

5 in F.B.I. Inquiry Quit Investigation In Dispute With Bell

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WASHINGTON, Dec. 7—The five lawyers conducting an investigation of alleged burglaries, illegal wiretapping and mail opening by the Federal Bureau of Investigation have asked to be removed from the case because of a "disagreement" with the Attorney General over whether new indictments should be sought at this time, the Department of Justice said today.

In a brief statement issued after a luncheon with reporters, Attorney General Griffin B. Bell said that the five-man group from the civil rights division, which has been investigating alleged wrongdoing by agents from the bureau for some 18 months, had asked to be "relieved of the responsibility" for continuing the inquiry over a "disagreement" in prosecution strategy with the Attorney General.

Under questioning by reporters, Mr. Bell said the lawyers disagreed with his plan to bring the case of a former supervisor in the bureau's New York field office to trial before seeking new indictments.

This is the first time in the memory of the Washington legal community that a Federal prosecution team had resigned from a case as a unit. Sources familiar with the case said that the lawyers felt

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it was an injustice for the Government to prosecute one relatively low-level bureau official for practices that had been widespread and approved up through the bureau's chain of command.

J. Stanley Pottinger, who was the Assistant Attorney General in the civil rights division when the investigation began, said in an interview that he "hoped the Government does not try John Kearney alone." He said that it would be wrong to prosecute Mr. Kearney if those "really responsible for the policy" were not brought to justice.

Mr. Bell said of the prosecution team, "They are fine young men." But he said they had told him they could not continue the case unless he followed their recommendations to indict other bureau officials.

The case is now under the direct supervision of Assistant Attorney General Benjamin R. Civiletti of the criminal division and Drew S. Day of the civil rights division, until a new prosecution team is picked. The five lawyers are staying on the case during the transition, the department said.

Earlier this year the prosecution team prepared a report, signed by its chief, William Gardner, a veteran lawyer in the civil rights division, recommending that the Government seek indictments against six present or former bureau officials, including the former agent indicted, John J. Kearney, 55 years old, who was the supervisor of a fugitive hunting squad that operated in the New York field office. He lives in Simsbury, Conn.

The others on the list were Wallace J. La Prade, an assistant director of the bureau who now heads the mammoth New York field office; two other assistant directors, Andrew J. Decker and James Ingram, and two former "special agents in charge" of intelligence operations in the New York area, Arbor Gray and John F. Morley.

Bell Approved One Indictment

Mr. Bell approved only an indictment against Mr. Kearney. He was indicted in April on charges that agents under his direction had illegally opened mail and tapped telephones while seeking radical anti-Vietnam war fugitives in the early 1970's, particularly members of the Weather Underground organization.

Mr. Bell has said on several occasions since then that it was his "strategy" to take the Kearney case to trial, continue the investigation, and if the Kearney prosecution were successful, to bring additional indictments.

But sources familiar with the investigation said that Mr. Bell had approved the Kearney indictment without a full under-

standing of the importance of the case and then, surprised by the outcry from friends of the bureau, had grown cautious about prosecuting any other agents or former agents.

Moreover, these sources said, even routine criminal cases in New York's Southern District where this case was brought take months and often years to process through the courts. Mr. Kearney's case is regarded as a complex test of the police powers of the Government in national security matters and could take years.

Mr. Bell has consistently said that he wants to trace the investigation up the ladder to find out if J. Edgar Hoover, the late director of the bureau, or other former top bureau officials, or Department of Justice officials, had approved the burglaries and other alleged improprieties. Only yesterday, Mr. Bell told The Los Angeles Times in an interview that the investigation had broadened to include the Nixon Administration White House.

He has also said that though he would not approve further indictments at this time, he would not let the Justice Department forfeit a prosecution simply because the statute of limitations had been allowed to run out on the case.

Despite Mr. Bell's contention that there is an active investigation, several responsible departmental sources said that there was almost no activity on the case because Mr. Bell and the prosecutors were "frozen" in their dispute. Senior officials, speaking for Mr. Bell, categorically disputed this and said unnamed witnesses had been interviewed by Mr. Civiletti and other officials in the past several weeks.

At this juncture there is no public evidence that authority for the alleged lawless acts of bureau agents came from any higher than the bureau's top echelon. Mr. Bell told reporters that the following three trails were being pursued on the burglaries in addition to the possible involvement of the Nixon White House:

¶ Whether the bureau took the actions on its own.

¶ Whether bureau officials authorized the actions without Mr. Hoover approving or knowing about them.

¶ Whether Mr. Hoover, in the case of the radical antiwar movement, made an exception to his own rule against what were called "bag jobs," and secretly authorized them.

William Sullivan, formerly the No. 3 man in the bureau, said in a recent interview that he had told a Federal grand jury in the case that Mr. Hoover authorized him to use any means to apprehend antiwar radical fugitives. Mr. Hoover died on May 2, 1972 and Mr. Sullivan was killed in a hunting accident last month.

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