

## Dismissal Sought in FBI 'Black-Bag' Case

Associated Press

Lawyers for three former FBI officials accused of authorizing burglaries have asked dismissal of the charges on grounds the government knew about the "black-bag jobs" for years and did nothing about them.

"As a result of that five-year delay (in bringing charges) this defendant is unable, because of the death of at least one witness . . . to put in crucial evidence" needed to defend himself against the charges, said Thomas Kennelly, attorney for Edward S. Miller.

Miller, former acting FBI director L. Patrick Gray III and W. Mark Felt are charged with one count each of violating the rights of citizens by authorizing burglaries in the FBI's 1972-1973 search for fugitives in the radical Weather Underground.

Kennelly's reference was to William Sullivan, No. 3 man under longtime director J. Edgar Hoover. Sullivan was killed in a New Hampshire hunting accident last year.

Sullivan's testimony before a grand jury — that Hoover authorized black bag jobs in the Weather Underground investigation as early as 1970 — was called to the judge's attention. Kennelly said the investigation of the FBI burglaries did not begin until 1976. The indictments were returned only this year.

Gray has denied authorizing the break-ins or knowing about them at the time. Miller has said he acted on Gray's authority. The conflict, one lawyer said yesterday in arguing for separate trials, will cause the men to "slice each other to ribbons" should they be tried together.

After a daylong hearing, U.S. District Judge William B. Bryant took the motions under advisement.

Defense lawyers also argued that the government should have charged

the former FBI officials with a misdemeanor that covers unauthorized searches, rather than a felony carrying a maximum sentence of 10 years in prison and \$10,000 fine.

But chief prosecutor Barnet Skolnick argued the more serious charge was brought because there was "a concerted long-term conspiratorial agreement by officials of the top law enforcement organization to break in — not once, not twice, but over and over and over again into the homes of private citizens."