

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
NORTHERN DIVISION  
(at Covington)

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Criminal Action No. 2: 11-0070-DCR
	)	
V.	)	
	)	
RONALD E. WEINLAND,	)	<b>ORDER</b>
	)	
Defendant.	)	

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This matter is pending for consideration of Defendant Ronald Weinland’s motion to compel the United States to preserve and produce all handwritten or typed notes of government agents, attorneys, officers and other law enforcement investigators. [Record No. 20] Having reviewed the defendant’s motion and the United States’ response, the Court will address the issues presented. A reply is not needed for this purpose.

Defendant Weinland seeks the following information: (1) notes of an interview involving his wife (Laura G. Weinland) and himself occurring July 2, 2008; (2) notes of any interviews with any other persons who are or may be witnesses at trial or part of the investigation in this case; and (3) notes regarding the multi-state investigation of this matter. According to Weinland, much of the government’s case is based upon a detailed analysis of transactions classified as church versus personal expenses. He contends that the government’s determination of this classification is based upon interviews conducted with the defendant as well as other individuals associated with the church. Thus, Weinland argues that the interview notes are needed to

prepare his defense to the pending charges. While Weinland acknowledges that the government will provide copies of memoranda that its agents prepared at a reasonable time prior to trial, consistent with the Court's discovery order, his counsel asserts that such summaries may not contain all the detail included in the agents' notes. Citing *United States v. Clark*, 385 F.3d 609, 619 (6th Cir. 2004), Weinland notes that an agent's "rough notes" of an interview constitute a written record that is potentially subject to discovery and he argues that the government's obligation to preserve such materials – and its obligation to advise its agents of this obligation – is "well established by case law." *United States v. Feola*, 651 F.Supp. 1068, 1136 (S.D.N.Y. 1987) *aff'd*, 875 F.2d 857 (2d Cir. 1989) *cert. denied*, 493 U.S. 834 (1989).

In response, the United States indicates that the agents' notes of the interview with Defendant Weinland have been produced. Likewise, the government has produced the agents' interview notes of the July 2, 2008, interview with Laura Weinland. Thus, his motion seeking preservation and production of such notes is moot. Additionally, the government correctly points out that it is not required to produce Jencks Act materials at this time.

With regard to agents' notes of interviews of other witnesses, the United States has requested that the case agent preserve all such notes. Further, IRS policies and procedures require that criminal investigators preserve notes as part of the agency's investigatory materials. While these materials may constitute Jencks Act materials if they contain a substantially verbatim recitation of a witness's statement, the government represents that is not the case here. And to the extent that the subject notes contain information used by the case agent to classify personal versus church expenses, the United States has represented that the materials will be

produced when required by Jencks. Defendant Weinland has no basis to claim that the United States has or intends to destroy any materials which are the subject of his motion. Further, the Court will not ascribe such intentions to the government or its agents.

Accordingly, it is hereby

**ORDERED** that the defendant's motion to compel the preservation of materials [Record No. 20] is **DENIED** because there is no basis to assert that any materials that are the subject of the motion have been or will be destroyed. To the extent that the motion seeks to compel production of Jencks Act materials in advance of trial, the motion is **DENIED** because the United States has produced some of the material requested and is not required to produce the remaining materials at this time.

This 19<sup>th</sup> day of January, 2012.



Signed By:

Danny C. Reeves DCR

United States District Judge