ARTICLE APPEARED
ON PAGE 10

THE CHICAGO TRIBUNE
18 April 1977

Bob Wiedrich

Why isn't FBI treated like CIA?

STAT

THE JUSTICE Department has a double standard on prosecuting federal agents for opening mail that may be well founded in law but will make no sense to Americans who want their country defended against all comers.

In one breath, the department says it will not prosecute Central Intelligence Agency personnel who opened letters in search of foreign intelligence plots against the United States in the two decades that ended in 1973.

But in the next breath, the department indicts a retired Federal Bureau of Investigation supervisor on charges of having directed mail openings and wire tapping in the search for radical terrorists who were trying to blow up the government between 1970 and 1972.

The fine line between the two operations appears to be the kind of mail that was involved—foreign as opposed to domestic..

And the second determining question appears to be whether CIA agents were protected from being accused of lawlessness by an implied presidential authorization that did not extend to the FBI men also working to defend their country against violent subversive activity.

KEEP IN MIND that during the period for which CIA agents have been given a justice Department absolution—1953 to 1973—foreign spies may have stolen American secrets. But it has not been recorded that they blew up buildings and jeopardized lives.

Quite the reverse applies to the Weathermen faction of the radical Students for a Democratic Society, whose fugitive leaders were being hunted by an FBI squad in New York City headed by John J. Kearney, the retired supervisor indicted last April 7.

The Weathermen were an admitted revolutionary group dedicated to the violent overthrow of a constitutionally elected government.

Some of their literature had been prepared in Fidel Castro's Communist Cuba. Some of the group's leaders were known to have received ideological training in Cuba. They were a clear and present danger to the country.

Today, by interpreting the law, the Justice Department has decided the CIA mail snoopers could not be successfully prosecuted because the rules were different when they operated and American Presidents from Dwight D. Eisenhower on down probably knew about their activities.

WE'RE NOT suggesting that they should be prosecuted. But we don't think the FBI agents should be, either.

Both bands of men were acting in behalf of their country and presumably under the orders of superiors.

Besides, we find it hard to differentiate between the opening of foreign and domestic mail when the quarry being sought was equally dangerous to the security of the United States.

In fact, it could be argued that the Weathermen with their nitroglycerin and dynamite were a far greater immediate threat to the country than the foreign agents with their secret cameras and bribe money.

Regardless, both mail opening operations were conducted during periods when there was grave national concern for the internal security of the nation.

And, as a 57-page report of the Justice Department pointed out last Jan. 14 in explaining the decision not to prosecute CIA men:

"Interviews of individuals who served as members of the President's Foreign Intelligence Advisory Board during the Kennedy and Johnson administration indicate these individuals were aware of domestic mail openings by the CIA and FBI."

A PRESIDENT would have to have been "in a fog," one board member told the Justice Department, not to have known that mail openings were being conducted.

In its report, the department declared that opening foreign mail would be illegal under present law and that it would not hesitate to prosecute future violators.

However, it explained that the law was not always as clear and that it would be "unfair" to prosecute defendants today who believed their actions to have been presidentially authorized.

The report leaned heavily on what it termed "the well observed, but seldom discussed" doctrine of plausible deniability or presidential deniability in intelligence matters.

The report defined those terms as meaning that rarely were presidential authorizations of sensitive intelligence operations reduced to writing.

The device was one used to shield a President from the consequences of having possibly authorized unlawful acts.

ON FEB. 18, 1976, the White House issued an executive order withdrawing any prior authorizations for CIA mail openings. After more than 20 years of ambiguity, the rules about opening foreign mail for intelligence purposes finally had been made clear.

Legal authorities, however, maintain that a judicial warrant is required to open domestic mail and that presidential approvals of the past never did legalize such FBI operations. Following the letter of the law, that probably is true.

Nevertheless, the domestic mail openings were in search of fugitive terrorists dedicated to destroying the United States government by violent means.

So while prosecuting former Agent Kearney may satisfy legal purists, we believe the action qualifies as a gross injustice and a perversion of the law.

No man should be indicted for defending his country.