

FBI Black Bag Probe Scans Washington HQ

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Federal investigators say evidence is mounting that one or more officials at FBI headquarters knew and approved of the recently disclosed domestic burglaries conducted by agents in 1972 and 1973.

Sources familiar with FBI operations and the current Justice Department investigation said agents would not have undertaken hazardous break-ins, which had been ordered halted by former Director J. Edgar Hoover in 1966, unless they had Washington approval.

The Times disclosed last month that at least 20 FBI agents are under federal investigation for alleged burglaries during the last five years—long after the FBI said such so-called black-bag jobs had ceased.

Last week FBI Director Clarence M. Kelley, acknowledging that he had erred in asserting the last break-in occurred in 1968, said "a limited number of surreptitious entries" had taken place in 1972 and 1973.

"They didn't do it without having some approval from headquarters," one source said. Another source said the investigation is "going to climb the ladder rung by rung." However, investigators conducting the nearly five-month-old department probe of the belatedly disclosed burglaries have not yet approached officials who held key supervisory positions in 1972 and 1973.

These individuals include L. Patrick Gray III, acting director at the time of the burglaries; W. Mark Felt, then No. 2 man in the bureau; Edward S. Miller, then assistant director in charge of the domestic intelligence division; said Gray's three principal aides.

Gray, who resigned in disgrace when it was disclosed in April, 1973, that he

had burned Watergate break-in documents in his fireplace declined through his attorney, Stephen Sachs of Baltimore, to discuss the burglaries.

However, an associate of Gray who insisted on being identified only as Gary's "friend," said: "He had absolutely no knowledge and a complete unawareness of these things [domestic burglaries]."

The three former aides to Gray—David Kinley, Barbara L. Herwig and Mack Armstrong—denied knowledge of any break-ins.

Armstrong, whose duties included domestic intelligence, said: "I'm not denying that these things occurred. But if they did, there were no reports, recommendations or orders from Mr. Gray that came across my desk."

Herwig said: "Things often operated on a need-to-know basis in the bureau) and we were there only a very short time (one year). It's entirely

possible that they (the burglaries) were done outside the normal channels."

Kinley said: "There may have been discussions about that, but I can't pinpoint any."

Felt, a 31-year FBI veteran who retired in mid-1973, declined comment on what knowledge he had of 1972 and 1973 break-ins. Asked if he was denying any knowledge, Felt replied: "I didn't say that. I just can't comment."

Miller, who retired from FBI headquarters in 1974, said he hoped the Justice Department investigation would be completed soon, adding that he found it "disconcerting as the dickens."

Talking with reporters outside his suburban Washington home, Miller said if any "surreptitious entries" were conducted they were done "to preserve the country and not for any selfish motives."

But Miller said he could neither confirm nor deny that he knew about or approved such break-ins; as two sources had suggested.

Miller held a crucial job at the time of the burglaries because the primary targets here friends and relatives of the radical Weather Underground in the New York area. Miller's domestic intelligence division considered fugitive Weather Underground members a priority assignment.

The investigation is also known to involve Andrew J. Decker, who in late 1972 and early 1973 was special agent in charge of the New York field office's internal security division.

Decker, who reportedly has retained Washington defense attorney Edward Bennett Williams; now is assistant director in charge of the records management division at FBI headquarters.

The 1972-73 burglaries here brought to Kelley's attention when an FBI agent searching for material in a related civil damage suit

found a veiled reference to them in file folders in the FBI's New York field office. The folders are understood to have been part of the files of John F. Malone, assistant director in charge of the field office until he retired last year, Justice Department sources said.

However, one source familiar with the investigation said this discovery did not necessarily mean that Malone had any role in the break-ins.

The source explained that because the New York field office—with some 1,000 agents—is the bureau's largest Malone gave his five special agents in charge of the operating divisions "considerable latitude."

Miller, who described himself as a close friend of Kelly, discussed "hypothetically" why he and other bureau officials—if they had known about the burglaries—might not have informed Kelly, who took command of the FBI in July, 1973.

"Even a man and wife don't tell each other everything," Miller said. "If something wasn't a problem, you might not mention it."

Asserting that Kelly "wouldn't deliberately mislead you," Miller said it was possible the FBI director had been told about the break-ins at some point "but it didn't make an impression."

Sources close to the Justice Department investigation said it has proceeded slowly so far largely because of difficulties raised by the Supreme Court's 1967 Garrity decision.

That 6-to-3 ruling reversed the convictions of New Jersey police officers in a ticket-fixing case, because the officers provided incriminating information when they were told they could lose their jobs if they refused to answer investigators' questions.

"We don't want a defense raised that we violated Garrity," said one investigator.