

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 03-20577-JORDAN/BROWN

UNITED STATES OF AMERICA

vs.

GREENPEACE, INC.,
d/b/a "Greenpeace USA,"

Defendant.

MOTION FOR DISCOVERY OF BRADY MATERIAL

Greenpeace, Inc., through undersigned counsel, hereby moves pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), for the disclosure of certain exculpatory material, which the Government has refused to provide.

Specifically, Greenpeace seeks:

- (1) the full manifest reflecting all cargo being carried by the APL Jade at the time of her boarding by Greenpeace activists on April 12, 2002, bills of lading for the shipment, and any CITES documentation accompanying the shipment ; and,
- (2) copies of all recorded conversations made at the time of the boarding between and among the Government, the pilot, Greenpeace and the vessel.

Greenpeace sought this material from the Government, which did provide some extra material in response to the Greenpeace *Brady* request. However, the Government declined to produce the requested items.

The evidence sought is relevant, material and exculpatory and is therefore, *Brady* material.¹ Greenpeace is charged with a substantive violation of and with conspiring to violate Title 18 § 2279, which provides, in pertinent part, as follows:

¹ "The suppression by the prosecution of evidence favorable to the accused upon request violates due process where the evidence is material to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady*, 373 U.S. at 87.

Whoever, not being in the United States service, and not being duly authorized by law for the purpose, goes on board any vessel about to arrive at the place of her destination, before her actual arrival, and before she has been completely moored, shall be fined under this title or imprisoned not more than six months, or both.

The charges result from the boarding of the APL Jade on April 12, 2002 by two Greenpeace activists who sought to call attention to the fact that the APL Jade was carrying illegal mahogany in violation of United States and Brazilian law.²

The Indictment states that “[I]t was a further part of the conspiracy that the defendant selected the ‘M/V APL Jade’ as the target of the conspiracy based upon the defendant’s erroneous belief that the ‘M/V APL Jade’ carried a shipment of Brazilian mahogany lumber.” Indictment, Manner and Means, Paragraph 2. The Government has made the fact of whether the Jade carried mahogany an issue in this case and has contended that there was no mahogany aboard. For this reason, Greenpeace asked for the full manifest of the Jade. The Government has stated that it has provided the entire manifest, but Greenpeace has reason to believe that it has not.³ Greenpeace also seeks the bills of lading for the shipment, which will also show the nature of the cargo.

A private company which tracks and documents all cargo shipments in and out of the United States using documentation including manifests and bills of lading that it receives from U.S. Customs, the Port Import Export Reporting System, or “PIERS,” has produced a record reflecting that the Jade arrived in Charleston on April 14, 2002, two days after the incident, with a cargo of mahogany. That document is attached to this Motion as Exhibit A. Moreover, the manifest which the Government did produce reflects

² The facts leading to the boarding are set forth in Greenpeace’s Motion for Discovery on Claim of Selective Prosecution, which is being filed at the same time as this motion.

only cargo carried for APL, the company that operates the Jade. The PIERS document shows that the mahogany on the Jade was being carried for Mitsui Osk Line, another company, as it is marked “MOL.” It is not uncommon for the APL ships to carry products of other shippers. The Jade picks up Brazilian cargo that is offloaded and then reloaded in Panama.

Moreover, if the Jade carried Brazilian mahogany, the shipment would have had to have documentation under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”). At that time, mahogany was listed in Appendix III of CITES, requiring the “Management Authority” of the State of export to certify that each shipment was not acquired contrary to that State’s laws for the protection of fauna and flora.

Greenpeace is entitled to these documents to show that the Government’s claim that there was no mahogany on the Jade is wrong. Greenpeace is not conducting any fishing expedition in seeking these documents, as the PIERS document (Exhibit A) indicates that, in fact, there was mahogany on the Jade.

Greenpeace seeks the radio traffic surrounding the boarding in support of a defense of consent or apparent consent. Greenpeace activists on the scene had communications tending to show that those on the ship knew that the activists were affiliated with Greenpeace, which is known for its peaceful protest activity. The reports of interview of crew and the pilot furnished by the Government confirm that they recognized Greenpeace and were never in any fear from the Greenpeace boarders.

³ Greenpeace makes no allegation that the prosecutor in this case has acted in bad faith in

WHEREFORE, Greenpeace requests the entry of an Order requiring the Government to produce the above listed material.

DATED: October 6, 2003

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via United States Mail this 6th day of October 2003 to: Cameron Elliott, Esq., United State Attorney=s Office, 99 Northeast 4th Street, Miami, Florida 33132.

Jane W. Moscowitz

claiming that he has furnished the entire manifest.

