

# Attorney General Backs FBI Pardons

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Attorney General William French Smith voiced his approval yesterday of the pardons President Reagan granted to two former FBI officials, but the chief prosecutor who handled the case charged that the move "strikes at the heart" of constitutional government.

Smith said he would not even have put the high-ranking ex-FBI men, W. Mark Felt and Edward S. Miller, on trial. They were convicted last Nov. 6 of conspiracy for authorizing illegal searches — "black bag jobs" — at the homes of friends and relatives of radical Weather Underground fugitives in the early 1970s.

Speaking on NBC-TV's "Today" show, the attorney general said he had been consulted about the pardons and agreed with them even though they did not go through customary Justice Department review. Smith said the decision to put the men on trial was "a very close call" to begin with.

"Had I been attorney general at that time, I would not have initiated those prosecutions," Smith said.

The lawyer who served as special prosecutor in the case, John W. Nields, disagreed sharply. He also protested against the secrecy with which the pardons were prepared.

He said the trial was held, despite stiff resistance from certain quarters of the Carter administration, to establish "the central proposition of democracy: that the government is second to the people and its powers are limited by the Constitution.

"The jury and the court collectively affirmed this proposition," Nields, now in private practice, said in a telephone interview. But "the executive branch pardoning the executive branch for violating the rights of the people strikes at the heart of this proposition."

Felt, once the FBI's No. 2 man, and Miller,

who had been chief of the domestic intelligence division, were found guilty after an eight-week trial.

The prosecutors contended, however, that the surreptitious searches were illegal — and that Felt and Miller knew they were illegal — because they were carried out without warrants and were directed at innocent citizens.

Chief U.S. District Court Judge William B. Bryant had instructed the jurors that they could acquit Felt and Miller if the jurors felt the two men "reasonably and in good faith" believed the FBI still had specific authority from the president or the attorney general to conduct surreptitious entries.

At the White House yesterday, acting press secretary Larry Speakes caused a stir when he declared under persistent questioning that Reagan granted the pardons because he felt the jury had been wrong.

Speakes said the president "clearly felt

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A9

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... that the decision of the jury and the decision of the court was not correct."

Speakes did not spell out the extent to which Reagan might have studied the trial record, but he said White House counselor Fred Fielding and presidential counselor Edwin Meese III "studied the excerpts from the record extensively."

Prosecutor Nields pointed out that those excerpts had been ones supplied by defense lawyers and were undoubtedly selective.

"They never talked to anybody from the prosecution side," he said of the White House. "Which is completely contrary to normal procedure for pardons." In normal cases, he said, "the prosecution and the judge are invariably consulted."

High administration officials were displeased with other aspects of Speakes' remarks. The acting press secretary amended them later to say he had been mistaken in describing the

president's actions as a comment on the jury or on the conviction.

"The president was not passing judgment on the rightness or wrongness of a jury," Speakes told a reporter. "He was simply making a personal decision that an act of clemency was the proper action."

The action was receiving other interpretations outside the White House. In San Francisco, 34-year-old attorney Fran Schreiber said she felt "betrayed by the government."

While still a law student at New York University eight years ago, Schreiber was living in an apartment that FBI agents broke into and searched twice. She said the government was interested in her files because she had helped in the criminal defense of numerous Weather Underground members.

Staff writer Lou Cannon and special correspondent Carol Pogash contributed to this article.