Tarnpol v. FBI et al, 9/30/77 HW 3/18/78

While Judge Richey's decision in this case would seem to be restrictive and to be against some of our positions in opposition to FBI and other withholdings from us I believe that read properly the decision favors us in all cases and is more useful among some judges because Richey has taken such conservative positions in FOIA cases.

We have faced no 7(A) problems but if we do this can help by requiring in camera inspection of such claims.

We have never made a blanket claim that the names of all agents have to be disclosed.

We are not in any case in a position where it can be alleged that we seek information out of "curiosity" only. There is no case, including my PA requests, that is not "historical" in the sense the word is used, or is of public interest, whether or not of personal interest. In this area we are fortunate because the claim to "curiosity" is one I think we can now expect from the government.

In effect this decision requires the disclosure of agents' names except if the disclosure is sought for "curiosity" satisfaction only.

In historical cases and in case that are pursued for substantial reasons the names of agents is important and relevant information.

I want to remind you of something you may want to remember if this comes to an issue, as it can in 1996 and 226 - before there was an FOIA, Hoover and DJ and the White House all decided to withhold nothing. There is no Archives record of which I know in which the name of an agent is withheld, or the name of a witness interviewed. I recall no single FBI record with any excision. There were later some by the CIA, after FOIA.

What this means is that after FOIA, DJ and FBI sought to misuse the Act as a means of withholding what it had previously not withheld. Or misuse of the Act for withholding when it requires disclosure.

I think this language is quotable in the worksheets case, the indexing part.

In the absence of any list or inventory in the FBI's JFK releases, which is has attributed to FOIA requests, there is no list or inventory. As I have told you there also is no basis for appealing withholding of any individual record or part of a record because there is no way of knowing the exemption claimed. As we discussed, this requires that a much larger claim be made by anyone contesting or appealing any withholding. In effect it requires what otherwise would not be required, that the appeal be made over all 100,000 pages to be sure that the pages of interest are included. Here I am saying that the FBI's deliberate failure to prepare an adequate list or inventory as it was processing the records when it knew the requirements of the Act and that its withholdings would be disputed is a deliberate attempt to frustrate the Act by making all that followed both cumbersome and costly in time and money. It is a means of making appeal impossible, or destroying the independence of the courts under the Act, if the government takes the line it has in 1996, that doing other than it has done is not too costly. I think that in 1996 and worksheets we should take the line that the government did what it did deliberately, from wrongful purposes, knowing it to be wrongful, and should not be allowed to be the beneficiary of its own misconduct. I think that if this is developed effectively enough it may be possible to force them to agree voluntarily to a partial replacement of records in which there are improper withholdings, those they knew were improper when they made them.