

The FBI Punishments

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THERE WILL BE much controversy over the decision of FBI Director William H. Webster to punish six of the more than 60 members of the bureau who were involved in a series of illegal break-ins, wiretaps and mail openings in the early 1970s. Some will claim he has treated the six too harshly; some will deplore his refusal even to slap the wrists of the 58 others. But there should be no controversy over the principle Mr. Webster has followed. He and Attorney General Griffin Bell have tried to make the punishments commensurate with and appropriate to the responsibility of each wrongdoer; the greater the responsibility—and authority—the more severe the punishment.

Accordingly, three men who were at the top of the FBI where it was heavily engaged in illegal activity face criminal indictments. Two men at the next level down are being fired. Two others in the chain of command are being disciplined. Of the agents at the bottom of the heap—those who actually committed the illegal acts after being told to do so—all but two have escaped punishment. Those two are being censured for acting illegally on their own initiative.

Contrast that pyramid of justice with the outcome of the Watergate affair. The most severe penalties were imposed on those with least authority—the Cubans, Howard Hunt and Gordon Liddy. Moving up the chain of command, the punishments imposed—or the conditions under which they were served—seemed to grow less onerous. The man at the

top was consequently pardoned before he was charged.

Unfortunately, the pattern of Watergate has been commonplace in American justice, whether effected judicially or administratively. Thieves are usually made to suffer more than embezzlers, low-ranking employees more than high-ranking ones. Attorney General Bell and Director Webster, with their notions of simple justice, have quite properly reversed that precedent.

Whether the amount of punishment imposed on FBI wrongdoers at each level was fitting is a wholly different question. We doubt that anyone who has not had access to the FBI's files can make a fair judgment about the appropriateness of the specific penalties Mr. Webster chose. The principle under which he was operating required him to consider not only the acts each agent committed but the awareness each had of the illegal nature of those acts and the opportunity each had to question his orders.

It can, and no doubt will, be argued that by excusing those agents who actually committed the burglaries Mr. Webster accepted the Nuremberg defense—they were only following orders. But an illegal break-in cannot be compared fairly to murder, especially when the break-in was of a kind that had been implicitly approved by presidents and attorneys general for three decades and had a somewhat ambiguous legal status prior to 1972. The primary fault lay at the top. Attorney General Bell and Director Webster were right in concentrating the punishments there.