UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

UNITED STATES OF AMERICA	)	Criminal No.: H-97-93
	)	
v.	)	Violations:
	)	
MARK ALBERT MALOOF,	)	15 U.S.C. § 1
	)	18 U.S.C. § 371
Defendant.	)	FILED 6/18/97

UNITED STATES' RESPONSE TO DEFENDANT'S MOTION FOR RETENTION OF AGENT'S AND PROSECUTOR'S ROUGH NOTES

The United States of America, through its undersigned attorney, hereby responds to Defendant's Motion for Retention of Agent's and Prosecutor's Rough Notes. In his motion, the defendant requests that the Court order the attorneys and investigative agent for the United States in this case to retain all rough notes of witness interviews in connection with the investigation and trial of this case. Def. Mot. at 1.

On June 6, 1997, the government advised defense counsel that the government attorneys have preserved all of their notes pertaining to this investigation and will continue to do so through the trial of the defendant. Additionally, the government attorneys have directed that the agents of the Federal Bureau of Investigation, who assisted with the investigation, to retain their notes pertaining to this investigation through the trial of the defendant. Therefore, defendant's Motion for an order is not needed and should be denied.

Moreover, while the government has complied with the defendant's request for the preservation of rough notes, the government asserts that this information is specifically exempted from disclosure pursuant to Fed. R. Crim. P. 16(a)(2), See also Hickman v. Taylor, 329 U.S. 495, 511, 67 S.Ct. 385, 393 (1947); United States v. Pierce, 893 F.2d 669, 675 (5th Cir. 1990); United States v. Friedman, 593 F.2d 109, 120 (9th Cir. 1979), and do not otherwise constitute discovery materials subject to disclosure. See, e.g., United States v. Newman, 849 F.2d 156, 160 (5th Cir. 1988); United States v. Martin, 565 F.2d 362, 363 (5th Cir. 1978); United States v. Gates, 557 F.2d 1086, 1089 (5th Cir. 1977), cert. denied, 434 U.S. 1017 (1978).

Accordingly, because the government has represented its intention to preserve all of the notes pertaining to the investigation, and because the defendant's request encompasses information not subject to disclosure, the motion should be denied as moot.

Respectfully submitted,

/S/

MARK R. ROSMAN
Attorney-in-Charge
Florida State Bar No. 0964387
U.S. Department of Justice
Antitrust Division
1601 Elm Street, Suite 4950
Dallas, Texas 75201-4717
(214) 880-9401

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UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. H-97-93
	)	
MARK ALBERT MALOOF,	)	
	)	
Defendant.	)	

ORDER

Upon consideration of the United States' Response to Defendant's Motion for Retention of Agent's and Prosecutor's Rough Notes,

The Defendant's Motion is hereby DENIED as moot.

DONE AND ENTERED THIS ____ day of _____, 1997.

_____
United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the United States' Response to Defendant's Motion for Rentention of Agent's and Prosecutor's Rough Notes and proposed Order was sent via Federal Express this _____ day of June 1997, to:

J. Mark White, Esq.
White, Dunn & Booker
1200 First Alabama Bank Building
Birmingham, AL 32503

Albert C. Bowen, Esq.
Beddow, Erben & Bowen, P.A.
Second Floor - 2019 Building
2019 3rd Avenue, North
Birmingham, AL 35203

/S/
MARK R. ROSMAN
Attorney-in-Charge
Florida State Bar No. 0964387
U.S. Department of Justice
Antitrust Division
1601 Elm Street, Suite 4950
Dallas, Texas 75201-4717
(214) 880-9401