

Files on Break-Ins Destroyed, Say Accused FBI Men

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One or more FBI officials apparently disobeyed orders from former director Clarence Kelley and destroyed files that detailed illegal FBI break-ins in the early 1970s, court documents disclosed yesterday.

Defense lawyers, revealing that they had been advised that more than 47 FBI files on the surveillance were missing, said they would ask a federal judge to dismiss conspiracy charges against former FBI director L. Patrick Gray and two of his top lieutenants.

Thomas Kennelly, defense attorney for former FBI intelligence chief Edward Miller, filed a dismissal motion before District Judge William Bryant, arguing that the missing files might have contained evidence clearing Miller.

Kennelly also asked Bryant to schedule a hearing at which Justice Department officials could explain the destruction of evidence.

Gray, Miller and Mark Felt, the bureau's former No. 3 man, are accused of authorizing warrantless break-ins, wiretaps, mail openings and other surveillance — known as "black bag" operations — in an effort by the bureau's New York office to locate fugitives suspected of terrorist bombings.

Francis Martin, a Justice Department trial lawyer, said: "Obviously, we don't feel that what happened should cause dismissal of the case."

In a letter made public yesterday, Martin advised defense lawyers that prosecutors had reviewed the documents and removed those they needed before any files were destroyed.

In an interview, Martin confirmed that 47 files were destroyed before decisions were made on whom to seek "black bag" indictments against. That means investigators may not have had all the available break-in reports available when deciding which agents to prosecute.

Martin's letter also disclosed that the department had considered taking action against an FBI section chief who retired recently, Robert Shackelford, because he bucked "specific instructions from Kelley and a top department official in destroying the files in 1976.

Officials said no prosecution of Shackelford is contemplated. It is illegal to knowingly destroy evidence in a criminal case.

Yesterday's development created a new snag for prosecutors preparing for the scheduled Jan. 22 trial of the three former FBI officials, charged with conspiring to violate the civil rights of relatives and friends of the radical Weatherman group.