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## Crimes by Government, Continued

Last spring, Attorney General Griffin Bell made a painful, historic and correct decision: to authorize the first Federal indictment ever of an agent of the Federal Bureau of Investigation. The defendant was John J. Kearney, a squad supervisor, and the charges involved illegal wiretapping and mail-opening by the F.B.I. in connection with the Weather Underground. We welcomed the indictment, not out of any special feeling against Mr. Kearney or a belief that he was singularly responsible. On the contrary, it is hard to believe that he acted without clear authority from his superiors. The indictment seemed important to us as a demonstration that the United States Government was willing, at last, to proclaim that the law applies to all, even—indeed especially—to its own employees. Now, however, that commitment is again in question.

The Department of Justice has just notified Mr. Kearney's former superior, John F. Morley, that it has decided not to prosecute him. More than four months have passed since the Kearney indictment, months in which not a single other agent, supervisor or higher official has also been charged. The public is left to wonder, is the Attorney General losing his nerve?

There are three possible interpretations for the inaction, none of them altogether benign. One is that the Morley case fell through for quite special reasons and that other cases are, in fact, still being developed. Perhaps so, but even if they are, what is the public to make of the fact that Agent Kearney has been left to dangle alone for so long?

A second reading is that the Attorney General has,

incredibly, decided to use Mr. Kearney as a solitary scapegoat. Mr. Kearney has already claimed he is the victim of selective prosecution. And defense lawyers infer from the Morley decision an unwillingness to go higher up the chain of command and charge those who authorized illegal conduct by Mr. Kearney.

The third interpretation is that the Attorney General, full of misgivings from the start, has now decided to let the entire matter crumble—to let the statute of limitations expire on other cases and, in time, to withdraw the charges against Mr. Kearney. It is possible, further, to wonder whether such a decision is prompted by a parallel but even more explosive case. The department is known to be considering whether to indict former C.I.A. Director Richard Helms for perjury, weighing—as in the F.B.I. cases—the effect of ignoring possible illegality against the effect of an indictment on the intelligence community. Such an interpretation should not be dismissed as feverish speculation. In a speech a month ago, Judge Bell observed of the Kearney indictment, "Maybe my judgment was bad. I indicted one agent, the first time an agent has ever been indicted. . . . The mail against me was a hundred to one."

There is a sure way to put all such interpretations to rest and that, obviously, is promptly to launch prosecutions of officials, up the chain of command, who authorized breaking the law as a way of enforcing it. If, for some reason, that cannot soon be undertaken—and, even more so if it is not to be undertaken at all—then, after all the delay, at least let the Attorney General tell the public what's on his mind.