

Ex-Agents' Trial Delay Sought



L. PATRICK GRAY III
... may be tried separately

3/1/79
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The Justice Department asked yesterday for another delay in the conspiracy trial of three former top FBI officials because of a continuing dispute about the defense's access to classified documents.

Prosecutors asked U.S. District Court Judge William B. Bryant to continue until April 16 the case against W. Mark Felt, the FBI's former number two official, and Edward S. Miller, former head of the intelligence division. They also said that L. Patrick Gray III, former acting director of the bureau, will probably have to be tried separately.

The trial was to start next Monday. The three are charged with conspiring to violate the civil rights of friends and relatives of the terrorist Weather Underground in the early 1970s by approving allegedly illegal break-ins of their homes.

Justice officials declined to com-

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ment on their letter to Bryant because it was delivered too late in the day to be filed publicly. A spokesman said only: "We anticipate going forward in all three cases."

The letter was in response to secret rulings by Bryant last Thursday that the government had to turn over classified national security information to defense attorneys. The prosecution's concern is that the documents might later have to be made public at the trial.

According to the letter from prosecutor Barnett D. Skolnik—made available to The Washington Post—Bryant's ruling last week "raises a number of difficult problems for the government regarding both discovery and ultimate public disclosure of classified data at a trial."

Skolnik said he would have to consult and "negotiate" for at least a month with a number of government officials presumably members of the intelligence community—before determining how or whether to proceed with the case against Felt and Miller.

Skolnik said the prosecution team had "tentatively concluded that severance of defendant Gray may well be required," and asked the court and defense counsel to proceed on the assumption that he would be tried separately.

Brian P. Gettings, Felt's attorney, said yesterday that he is seeking about 1,000 documents "that tend to corroborate our belief that Gray authorized (the break-ins) possibly on the authority of others" higher in the government.

Felt and Miller have publicly acknowledged approving break-ins in search of the radical fugitives, but said they relied on Gray's authority.

Gray has denied authorizing the break-ins. His attorney, Alan Baron, foreshadowed the coming Miller-Felt confrontation with Gray last summer in arguing for a separate trial for his client. "The government would love to see Mr. Gray and Mr. Miller slice each other to ribbons," Baron said.

Thomas A. Kennelly, Miller's lawyer, said the defense lawyers are seeking documents that include some from the CIA, the National Security Agency and "possibly foreign governments."

"These are documents the government doesn't want to turn over, some of which we know exist and others we think exist that we're entitled to," Kennelly said.

Prosecutors have insisted that national secrets are not relevant to the case, but attorneys for Felt and Miller claim such material will show links between the Weather Underground and hostile foreign governments, such as Cuba. This, they argue, the warrantless break-ins would have been legal.

Gray, on the other hand, is more interested in seeking permission to use testimony about highly classified matters.

This latest expected delay in the trial demonstrates the government's continuing problem in prosecuting cases involving national secrets.

The department recently dropped cases against an official of the International Telephone and Telegraph Corp. because of fears that classified documents about CIA activities might be made public during a trial. Such concern also was a factor in dropping a recommended prosecution of a Lockheed Aircraft Corp. official, according to sources.