

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

UNITED STATES OF AMERICA

PLAINTIFF

v.

CRIMINAL ACTION NO. 3:08CR-119-S

ROBERT FELNER

DEFENDANT

ORDER

This matter is before the court on motion of the defendant, Robert Felner, for an order requiring the United States to disclose Jenks Act materials thirty days prior to trial.

The established rule in the Sixth Circuit is that the United States “may not be compelled to disclose Jenks Act material before trial.” *United States v. Presser*, 844 F.2d 1275, 1283 (6th Cir. 1988). The defendant seeks early disclosure despite this authority, requesting that the court exercise its discretion for purposes of judicial efficiency and fairness.

In support of his request, Felner urges that because this case involves “the intricacies of interstate fraud and taxation, complex areas of law,” and also “entails a substantial amount of discovery.” Memorandum in Support(DN 54) p. 4.

The court believes that early disclosure of Jenks Act material might alleviate the concerns raised by the defendant. The fact that the United States has produced over 20,000 pages of documents in discovery makes for intensive pretrial work.

Felner raises the possibility of lengthy delays and/or continuances to seek out rebuttal witnesses. This is merely a possibility. The court may not, however, order pretrial Jenks disclosures under existing Sixth Circuit precedent even if such disclosures would make the trial smoother. Further, the defendant is not entitled to a witness list for the United States. *See, United States v. McCullah*, 745 F.2d 350, 353 (6th Cir. 1984).

The United States encouraged, however, to voluntarily provide some or all of the Jenks Act materials in advance of the witnesses' testimony.

For the reasons set forth herein and the court being otherwise sufficiently advised, **IT IS HEREBY ORDERED AND ADJUDGED** that the motion of the defendant, Robert Felner, for pretrial disclosure of Jenks Act materials is **DENIED**.

IT IS SO ORDERED.