Dear Wes, 6/22/84

This is so wild it may permit a little good clean fun in the column and perhaps help FOIA a little.

In a Carl Stern FOIA suit having to do with the FBI's covering up of some of its illegalities the FBI actually withheld and insisted it had to withhold the name of its New York Special Agent in Charge. In fact the issue was litigated up to the appeals court, and that costs money and takes much time. As you know, the name of any SAC is well and publicly known, so his also was known. More than most. (The New York Office is an FBI division and its SAC was an assistant director.)

If my recollection is correct, this one was Wallace LaPrade and he made quite a stink of being disciplined, open and very much publicized warfare if I recall correctly.

I just remembered that I had an interest in him via my King interests and I enclose a copy of one story that is enough to show you how public it all was!. La Prade started a real battle after this and I did not keep the clips.

Stern's suit was after all this publicity, so in addition to the fact that the SAC's name is always public domain, here you have one with went public with a real vengeance, and after that the FBI forced litigation in its effort to withhold.

All I know of Sterns suit is what I read in the decision. I am inclined to believe that it was much broader than these three names and that the FBI, as usual, was lavishing public moneys (that might better have been used in law enforcement) in its endless battles to nullify FOIA, which has caused it much embarrassment. It withheld the names at district court and appealed when it lost. The result is that it now has a decision which requires it to disclose those names when there is a public interest that overrides privacy considerations. It knew this all along and, in fact, disclosed many thousands of pages of reports without withholding such names. In one lawsuit it even gave me a list of all the field office agents, complete with home addresses and phones, and then abruptly started withholding those identical names under privacy claims!

Aside from always battling FOIA, the apparent reason for withholding the names of agents is to prevent associating them with their work, to cover up. It is for this very reason that the names are important to scholars as well as reporters and of considerable public interest in many cases.

In one of my lawsuits (King again) the FBI almost got away with using an unindicted coconspirator in the same New York matter as an FOIA case supervisor at FBIHQ and built its case on his affidavits! I was told that the very FBI building shook when I exposed this, along with proof of his false swearing and swearing to the genuineness of phony documents, and that court banished him. (He was in the courtroom, did not utter a single word in self-defense, and just left silently.)

God the cost of all of this, including the unnecessary burdening of the courts!

Best wishes,

Hal

The FBI Report supplied the general job title and detailed the involvement of each of the three censured FBI employees. According to the Report, two of those employees contributed inadvertently to the cover-up. One of those employees had been assigned to the FBI's Legal Counsel Division and was involved in the 1973 SWP litigation against the FBI. Over a three-year period during the course of that litigation, the government denied having conducted surreptitious entries against the SWP. This denial was based upon the FBI's repeated and erroneous assertions to the DOJ that no such entries had occurred. Eventually, the DOJ learned of the entries and corrected the government's denial. The FBI Report concluded that there was no "deliberate attempt on the part of any current employee to misrepresent . . . the investigative techniques used in the SWP case." *Id.* at 16. An agent assigned to the Legal Counsel Division, however, was "censured for derelictions of his responsibilities." *Id.* at 17. In the censure letter to that employee, FBI Director Webster stated that, if the employee had reviewed pre-existing files more thoroughly, he might have discovered that the FBI's representations in the SWP litigation concerning surreptitious entries were false.

The second censured FBI employee found to have contributed inadvertently to the cover-up provided inaccurate and misleading information to the Senate Select Committee on Intelligence and the House Select Committee on Intelligence in 1975 regarding surreptitious entries conducted against the SWP and Weather Underground fugitives. This employee was responsible for handling the congressional requests for information. The FBI Report found that, while some experienced FBI agents (all retired) intentionally may have suppressed revelation of surreptitious entries, the censured employee's shortcoming was simply his lack of perseverance in gathering complete and accurate information. *Id.* at 23. In censuring this employee, Webster concluded that

greater investigative initiative on the employee's part might have resulted in the discovery of illegal entries.

The FBI concluded that a third employee, a Special Agent in Charge (SAC) in the FBI's New York office, knowingly participated in a cover-up during a 1974 GAO audit of the FBI's domestic intelligence operations. This SAC followed specific directions from an Assistant Director to exclude from a particular teletype to FBI Headquarters any information concerning surreptitious entries carried out against the Weather Underground. The Report found that "there was an apparently deliberate attempt to withhold the existence of surreptitious entries from the GAO in this one instance." FBI Report at 6. Although the "individual most likely responsible for this misrepresentation retired in 1976," the FBI censured the SAC for his participation in that misrepresentation. *Id.* The SAC's censure letter was much more critical than the censure letters received by the other two employees. Webster concluded that the SAC "took part in an effort to withhold information from GAO" and that such action was "intolerable for a senior bureau official."

In sum, two contributors to the cover-up who were still FBI employees in 1980 were employees who, according to the Report, appeared to have acted inadvertently. The FBI Report presented no evidence that these employees violated any federal law, that they intended to cover up the illegal FBI activity, or that they were even aware of such attempts by others. The third employee, however, was found to have participated knowingly in the cover-up.

Several weeks after the Attorney General released the FBI Report, appellee Carl Stern, a television news reporter, requested that the FBI disclose the names of the three FBI employees whose censure was described by the Report. When the FBI refused, and all administrative appeals were exhausted, Mr. Stern filed suit in district

2. *The Special Agent in Charge*

We reach a different conclusion, however, as to the SAC who was involved with the GAO audit of the FBI's domestic intelligence operations. He was a higher-level official than the other two employees, and he participated *knowingly* in the cover-up. His censure letter stated:

> Although you were following instructions from a superior, you are culpable to the extent that you took part in an effort to withhold information from GAO. Your participation in acts that resulted in the FBI's not making a full and timely disclosure of surreptitious entries was a serious matter, and you should have been aware that the result of your action would be a misrepresentation to GAO.

The letter added that "this type of action is intolerable for a senior bureau official." This censure reflects the FBI's conclusion that, although the SAC did not initiate the plan to withhold relevant information available in the New York office, he was aware of the plan, acquiesced in it, and helped carry it out.

The balancing we are required to make under Exemption 7 tips toward disclosure in the SAC's case. We conclude that it would not be an "unwarranted invasion of personal privacy" to reveal his name, despite the potential association with notorious and serious allegations of criminal wrongdoing. He was a high-level employee who was found to have participated deliberately and knowingly in the withholding of damaging information in an important inquiry—an act that he should have known would lead to a misrepresentation by the FBI. The public has a great interest in being enlightened about that type of malfeasance by this senior FBI official—an action called "intolerable" by the FBI—an interest that is not outweighed by his own interest in personal privacy. There is a decided difference between knowing participation by a high-level officer in such deception and the negligent performance of particular duties by the two

other lower-level employees. The excuse that the SAC was merely following orders should not prevent the public from being informed that a specific "senior bureau official" followed a deliberately-chosen course when placed, perhaps, between a hard rock and his conscience. One basic general assumption of the FOIA is that, in many important public matters, it is for the public to know and then to judge.

CONCLUSION

We hold that the FBI may withhold the names of the two lower-level employees, who were inadvertent participants in the cover-up, under Exemption 7(C) of the FOIA. We agree with the district court, however, that neither Exemption 7 nor Exemption 6 justifies nondisclosure of the name of the Special Agent in Charge who knowingly participated in an effort to withhold information from the GAO. We therefore reverse in part and affirm in part.

It is so ordered.

49178

By Charles R. Babcock
Washington Post Staff Writer

Attorney General Griffin B. Bell rejected a recommendation that a high-ranking FBI official be indicted for perjury last year, and instead personally asked the veteran agent to correct his sworn testimony.

The appeal to J. Wallace LaPrade, head of the FBI's large New York field office, illustrates the problems Bell has faced in his dual role of overseeing the FBI and the investigation of alleged illegal break-ins by FBI agents during the early 1970s.

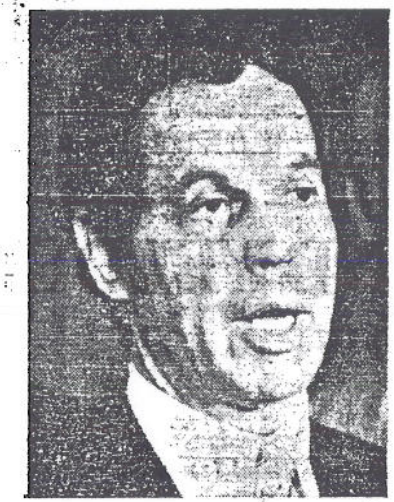
He is expected to announce his decisions on further prosecutions in these so-called "black bag" cases early this week.

The attorney general told LaPrade, according to sources familiar with the meeting, that he didn't want to indict an FBI agent — especially not for perjury — because it would reflect badly on all FBI agents who are called to testify in court cases.

Bell is known to view his brief encounter with LaPrade as a sincere effort to find the truth about who authorized the break-ins and surveillance of radical fugitives.

But his conduct in the episode concerns some Justice Department attorneys because it can be viewed as an example of a double standard of justice, of special treatment for an FBI agent that would not be afforded the average citizen.

Prosecutors sometimes permit witnesses to change their grand jury testimony. But it is considered unusual for the Justice Department to initiate such proceedings after a recommendation to prosecute has been made.



Associated Press

J. Wallace LaPrade, left, was asked by the attorney general to alter his testimony.

It is even more unusual for the attorney general to make such an appeal personally.

LaPrade's potentially perjurious testimony was given to a federal grand jury in New York in January 1977.

A civil rights division task force then heading the investigation recommended to Bell a few months later that LaPrade be charged with perjury as part of a first wave of indictments in the investigation.

Bell chose at the time, however, to obtain the indictment only of John J. Kearney, a field supervisor who worked for LaPrade, in connection with alleged mail-openings and wiretaps.

LaPadre was named as an unindicted co-conspirator.

That April indictment triggered a storm of protest by FBI agents and their supporters and it is generally considered that Bell then began to question the course of the investigation.

About the same time, Bell met privately with another potential defendant of the case without either Bell's prosecutors or Decker's lawyer present, a breach of legal decorum that the attorney general now acknowledges was incorrect.

Bell said in a recent interview that criticism of the Decker meeting was justifiable. "I remember I was sort of startled myself when I ended up talking [with him]," he said.

But the attorney general rejected the suggestion that he had to be especially careful of appearances in such a sensitive internal investigation.

"It's only the weak people who lean over backwards against their own people," he said. "I'm not so lacking in confidence as that."

Bell made increasingly critical comments about the civil rights team's investigation in the months after the Kearney indictment. And he began to urge that LaPrade be recalled and given a chance to change his earlier testimony, sources said.

Finally, in early December, LaPrade and his New York attorney, Thomas Bolan, met at the Justice Department with Benjamin R. Civiletti, head the criminal division, and other J. tice attorneys.

Bell joined the meeting for only few minutes to make his personal a peal for LaPrade to tell the truth, cording to sources.

It was also in early December th the five-member civil rights divisi team asked to be taken off the ca because of what were said to be d ferences in strategy.

A new 10-member task force to over and began concentrating on hig level officials at FBI headquarte who may have approved the break-in Bell has been considering their reco mendations for the past few weeks.

There have been indications, fi reported in The Los Angeles Time that the task force recommend some kind of prosecutions of form FBI Director L. Patrick Gray III, well as W. Mark Felt, the former N 2 man in the bureau, and Edward Miller, who was head of the FBI's d mestic security division during the p riod of the break-ins.

Justice is reported to have propose that the men plead guilty to min charges of civil rights violations. L Prade's case is expected to be handle through a disciplinary proceedin perhaps even dismissal.