

F.B.I. Aide Said to Have Defied Hoover in Allowing '71 Burglary

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WASHINGTON, Aug. 27— Justice Department prosecutors have found evidence that Federal agents, apparently in defiance of an order from J. Edgar Hoover, carried out an illegal burglary in the last months of Mr. Hoover's life without his knowledge, but with the written approval of one of his top aides.

Sources close to the department's expanding inquiry into some operations of the Federal Bureau of Investigation said today that the burglary, which occurred in New York City in the fall of 1971, followed written authorization for a "surreptitious entry" from Edward S. Miller, then the bureau's intelligence chief.

The sources said that Mr. Miller, who is now retired, was asked about the matter at a brief appearance before a Federal grand jury here yesterday. They said he could supply few details about the request for his approval, except that it had been sent to him shortly after he took over the intelligence division in September 1971.

Order From Hoover

Mr. Hoover, who then headed the bureau, directed in 1966 that the use of burglaries by his agents to gain intelligence information be halted. In a memorandum written six months after that order, Mr. Hoover noted that requests to authorize such break-ins were still being submitted from the field and repeated his intention that they be discontinued.

Some bureau sources have said recently that the practice resumed before Mr. Hoover's death in May 1972, but without his knowledge. However, the sources' disclosure of the prosecutors' findings is the first indication that the use of such techniques had been approved by high officials at bureau headquarters between the 1966 ban and Mr. Hoover's death.

One former bureau official suggested today that the request approved by Mr. Miller had been not for a burglary as such but for a "microphone survey," an entry of an office or residence — it could not be learned which — to assess the prospects for installing a secret

listening device.

Once entry was gained, the former official suggested, the agents took it upon themselves to hunt for, and photograph or remove, papers and documents they found to be of interest.

Mr. Miller, reached by telephone at his suburban Virginia home, said he would have no comment on any aspect of his grand jury appearance. Nor would Justice Department officials characterize his testimony.

They also declined to comment on an unsubstantiated report that Mr. Miller told the grand jurors yesterday that the

current bureau director, Clarence M. Kelley, was informed shortly after he took over the bureau in 1973 that his agents had carried out a number of burglaries over the preceding two years.

Mr. Kelley has said that he was unaware of the burglaries which have become the focus of the grand jury inquiry, until March 1976, when some files relating to them were found in the bureau's New York City office. A bureau spokesman said today that Mr. Kelley would stand by his previous statements.