Mr. [Soichiro] Yamamoto" (Mitsubishi Motion, p. 2). Yet, the January 16, 2001 letter from the Government to counsel for Mitsubishi, referred to and attached to defendant's motion, has several paragraphs of potential impeachment material concerning the circumstances leading to the interview of Mr. Yamamoto and of the interview itself.² (See Mitsubishi Motion Attachment 1.)

Similarly, Mitsubishi states "[f]urther, the government provides no material dated after January 15, 2000--over a year ago--for one of its key witnesses, Robert Krass, although it is virtually inconceivable that the Government has not interviewed this key witness in more than a year." Yet, in the same January 16, 2001 letter, the Government states "Mr. Krass was interviewed on January 10th and 11th, 2001" and goes on to provide further *Brady* information as a result of those interviews. These exchanges demonstrate that the Government has continued to observe its *Brady* obligation. The only dispute continues to be Mitsubishi's insistence that under *Brady* it is entitled to all attorney notes so it may determine if they contain more exculpatory material.

² Mr. Yamamoto's anticipated testimony is extremely limited and would revolve around certain documents he produced to the Government (Government Exhibits 1 through 6) in connection with a plea agreement reached with his current employer, Toyo Tanso, regarding price fixing a product other than graphite electrodes. The documents were ones he received during 1991 and 1992, while he was the Managing Director of SEC, a company which plead guilty to fixing prices on graphite electrodes. The Government only anticipates calling Mr. Yamamoto in the event the documents he produced are not admitted through some other method, such as by stipulation.

Finally, the single example defendant cites to support its claim that the Government has failed to adequately fulfill its *Brady* obligation does not support its claim. The example relates to a disclosure regarding the anticipated Government witness, Thomas Burkett. On June 21, 2000, over seven months prior to trial, the Government disclosed, among other things, the following information with respect to an August 6, 1998 interview of Mr. Burkett: “When Masao Nakayama [a Mitsubishi secondee to UCAR] replaced Ichiro Fukushima [another secondee] as UCAR’s Vice President of Sales in Asia and the Pacific, Burkett officially was to report to Nakayama, but Krass told Burkett to continue to take orders from his previous direct superior, Fred Bailine, UCAR’s Director of International Marketing Coordination. Krass told Burkett that he was to keep Nakayama as uninvolved in UCAR’s business as possible.” Paralegal notes of the interview, which the Government produced to the defendant, contain the following passage: “Krass explained to TB to take orders (pricing etc.) from Bailine.” Defendant claims the Government’s failure to mention the reference to “(pricing etc.)” withheld “crucial” impeachment evidence. (Mitsubishi Motion p.3, n.1.) This is a gross exaggeration. The previous summary disclosure fairly read makes clear that Mr. Burkett was instructed to take orders from Bailine and keep Nakayama as uninvolved as possible, *i.e.*, Burkett was instructed to circumvent Nakayama with respect to all matters, not just pricing.

For the above reasons, defendant's renewed *Brady* motion should be denied.

Dated: 01-25-01

Respectfully submitted,

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ORDER

AND NOW, this day of January 2001, upon consideration of the Defendant's
Motion for Specific Additional *Brady* and *Jencks* Evidence and the Government's Response in
Opposition thereto

IT IS hereby ORDERED that the Motion is DENIED.

By the Court:

UNITED STATES DISTRICT JUDGE

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CERTIFICATE OF SERVICE

This is to certify that on the 25th day of January 2001, a copy of the Government's Response in Opposition to Defendant's Motion for Specific Additional *BRADY* and *JENCKS* Evidence and Proposed Order, has been hand delivered to counsel of record for the defendant as follows:

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