

U.S. WON'T DEFEND 2 AGENTS OF F.B.I.

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The Justice Department has decided that it cannot defend two agents of the Federal Bureau of Investigation accused in a civil lawsuit of burglarizing the New York City offices of The Socialist Workers Party, a department official said today.

The official said that the decision not to provide the two agents with Government counsel in the case was made after Deputy Attorney General Harold R. Tyler decided that a Government defense would present the department with a conflict of interest.

The official and others confirmed that the potential conflict was posed by a current investigation, centered on the department's civil Rights Division, of possible criminality by F.B.I. agents who took part in the New York burglaries.

Mr. Tyler reportedly decided that it would be inappropriate for the Justice Department to defend in court in one instance activity for which it might eventually bring criminal prosecution in separate cases, and he authorized the retention, at Federal expense, of private lawyers to represent the two

Agents' Names Added

United States District Judge Thomas P. Griesa agreed yesterday to permit the Socialist Workers Party to file an amended complaint in its two-year-old lawsuit that added the names of the two agents, George P. Baxtrun Jr. and Arthur J. Greene Jr., to the list of defendants in the case.

The judge's order also approved the addition to the complaint of John F. Malone, a former assistant F.B.I. director who was head of the bureau's New York field office from 1952 until 1975. But the Justice Department official said that Mr. Tyler had made no decision yet regarding counsel for Mr. Malone.

The 92 known burglaries of the offices of the Socialist Workers Party and affiliated organizations occurred on the average of once every three weeks from 1960 to 1966, and many of them, judging from F.B.I. documents made public by the party, were approved by Mr. Malone.

Although there is no Federal statute barring burglary as such, department lawyers have said that the civil rights laws might well apply to the New York burglaries, for which Senate investigators have found no search warrants were obtained.

Removed Documents

F.B.I. reports of the burglaries that were made public show that they were invariably conducted in the early morning by agents who were sometimes forced to pick locks to gain entry and who removed or photographed party documents they found inside.

There is a five-year Federal statute of limitations on the prosecution of criminal acts, however, and it was unclear under what authority the civil rights division was investigating the criminality of burglaries

that, as far as is known, came to a halt in 1966.

One possibility may be that prosecution is being considered under a section of the United States Code that makes illegal a conspiracy to violate civil rights, and on which the statute of limitations does not begin to run out until the conspiracy is broken by discovery of the illegal acts in question.

Another possibility is that other burglaries occurred within the last five years that have not been disclosed.

Unusual Decision

The Justice Department's decision not to defend the two F.B.I. agents itself is unusual although not unprecedented. An official said the department had recently authorized private counsel for a group of employees of the Central Intelligence Agency and the Postal Service who were being sued in connection with the C.I.A.'s

20-year secret program of opening and photographing mail between the United States and Communist countries.

Within the next few weeks, Justice officials, acting on instructions from Attorney General Edward H. Levi, are expected to begin notifying several hundred individuals that they were affected in some way by the F.B.I.'s domestic counterintelligence program.

That operation was a broad attempt, beginning in 1956 and ending in 1971, to harass, disrupt and neutralize various political organizations of both the left and right. It included anonymous mailings designed to injure the reputations of politically active individuals, to cost them their jobs and to destroy their relations with friends and spouses. In several cases, the bureau's efforts were successful.

The Socialist Workers Party's lawsuit, which is expected to come to trial in Federal Court in New York within a few months, is seeking damages of \$37.3 million for the harassment to which the party says it has been subjected. It also asks a judicial injunction against further burglaries and mail openings and the use of informants against it by the F.B.I. and other agencies.