

Mr. SCHLEI. Well, it is in a personnel or medical file, but—

Mr. KASS. What kind of file is it in?

Mr. SCHLEI. Well, it is in a file that we maintain as to each prisoner in the Federal prison system.

Mr. KASS. Is that not, in effect, called the personnel file?

Mr. SCHLEI. Well, I think that if it came down to releasing something like that, we would argue that it was a "similar matter." But I think it will be helpful if this ever becomes law if we make a little legislative history here that prisoners' records are "similar matters the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

Mr. KASS. Mr. Schlei, you referred earlier to the litigation files. How do you read the Federal Rules of Criminal Procedure and the Federal Rules of Civil Procedure, their aspects dealing with the disclosure and discovery proceedings, as far as exemption No. 3—"specifically exempted from disclosure by statute"? Would there be any connection or correlation between these two?

Mr. SCHLEI. Between the Federal criminal rules—

Mr. KASS. Or civil rules dealing with disclosure.

Mr. SCHLEI. Well, I do not know that the Federal criminal rules provide that any information in the possession of the Government is exempt from disclosure. They create a right of discovery where none existed at all before. Traditionally, as you know, there has been no discovery in criminal cases. The defendant has his fifth amendment, and the Government need not provide discovery.

Now there is a growing right to discovery in Federal criminal cases which is embodied in the Federal criminal rules, but I do not think that the Federal criminal rules specifically exempt anything in the possession of the Government from disclosure by statute.

Mr. KASS. But do they not spell out, both the Federal civil and criminal rules, the procedure for handling your litigation files?

Mr. SCHLEI. Well, perhaps that argument could be made as to the particular individual with whom you are litigating. But this statute—

Mr. KASS. You would still be litigating with a particular individual in each case.

Mr. SCHLEI. Yes, but this statute talks about any member of the public. And it would be hard to say that the criminal rules say anything about the right of a representative of the New York Times, say, or of somebody who for some reason wanted to know about the case. The criminal rules obviously deal only with an adversary situation. And I would think you would have a tough time appealing to them for protection against disclosure to somebody not even a party to a criminal case with you.

Mr. KASS. Would it not be an adversary proceeding, though in the civil sense where a person has brought suit under section (b) of this statute?

Mr. SCHLEI. Yes. Well, is it your thought that the legislative history would make clear that exemption 3 really reads in the Federal civil rules and that any disclosure as to litigation files in civil matters would have to be sought in accordance with the Federal Rules of Civil Procedure?

Mr. KASS. This is the question I am asking you.