

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA *
Plaintiffs * CRIMINAL NO. 00-000
vs. *
DEFENDANT *
Defendant *
* * * * *

MOTION FOR PRODUCTION OF JENCKS MATERIAL
IN ADVANCE OF TRIAL

TO THE HONORABLE COURT:

COMES NOW co-defendant, represented by the Federal Public Defender, and respectfully STATES and PRAYS:

1. The Trial in this case is currently scheduled for March 27, 2001.
2. Federal Rules of Criminal Procedure 26.2, and 18 USC §3500, indicate that the government is not required to produce the statements of witnesses who testify on the government's behalf until the conclusion of its direct examination.
3. Notwithstanding the above, the defendant respectfully submits that the production of statements of government witnesses at trial will substantially impair the ability of Mr. defendant to adequately defend himself and to prepare an effective cross-examination. Defendant requests that the government be required to produce Jencks material at this time.
4. The purpose underlying the Jencks Act is to insure fairness in the criminal process. See Campbell v. United States 373 U.S. 487, 496-497 (1963). The request being made here has been anticipated by the Supreme Court and it is precisely for that reason that the defendants herein

make this request. United States v. Agnello, 393 U.S. 348, 356 (1969) ("It may be that in some situations, denial of production of a Jencks Act type of a statement might be a denial of a Sixth Amendment right"). Furthermore, some Circuit courts have encouraged prosecutors to disclose Jencks Act material prior to trial, stating that such pretrial disclosure constitutes a salutary practice. United States v. Campagnuolo, 595 F.2d 852 (5th Cir., 1979).

5. Additionally, authority exists for not literally applying the time dictates of the Jencks Act where there are countervailing constitutional considerations such as the denial of due process and the effective assistance of counsel in a complex case. See United States v. Narciso, 446 F. Supp. 252, 270 (E.D. Mich., 1977).

6. Strict compliance with the literal time requirements contained within the Jencks Act creates the potential for repeated recesses. This will interfere with the fair and proper administration of justice. See United States v. Golber, 336 F. Supp. 1 (D.Pa., 1971). Moreover, as the Court recognized in United States v. Narciso, supra., "an overly strict adherence to the Jencks Act raises potential deprivations of due process and effective assistance of counsel".

7. Defendant requests that this Honorable Court exercise its inherent power to require early production of Jencks Act material so as to facilitate an orderly presentation of the government's case.

WHEREFORE, the defendant respectfully requests this Honorable Court to order the government to produce Jencks material at this time. I HEREBY CERTIFY that on today's date a copy of the foregoing Motion was served on counsel for the Government, U.S. Attorney

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Guillermo Gil (Attn: Assistant U.S. Attorney Michelle Morales) by delivering it to his office at
the Federal Building, Carlos Chardón Avenue, San Juan, Puerto Rico.

In San Juan, Puerto Rico, this March 19, 2001.

Joseph C. Laws, Jr.
Federal Public Defender

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