

# Bell Says Government Won't Pay Indict

By John Chadwick  
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Attorney General Griffin B. Bell said yesterday the government ought to but will not pay the legal fees of FBI agents indicted for break-ins, wiretaps, mail opening or other illegal activities they carried out in domestic subversion case.

Testifying before a Senate Appropriations subcommittee, he said the agents thought what they were doing was in the best interest of the country but now will "lose their life savings" defending themselves against the criminal charges brought by the government.

Justice Department officials said the government has never provided or paid for defense lawyers for officials under indictment on criminal charges.

Bell added that activities like those specified in the indictment had been going on for 40 years and said the Justice Department "desperately" needs a charter from Congress spelling out just what the FBI can or cannot do in domestic security cases not tied directly to a crime.

Bell's testimony touched off a lengthy, and at times heated debate, over the proper role of the FBI and other government agencies in protecting the country against subversive activities.

At one point Sen. Lowell P. Weicker Jr. (R-Conn.) exclaimed: "Can't we have law enforcement and the Constitution in this country?"

John J. Kearney, a former supervisor in the New York City FBI office, recently was indicted on charges of illegal wiretapping, mail opening and conspiracy in connection with surveillance activities in the early 1970s against the Weathermen, an underground terrorist organization.

The prosecution was authorized by Bell, and similar indictments against other former FBI agents are expected. However, FBI Director Clarence M. Kelley has urged Bell to reconsider, saying Kearney's indictment has had a bad effect on FBI morale.

Bell told the senators that he met Monday with Kelley and 10 FBI agents from around the country, all of them selected by Kelley, and also with four other agents from New York who also asked to be heard.

After that meeting, Bell told reporters he would go ahead with the prosecution because, he said, "What's at stake is the rule of law."

He told the senators the FBI delegation impressed on him that FBI morale is low and protested that FBI agents were having imposed on them "a post-Watergate morality for pre-Watergate activity." He said they also

protested that similar treatment was not being given to CIA agents.

The Justice Department decided against prosecuting Central Intelligence Agency officers involved in a mail-opening operation. Bell has said there are differences between the two cases, without spelling them out in detail.

Weicker, who was a member of the Senate's special Watergate investigating committee, insisted that the law and constitutional rights should be observed in enforcing the law and protecting national security.

He wanted to know if the taxpayers were going to be billed for defending FBI agents for break-ins and other illegal activities. Bell replied that they were not, but he said "we ought to do it; it would not be a bad thing to do."

Bell said Congress "didn't have any trouble at all" in providing that the government defend drug companies against suits growing out of last year's swine flu inoculation program but was not willing to pay for defending "our own people" when they were acting within their assigned duties.

In the past, the Justice Department has represented present or former government officials who were named defendants in civil suits and sometimes has paid private lawyers to represent them.

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Some of those civil cases have involved matters that the department's Criminal Division was investigating. But one official said that the moment an individual becomes the target of a federal criminal investigation, the department ceases to provide for his defense in the civil suit concerning the same matter.

Bell said that one of the assigned responsibilities of the FBI is domestic security but that there is "no law on that." He said there is no law that permits domestic surveillance, even just following people around, unless a specific law violation is involved.

In testifying to the desperate need for a charter from Congress in this field, Bell said the question is whether some kind of preventive intelligence should be authorized before the commission of a crime.

Bell said that as Attorney General

he has not authorized any activities of this kind and was not devising any charter. "I roll the problem right up to you," he told the senators, saying it was up to Congress to decide if such authority should be granted.

Sen. Ernest F. Hollings (D-S.C.), the subcommittee chairman, said that while he was governor of his state he had the Ku Klux Klan infiltrated and broke it up.

Similarly, in those days, he said, then-Director J. Edgar Hoover had the FBI infiltrate the Communist Party and used break-ins and wiretaps and it was "considered good government."

Hollings said there was no law against being a Communist, but Hoover was "congratulated by every President." Also, he said, when the Army was called in during the Johnson administration to deal with rioters

and protesters, it tapped lines and infiltrated groups.

Asserting he had outlawed all such things, Bell said he just wanted Congress "to tell us what it wants done."

As an example of the problem, Bell said that a person might go abroad to take terrorist training without committing a crime. He asked whether the FBI should be permitted to keep him under surveillance on his return.