

ANCHORAGE POLICE DEPARTMENT



BUREAU BULLETIN



LEGAL BULLETIN NO. 4

November 1, 1977

THE RETENTION OF FIELD NOTES

Reference: United States of America
v.
James Michael HARRIS

United States
Court of Appeals
for the
Ninth Circuit

September 23, 1976

FACTS:

Early one morning, a call was made to the Federal Building in Seattle, Washington. The caller threatened to bomb the building. The call was traced to the residence of HARRIS. Witnesses at the residence of HARRIS indicated he was home at the time the call was made. At trial, the defendant took the stand and denied being home at the time the call was made: he stated he had been out drinking. A FBI agent then testified that he had interviewed HARRIS on the afternoon of the event and HARRIS had admitted to being at his residence at about the time the call was made and stated he had attempted to call his mother, but made no bomb-threat call.

There was a conflict between what time the agent said the defendant told him he was at the house and what the defendant testified. The agent testified that he had taken "rough notes" during the interview and after doing his report he destroy the notes. The defendant was convicted and appealed to the Ninth Circuit Court of Appeals.

ISSUE:

Should the FBI agents keep their "field notes" and, if so, are they evidence?

HELD: Yes.

REASONING:

1. Notes taken by FBI agents in interviews either with prospective government witnesses or accused constitute potentially discoverable material.
2. Disposal of potentially producible materials (field notes) amounts to an usurpation of the judicial function of determining what evidence must be produced in a criminal trial.
3. Field notes must be preserved and the judge will determine if they are evidence the agent cannot make the decision to destroy evidence.

4. The Jencks Act (18USC3500) requires the government to produce any previously made statement once that person testifies.

NOTES:

In years past, it has been left to the discretion of the individual officer to keep or destroy his field notes once his report was completed. In view of this case, we should re-evaluate our position. Interestingly enough, because of the witnesses, the conviction was upheld. However, all through this opinion the FBI and their policy of destroying notes is criticized by the court who blamed the FBI for destroying evidence. The court says it will decide what is and what is not evidence--not the FBI.

The Alaska Supreme Court has not as yet addressed itself to this issue. Alaska is one of the states that the Ninth Circuit Court of Appeals handles. Criminal Rule 16 orders that all statements be furnished to the defense. The rule also not only covers the prosecuting attorney but "any others who have participated in the investigation," which includes the police.

This opinion cites Ogden vs U.S., 323 F2 818 (Ninth Circuit 1963) which deals with notes that were destroyed: but they were destroyed after a statement was signed. They held in that case that it was permissible to destroy the notes because the statement was signed and consistent.

It is suggested that field notes be retained of all witnesses and/or defendants unless the person has signed a statement. The department serial number should be placed on the notes. When the interview is completed, the witness/defendant should be requested to review your notes and either initial them or put their signature on each and every page.