

Kelley, Weicker Clash on Agent Case

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At a tense Senate hearing, FBI director Clarence M. Kelley yesterday rejected a suggestion that he advocates any "extralegal" authority for his agency in combatting crime or subversion.

But Sen. Lowell P. Weicker, Jr. (R-Conn.) said Kelly was asking special consideration for a former FBI supervisor in New York, John J. Kearney, who recently was indicated on charges of illegal wiretapping, mail opening and conspiracy in connection with surveillance activities in the early 1970s against the Weathermen, an underground terrorist group.

Kelley testified he had not asked Attorney General Griffin B. Bell to drop the case against Kearney. Instead, Kelley said, he asked only that it be reviewed in the light of the Justice Department's decision not to prosecute Central Intelligence Agency agents involved in a mail-opening operation.

He said that as a result of Kearney's indictment there is a "real la" in morale throughout the FBI and he is concerned about a loss of capability by the agency. Kelley said his statements didn't indicate he felt that Kearney's actions were legal.

Kelley said that in the early 1970s, there were emotional feelings and

people were telling the FBI that something had to be done. And, he added, people make mistakes.

Weicker told Kelley that emotions and pressure are not a valid defense for breaking the law. "Who requested the law be ignored?" he asked.

In the CIA case, Weicker said, two Presidents and at least one Attorney General had given approval for the mail openings. He asked whether, in the FBI case, anyone outside the agency had given approval.

"I don't know," Kelley replied. He said he will not know all the facts until Kearney's trial, but he said the defense may very well be that authority was obtained from superiors.

Weicker said that in the Nuremberg trials of Nazi war criminals "this nation of all nations" rejected the idea that an illegal act could be excused because it was done on orders.

Kelley said the acts recited in Kearney's indictment obviously were illegal, but he said that prior to a 1966 directors from the late FBI Director J. Edgar Hoover, approval had been given for such activities.