

FBI Break-In Trial Postponed

12-20-79
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The long-delayed trial of two former top FBI officials accused of approving illegal break-ins in search of the radical Weather Underground members in the early 1970s was postponed again yesterday because of a continuing dispute over defense access to classified documents.

U.S. District Court Chief Judge William B. Bryant moved the scheduled Jan. 2 trial date for W. Mark Felt, the FBI's former No. 2 official, and Edward S. Miller, former head of the bureau's intelligence division, to March 17. Bryant acted after a closed hearing at which defense attorneys and prosecutors described their recurring difficulties in agreeing on the alleged national security implications in the case, according to sources.

Felt and Miller were indicted along with former acting FBI director L. Patrick Gray III in April, 1978, on charges they conspired to violate the civil rights of friends and relatives of the Weather Underground, a group of radicals suspected of many bombings in the early 1970s. Gray's case was severed from that of Felt and Miller last May.

The defense has said in pretrial motions that it intends to argue Felt and Miller acted on higher authority in approving the break-ins, that break-ins were a routine FBI investigative technique for years, and that the so-called "black bag jobs" were legal because of the Weather Underground's ties to foreign powers.

The government has countered that the group was not a legitimate target of a national security investigation. Justice Department officials view the defense efforts to get classified documents as an example of "graymail."

Gray mail is a practice in which defense attorneys search until they find material the government can't declassify. The prosecution therefore has to drop the case.

Sources close to the case yesterday the delay was partly due to Bryant's slowness in ruling on months-old discovery motions. The motions relate to the release of documents provided by the intelligence agencies, and to other

documents that have been heavily censored by the intelligence community. Bryant is expected to rule on several of these matters within a few weeks.

Even then, however, there are expected to be further disputes over which documents can be used in the trial. Defense attorneys have said in court papers that they plan to introduce great quantities of documents

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showing the historical use of break-ins. This presumably would include entries at foreign embassies.

Sources familiar with the case said U.S. intelligence have balked at declassifying such information, even though it is widely known, because the government doesn't want to be in the position of confirming the break-ins officially in court.