

Justice Department Indicates It Might Not Defend

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WASHINGTON, May 10—The Justice Department has raised the possibility that it will not defend in a civil lawsuit three agents of the Federal Bureau of Investigation who allegedly took part in or approved burglaries of the Socialist Workers Party's New York City offices in the early 1960's.

The papers filed in Federal District Court in Manhattan on Friday, Justice Department lawyers asserted that "at this stage it is unclear whether there is, or may be, a conflict between" the Government's defense of other Federal officials already named in the case, and the defense it could offer the three agents.

The Government response to the Socialist Workers' motion did not elaborate, but Justice Department officials said that the dilemma had been occasioned in part by doubt over the legality of the break-ins and by the possibility that the three agents might eventually find themselves subject to criminal prosecution by the Justice Department in that regard.

Implications of Move

Should the department decide not to offer a defense, that decision would have serious implications for numerous other former and present F.B.I. agents involved in the bureau's counterintelligence program over the years who may find themselves the targets of similar civil suits brought by other victims of the program, known as Cointelpro.

The Justice Department is reviewing the 15-year record of the bureau's harassment and disruption of the socialist Workers Party, the Communist Party and other domestic radical and right-wing groups, and Attorney General Edward H. Levi has said that victims of particularly egregious violations of their privacy and personal freedoms will be notified.

The Socialist Workers party, through a discovery order

granted by Federal District Judge Thomas P. Griesa, has obtained hundreds of pages of F.B.I. files recounting the bureau's attempts to disrupt its operations, including documents showing that its Manhattan offices were burglarized by Federal agents on an average of once every three weeks between 1960 and 1966.

Although most of those documents have been censored by the bureau, the names of two F.B.I. agents, George P. Baxtrum Jr. and Arthur J. Greene Jr., appeared in bureau reports referring to the burglaries.

The lawyers for the Socialist Workers are attempting to add Mr. Baxtrum and Mr. Greene to the list of defendants in their

suit, as well as John F. Malone, who headed the bureau's New York City office between 1962 and 1975.

Individual Suits Expected

One Justice Department lawyer said today that, unlike the other defendants, the party intended to sue the three agents as individuals, making them personally liable for any damages awarded.

Another Justice Department official said that he hoped a decision on whether to offer representation to the agents, should that become necessary, would be made by the end of this week.

The official's remarks followed the disclosure today by

the staff of the Senate Select Committee on intelligence activities that the F.B.I. had carried out as many as 1,300 "surreptitious entries" for various purposes between 1942 and 1970.

In addition to the 92 known burglaries of the Socialist Workers' offices, the staff report said, F.B.I. agents conducted at least 239 entries directed at some 15 domestic political groups to search offices or members' homes or to photograph or seize documents.

In none of these cases, the report said, were various attorneys general advised that the bureau was conducting break-ins without a judicial search warrant, a practice that courts

TUESDAY, MAY 11, 1976

3 F.B.I. Agents in Suit by Socialist

have found to be in violation of the Fourth Amendment prohibition against unlawful search and seizure.

Other Entries Cited

The committee staff also reported that the bureau had made at least 491 surreptitious entries between 1960 and 1975 to install listening devices in the homes or offices of criminal suspects, and that 509 microphones had been surreptitiously installed by the bureau in domestic intelligence cases during the same period.

The report took note of internal F.B.I. documents conceding that the burglaries were "clearly illegal," and it said that even after the practice had been formally terminated by J.

Edgar Hoover, the late F.B.I. Director, in early 1967, at least one such break-in was carried out by bureau agents.

Mr. Hoover's order did not ban surreptitious entries to install microphones, however, or burglaries against foreign intelligence targets, such as embassies and consulates in the United States.

Meanwhile, F.B.I. sources said that a public apology on Saturday by Clarence M. Kelley, the current F.B.I. Director, for some of the bureau's past actions had generated considerable adverse reaction among present and former agents of the bureau.

In a speech at Westminster College in Fulton, Mo., Mr. Kelley, without being specific,

termed some of the F.B.I.'s activities "clearly wrong and quite indefensible," and he implicitly criticized Mr. Hoover in giving his assurances that the bureau would never again be able to act "without accountability."

Advice to Kelley Noted

As the Congressional investigations of the F.B.I. have progressed over the last year, some of Mr. Kelley's aides have been advising him, as one put it, "to put a little daylight" between himself and Mr. Hoover, under whom all of the reported abuses occurred.

Another group of executives at the bureau's headquarters, mainly older men who came to power under Mr. Hoover, re-

Workers Party

portedly have been resisting such a public renunciation of the bureau's past.

One bureau source, asked today about the reaction to Mr. Kelley's Westminster speech, said: "There are still a lot of people who have a lot of respect for Hoover. He [Mr. Kelley] wins nothing by this."

Another source conceded that "maybe the timing wasn't the best" for Mr. Kelley's address, coming as it did after the Congressional committees had disclosed most of their adverse findings about the bureau, and he added that "things are getting sticky around here" as F.B.I. officials divided into "various camps" in their responses to the Director's remarks.