

Peak
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The Constitution and Mr. Kelley

FIRST THE GOOD NEWS: Recently, Attorney General William Saxbe released a study conducted by Assistant Attorney General Henry Peterson on the behavior of the FBI counter-intelligence program under the late FBI Director J. Edgar Hoover. Mr. Peterson and Mr. Saxbe expressed their appropriate concern over the manner in which the program was conducted. If that conduct could be reduced to one now-familiar phrase, that phrase would be "dirty tricks." Mr. Hoover's rationale was that the objects of his scorn were "militant," "radical" or "subversive." To him, those terms justified extensive wiretapping, mail drops and other forms of deep penetration surveillance. More than that, the program involved the transmission of information—often deliberately falsified—between members of groups in such a way as to lead them to distrust each other, perhaps even to harm those that Mr. Hoover's minions had made to appear as police informers in the eyes of their associates. Mr. Saxbe and Mr. Peterson were also concerned by the manner in which Mr. Hoover loosely attached labels of opprobrium to such organizations as the Southern Christian Leadership Conference, headed by the late Rev. Dr. Martin Luther King, and CORE, under the leadership of James Farmer, who would later serve briefly in the Nixon administration as an Assistant Secretary of Labor. It was valuable and educational that the Justice Department released this study. There is much more to be learned about the subject but at least some disclosure has been made.

And now the bad news: No sooner had Mr. Saxbe sat down than FBI Director Clarence Kelley, Mr. Hoover's successor, took to the rostrum to defend these practices on the grounds that the nation was in danger at the time. He went on to read an internally inconsistent statement that defends the practices of his predecessor at great length, but smiles upon the constitutional requirements

of due process only in passing. It is this posture that is disturbing in a man whose presence in his job was believed to be a break with the excesses of the Hoover past at the FBI. Mr. Kelley reminds us that many of these programs were mounted in response to uprisings on the campuses and in the cities in the middle of the last decade. "I invite your attention to the gravity of the problem as it then existed," Mr. Kelley said. Yet, he must know that our system of due process was intended to protect the constitutional rights of individuals in times of tumult as well as those of tranquility. Indeed, those guarantees are all the more precious when other elements in the society have broken down. And Mr. Kelley must know that one of the skeletons discovered in Mr. Hoover's closet was a plan to encourage police chiefs to arrest "militants" on vague pretexts and jail them over and over again until they could no longer make bail and thus had to languish in jail.

Mr. Kelley must have his own reasons for defending that kind of policy on the part of a powerful government agency. But such tactics ill become an agency of government, any agency of government. Indeed, an agency whose sole purpose is the enforcement of the law has special burdens to conduct itself in a manner that reflects an understanding of the importance of constitutional government. It remains now for Mr. Saxbe and his successors to keep a close eye on the way the FBI handles people and groups whose reputations it so recklessly damages with derogatory labels. And it remains for the various oversight committees of Congress to watch the FBI in the future far more carefully than it was watched in the past. For Mr. Kelley seems more concerned with defending Mr. Hoover's memory than with upholding the spirit of the Constitution or even the strict enforcement of the law.