

FBI Aide Says Gray Resumed Break-Ins

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Acting FBI Director L. Patrick Gray III reinstated the policy of permitting break-ins in domestic investigations in August, 1972, according to Edward S. Miller, former head of the bureau's intelligence division.

Gray announced his decision at 1972 meetings of FBI agents on Aug. 29 and Sept. 15 and in a personal meeting with Miller in August, Miller said yesterday in a telephone interview.

"Gray made the decision in August and I was the first one in the bureau he told," Miller said.

"We were in my office discussing one of our investigations when he told me he had decided to reinstate the surreptitious entry policy. I asked him if his authorization specifically included domestic investigations, and he said, 'Yes.'"

Miller said Gray announced the decision to a



EDWARD S. MILLER
... tells of '72 decision

meeting of 20 FBI senior agents from around the country who were visiting the Washington headquarters on Aug. 29, and to a group of agents investigating the Weather Underground, a radical organiza-

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tion, on Sept. 15 in Quantico, Va.

"Both times," Miller said, "Gray made the strong admonition that every break-in had to be approved in advance by myself and [W. Mark] Felt [then associate director of the FBI]."

Miller said that he and Felt approved as many as 12 break-ins in the New York area between September, 1972 and April, 1973, on the basis of the policy reinstated by Gray.

Gray, through his attorney, denied "condoning or approving, directly or indirectly, any illegal activity on the part of the FBI."

Felt said yesterday that he recalled approving surreptitious entries in 1972-73, and that he was acting with Gray's overall approval.

"I'm convinced that I was acting with his approval," Felt said. "I had authorization based on discussions with Gray . . . Gray's attitude was if you're going to do it, you've got to have top-level approval."

"I have this impression strongly . . . I'm not prepared to say exactly what Gray said, but I believe I can reconstruct it."

Until recently, the bureau's use of burglaries in domestic investigations was believed to have been halted in 1966 by then-Director J. Edgar Hoover. But FBI documents made public last March reported burglaries conducted by FBI agents in the New York City area in 1972 and 1973.

The Justice Department's Civil Rights Division is investigating the burglaries, and is empaneling a federal grand jury this week in New York City to begin hearing evidence in the case.

Miller said that when he told Robert L. Shackelford, a section chief in the general intelligence division, of Gray's decision to reinstate the break-in policy, Shackelford said, "That's good, because they're doing it anyhow."

Miller said Shackelford's comments "confirmed wafts of feelings I had that there were break-ins in New York." He said he told Shackelford: "Then this will put some bureau discipline back into it."

Shackelford said yesterday he had no recollection of such a conversation with Miller, and refused to comment further.

Miller said that Washington approval for the New York burglaries was requested orally by Andrew J. Decker Jr., then chief of the FBI's New York office.

"I remember twice Andy called me and asked for permission to break into the home of a person he thought was connected with the Weather Underground," Miller said. "We needed the second break-in because the first had been abortive."

Miller said that other telephone requests from Decker were received by Shackelford, who personally relayed them to Miller. Miller said he called Felt on each request and received his approval before calling back to Decker.

"There was never any written record made of the requests," Miller said. "The only record was a two-line memo I would send to Felt after each call recording that he had approved the request."

Miller said that Gray began inquiring into what investigative techniques the FBI should employ as early as May, 1972, when he was appointed acting director of the bureau.

"He was very conscious of the need for good intelligence," Miller said. "He consulted many people, in and out of the bureau, before reinstating the policy. When he finally decided, it was because he felt the burglaries were necessary to penetrate the communications of dangerous terrorist groups."

"Frankly," Miller said, "we in the bureau found Gray's interest in gathering intelligence very refreshing. He was formerly in the service, and he recognized the need for better intelligence."

Miller added that "Hoover had stopped the policy and prevented it from being reinstated because he was worried about being blamed publicly for the break-ins. The entire intelligence community — CIA, NSA and others — thought we needed the break-ins, but Hoover was the stumbling block. But Gray thought the problem of terrorism was so critical that he was willing to take responsibility."

Another factor in Gray's decision to authorize the break-ins, Miller said,

was a Supreme Court decision in June, 1972, that deprived the FBI of an investigatory tool by declaring wiretaps without warrants on domestic subversives were unconstitutional.

Miller said that some of the burglaries he approved had turned up valuable information concerning terrorist groups, but said that he would not elaborate because the information was confidential.

Felt said that the New York burglary he remembered approving was not productive. Felt said the break-in was at the home of some persons suspected of harboring Weathermen fugitives.

"We fully expected to get notes or correspondence with return addresses or something," Felt said. "It sounded justified and would lead to the apprehension of at least one of the Weathermen fugitives."

Felt said, however, that he later learned the break-in "didn't turn up anything" relevant to the Weathermen investigation.

The second break-in Felt said he approved was in Dallas in connection with Arab terrorists. That entry was "extremely productive" and netted a list of suspected Arab terrorists in this country, Felt said.

"We then went and interviewed each one and asked each of them to submit to fingerprinting," Felt said, adding that most of the suspected terrorists refused.

The interviews, he said, amounted to what "you might call harassment" and had the effect of putting them out of circulation."

Felt said that a memorandum of conversation was prepared after he approved each break-in and that such records should still be in FBI files.

After the surreptitious entries had been approved, Felt said, "I told Gray after the fact and he thanked me for telling him."

Felt said that he would approve the break-ins if he had it to do over again. "I'm proud of what I did," he said.

"You've got to remember that we were dealing with murders, terrorists, people who were responsible for mass destruction . . . the key word is violence. They were planning mass destruction . . . Please emphasize the viciousness of these people. We were dealing with fanatics."

"If you learn in advance of a bomb about to go off, you can't put your fingers in your ears and wait for it to go off," Felt said.

He conceded that the FBI had no information that those whose residences were burglarized planned immediate violence.

"But these people had claimed responsibility for hundreds of bombings and we wanted to put them out of circulation . . . we had an obligation to," Felt said.

"I think I have observed the spirit and the letter of the Constitution . . . the right of one person cannot be allowed to exist to the detriment of hundreds," he said.

Felt, 63, retired from the FBI in 1973 after 32 years with the agency. He is at work on his biography, entitled "The Pyramid: A trip to the Top of the FBI." It is scheduled for publication next year.

In the current Justice Department investigation of FBI burglaries, officials have said that they are not investigating the break-in involving the Arab terrorists because it involves foreigners.

Felt said the distinction between so-called "domestic" and "foreign-related" entries is "silly."

Felt said that he has not hired a lawyer as a result of the current investigation and has not been interviewed or called to testify.

Concerning the investigation, he said: "There are political overtones to this—to show the Ford White House as a staunch defender of civil rights . . . to offset Watergate and the Nixon pardon."

Felt noted that former CIA Director Richard Helms was not prosecuted for approving a 1971 break-in at a Fairfax City photo studio in connection with a CIA security investigation.

"That was a much more clear-cut violation of someone's civil rights . . . that was over leaks and the FBI was trying to stop violence."

Miller said that he and Felt terminated the break-in policy in April, 1973, when Gray was replaced as FBI director by William D. Ruckelshaus. Ruckelshaus was replaced by the current director, Clarence M. Kelley, in June, 1973.

Miller criticized the Justice Department officials investigating the New York burglaries for not questioning him and Felt.

"They're under political pressure to get indictments against some of the top former officials in the bureau," Miller said, "and they know that, if they talk to us their theory would fall apart. They're trying to make us scapegoats."