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FBI's Authority For Break-Ins Called Into Doubt

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The former head of a Justice Department task force that investigated FBI break-ins in the early 1970s told a jury yesterday he knew of no authority for the bureau to conduct such "black bag jobs" without the attorney general's approval.

The witness, William Gardner, agreed with prosecutors that no court has held that the attorney general could delegate to the FBI the power to approve break-ins or electronic surveillance.

Gardner, the government's lead-off witness, completed three days of testimony in the conspiracy trial of W. Mark Felt, the FBI's former number two man, and Edward Miller, its former intelligence chief.

Felt and Miller are charged with approving — without instruction from the president or the attorney general — nine illegal break-ins in 1972 and 1973 during an FBI search for fugitive members of the radical Weather Underground, an antiwar organization.

Gardner acknowledged to defense attorneys that there is nothing in the Constitution barring the attorney general from giving the FBI authority to order such surveillance.

But prosecutors introduced a June 19, 1972, memorandum in which Attorney General Richard Kleindienst directed acting FBI director L. Patrick Gray to "terminate immediately" all surveillance in domestic criminal investigations.

Despite the Kleindienst directive, which came after a Supreme Court decision that warrants are required for break-ins in domestic investigations, break-ins were conducted later that year and in 1973 in a search for members of the Weather Underground wanted for terrorist bombing, prosecutor John Nields Jr. said.

Defense lawyers argued that the Weather Underground had ties to hostile foreign powers and, therefore, the investigation was a national security probe with less stringent strictures on surveillance.

Defense lawyers introduced a 1954 memorandum from Attorney General Herbert Brownell giving the FBI director authority to conduct break-ins to install electronic listening devices in national security cases.

But Gardner said the Justice Department still reserved the right to review the decisions.