

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	
)	
MRS. BAIRD'S BAKERIES, INC. and)	Criminal No. 3-95CR-294-R
FLOYD CARROLL BAIRD,)	
)	
Defendants.)	Filed 4/29/96

**GOVERNMENT'S RESPONSE TO DEFENDANT MRS. BAIRD'S BAKERIES, INC.'S
MOTION AND BRIEF FOR DISCLOSURE OF BRADY MATERIAL
FOR SENTENCING**

The United States of America, through its undersigned attorneys, hereby responds to Defendant Mrs. Baird's Bakeries, Inc.'s Motion and Brief for Disclosure of Brady Material for Sentencing. The government is aware of its obligations with respect to production of exculpatory evidence under Brady v. Maryland, 373 U.S. 83 (1963), and has already produced to the Defendant all such information properly falling within the scope of Brady and its progeny.

Pursuant to the Court's Pretrial Order in this case filed October 13, 1995, the government provided full disclosure of all materials and information to the Defendant that could be considered Brady material. No distinction was made by the government between Brady material to be used at trial as opposed to sentencing. This information, contained in a letter addressed to defense counsel dated November 2, 1995, is annexed hereto as Exhibit A.

With respect to the specific requests for Brady material outlined in the Defendant's motion, the government responds as follows:

Paragraphs 1-3, 5 and 6 all request essentially identical information regarding price increases during the conspiracy period that were not the subject of illegal agreements between the Defendant and its competitors. Information was provided to the Defendant during the course of pre-trial discovery concerning several persons who, in response to questioning by agents of the government, denied participation in at least one of the conspiracies charged in the Indictment (see Exhibit A). Additionally, the Defendant now has the benefit of certain Jencks Act (18 U.S.C.A. §3500) statements that were provided to counsel during trial, as well as the complete trial transcripts of the government's witnesses. The government is unaware of any other information that is responsive to these requests.

Paragraph 4 of the Defendant's motion requests information concerning the government's calculation of \$30 million as a "conservative" volume of commerce for the East Texas area during the conspiracy period. This admittedly conservative estimate of the volume of commerce has recently been upgraded to \$218 million by the government, and now appears in the Addendum to the Presentence Investigation Report. The initial estimate was obviously based on incomplete information, all of which was subpoenaed by the Grand Jury from the Defendant. Only after a trial subpoena was served on the Defendant was the government able to obtain the more accurate figure. The government's estimate of \$218 million as the affected volume of commerce is based on sales figures provided by the Defendant.

CONCLUSION

The government reiterates that it is aware of its obligations under Brady and its progeny and has produced all such information falling within the scope of Brady. However, the Defendant is not entitled to use Brady as a discovery device to gain general access to the prosecution files. Consequently, because Defendant's motion requests information not authorized under Brady, its motion must be denied.

Respectfully submitted,

_____/s/_____
GARY I. ROSENBERG
DUNCAN S. CURRIE
DAVID B. SHAPIRO

Attorneys
U.S. Department of Justice
Antitrust Division
1601 Elm Street, Suite 4950
Dallas, Texas 75201-4717
(214) 655-2700

CERTIFICATE OF SERVICE

This is to certify that true and correct copies of the foregoing Government's Response to Defendant Mrs. Baird's Bakeries, Inc.'s Motion and Brief for Disclosure of Brady Material for Sentencing and Order were mailed via Federal Express on the ____ day of May, 1996 to:

R. H. Wallace, Esq.
Shannon, Gracey, Ratliff & Miller, L.L.P.
1600 Bank One Tower
500 Throckmorton
Fort Worth, Texas 76102-3899

DAVID B. SHAPIRO
Attorney