

CRIMINAL CHARGES BELIEVED SUPPORTED IN INQUIRY ON F.B.I.

NOV 9 1976

Justice Aides Expected to Ask Levi If They May Seek Indictments in Taps, Bugs and Burglaries

NYTimes

By JOHN CREWDSON

Special to The New York Times

WASHINGTON, Nov. 8—Justice Department lawyers have reportedly concluded that they have evidence to support criminal charges against 10 to 20 past and present officials of the Federal Bureau of Investigation who either knew of or approved illegal investigative techniques employed by bureau agents in recent years.

According to Federal sources, prosecutors in the department's civil rights division have found evidence of illegal wiretaps, bugs, burglaries and mail openings and an abortive plot by bureau agents in New York City to kidnap a woman they believed to be linked to members of the terrorist Weather Underground.

The prosecutors, the sources said, have prepared a long memorandum outlining the case against the bureau officials. The case has emerged from hours of grand jury testimony and examination of bureau documents over the last five months by a special panel in the criminal section of the civil rights division.

Memo to Be Given to Levi

Although there are still some gaps in the evidence, one source said, the memorandum will be presented later this week to Attorney General Edward H. Levi by Justice Department lawyers, who are expected to recommend that he permit them to seek indictments against some or all of those named in the memorandum.

There was no indication of how quickly Mr. Levi might act, or how quickly indictments could be prepared and presented to the Federal grand jury that has taken evidence in the case.

But one source said that he had detected no inclination on Mr. Levi's part to defer a decision to the incoming administration of President-elect Jimmy Carter, and he added that the prosecutors hoped that if indictments were approved they could be returned before the end of this year.

2d Inquiry May Continue

The Justice Department investigation, the first ever to focus on possible criminal activity by agents and executives of the nation's foremost law-enforcement agency, has centered up to now on reported burglaries and other intrusive techniques carried out by F.B.I. agents in the New York City area from 1971 to 1974.

None of the reported burglaries were authorized by judicial warrants.

A search by the Justice Department for comparable illegal activities by bureau agents outside the New York area, and against other organizations, such as the Black Panther Party, is expected to continue for several months.

One source familiar with the evidence

Continued on Page 23, Column 3

THE NEW YORK TIMES, TUESDAY, NOVEMBER 9, 1976

Criminal Case Believed Supported In Justice Agency's F.B.I. Inquiry

Continued From Page 1

in the Weather fugitive cases said that, in reaching a determination, Mr. Levi and his aides would have to consider the relative strength of the evidence against each of the bureau's executives, since the evidence is weaker in some cases than in others.

Another question, the sources said, was whether a trial jury could be persuaded to convict bureau officials for having countenanced violations of law in the pursuit of admittedly dangerous terrorists.

The Justice Department prosecutors, at least in part because of their doubts about gaining convictions of low-level bureau agents who were in most cases following orders from their superiors, have granted immunity from prosecution to nearly all the 40 or so members of the New York Weather fugitive squad who carried out the illegal activities.

A Few Supervisors Spared

One source said that a tentative decision had also been made not to seek the prosecution of a handful of bureau supervisors who are above the so-called "street agents" because the supervisors had proved to be the link between F.B.I. headquarters here and the bureau's New York City office and might therefore be able to implicate higher-ups in Washington with their testimony.

An impediment to the investigation thus far, and the basis for the importance of the supervisors' testimony, one source said, is the absence of some crucial documentation in bureau files to show which top bureau executives were involved in the illegal wiretaps and burglaries.

The source attributed that absence to the longstanding reluctance within the bureau to reduce sensitive conversations or directives to writing and to what he described as "incredible" sloppiness in keeping records.

The burglaries and other illegal activities that have come under the prosecutors' scrutiny reportedly ranged over three years, beginning in late 1971, while

J. Edgar Hoover was still the F.B.I. Director, and ending in November 1974, more than a year after Clarence M. Kelley, the current Director, took over the bureau.

One of the principal questions that remain to be answered by the Justice Department investigation is the extent to which bureau agents and officials have acted in recent years without the approval of Mr. Hoover and the men who succeeded him.

Lack of Evidence Cited

One source said recently that no evidence had come to light showing that Mr. Hoover, who ordered in 1966 that burglaries by his agents be halted, had been aware that the practice was resumed before he died in May 1972.

Nor, he said, was there any indication that Mr. Kelley, who has maintained that he never approved such actions nor was asked to approve them since becoming Director in July 1973, had been aware of the illegalities that took place under his administration.

Two former top F.B.I. officials, W. Mark Felt and Edward S. Miller, have acknowledged publicly that they approved some of the surreptitious entries in 1972, but both have maintained that they were acting on authority from L. Patrick Gray 3d, who took over as Acting Director of the bureau upon Mr. Hoover's death.

Mr. Gray has said through his attorney, Stephen Sachs, that he never authorized any illegal burglaries, and the Justice Department prosecutors are known to believe that they do not have sufficient evidence to charge him.