

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.)	
)	

After considering the evidence and arguments of counsel at the final pretrial hearing today, along with the briefs filed by the parties, the court denies defendant Joseph Smith’s (“Smith”) motion regarding the destruction of evidence [Docket No. 90]. Regardless of what the evidence showed with respect to what documents were discarded or destroyed and why, the evidence clearly established the lack of any connection between plaintiff United States of America (the “Government”) and the alleged actions by the Catholic Diocese of Cleveland (the “Diocese”). Without bad faith, collusion or connivance on the Government’s part, there can be no relief under Federal Rule of Criminal Procedure 16(d) as Smith requests. *United States v. Wise*, 221 F.3d 140, 156 (5th Cir. 2000); *United States v. Loud Hawk*, 628 F.2d 1139, 1146-48 (9th Cir. 1979); *United States v. Higginbotham*, 539 F.2d 17, 20-22 (9th Cir. 1976). The court finds that the Government had no role or knowledge in the acts of Mr. O’Donnell or anyone else at the Diocese in the alleged destruction of Diocese Finance Council minutes, and denies Smith’s motion accordingly.

Defendant Anton Zgoznic’s (“Zgoznic”) motion in limine [Docket No. 104] is granted in part and denied in part. The court finds that Government exhibits 14 and 147, related to Zgoznic’s personal income and income tax returns, are not sufficiently relevant to the charges at hand and pose too great

a risk of undue prejudice. The court therefore grants Zgoznic's motion in part and excludes Government exhibits 14 and 147. However, the court finds that Government exhibits 28, 29, 30, 35 and the summaries of invoices and payments from the Diocese and its constituent entities to the Zgoznic Entities for outsourcing are sufficiently relevant to warrant introduction at trial, and Zgoznic's motion in limine is denied so far as it seeks exclusion of those exhibits.

Finally, the Diocese has filed a motion to quash the subpoenas issued by Smith on August 3, 2007 and Zgoznic on August 6, 2007 seeking certain records related to the hiring of, the services performed by and the payments made to the Zgoznic Entities by and for the Diocese [Docket No. 103]. The decision to quash or modify Smith and Zgoznic's subpoenas is left to the court's discretion, and will be upheld so long as the decision is not clearly arbitrary or without support in the record. *United States v. Hughes*, 895 F.2d 1135, 1145 (6th Cir. 1990) (citations omitted). The court finds that compliance with the subpoenas would be oppressive and unreasonable, given the time and energy that would be required of the Diocese to comply, and the lateness of these subpoenas. The defendants have been on notice since August 2006 that the Government intended to prove that the hiring of the Zgoznic Entities was at Smith's direction alone, the services performed by the Zgoznic Entities were unnecessary or inferior, and the payments to the Zgoznic Entities were excessive and unnecessary; either or both of the defendants could have, and should have, requested the documents sought far earlier. For those reasons, the court grants the Diocese's motion to quash Smith and Zgoznic's subpoenas.

IT IS SO ORDERED.

/s/ Ann Aldrich
ANN ALDRICH
UNITED STATES DISTRICT JUDGE

Dated: August 16, 2007