

Mr. KASS. Would a definition of personnel rules include, in your estimation, instructions to FBI agents, or instructions to Secret Service agents, as exempt from disclosure?

Mr. MOLLENHOFF. I think those should be exempt.

Mr. KASS. They should be exempt?

Mr. MOLLENHOFF. Yes. I don't think that that particular area is something that we should want to get into. The only time that that should be gone into is extraordinary circumstances where a proper committee of Congress would feel there is something wrong with the way it is being handled.

Mr. KASS. But as to the relationship between the executive and the public, they should not be given even that information?

Mr. MOLLENHOFF. No.

Mr. KASS. Exemption No. 6 states: "Personnel and medical files and similar matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." It was objected to by the Counsel for the Treasury Department. He objected to the word "clearly."

Do you feel, as a lawyer, that the word "clearly" is a problem?

Mr. MOLLENHOFF. It is a problem for them, because they want it fuzzily, so they can put on any kind of interpretation they want to. This is like saying the burden of proof is on them. That means something in the law, and they don't want the burden of proof. They want a nice, fuzzy word that they can interpret as they see fit.

I think "clearly" should stay in there, and I don't care what the Treasury Counsel says. I understand his problem. But it is not a problem that involves the public interest.

Mr. KASS. In reference to exemption No. 5, on inter-agency and intra-agency memorandums or letters dealing solely with matters of law or policy, many agencies have objected that they cannot clearly, if you will, separate on the one hand, those memorandums dealing solely with fact, and on the other hand those memorandums dealing solely with matters of law or policy outside the public reach.

How would you interpret that?

Mr. MOLLENHOFF. I think there is some question in my mind about putting questions of law and policy.

The idea here is that these agencies, dealing with the public, set their policy out so that the public knows what they can depend upon, and that whatever decisions they make are decisions that are made upon what is clearly published in the Federal Register, clearly available to the person who has any business with the Government.

There may be unusual circumstances which I can't think of offhand, where you don't put out the legal opinion.

I think that the business of covering legal fines gives them much too broad a sphere. When you go back to the tax scandal cases, you find legal opinions within the agencies were the whole root of the evil. They were ruling one way in one legal opinion and another way in another legal opinion, within a period of a few weeks or a few months.

Of course, I am getting into an area here where I think we are covered by tax laws. We are denied access to tax return information under section 55, and the legal opinion dealing with specific cases. That comes under another exception as specifically set out in law.