UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No: H-92-152(filed 8/13/92)
	)	
JOHN J. JOHNSON,	)	Violations:
	)	15 U.S.C. § 1
Defendant.	)	18 U.S.C. § 1001
	)	18 U.S.C. § 2(b)
	)	18 U.S.C. § 371

GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION FOR DISCLOSURE OF PROMISES OF LENIENCY OR OTHER AGREEMENTS BETWEEN THE GOVERNMENT AND ITS WITNESSES AND FOR DISCLOSURE OF CRIMINAL RECORDS OF ITS WITNESSES OR ACTS OF MISCONDUCT

The United States of America, through its undersigned attorneys, hereby responds to the Defendant's Motion for Disclosure of Promises of Leniency or Other Agreements Between the Government and Its Witnesses and for Disclosure of Criminal Records of Its Witnesses or Acts of Misconduct.

The government is well aware of its continuing duty to disclose information to the defendant as required by the United States Supreme Court's decisions in Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963), and Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763 (1972). Brady information known to the government that is within the public record is being forwarded to the defendant today under separate cover. Based on the same concerns stated in the government's Motion for a Pretrial Hearing to Resolve Potential Conflicts of Interest [at 2] and

supporting Memorandum [at 10], filed July 23, 1992, the government will forward other information not in the public record requested under this motion to the defendant after the Court reaches a resolution of the potential conflict issue.

However, the defendant has also requested:

> . . . the full and complete contents and statements of all promises, rewards, or inducements of any kind made by the Government, its prosecutors, its agencies, or its agents or by the State acting as a result of an explicit or implicit request by the Government to induce or encourage the giving of testimony or information made to . . . (b) any witness who testified before the grand jury; and (c) any witness who assisted the Government in its investigation and preparation of the trial in this case.

See Defense Motion ¶ 2. These broad requests are vague and unsupported by the law. The government has no obligation and therefore declines to disclose to the defendant any potential impeachment information regarding individuals who testified in the grand jury or assisted the government in the preparation of its case, who will not testify as witnesses at trial. Indeed, unless covered by Fed. R. Crim. P. 16, Brady or the Jencks Act, 18 U.S.C. § 3500, information which could disclose matters occurring before the grand jury is expressly protected from disclosure under Fed. R. Crim. P. 6(e), absent a showing of particularized need, which the defendant clearly has not made. See Douglas Oil Co. v. Petrol Stops Northwest, 441 U.S. 211, 99 S.Ct. 1667 (1979).

Finally, the government respectfully asserts that the defendant's request for a hearing on this matter is both premature and unnecessary.

For the foregoing reasons, the defendant's Motion should be denied.

Respectfully submitted,

"/s/"
JANE E. PHILLIPS

"/s/"
JOAN E. MARSHALL

"/s/"
MARK R. ROSMAN

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Antitrust Division
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CERTIFICATE OF SERVICE

This is to certify that true and correct copy of the foregoing Government's Response to Defendant's Motion for Disclosure of Promises of Leniency or Other Agreements Between the Government and Its Witnesses and for Disclosure of Criminal Records of Its Witnesses or Acts of Misconduct and proposed order has been served upon and was sent via Federal Express this __ day of August, 1992, to:

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

"/s/"
JANE E. PHILLIPS
Attorney

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	)	18 U.S.C. § 371

ORDER

Upon consideration of the Defendant's Motion for Disclosure of Promises of Leniency or Other Agreements Between the Government and Its Witnesses and for Disclosure of Criminal Records of Its Witnesses or Acts of Misconduct and the Response of the United States, and

Since the government is aware of its continuing duty to disclose information to the defendant as required by the United States Supreme Court's decisions in Brady v. Maryland, 373 U.S. 83 (1963) and Giglio v. United States, 405 U.S. 150 (1972), and fully intends to provide the defendant with such information as is required by law,

The Defendant's Motion is hereby DENIED.

DONE AND ENTERED THIS this ___ day of _____, 1992.

_____

UNITED STATES DISTRICT JUDGE