

Red-Faced Officials Reclaim

By Laura A. Kiernan
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After almost two years of secret wrangling with the Justice Department behind locked doors at the federal courthouse here, defense lawyers for two former high ranking FBI aides charged in the FBI break-in case last Friday received a thick brown folder full of documents.

Within an hour, emissaries from the Justice Department descended on the lawyers' offices in downtown Washington and snatched up all the documents. It seemed that somehow, as many as a half dozen highly sensitive documents—which had nothing to do with the FBI case—had slipped into the stack of records set for use at a public trial.

"I looked at it and I went ape," said Frank W. Dunham Jr., one of

the defense lawyers who saw one of the documents. Dunham, a former government prosecutor who said he has higher than "top secret" clearance to see documents connected to the trial, said he knew right away that this was "super sensitive stuff."

The government has charged that FBI officials in the early 1970s approved illegal break-ins and conspired to violate the civil rights of friends and relatives of the radical Weather Underground. The defense for the two aides, which hinges in part on access to bureau documents, is that the men were simply following long-standing department policy.

The folder turned over in the courthouse Friday contained documents that had been marked up and sanitized of bureau secrets so they could be used in open court—or at least

that's what the Justice Department thought.

Dunham said he immediately telephoned a government security official and read him a portion of the document that had been included in the brown folder.

"Oh my God. Don't do anything with it. Somebody will be right there," Dunham quoted the official as saying.

Meanwhile, on Connecticut Avenue, defense lawyer Thomas A. Kennelly had put his brown folder on his office desk and taken his 15-year-old son Patrick to lunch.

When they returned, Kennelly said, in an interview yesterday, a Justice Department employe was waiting for him.

"There's been a terrible mistake," Kennelly quoted the employe as say-

Papers Released by Error

ing, "I hope you'll come and visit me in jail."

The employe then whisked away Kennelly's package of documents. The Justice Department said yesterday it had no comment on the incident.

The document mixup was seen as particularly ironic considering that the FBI case has been bogged down in legal disputes in U.S. District Court about access to thousands of pages of secret government records since an indictment in the highly controversial case was handed up by a federal grand jury here in April 1978.

Those charged were former FBI director L. Patrick Gray III, W. Mark Felt, once the bureau's No. 2 man, and Edward S. Miller, who headed the domestic intelligence division. The indictment said they authorized illegal break-ins by FBI agents in the early 1970s aimed at radical fugitives. Felt and Miller are scheduled for trial on

July 7. The case against Gary will be tried separately.

Lawyers for Felt and Miller have persisted in their claim that they need certain government records to defend themselves. The result has been a protracted series of closed hearings before Chief Judge William B. Bryant in an effort to change names and language in the documents so they will be "sanitary" enough for use at a public trial.

The defense lawyers in the case, as well as some legal assistants, have been given security clearance to view some documents in a vault on the sixth floor of the main Justice Department building.

The sanitation process is designed to ensure that any classified material that might damage national security is deleted, while retaining enough of

the information in the documents to satisfy Felt and Miller's defense claims, lawyers said.

Last Friday, government prosecutor John W. Nields Jr. handed Dunham, one of Felt's lawyers, and Kennelly, who represents Miller, the brown folders marked "Material Cleared for Use at Trial."

It was the first and only batch of documents that the defense lawyers had managed to obtain from the Justice Department. Inside were about 100 documents.

Dunham eventually turned the folder of documents over to paralegal Katherine A. Worthington, but Worthington quickly ran back to Dunham's office.

"I don't think we are supposed to have this," Worthington said.

She was right.