

# FBI Aide Won't Be Prosecuted

## N.Y. Ex-Superior Of Indicted Agent Is Out of the Case

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The Justice Department has decided not to prosecute John F. Morley, the former FBI superior of retired FBI supervisor John J. Kearney, who is under indictment for wiretapping and mail opening, it was learned yesterday.

The unannounced decision raises the question of whether Attorney General Griffin B. Bell has decided to drop further FBI prosecutions that department officials had said were supposed to move "up the ladder" of FBI authority, rung by rung.

Spokesmen for both the Justice Department and the FBI declined comment on the case.

[Morley's attorney, William G. Hundley, confirmed yesterday that he received a letter from Bell saying that the department had decided not to seek an indictment against his client.

[Hundley, who also represents two other special agents who worked in the New York office during the period of the alleged offenses, said he was "hopeful" he'd soon receive similar letters about them. "I consider their cases indistinguishable from Morley's," he said.]

Kearney's indictment April 7, by a federal grand jury in New York, has been a source of considerable unrest inside the FBI. Many agents believe that Kearney is being singled out for blame for investigative tactics against political radicals that they think had become institutionalized in the bureau.

Edward Bennett Williams, Kearney's lawyer, said yesterday that he was not certain of the significance of the department's decision not to present evidence against Morley to a federal grand jury now investigating the case here.

Williams termed the case "a total puzzlement."

"It's incredible to me that John

Kearney should be the only agent to hang out on the line," he said.

Bell, in his review of the continuing grand jury investigation of FBI break-ins, mail-opening and wiretapping, has been making increasingly critical comments about the probe.

A month ago, for example, speaking to a Washington business organization, Bell said of the Kearney case:

"Maybe my judgment was bad. I indicted one agent, the first time an agent has ever been indicted.

"We kept up with the mail for a long time. And when I say kept up with it, there were thousands of pieces. The mail against me was a hundred to one. And last time we checked, I was losing the one—the one was going down."

In addition, sources familiar with the grand jury inquiry said that recent FBI witnesses have been questioned extensively about whether they had reason to believe the illegal investigative tactics were an unwritten but established procedure inside the agency for decades.

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However, at the same time, an official familiar with the case cautioned against concluding that the Morley decision signaled that Bell intended to drop the case and move for dismissal of the charges against Kearney.

The official noted that Morley served as special agent in charge of the Internal Security Division in New York until October, 1972. Thus, the five-year statute of limitations covering any crimes Morley might be charged with is about to expire.

Justice Department officials said the indictment of Kearney would not have been returned as early as April if it had not been for the pressures of the same five-year statute.

Kearney served as supervisor of Squad 47 in the FBI's New York office from August, 1970, through June, 1972. The squad, which operated as part

of the Internal Security Division, allegedly conducted wiretapping and mail-opening without warrants in searching for fugitives from the Weatherman terrorist organization.

One source said evidence against Morley could have been presented to the grand jury before the statute of limitations ran out if it had not been for a wider investigation ordered by Bell.

Morley, who retired from the FBI June 5, 1974, served as special agent in charge of the New York office's Administrative Division after leaving the internal security post in October, 1972. The switch took him out of the line of authority allegedly involved in the illegal investigative techniques.

No date has been set for Kearney's trial, but it is expected to begin in October.