

Subpoenas Upheld In Burglary Probe Involving FBI Men

By Warren Brown
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NEW YORK, Sept. 3—A federal judge denied a motion here today that could have jeopardized the Justice Department investigation of allegations that FBI agents committed illegal burglaries within the last five years.

U.S. District Court Judge Henry Werker denied a motion to quash grand jury subpoenas for two former FBI agents involved in the probe because, he said, it was sought prematurely.

"If it had been successful, the motion would have shut down our case until we could have reversed it," Assistant Attorney General J. Stanley Pottinger said after the ruling. Pottinger heads the Justice Department's Civil Rights Division, which has been conducting the eight-month investigation.

Although the motion, filed by attorney Jack B. Solerwitz, named only the two former agents, it would have applied to all agents—reportedly about 25—if it had been granted.

Solerwitz, arguing on behalf of former New York special agents Claiborne J. Poche and Philip J. Newpher, said their appearance before a grand jury would have jeopardized national security interests.

But Werker said the contention was unfounded because agents claiming that they had committed burglaries to protect national security had several options.

Justice Department investigators could accept their assertion and allow the agents to remain silent, he said, or the government could go into a private session with the judge and the agents' lawyers to determine whether the national security argument was valid.

If the judge rules in favor of an agent, the agent may remain silent; if not, he would be compelled to testify, Werker said.

He added that The Justice Department could eliminate the need for a closed session by giving the agent immunization to disclose matters that the agent may regard as potentially harmful to national interests. Pottinger had pointed out that such im-

munization would be for the act of disclosure only and not for the contents of the disclosure.

Werker also said an agent may be compelled to testify if it can be shown that the Attorney General feels that adequate safeguards have been taken to protect the confidentiality of sensitive disclosures.

Werker said the Justice Department could declassify documents that an agent or his attorneys regard as national security matters, thereby making the question of national security moot.

Pottinger said he does not think that there will be a need to declassify any documents in the case because, he said, no national security interests are involved.

Werker also rejected a motion by Solerwitz to appoint a special prosecutor to head the Justice Department's probe because, the judge said, he had no power to do so.

Solerwitz appealed Werker's ruling and asked for an emergency delay of the grand jury subpoenas pending an outcome of the appeal.

The U.S. Court of Appeals here is expected to rule on Solerwitz's request by 9 a.m. Tuesday.

The burglaries in the New York area were discovered as the result of a lawsuit by the Socialist Workers Party, a Trotskyite group, charging that the FBI and other federal agencies had harassed and committed illegal acts against the party.

The federal judge hearing the suit ordered the FBI to produce every document in its possession relating to the SWP and, in the course of locating these documents, FBI agents found a file in the New York field office containing information about the burglaries.

So far none of the burglaries committed during 1972 and 1973 has been identified as having been directed against the SWP. Justice Department sources have said that most were aimed at organizations and individuals that the FBI thought might have information about fugitive members of the Weather Underground.