

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
COVINGTON**

CRIMINAL NO. 11-70-DCR

UNITED STATES OF AMERICA

PLAINTIFF

**V. RESPONSE OF THE UNITED STATES TO MOTION TO REQUIRE
PRESERVATION AND TIMELY PRODUCTION OF AGENT'S NOTES**

RONALD E. WEINLAND

DEFENDANT

* * * * *

COMES now, the United States of America, by and through counsel, and responds the motion concerning agent's notes should be denied for the reasons set forth below.

Ronald E. Weinland, the Defendant herein, seeks the preservation and production of certain agents' notes. With respect to the agent's notes of the interview of the Defendant, the motion should be denied as moot. All discovery materials and the agent's notes of the interview of the Defendant have been produced. Furthermore, the government is not required to produce Jencks Act materials at this time. *See, United States v. McCleskey*, No. CR-3-95-010, 1997 WL 1774877, at * 3 (S.D.Ohio 1997) (denying motion to preserve and produce agent's notes).

The Defendant was interviewed, with his wife, on July 2, 2008, by Special Agents Susan Palmisano and Special Agent Kevin Valentine of the Internal Revenue Service (IRS). The notes of that interview taken by each agent were provided to the Defendant on December 28, 2011. Therefore, the Defendant's motion is moot with respect to the agents' notes of the Defendant's interview.

With respect to the agent's notes of interviews of witnesses, the United States requested SA Palmisano, the case agent, preserve all such notes on December 23, 2011. IRS policies and procedures require criminal investigators to preserve their notes, and they are included in the agency's investigative materials.

The memoranda of witness interviews are not subject to discovery under Rule 16 of the Federal Rules of Criminal Procedure. At best, such memoranda may be considered Jencks Act materials. Witness interview memoranda only qualify under the Jencks Act when they reflect the statements of the witness substantially verbatim or when the witness has adopted the memoranda. 18 U.S.C. § 3500(b); *United States v. Padin*, 787 F.2d 1071, 1077-1078 (6th Cir.1986); *United States v. Nathan*, 816 F.2d 230, 237 (6th Cir.1987). Likewise, an agent's notes of witness interviews are not Jencks Act materials unless they contain a substantially verbatim recitation of the witness's statement or were adopted by the witness. *United States v. Williams*, 962 F.2d 1218, 1224 (6th Cir.1992). The

witness memoranda in this case are neither substantially verbatim recitations of the witnesses' statements nor were the memoranda adopted by the witnesses.

The United States recognizes that some witness interviews may be Jencks Act materials as to the case agent because they may contain information the case agent used to identify personal versus church expenditures. *See, United States v. Duncan*, 712 F. Supp. 124, 128(6th Cir.1988). The United States, however, is well aware of its obligations under Jencks, and will produce the Jencks Act materials in accordance with the law. *United States v. Presser*, 844 F.2d 1275, 1283 (6th Cir.1988)(Jencks Act materials cannot be compelled for production until after a witness testifies even when they contain *Brady* materials); *United States v. McCleskey*, No. CR-3-95-010(1)(3), 1997 WL 1774877, at *3.

WHEREFORE, based on the foregoing, the Defendant's motions should be denied as moot, in part, and not ripe for adjudication, in part, because the United States has no obligation to produce Jencks Act materials at this time.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On January 9, 2012, I electronically filed this document through the ECF system, which will send the notice of electronic filing to:

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