

FBI Files Case Pressed by U.S.

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Federal prosecutors argued yesterday that the destruction of 47 FBI files by a top agent two years ago does not constitute grounds for dismissal of indictments against former FBI Director L. Patrick Gray and two of his aides.

The files, detailing the bureau's illegal break-ins, wiretaps and other surveillance in the early 1970s, were only copies and the originals still exist, the prosecutors said.

Gray and aides are accused of approving warrantless surveillance in an effort to trace fugitive radicals.

In a brief submitted to a federal judge, the Justice Department denied the documents were destroyed in an effort to hide evidence clearing the defendants.

It said Robert Shackelford, the now-retired FBI section chief who destroyed the documents in 1976, "was himself a subject of the then-ongoing criminal investigation" into surveillance of friends and relatives of the radical Weatherman group.

CHIEF U.S. District Judge William Bryant has scheduled a hearing for Thursday on defense motions to dismiss the indictments against Gray, Mark Felt, former No. 3 man at the bureau, and former FBI intelligence chief Edward S. Miller.

They are charged with conspiring to violate the civil rights of friends and relatives of fugitive Weatherman members in approving the surveillance.

Prosecutors Barnet Skolnik and Francis Martin said in their brief the files Shackelford destroyed were "for the most part what are referred to as 'tickler' files — that is, files containing copies of documents, the originals of which are in official files."

"All of the official FBI files on the Weatherman are fully intact and available to the defense," they wrote.

As for other files that might have been destroyed, they argued defense lawyers cannot show those documents would have exonerated their clients.