

Secret Break-In Data Was Re

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Prosecutors in the FBI break-ins case mistakenly circulated to defense lawyers highly classified material that is only supposed to be seen or discussed in a spy-proof vault.

Attorneys for three former top FBI officials charged in the case made the disclosure yesterday in a lively pre-trial hearing where they protested Justice Department attempts to get the documents back for censoring as part of a proposal to place strict limits on collecting new information.

Special Justice Department prosecutor Barnett D. Skolnik said the special security precautions were necessary because the defense was seeking to "lasso" classified documents that had little to do with the charges.

The three men—former acting FBI director L. Patrick Gray, former top aide W. Mark Felt and former intelli-

gence division chief Edward S. Miller—were indicated last April for allegedly violating the civil rights of friends and relatives of the radical Weather Underground by approving break-ins at their homes in the early 1970s.

Their attorneys have sought access to voluminous intelligence files in an effort to show that the break-ins were justified because the fugitives had ties to foreign governments.

The lawyers voiced special opposition yesterday to a government request that they return their clients' grand jury testimony to be "redacted"—censored—of material containing "sensitive compartmented information (SCI)."

U.S. District Court Chief Judge William B. Bryant said he soon would sign some version of a protective order. But the continuing controversy over access to the highly sensitive ma-

terial makes the scheduled Jan. 22 trial date unlikely, the lawyers said.

The proposed government order would allow access to "SCI" material only in the Justice Department's "special security center." The sixth-floor room has a steel, bank vault-like door and special soundproofing and telephones, a department spokesman noted.

SCI refers to the handling, rather than classification of a document, an intelligence source said, and usually refers to a technical collection procedure, such as an intercept by the super-secret National Security Agency.

One defense attorney referred to the security center as the "cone of silence" and said it sounded like something dreamed up by Maxwell Smart, the hero of a former spy-spoof television series.

The defense lawyers' objections to the proposed restrictions were serious, however, and underlined the gov-

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ernment's continuing problem in prosecuting cases that have even a peripheral connection with national security.

For instance, it took the prosecutors about two months to file their proposed protective order, apparently because of the layers of intelligence community bureaucracy that had to be consulted.

Alan I. Baron, Gray's attorney, said prosecutors told him and his defense colleagues on Oct. 10 that they should never have had access to the SCI documents. Such material can't be discussed over the phone or traveled with unless accompanied by armed courier, he said he was told.

Baron said he was even told that the Justice Department was investigating how the defense attorneys even got transcripts including SCI material.

Baron also complained that there were at least five variously censored

versions of a memo central to his client's defense. That memo had been used in the grand jury deliberations but now was being withheld from Gray, he said. "The government shouldn't be given that power," he said.

Frank W. Dunham Jr., one of Felt's lawyers, suggested that a less restrictive protective order be issued. Thomas A. Kennelly, who represents Miller, charged that the prosecutors' proposal would "build a permanent dam to the free flow of discovery to the defendants in this case."

Bryant said at one point that the government might be willing to concede many of the facts the defense is seeking to establish through discovery documents.

Skolnik agreed and said that the defendants could tell their side of the story without "uttering a few magic words" of SCI material.

He said the defense can use the fact that there was contact between the Weather Underground and foreign governments without actually seeing the specific classified document. "The defendants' story 'can be told in all its glorious fullness,'" Skolnik added, without referring to "another intelligence-gathering procedure besides what's been charged in the indictment."

The defense consistently has claimed it needs classified material to explain the motivation of the FBI officials charged. The government has contended that national security is not a valid issue in the case.

Yesterday's developments foreshadow an even more stimulating debate over the admissibility at trial of whatever classified documents are produced during the drawn-out discovery process.