

Rule 6(e) restricts the disclosure of information *actually revealed* in the confidence of the grand jury chamber. This prohibition, however, does not actually reach *other* information in the possession of law enforcement entities, such as FBI “Form 302” witness interview records, documents obtained in response to search warrants, “lead” information acquired from sources, and so forth. Even during the most secretive grand jury investigation, in other words, there is a huge amount of information that can be shared with intelligence officials without running afoul of Rule 6(e). (Such information may be highly sensitive, of course, but protecting sensitive sources and methods is hardly something with which the Intelligence Community lacks experience.)

Sadly, however, Rule 6(e) increasingly came to be used simply as an excuse for *not* sharing information – leaving vital collections of *shareable* information about international terrorist groups off-limits to IC intelligence analysts. For years, it was routine FBI and DOJ practice to respond to virtually *any* Intelligence Community requests for information with the answer that “Rule 6(e)” prevented any response. As two frustrated NSC veterans describe it,

“Rule 6E [sic] is much more than a procedural matter: it is the bulwark of an institutional culture, and as Justice Department lawyers readily admit, it is used by the Bureau far more often than it should be. It is one of the Bureau’s foremost tools for maintaining the independence that the FBI views as its birthright.”¹¹⁶

¹¹⁶ Benjamin & Simon, *supra*, at 227.