

Trying of Gray In FBI Break-Ins Is Put in Doubt

3/16/79
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The conspiracy case of former acting FBI director L. Patrick Gray III was severed from that of two of his former aides yesterday as federal prosecutors raised the possibility that Gray may never be tried for allegedly approving illegal break-ins.

The prosecutors, Barnett D. Skolnik and Francis J. Martin, told U.S. District Court Judge William B. Bryant that his recent rulings that would allow Gray to make public highly classified national security documents and evidence at his trial have imperiled Gray's prosecution.

Meanwhile, Skolnik and Martin told the judge that they plan to be ready to try Gray's former aides, W. Mark Felt, once the FBI's No. 2 official, and Edward S. Miller, the bureau's former intelligence chief, "at a relatively early date."

Even the government's effort to prosecute Felt and Miller was left somewhat in doubt yesterday. Prosecutors turned over 101 documents from the Central Intelligence Agency to defense attorneys on Wednesday, but the CIA has yet to decide whether to release another 29 documents or whether any of the papers can be disclosed at Felt's and Miller's trial.

Bryant gave the prosecutors until March 30 to turn over to the defense attorneys all the classified material that they had requested. The judge warned prosecutors that if the material is not turned over by then he would consider a defense motion to dismiss the charges against Felt and Miller.

Skolnik promised that the government would get the information from the documents to defense attorneys by that date. But Martin and Skolnik told Bryant that there still are problems to be solved, particularly on how to turn over information from documents that were given to the United States by foreign governments.

"Why can't you go to the file and knock off the letterhead and type up the information and give it to them?" Bryant asked Martin.

"We can't give out information without foreign governments' consent," Martin replied.

Gray, Felt and Miller are charged with conspiring to violate the civil rights of friends and relatives of members of the terrorist Weather Underground in the early 1970s by approving allegedly illegal break-ins of their homes. Gray has denied giving such authorization, while Felt and Miller say that they approved the burglaries on Gray's authority.

The dispute over the documents centers on Bryant's ruling last month that prosecutors must turn over evidence that details Weather Underground contacts with hostile foreign governments or groups, such as North Vietnam, Cuba and the Palestine Liberation Organization. If such contacts can be proven, the warrantless break-ins would have been legal, defense lawyers say. Some of the documents come from the CIA, some from the super-secret National Security Agency and others from the FBI and foreign governments.

Felt's attorney, Brian P. Gettings, predicted after yesterday's hour-long hearing that Gray would never be tried, no matter whether the government wins or loses its case against Felt and Miller.

"Their problems [with the Gray prosecutions] are insurmountable," said Gettings, a former prosecutor.