

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	Case No. 1:06-CR-00394
Plaintiff,)	
)	Judge Ann Aldrich
v.)	
)	
JOSEPH SMITH, et al.,)	
)	<u>ORDER</u>
Defendants.)	
)	

Following the status conference held this afternoon, the court finds it necessary to limit the scope of evidence and argument to be presented at the final pretrial hearing on August 16, 2007, regarding defendant Joseph Smith's ("Smith") motion regarding the alleged destruction of evidence by the Catholic Diocese of Cleveland ("Diocese") [Docket No. 90]. An evidentiary hearing on such a motion, which seeks suppression of evidence and/or adverse inferences, is justified only where the movant has affirmatively demonstrated that some destruction of evidence has taken place. *United States v. Friedland*, 660 F.2d 919, 927 (3d Cir. 1981). Here, Smith has only affirmatively provided evidence of the destruction of Diocese Finance Council minutes. All of the other allegations Smith has made regarding the destruction of documents by the Diocese are premised on the inference that because the Diocese should have kept documents, and because the Diocese now claims some documents cannot be found, those documents must have been destroyed because they possessed potential evidentiary value. Such an inference is not enough to warrant an evidentiary hearing. *Id.* Therefore, the court limits the scope of testimony and argument on Smith's motion [Docket No. 90] solely to the alleged destruction of Diocese Finance Council minutes. Gerald Arnold (whom Smith's counsel conceded would not offer

any testimony concerning the alleged destruction of Finance Council minutes) is excused from appearing at the final pretrial hearing.

The court also denies defendant Anton Zgoznic's motion for reconsideration [Docket No. 115]. Despite the arguments raised in the motion, the First Amendment arguments raised in Zgoznic's motion to strike and exclude [Docket No. 106] could and should have been made prior to the deadline for pretrial motions. Alternatively, counsel should have sought an extension of the pretrial motion deadline following severance of the defendants. In any case, the motion remains untimely and the court denies Zgoznic's motion for reconsideration.

IT IS SO ORDERED.

/s/ Ann Aldrich
ANN ALDRICH
UNITED STATES DISTRICT JUDGE

Dated: August 15, 2007