

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:

PROPOSED VOIR DIRE OF THE UNITED STATES

ROBERT E. CONNOLLY
JOSEPH MUOIO
WENDY BOSTWICK NORMAN
ROGER L. CURRIER

Attorneys, Philadelphia Office
Antitrust Division
U.S. Department of Justice
The Curtis Center, Suite 650W
170 S. Independence Mall West
Philadelphia, PA 19106
Tel. No.: (215) 597-7401

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UNITED STATES' PROPOSED VOIR DIRE QUESTIONS

The parties have submitted a written questionnaire for the Court's consideration.

Pursuant to Fed. R. Crim P. 24(a), the United States requests that the Court supplement the previous questions, whether passed in writing or orally, with the following supplemental *voir dire* itself.

A. Summary of Charges

I will now summarize for you the charges against the defendant.

This is a criminal case in which an Indictment has been returned against Mitsubishi Corporation. Mitsubishi is a Japanese corporation which does business throughout the world.

The Indictment charges that Mitsubishi Corporation violated Section One of the Sherman Act by aiding and abetting a conspiracy among certain major graphite electrode manufacturers to suppress and eliminate competition by fixing the price of graphite electrodes sold in the United States and elsewhere. In other words, the crime alleged here is that this defendant helped a conspiracy among certain major graphite electrode manufacturers in which the manufacturers had agreed on the prices charged to customers buying graphite electrodes.

B. Aiding and Abetting

Under the law a defendant can be held responsible for committing a crime even if the

defendant only gave assistance and didn't know all of the details of the criminal activity. This is called aiding and abetting. How many of you have heard that term? Do any of you have a problem with the general concept of holding a defendant responsible for a crime if there is evidence that the defendant helped in some way to make the crime succeed? Would any of you require the Government to prove that the defendant was involved in every aspect of the crime?

At the end of the evidence the Court will give you instructions that include a definition of aiding and abetting. The Court's definition of that charge may or may not fit your own notion of what it means to help others commit a crime. However as jurors you are required to accept and to use the definition the Court gives you in reaching a verdict. Would any of you have a problem setting aside your own definitions or ideas about what it means to aid and abet a crime? If you should disagree with the way the law defines aiding and abetting can you agree to set aside your personal opinions and use the definition the Court gives you to reach a verdict?

C. Corporate Defendant

As you know the defendant in this case is Mitsubishi Corporation. Some of you may be familiar with cases in which a corporation faces criminal charges. Under the law a corporation is responsible for the conduct of its employees if they are acting within the scope of their authority. Do any of you have a problem holding a corporation responsible for the conduct of its employees when they are acting within the scope of their employment? Do any of you feel differently about that when the conduct of the employees involves criminal activity?

Do all of you understand that the Government need only prove that one or more of Mitsubishi's employees was involved in criminal wrongdoing? In other words, the Government is

not required to prove that Mitsubishi's top corporate officials were involved or even aware of any wrongdoing. It is sufficient if there is proof beyond a reasonable doubt that one or more of the company's employees committed a crime. Do any of you have a problem with that concept?

**D. Foreign Companies and
United States Laws**

Do any of you have any problem with the federal government enforcing U.S. price-fixing laws against foreign companies that do business in the U.S.? Do any of you think it is unfair or unnecessary to expect foreign companies doing business in the U.S. to follow U.S. laws against price fixing?

E. Economic Crime

Do any of you believe that economic crimes, such as conspiracy to fix prices, are any less serious than other types of criminal offenses? Do any of you have a personal opinion or belief that economic crimes should be treated any differently than other types of criminal wrongdoing?

F. Circumstantial versus Direct Evidence

There are two types of evidence that you will be asked to consider in this case; one is direct evidence and the other is circumstantial evidence. Direct evidence comes from witnesses who can describe what they saw and heard. Circumstantial evidence is testimony or a document that gives you a reasonable basis for drawing a conclusion about what happened. The Government can meet its burden to prove the defendant guilty either by direct evidence or by circumstantial evidence. Do you have any problem with that? Would any of you have a problem giving equal consideration to circumstantial evidence? Would any of you refuse to convict if proof of the defendant's guilt was based in part on circumstantial evidence?

G. Witness Credibility

There may be some conflict in the testimony of the witnesses. As a juror it will be your job to determine who you think is telling the truth. We have all had the experience of trying to decide who is telling the truth at some point in our lives, and some people find they are very uncomfortable in those situations. Does that apply to any of you? Are any of you uncomfortable about accepting the responsibility to determine who is telling the truth?

H. Religious Belief

Some people have a religious belief that discourages them or actually does not permit them to pass judgment on others. Do any of you have that religious belief? Do any of you have any philosophical views or personal opinions about making judgments of others that would make it difficult for you to serve as a juror in this case?

I. Reasonable Doubt versus All Doubt

The Government is required to produce evidence that proves the charge against this defendant beyond a reasonable doubt. This does not mean the Government must prove to you that there is no doubt of the defendant's guilt, because the law recognizes that removing all doubt would be an impossible task. Would any of you refuse to convict the defendant if the Government proves the charge beyond a reasonable doubt?

J. Interest in Outcome

Mitsubishi is accused of aiding and abetting a price-fixing conspiracy that involved UCAR, a former subsidiary of Union Carbide, and several other foreign corporations. Do any of you think you may have heard or read anything about this case, or about any related cases before you

came into this courtroom? Do any of you feel you may have a special interest in the outcome of this case? Do you have any reason to believe that you would hesitate to convict Mitsubishi of aiding and abetting the price fixing conspiracy if the Government proves that charge beyond a reasonable doubt?

K. Last Questions

Do you know or have you previously met any other members of the jury panel?

Is there any additional information that came to mind after you completed your written questionnaire which may have some bearing on your service as a juror in this case? Is there anything else we have not touched on in our questions that you think the Court or the attorneys should know about you or your opinions in selecting a jury for this case?

At the end of the this series of questions, I am going to ask that each person who has an affirmative answer to one or more of them to stand and come to the bench. Please do not rise until all of the questions have been asked.

1. Have you, any member of your family, or any of your close friends ever been the victim of a crime?
2. Have you, any member of your family, or any of your close friends ever been a witness to a crime?

3. Have you, any member of your family, or any of your close friends ever been involved personally or through the person's employer, in a civil case or investigation involving the antitrust laws or any form of fraud?

Dated:

Respectfully submitted,

ROBERT E. CONNOLLY
JOSEPH MUOIO
WENDY BOSTWICK NORMAN
ROGER L. CURRIER
Attorneys, Antitrust Division
U.S. Department of Justice
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CERTIFICATE OF SERVICE

This is to certify that on the 16th day of January 2001, a copy of the Government's Proposed *Voir Dire* Questions, has been mailed/faxed to counsel of record for the defendant as follows:

Theodore V. Wells, Esquire
Paul Weiss Rifkind Wharton & Garrison
1285 Avenue of the Americas
New York, NY 10019-6064

ROBERT E. CONNOLLY
Attorney, Philadelphia Office
Antitrust Division
U.S. Department of Justice
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