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# U.S. May Repay Attorneys' Fees Of Some Workers

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The Justice Department says that "there may be circumstances" in which it would consider reimbursing a federal employee for the cost of defending himself in a criminal proceeding.

In response to questions from the Senate Judiciary Committee, the department noted that it has spent more than \$2 million in the past four years to hire private attorneys to defend federal employees—usually FBI or CIA agents—from civil suits. A number of such suits have been brought by people charging that their civil rights have been violated through such things as illegal mail openings, wire taps, and break-ins.

The department said that hiring outside lawyers is necessary to avoid possible conflicts of interest in cases where the sued employee is under simultaneous investigation by the department for possible prosecution.

But the department said "there may be circumstances in which, at the conclusion of criminal proceedings, it would be appropriate for the department to consider reimbursement of an employee for payments made to counsel in connection with those proceedings."

The only pending prosecution is that of John J. Kearney, an FBI agent who is charged with directing a mailing opening operation and wiretap operation against radical fugitives in New York.

"I am very surprised that the department admits fugitives in New York.

"I am very surprised that the department admits that it might eventually pay the legal fees of an executive branch employee—like Mr. Kearney—whom it is prosecuting," said Sen. James Abourezk (D-S.D.), who released the 69 pages of questions and answers. "I think such a policy would raise issues just as serious and far-reaching as does the department's payment of attorneys' fees in civil suits."

President Ford's Attorney General, Edward H. Levi, sent out a memo before leaving office in January stating that "there may be instances" in which the department would reimburse federal employees for attorney's fees in criminal cases.

Last week, a Justice Department spokesman said he would not speculate on the types of situations in which the department would reimburse federal employees in criminal cases.

"It's the kind of thing we'd have to deal with on an ad hoc basis," the spokesman said.

In civil cases, the hiring of private attorneys by the department was relatively rare until last year, when House and Senate committee reports on domestic and foreign intelligence activities disclosed incidents of illegal mail openings, break-ins, and wiretaps.

While the Justice Department was conducting

criminal investigations into the incidents, a flurry of civil suits aimed at FBI and CIA agents in their individual capacities were filed.

Between 1974 and 1976, the department paid about \$600,000 for private attorneys in civil cases, according to a report. But in 1976, it requested a \$4.9 million supplemental appropriation to hire additional private counsel of which \$1.9 million was subsequently approved. In May, the department asked the Senate Judiciary Committee to review its policy. The 170 committee questions the department answered in its report constitute the first stage of the review.

To date, said the report, the department has hired 59 private law firms to represent 92 federal employees in 23 civil cases.

Although there is no direct statutory authority for the hiring of private attorneys to defend present or former federal employees in civil cases, the department said in its report the hirings are "the only responsible means of discharging its statutory duty to represent the interests of the United States in civil cases."

There are at least two government interests in hiring outside attorneys in these cases, the department said. One, in some cases, is to establish the legality of the act for which the employee is sued.

The other is relieving federal employees of a potential financial burden—attorney's fees—that could have "a serious and detrimental effect upon the current morale of federal employees and upon the vigor with which they pursue their assignments in the future."