

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA) Criminal No: CR-H-94-58
)
 v.)
)
GLAZIER FOODS CO.,)[filed 4/26/94]
)
 Defendant.)

**GOVERNMENT'S RESPONSE TO DEFENDANT GLAZIER FOODS
COMPANY'S MOTION FOR PRODUCTION OF JENCKS MATERIAL**

The United States of America, through its attorneys, hereby responds to Defendant Glazier Foods Company's Motion for Production of Jencks Material with Legal Authorities in Support (hereinafter "Motion").

Defendant has asked the Court to order early disclosure of Jencks Act Material. Because the evidence in this case will closely resemble that presented in United States v. John J. Johnson, No. CR-H-92-152 (S.D. Tex.), which Glazier Foods's counsel also tried, Defendant effectively has the majority of the Jencks material for this case in its possession already. No purpose is served in duplicating production of this material and the government does not plan to do so, as defense counsel was advised by letter dated April 5, 1994 (attached as Exhibit A).

The Jencks Act does not otherwise contemplate the early disclosure sought by Defendant. United States v. Lowenberg, 853 F.2d 295, 300 (5th Cir. 1988). However, to avoid delay and ensure ample opportunity for use, the United States will produce

to Defendant any Jencks material not already produced three days before trial, just as it did in the Johnson trial.

Where Brady material is contained within a witness's statement, Jencks timing controls disclosure. United States v. Scott, 524 F.2d 465, 467-68 (5th Cir. 1975) ("the rule announced in Brady is not a pretrial remedy and was not intended to override the mandate of the Jencks Act"). If any Brady material included within Jencks Act statements exists, the government will produce it three days prior to trial, if it has not already been produced.

Because the United States has effectively turned over the great majority of Jencks statements to Defendant and offered to turn over any other Jencks material not received before the previous trial three days prior to trial, Defendant's Motion should be denied.

Respectfully submitted,

"/s/"

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Government's Response to Defendant Glazier Foods Company's Motion for Production of Jencks Material and proposed order was sent via Certified Mail-Return Receipt Requested this 25th day of April, 1994, to:

Joel M. Androphy, Esq.
Berg & Androphy
3704 Travis Street
Houston, Texas 77002

"/s/"
JANE E. PHILLIPS
Attorney

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O R D E R

Upon consideration of the Defendant Glazier Foods
Company's Motion for Production of Jencks Materials and the
Government's Response,

The Defendant's Motion is hereby DENIED.

DONE AND ENTERED THIS _____ day of _____, 1994.

UNITED STATES DISTRICT JUDGE