

Court Rules FBI Must Keep Notes

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FBI agents must keep their handwritten notes of all interviews conducted in the thousands of cases investigated by the bureau, a Federal appeals court here has ruled.

Failure to keep the notes in the future, for possible surrender to defense attorneys at trial, may result in dismissals of cases, the U.S. Court of Appeals warned.

The ruling is the first in any U.S. circuit court to require the FBI to keep such raw materials of its investigations. The FBI had argued vigorously that there was no legal requirement that such material be kept, that the information contained in the cryptic notes is subsequently transcribed in a fuller typed form on official FBI reports that already are turned over to defense attorneys, and that retention of such materials would be an administrative burden on the agency.

The three-judge appellate court, in an opinion written by U.S. Circuit Judge J. Skelly Wright, rejected all three arguments in turn. It found:

— Administrative burden is no excuse for "government actions infringing upon important rights of individuals."

— There is no assurance that the FBI's official "302" reports based on the notes are accurate.

— "... (the) government's argument asks us to assume too much; it asks us to believe that the FBI never makes a mistake, and that, therefore the 302 reports always embody accurately everything con-

tained in the notes," Judge Wright said.

He said that agents can make honest mistakes in transcribing notes the notes, or that they could intentionally lie in an attempt to be overzealous investigators.

The judges issued the ruling in a local bank robbery case in which the issue of the FBI's notes was raised on appeal. The judges refused to reverse the convictions in that particular case, saying the evidence of guilt against the three defendants was overwhelming.

Also, they said the FBI in this case "should not be judged too severely for acting in reliance... on the many cases in other circuits ostensibly approving the FBI's practice of destroying the notes."

Agreeing with Wright were U.S. Circuit Judge Spottswood Robinson III and U.S. District Judge C. Stanley Blair of Maryland.

The judges did not indicate there was any reason to believe the FBI had distorted its notes or made any mistakes in transcribing them in this particular case.

An FBI spokesman said the agency had made no decision yet on whether to appeal the ruling to the U.S. Supreme Court. The appellate court's findings were issued late Monday.