

Notes on Evans v. Department of Transportation  
446 F. 2d 821 (C.A. 5)

The Petition for Rehearing cites Evans and Frankel as standing for the proposition that two other circuits have concluded that Congress determined that all investigatory files, not simply open files, should remain confidential. Because of your remark yesterday that you felt Evans was wrongly decided, I read it again this morning.

I note first that Evans did not state what the Petition for Rehearing says it stands for. Evans found a harm; it decided this harm outweighed the considerations in favor of disclosure:

As a matter of common sense the efforts of this Agency to investigate and take appropriate action as to the mental and physical health of pilots would be seriously jeopardized if individuals could not confidentially call facts to the attention of the Agency which might affect the safety and lives of millions of passengers. 446 F. 2d 821 at 823

\* \* \* \*

We are of the further opinion that Congress could not possibly have intended that such letters should be disclosed once an investigation is completed. If this were so, and disclosure were made, it would soon become a matter of common knowledge with the result that few individuals, if any, would come forth to embroil themselves in controversy or possible recriminations by notifying the Federal Aviation Agency of something which might justify investigation. 446 F. 2d 821 at 824.

Evans went on to assert that "The investigatory functions of the Agency may not be crippled by a requirement not commanded by the statute," which amounts to a finding that this was the harm they sought to protect against. No such specific harm can be pointed to in the spectro case.

Secondly, I note that as in Frankel, the information sought here is not sought for public purposes as contemplated in the legis-

lative history of the act, but for private desires which the petitioner wanted fulfilled. Spectro, of course, has public implications. Moreover, there is a suggestion in the statement of facts Evans has a vengeance motive. Evans files for the documents after he has been reinstated to his job and some eleven years after he lost his job. The Court puts a gloss on his motives by saying it can understand his "curiosity". But the court also notes that he has sought repeatedly to learn the identity of the "letter writers", that is, the "confidential informers". Out of mere curiosity? Why didn't he try to get them on discovery when he was trying to get his job back? Again, the Williams affidavit notwithstanding, no informant is jeopardized by the release of the spectro.

Thirdly, Judge Kaufman's statement at the top of page 8, "Nor is Weisberg the subject of any investigation," may have been put there to distinguish spectro from Evans, where the fact that Evans was the subject of an investigation gave him motives for seeking to do injury to someone.