

Prisoner can use FOIA to find out about snitch

By John Roemer
Daily Journal Staff Writer

A Mill Valley man dubbed "the acid king," who is serving life without parole in federal prison for producing LSD by the kilo, can force the government to release information on the informant who testified against him, a 9th U.S. Circuit Court of Appeals panel held Wednesday.

The decision for the first time spelled out how a confidential informant's status is deemed "officially confirmed" for Freedom of Information Act disclosure purposes. *Pickard v. U.S. Department of Justice*, 2011 DJDAR 11276.

"The court confirmed that the goal of FOIA is to make as much information about how the government operates as public as possible," said Jennifer Lynch, a staff attorney at the Electronic Frontier Foundation, a free speech advocacy group that monitored the case.

The panel voted 3-0 to reverse U.S. District Judge Charles R. Breyer of San Francisco. It ordered the government to take the next FOIA procedural step: Production of an index of the responsive material it possesses, along with any arguments it cares to make about why specific items may be exempt from FOIA disclosure.

William Leonard Pickard drew fame in 2000 when authorities found his clandestine lab and 41 kilos of lysergic acid diethylamide at a decommissioned missile site in Kansas. The Drug Enforcement Administration called it the largest LSD lab seizure in its history and linked Pickard's arrest and the subsequent drop in the drug's availability to a sharp decline in LSD emergency room admissions.

Pickard was convicted and sentenced in 2003 on conspiracy and possession charges. From behind bars, he has since sought to learn from the government the criminal history of his former associate Gordon Todd Skinner, who testified for the prosecution at his trial, and to find out whatever rewards or inducements Skinner received.

Drug Enforcement Administration agents stonewalled, submitting a so-called Glomar response in which they refused to confirm or deny Skinner's informant status. The

term arose when federal courts OK'd the CIA's refusal to acknowledge its connection to a spy ship named the Hughes Glomar Explorer. *Phillippi v. CIA*, 546 F.2nd 1009 (D.C. Circuit 1976).

Pickard sued and Breyer granted summary judgment to the government, holding that Skinner's identity as a confidential informant had not been "officially confirmed" within the meaning of the FOIA statute.

On the contrary, wrote Circuit Judge Barry G. Silverman for colleagues J. Clifford Wallace and Richard C. Tallman. At Pickard's criminal trial, prosecutors elicited testimony from Skinner and from DEA agents regarding Skinner's acts as a confidential informant.

That made it official, the panel held.

"The revelation of Skinner's identity as an informant was not the product of an unofficial leak, nor was it improperly disclosed in an unofficial setting by careless agents," Silverman wrote.

The government's argument that it should be able to withhold on Glomar grounds information about an agent after he has been unmasked in open court cannot prevail, he added. "We cannot abide such an inconsistent and anomalous result."

Kim S. Zeldin, a Liner Grode Stein Yankelevitz Sunshine Regenstreif & Taylor LLP litigation partner who represented Pickard on his appeal, said her client hoped his FOIA request could help his case. "He wanted information to show he had been set up by an informant who was not to be believed, with a view to a further appeal," Zeldin said.

She pointed out that Skinner is also serving a life term for kidnapping and assault with a dangerous weapon. She blasted sentencing laws that gave Pickard a similar sentence for manufacturing drugs. "The justice system doesn't seem fair in that regard," she said.

A spokesman for U.S. Attorney Melinda L. Haag of the Northern District, whose office defended Pickard's appeal, declined to comment.

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