

Bell Prepared to Defy Judge on FBI Files

By Charles R. Babcock
and Morton Mintz
Washington Post Staff Writers

Attorney General Griffin B. Bell has told the Supreme Court he is prepared to defy a district court judge's order to give up files containing the names of confidential FBI informants. And the lower court judge, Thomas P. Griesa, has countered that Bell's brief to the high court is incomplete and misleading.

The Supreme Court may decide as early as this week whether to review the legal issues raised by the Justice Department's long and bizarre feud with Griesa. Bell is willing to risk being cited for contempt for failing to comply with Griesa's order, aides say, because he fears identifying informants in this civil case would create a harmful precedent and scare off others who might cooperate with law enforcement officials.

Leonard Boudin, attorney for the Socialist Workers Party, the group that filed the multimillion-dollar damage suit, calls Bell's claim melodramatic and its legal basis fictitious. "That order isn't directed at Bell, but the FBI," he said in a recent phone interview.

The SWP suit has been dragging on since 1973, while attorneys for the two sides argued about access to FBI files on 1,300 informants who spied on the small radical political group since 1938.

The feud between the Justice Department and Griesa escalated earlier this year when the Manhattan judge threatened to hold FBI officials in contempt if they refused to comply with his order to turn over to Boudin files on 18 informants.

When the 2nd U.S. Circuit Court of Appeals refused to review the order because it was not a final decision in the case, Bell—as custodian of the FBI files—petitioned the Supreme Court.

"The attorney general is prepared not to comply with the district court's order in this case, if that is necessary to permit appellate review," the brief by Solicitor General Wade H. McCree Jr. said. "But it would be pointless to require the attorney general to take that formal step, which could only lead to confrontation between two branches of the government."

Moreover, it would be unseemly for the chief law enforcement officer of the United States, sworn to uphold and obey the law, publicly to disobey

a court as the price of obtaining review of a ruling he believes to be both unsound and certain to harm the proper functioning of government."

To support its claim that the confidentiality of informants is "privileged" and shouldn't be revealed, Justice cited the case where then-President Nixon got an early Supreme Court review of his fight to keep the Watergate tapes out of the hands of special prosecutor Leon Jaworski.

Boudin replied in his brief that the reference to Nixon is "trivious" because no order has yet been directed at Bell and because Cabinet officers do not have the legal standing of the president.

Griesa also was critical of the Justice brief. He hauled Bell's attorneys into his courtroom in April for a long recitation of "some things . . . which I think the government might wish to correct."

He all but accused Assistant U.S. Attorney Thomas E. Moseley of deliberately trying to confuse the facts of the case. He charged that the Justice brief had omitted pertinent court rulings and overstated the usefulness of previously disclosed FBI documents. "The government is well aware that

none of the depositions and document discovery thus far was intended to cover the FBI informant question," he said.

McCree filed a transcript of that hearing as a supplement to his original brief, but has decided not to answer Griesa's charges further. "We didn't want to get in a spitting match with a federal judge," one Justice official said.