

U.S. Secrecy Bid Attacked Again by Defense Attorneys

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By Charles R. Babcock
Washington Post Staff Writer

Unusual government claims for secrecy in two celebrated criminal cases were attacked again by defense attorneys this week.

Yesterday, lawyers for three former top FBI officials filed objections to a proposed Justice Department "protective order" designed to prevent disclosure of documents referring to intelligence sources and methods. The three are charged with approving allegedly illegal break-ins in search of the radical Weather Underground in the early 1970s.

Prosecutors took the unusual step earlier this week of asking that portions of the defendants' own grand jury testimony be returned to the government for deletion of national security material that apparently was mistakenly given to the defense earlier.

Those charged, former acting FBI director L. Patrick Gray, W. Mark Felt, his top assistant, and Edward S. Miller, once chief of the bureau's intelligence division, have sought documents which they claim will show that the break-ins were justified because the Weather Underground had ties to foreign intelligence powers.

The government long has maintained that national security is not a valid consideration in the FBI case. But the proposed protective order shows concern about intelligence issues.

Defense attorneys in the case also have complained about excessive deletions in other "discovery" material they have received.

Alan Baron, Gray's attorney, said yesterday that the protective order also placed undue burdens on the defense's ability to question witnesses before the scheduled Jan. 22 trial.

A hearing on the proposed order is set for Mon-

day.

The government's concern about protecting national secrets in another case—the perjury charges against International Telephone and Telegraph Corp. official Robert Berrellez—also was challenged this week.

Berrellez's attorney, Patrick A. Wall, attacked the Justice Department's effort to get the U. S. Circuit Court of Appeals here to set up a rare set of procedures for determining what evidence is admissible in the case.

U. S. District Court Judge Aubrey Robinson Jr. dismissed the jury in the case Oct. 25 but gave prosecutors a chance to appeal his decision not to sign an unusual protective order.

Wall argued in papers filed Wednesday that Justice had contrived an issue that didn't merit the serious step of the appeals court overruling Robinson.

He said it was ironic that the government was so concerned about possible disclosure of intelligence sources at a trial that it needed special rules, but refused to agree the same concern was a legitimate defense for Berrellez.

Berrellez is charged with lying to a Senate committee about ITT's collusion with the Central Intelligence Agency in trying to prevent the election of Salvador Allende in Chile in 1970. Berrellez claims he "testified as he did at the specific instructions of agents of the CIA," Wall said in the brief.

The appeals court has given no indication when or even if it will consider the Justice request.

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