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U.S. Expected to Fight Disclosure Of F.B.I. Data in Ex-Agent's Trial

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WASHINGTON, Aug. 23—Justice Department lawyers are expected to ask a Federal judge in New York to modify or dissolve a sweeping order that would require the Government to produce records of all warrantless wiretaps, mail openings and break-ins by Federal Bureau of Investigation agents between 1947 and 1972, sources said today.

The order was issued Aug. 2 by District Judge Kevin Duffy in response to pretrial motions by attorneys for John J. Kearney, who said they needed the material for Mr. Kearney's defense.

Mr. Kearney, a former F.B.I. supervisor, was indicted last April on five felony charges stemming from allegedly illegal wiretaps and mail openings committed by agents under his command in their search for Weather Underground fugitives.

Several supporters of Mr. Kearney said they were hopeful that the department might abandon its prosecution if it could not get the order changed, but neither the Justice Department lawyers nor the defense attorneys would comment today on that possibility.

'Very Sticky Problems'

Officially, Justice Department spokesmen would say only that the matter was still being discussed by attorneys involved in the prosecution of Mr. Kearney, and that no decision had yet been made.

Privately, however, several persons familiar with the case said today that the department lawyers were almost certain to seek modification or dissolution of the order. One Justice Department official said that "some very, very sticky problems" could arise if the order was not modified.

In addition, the sources said that officials at the bureau itself would be likely to oppose the judge's order and to urge the Justice Department attorneys to try to have it changed.

Thomas Harrington, a spokesman for the bureau, said that no one in the F.B.I. would be able to comment on the matter. But a long-time agent there said today that "there's no question it's a problem, and there's no question [the department attorneys] will try to modify it."

Sensitive Records

One reason officials are concerned, the sources said, is that it would take a massive clerical effort to assemble the material covering the 25 years that Mr. Kearney served as an agent.

A more important concern, they said, is that the order as it stands would appear to require records on all warrantless

break-ins and wiretaps by all agents, including those against foreign embassies and consulates.

"I would think that not only the bureau, but the State Department and the N.S.A. [the National Security Agency, which attempts to intercept and decode foreign cable traffic] would object," a Justice Department source said.

Mr. Kearney, the first bureau agent to be indicted on a felony charge, is represented by Hubert Santos, of Hartford, Conn., and by the firm of Williams & Connolly in Washington.

His attorneys refused to comment today on the matter. The apparent motive in seeking the materials would be to show that such activities were so common at the time that Mr. Kearney had good reason to believe he was operating under legitimate authority in approving them.

Possible Appeal Strategy

Should the material not be provided, supporters of Mr. Kearney said, the defense lawyers would most likely argue that they were being denied material essential to their case.

Judge Duffy already has said in his order that the Government would be able to hold back materials that could compromise investigations or cause undue injury or embarrassment to unrelated third parties.

Even so, several Justice Department sources said today, the order is one of the most sweeping ever issued against the bureau.

Although Mr. Kearney is the only agent indicted to date in connection with the search for the Weather Underground fugitives, the Justice Department investigation is still active and at least a half-dozen other middle-level and senior officials are said to be targets of the inquiry.

Defense Groups Raise Funds

Today, a group of four committees concerned about the investigation of bureau agents and of other intelligence officers and former officers announced that they had raised nearly \$500,000 for legal costs of the men, and had already paid \$110,000 in legal fees for 47 agents who have been questioned about the alleged break-ins, wiretaps and mail openings.

In addition, one of the groups, the Security and Intelligence Fund, said it had sent a telegram to President Carter urging him to reconsider the prosecution of Mr. Kearney and of other intelligence agents facing legal difficulties because of "past duties in the interest of national security."