

## Mr. Kelley and the Future of the FBI

Part 6/14/73

In nominating Clarence M. Kelley to be director of the FBI, President Nixon has wisely reached outside political circles and selected a professional with long experience and considerable stature in the law enforcement field. Mr. Kelley enjoys a reputation as one of the nation's top chiefs of police, based on his achievements in banishing corruption from the Kansas City force, introducing a number of innovative systems and techniques, and winning wide community support there.

Even so, the nomination should not be whisked through the Senate in a flurry of relief at the prospect of finally giving the beleaguered FBI a capable permanent leader after 13 months of turmoil and temporizing. We do not have in mind here the predictable Senate Judiciary Committee concern with certain controversial aspects of Mr. Kelley's record, such as his approach to minority hiring in the Kansas City department, or the civil liberties aspects of the intelligence networks he has created. Rather, we are referring to the larger challenge for the Senate committee—and for Mr. Kelley—which was summed up last Friday by the FBI's acting director, William D. Ruckelshaus, in a commencement address at Ohio State University. Mr. Ruckelshaus said:

The Director must be able to conceptualize how the FBI fits into our societal fabric at any given historical moment. He must recognize the permissible limits of investigative techniques—what is permissible in wartime or times of extreme emergency is impermissible when the threat to our country's security is minimal—and he must communicate forcefully those limits to FBI agents. Needless to say, this takes an individual of considerable capacity.

Further, the necessity to America of our major federal law enforcement agency's not exceeding a wise exercise of its power is too important to leave to the judgment of one man. There must be effective oversight . . . In my opinion neither the legislative nor the executive oversight or check is sufficient today and needs to be strengthened.

Mr. Ruckelshaus is exactly right. A long list of questions about the future of the FBI has accumulated as a result of Mr. Hoover's long, idiosyncratic reign, the unhappy tenure of L. Patrick Gray III, and recent revelations about the surveillance, undercover adventures and bureaucratic infighting which various FBI operatives have carried on over the years. All of these matters have taken their toll in terms of misuse of resources,

abuses of authority, and erosions of public confidence. If the agency is now to be restored to a position of trust and effectiveness, its mission must be redefined and *recognized* as redefined in ways which will ensure the "wise exercise" of the enormous police power which the federal government commands.

The central issue is that of control. The FBI has now experienced a stretch of autonomous, autocratic rule under Mr. Hoover, and a brief swing to subservience to partisan interests on the part of Mr. Gray. Somewhere between those two extremes is a middle ground which combines professional independence with legitimate accountability to Congress, the President and the Attorney General. No aspect of reconstruction is more important than establishing the agency firmly on that rational middle ground.

Mr. Kelley and the Congress should also come to grips with the problem of what Mr. Ruckelshaus called "the permissible limits of investigative techniques." This is more than a matter of whether the FBI should plant *agents provocateurs* or engage in burglary to collect information. There is, first, the strategic issue of what the bureau ought to investigate—whether a single agency should continue to have the dual mission of probing federal crimes and gathering political or national security intelligence as well. There is also the perennial question of techniques, which is a matter of both tactical detail and overriding principle. Mr. Kelley's views on investigative methods, especially intelligence and communications systems, should be explored in detail, precisely because in Kansas City he has pioneered in using advanced technology in areas where legal restraints are new or incomplete.

The issues of goals and governance now facing the FBI are so basic that no director, however competent, should be expected or allowed to resolve them by himself. The Congress, which has all too often acquiesced in the doings of FBI directors, should now assert itself to provide direction and an overall design—to spell out, or more likely to hash out, what kind of federal law enforcement agency is required and how the rights and liberties of American citizens should be protected in the process. President Nixon, the Attorney General and Mr. Kelley should welcome clear statements of congressional intent and should cooperate in developing whatever new laws and guidelines are desirable to bolster the FBI's integrity and effectiveness. It is a major assignment, and the Senate Judiciary Committee's hearings on Mr. Kelley's nomination will be the place to start.