

Lawyer Believes FBI Break-ins May Have Been OK'd by Former Attorneys General

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WASHINGTON—Lawyers defending FBI agents who may be indicted for illegal break-ins hope to prove that extralegal intelligence methods were authorized at the highest levels of the Justice Department, attorney Edward P. Morgan said Friday.

Morgan, who was hired by the Society of Former FBI Agents to coordinate the defense of agents caught up in the widening probe of so-called "black bag jobs," said ultimate responsibility appeared to reach as high as former attorneys general.

"We may very well find that the authorization goes into the Department of Justice, to the attorney general and perhaps to members of certain congressional committees," Morgan said in an interview.

"It would not be an uncomplicated trial," he added. "All the facts would have to hang out."

Morgan declined to name the attorneys general he believes authorized extralegal intelligence techniques. But Nicholas deB. Katzenbach, Ramsey Clark and John N. Mitchell headed the Justice Department during the period under investigation.

Morgan said defense lawyers could use the "discovery" procedure of the federal courts to force the FBI and the Justice Department to divulge all records relating to FBI burglaries to obtain information.

Court rules permit defendants in criminal cases to obtain all relevant records that might be in the hands of the prosecution. In this case, all FBI files relating to break-ins would be covered and presumably would have to be made available.

The Justice Department has acknowledged it is investigating burglaries that have been committed by FBI agents since 1966 when the late director, J. Edgar Hoover, called a stop to the illegal procedure.

FBI Director Clarence M. Kelley has said there have been "a limited number" of break-ins since 1966.

Sources familiar with the probe have said a federal grand jury in New York may be asked next month to begin considering indictments against present and former agents. The sources said the investigation was centered in New York but might spread into other communities.

Morgan said defense strategy would be based on an opinion of the U.S. Court of Appeals in the District of Columbia, which last May reversed the convictions of Watergate figures Bernard L. Barker and Eugenio R. Martinez for the break-in at the office of Los Angeles psychiatrist Lewis J. Fielding.

The court held that although the burglary to obtain information about Pentagon Papers figure Daniel Ellsberg was illegal, Barker and Martinez were blameless because they believed the action had been properly authorized by government officials.

Morgan said "street-level" FBI agents would be in the same position as Barker and Martinez if they obeyed instructions to break into a home or office to obtain information.

"The agent must be entitled to assume the legality of actions he is called on to perform," Morgan said. "It is a little ridiculous to say the field agent should recognize that an order is wrong and tell his superior to go to hell."

Justice Department sources have said that information about post-1966 break-ins was discovered in files maintained by John F. Malone, retired head of the New York field office.

Malone and several other agents have been named as defendants along with the government in a \$37 million civil damage suit filed by the Socialist Workers Party, which was a target of burglaries by FBI agents and informants.

In a recent interview, Malone's attorney, Paul Windels of New York, indicated he also planned to argue that the responsibility for the break-ins went much higher than the former head of the New York office. Windels also denied that Malone was involved in any wrongdoing.

"It is perfectly clear that whatever was done was institutional," Windels said. "Those who should be listed per-

sonally are the political leaders.

"It is a bad reflection on this country if a premium is placed on what political leaders say they didn't know," Windels said. "The attorney general should not walk through his office with blinders on."

Morgan said the investigation already had had a "devastating" effect on the morale of FBI agents throughout the country. If indictments are handed down, he said, the impact will be even worse.

"If this demoralization continues, (agents will become) a bunch of intellectual eunuchs who are afraid to do anything," Morgan said.