

Weatherman Link to Foreign

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The former chief of the Justice Department task force that investigated FBI break-ins involving the Weather Underground testified in federal court here yesterday that the decision on whether a target of one of the searches was connected with foreign powers would amount to a "judgment call."

Defense lawyers in the criminal conspiracy case of two former top FBI officials are trying to show that the men reasonably believed that the radical Weather Underground and some of the break-in targets were affiliated with hostile foreign powers and that

they approved the warrantless entries for "national security" reasons.

The former Justice Department lawyer, William L. Gardner, testified as a government witness yesterday in U.S. district court, where W. Mark Felt and Edward S. Miller are on trial. The two former FBI men are charged with conspiracy to violate the civil rights of friends and acquaintances of Weathermen fugitives whose homes were secretly entered by FBI agents in 1972 and 1973.

During Gardner's testimony yesterday, however, government prosecutor John W. Nields Jr. introduced a June 1972 document sent from Miller to Felt that said "no evidence exists at this time" of Weatherman involve-

ment with foreign powers that would support a request to the attorney general for approval of a wiretap.

The government contends, and Gardner agreed in his testimony yesterday, that there was no significant evidence to link the targets of the searches with any foreign powers. Moreover, if the searches were connected to a national security matter, the prosecution contends, the surreptitious entries—known as "black bag" jobs—required case-by-case approval from the president or the attorney general. The defense argued that no law required that specific approval.

The case against Felt and Miller involves nine break-ins at homes in New York and New Jersey. The gov-

Power Held a 'Judgment Call'

ernment has told the jury it will prove that Felt, who was once the number two man at the bureau, and Miller, who was chief of the domestic intelligence division, authorized the break-ins on their own, knowing that they were illegal and unconstitutional.

Felt and Miller contend that they had the general authority to approve the break-ins from then acting FBI director L. Patrick Gray III. The authority was delegated to Gray, as the bureau director, from the White House and the attorney general's office, the defense contends.

In his testimony yesterday, Gardner said he believed that a 1972 U.S. Supreme Court decision made surreptitious entries against domestic targets

illegal unless a neutral magistrate—such as a judge—had issued a warrant.

Gardner said that the Justice Department interpreted the high court decision as prohibiting searches as well as electronic surveillance by wiretaps or microphones. The defense, however, put into evidence a memorandum from the FBI legal counsel, sent to Felt on the day the court's ruling was announced, which said that the decision was limited strictly to warrantless electronic surveillance of purely domestic targets.

Under cross-examination by Felt's lawyer, Brian P. Gettings, Gardner acknowledged that the high court decision drew a distinction between domestic and foreign targets, meaning instances in which persons were known to be collaborating with foreign powers.

On the day of that Supreme Court decision in June 1972, which specifically dealt with electronic surveillance, Gardner said his investigation showed that the FBI immediately terminated a telephone tap directed at Jennifer Dohrn, the sister of Weatherman fugitive Bernadine Dohrn and herself an avowed Weatherman. A

break-in at Jennifer Dohrn's home is one of the allegedly illegal searches named in the indictment of Felt and Miller.

Under repeated questioning from Gettings, Gardner said that his office knew that Dohrn had some relations with foreign powers. Gardner then agreed with Gettings that the determination of whether Jennifer Dohrn was a collaborator with foreign powers, a point that is key to the warrant question, amounted to a "judgment call."

"I think it is often difficult to determine whether a particular person has connections to a foreign power," Gardner said.

Gardner and three other lawyers working on the break-in investigation quit the Justice Department task force in December 1977 in a policy dispute with then Attorney General Griffin Bell.

In April 1978, shortly after Felt, Miller and Gray were indicted on the conspiracy charge, Gardner, in a statement to a Senate subcommittee, charged that Bell shut down the investigation rather than accept the task force recommendation for indictments of eight FBI officials for their role in the break-ins.