

Agent Admits Removing Files

Judge Won't Dismiss Indictments of FBI Trio

By Allan Frank

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Despite the first public admission by an FBI agent that he had lifted files allegedly under guard in a case against his three former bosses, Chief U.S. District Judge William B. Bryant yesterday declined to overturn the indictments of the three high-ranking bureau officials.

Following a two-day hearing on defense allegations that the loss by the Justice Department of 1,527 files amounted to the denial of crucial documents to the defense, Bryant, without explanation, rejected the request for dismissal of the indictments.

Former FBI acting director L. Patrick Gray III, former acting associate director W. Mark Felt and former assistant director for domestic intelligence Edward S. Miller contend loss of the documents means evidence they believe would be beneficial to them is no longer available.

They are charged with conspiring to violate the rights of friends and relatives of the Weather Underground by authorizing illegal break-ins, wiretaps and mail openings during 1972-73.

BRYANT'S DECISION followed several hours of testimony during which he became increasingly exasperated with what he said he considered to be repetitious questioning of witnesses by defense attorneys.

The questioning lost its sting only when Robert Shackelford, former chief of the domestic intelligence division section known as IS-2 (Internal Security-2) began testifying.

Shackelford, who was identified in court papers filed by the prosecution last month as the person who destroyed 47 files now missing in the case, said he had retained until mid-1978 documents he had taken from his own domestic intelligence files in

October 1976 that might have helped his defense had he been prosecuted.

Until he testified yesterday, Shackelford had never confirmed the Justice Department claim he had taken the documents sometime after he was transferred out of the domestic intelligence division because he was a potential target of the investigation.

When Shackelford was questioned by Justice Department trial attorney Francis J. Martin about whether he had taken documents because he felt the files "might be exculpatory to yourself and others," Shackelford replied, "I would say the material I retained was historical in nature and could possibly be of some benefit to me."

SHACKLEFORD, who Attorney General Griffin Bell has indicated will not be prosecuted, added that his motive was not to destroy materials which might have been used against him in court for his role as head of the section running FBI operations in the search for Weather Underground fugitives.

He testified that the internal security section he headed was being dismantled and he went through the documents and instructed his secretary, Pauline C. Nommensen, to have the ones he did not take destroyed because he was "concerned . . . the material was highly classified."

Nommensen testified that Shackelford had not ordered her to destroy the documents, which he examined about two months after being removed from his job, but that she had overseen two young men who took the documents and placed them in bags to be destroyed.

The secretary's testimony also supported prosecutors' assertions that the material destroyed consisted largely of copies of files that remain in existence and are available to the defense.