plish a forbidden result," the court reasons, and where there is an intent to injure a competitor's interstate business the "case falls clearly within the per se unreasonable category." (C. Albert Sauter Co., Inc. v. Richard S. Sauter Co., Inc., 10/5/73)

A pharmaceutical packaging firm charged several ex-employees who had formed a competing company with conspiring to injure its interstate business by: (1) enticing away its key personnel; (2) using a deceptively similar corporate name; (3) appropriating its job orders, bid estimates, and specifications; and (4) encouraging its employees to act in violation of their fiduciary duties.

The ex-employees claimed that no Sherman Act violation could be found unless it was demonstrated that a "public injury" resulted. The court, however, concludes that "whenever a plaintiff can prove by a preponderance of the evidence that defendant conspired, agreed, or had an understanding to engage in acts of unfair competition with the intent to injure the plaintiff as a competitor by impairing the plaintiff's ability in interstate commerce, then defendant has violated Section 1 of Sherman Act." (Page 2234)

FBI's Kennedy Assassination File Is Exempt From Public Disclosure

Last March, the U.S. Court of Appeals for the District of Columbia Circuit opened the door for a new series of independent investigations into President Kennedy's assassination. It held that the Federal Bureau of Investigation's file on the assassination was not exempt from compelled disclosure under the Freedom of Information Act, 5 U.S.C. § 552(a)(3). Following a rehearing en banc, the court vacates the panel decision and finds that the records fall within the exemption for "investigatory files compiled for law enforcement purposes." 5 U.S.C. § 552(b)(7). (Weisberg v. U.S. Dept. of Justice, 10/24/73)

After reviewing the scope and detail of the FBI's investigative effort, the court finds "beyond peradventure," that the files were investigatory in nature and were compiled for law enforcement purposes. This is so, the court continues, despite the fact that, at the time the investigation was undertaken, presidential assassination was not a federal crime. "We need only surmise the consequences to law enforcement if any person, knowing full well that an investigation has been conducted, can ask some federal court to compel disclosure of the bureau's files."

The Attorney General, the court continues, is authorized to refuse disclosure under the investigatory file exemption if he determines that the files were compiled for law enforcement purposes. This, however, "does not finalize the matter," since there remains the judicial function of determining whether his classification is proper. "Here the record overwhelmingly demonstrates how and under what circumstances the files were compiled and that indeed they were 'investigatory files compiled for law enforcement purposes.'"

Only one dissent is noted—by one of the two judges who made up the panel majority. The other member of the panel majority was a Federal district judge sitting by designation, so that he did not sit on the en banc court. (Page 2236)

Police Can Record Phone Call Without "Interception"

What's an interception? In football the answer is simple; in the esoteric world of electronic surveillance, it's not. The Arkansas Supreme Court finds a noninterception by an officer who both overheard and recorded a conversation that incriminated a gambling suspect. The secret of this officer's success in achieving such a fruitful noninterception is the same as the secret of the football player who intercepts a well-thrown pass: he placed himself in the position of the intended receiver. (Flaherty v. State, 10/1/73)

During the execution of a warrant to search the defendant's residence for gambling evidence, the officer answered incoming calls from prospective bettors and recorded them. The tape recording was properly admitted, the court holds, for evidence obtained in this way is not the result of an "interception" as defined by 18 U.S.C. 2510, the 1968 Amendment to Section 605 of the Federal Communications Act.

Such evidence of conversations was considered admissible under Section 605, even where the answering officer impersonated the person to whom calls were directed. This distinction between merely answering a phone and acquiring evidence about a call "through the use of any electronic, mechanical, or other device" survives in 18 U.S.C. 2510. (Page 2236)

Supreme Court Rejects Vagueness Challenge To Florida's Sodomy Law

A Florida Supreme Court ruling that the state's proscription of the "abominable and detestable crime against nature," if applied to reach oral and anal sexual activity, is void for vagueness, Franklin v. State, 257 So.2d 21 (1971), does not affect sodomy convictions obtained prior to the court's decision. Since earlier Florida Supreme