

Future of Probe of FBI To Rest With Carter Aides

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The major decisions on whether and how to continue the Justice Department's nine-month probe of illegal burglaries by the FBI almost certainly will have to be made by outgoing Attorney General Edward H. Levi's still unnamed successor.

That was revealed yesterday by reliable sources who said the investigation has not yet reached a point where investigators can say whether any FBI officials will be indicted for complicity in the break-ins.

There is a slight possibility that department investigators will make some recommendations about the probe to Levi by early January, the sources said. In that case, he theoretically would be able to act before the Carter administration takes office Jan. 20.

At this stage, the sources continued, there is still considerable uncertainty within the Justice Department about whether the evidence uncovered so far is strong enough to allow prosecution of any present or former FBI officials.

There have been published reports that the department is considering seeking indictments of between 10

and 20 persons allegedly involved in the burglaries against radical political groups. These so-called "black bag jobs" are known to have been committed in the New York area during 1973 and 1974.

However, the sources said yesterday that the estimate of 10 to 20 is far in excess of any indictments likely to result from the investigation. Although the Justice Department is keeping its options open, they added, the attorneys in charge of the probe could conclude that there are no chances of successful prosecutions.

The inquiry is under the direction of Assistant Attorney General J. Stanley Pottinger, who heads the Civil Rights Division. It is based on federal statutes that prohibit law enforcement officers from using their police powers to violate a citizen's civil rights or to make searches without warrants.

Two federal grand juries—one in New York and one in Washington—have been impaneled in the probe. Their inquiries, according to the sources, have been directed at trying to learn whether present or former FBI executives authorized the break-ins or were aware of them and engaged in a cover up.

Several field agents from the FBI's New York office are known to have

provided information about their participation in the burglaries. However, the sources said, the Justice Department is not interested in prosecuting these low-level agents who reportedly acted in the belief that they were carrying out properly authorized, legal orders.

Instead, the probe is known to have concentrated on tracing the chain of responsibility to the FBI's executive hierarchy. Although a small number of persons who held executive-level positions in the bureau's intelligence division during the early 1970s are under scrutiny, the sources said, a big question remains about whether they can be connected to the burglaries in a way that would warrant prosecution.