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Investigating The Investigators

THE REFORM OF FBI INTELLIGENCE OPERATIONS. By John T. Elliff. Princeton. 248 pp. \$14.50

By ANTHONY MARRO

JOHN ELLIFF BEGINS his book on a shaky note by saying that it was only after J. Edgar Hoover's death and the disclosures of Watergate that there were "for the first time in fifty years . . . credible allegations of illegality in the FBI." This is likely to strike a good many people as nonsense, or at least remind them that one of the funnier things about the Church committee hearings (in which Elliff, as a committee staffer, played a role) was the way people who should have known better professed great shock and surprise to learn that the Bureau had staged ille-

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gal break-ins and had harassed members of fringe political groups. At times, these exclamations rang so hollow as to be almost comic, like Claude Rains, in *Casablanca*, announcing that he was shocked to learn that gambling was taking place in the casino.

This is too bad, because it gives the impression at the start that Elliff either is about to do a number in praise of the Church committee (official name: Select Committee to Study Governmental Operations With Respect to Intelligence Activities) for having had the courage to criticize Hoover three years after his death, or is as innocent as a chipmunk of the true workings of the Bureau.

In fact, the book is not a paean to his former employer, and Elliff is not naive about the Bureau or about what constitutes real and imaginary "reform." Working both with the senate committee and under the "auspices" of the Police Foundation (whatever that means), he has produced a study that is not only thoughtful and sound, but particularly valuable at a time when Congress is getting ready to craft the first legislative charter ever to govern the Bureau.

The most important thing Elliff has to say is his insistence that FBI investigations be linked to some specific (actual or probable) criminal act is only "the beginning—not the end—of the reform enterprise." Although most civil liberties groups argue that it is necessary to hold the Bureau to a "criminal standard" in its investigations and intelligence-gathering, Elliff makes clear that the criminal code is so sweeping that the government stands a fair chance of making at least a technical case against anyone. This is something known to all prosecutors, who say as a matter of course that the most important decision they make is not whether to indict but whether to investigate. And it is, according to Elliff, the bottom-line reality that must be addressed in any true reform effort.

"There are many more federal criminal laws today [than in 1940], especially in such areas as organized crime, civil,

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rights, bombings and riots, assaults on American and foreign officials, and white-collar crime," he writes. "In combination with the law of conspiracy and the federal fugitive laws, which allow investigations to locate persons who cross state lines to avoid prosecution, the scope of federal jurisdiction is immense."

The result, he notes, is that the FBI and the Justice Department have enormous discretionary power to decide how they will allocate their resources. And thus merely limiting intelligence operations to criminal situations can amount to virtually no limit at all. "Even the most rigorous probable cause standard is not much of a restraint if all that is needed is probable cause of a conspiracy."

The key, then, is not merely in linking investigations and intelligence-gathering to crimes, but in setting and enforcing rational and lawful priorities, to insure that agents spend their time investigating serious threats, not dossier-building on harmless Trotskyist groups.

Much of what he has to say has been said before—most notably in the Church Committee reports—and others have managed to make the subject more interesting. (When it comes to lucid prose, Elliff beats out the Church Committee reports, but only by a nose.) Nonetheless, this is an even-handed and scholarly account of the efforts to reform FBI intelligence operations, and as cogent a summary as will be found of how they got out of hand in the first place. Among other things, Elliff warns against looking for individual bogeymen (Hoover included), and assigns fair blame to attorneys general of all political stripes, as well as to the congressional oversight committees that looked the other

way for 50 years, or actually opened the way for abuses.

It was, after all, Ramsey Clark, considered something of a saint by many liberals, who urged the FBI to mark for possible future detention anyone who belonged to or participated in "a basic revolutionary organization." And, he writes, "It made little difference whether the Attorney General was a liberal like Ramsey Clark or a conservative like John Mitchell. . . . Whatever their ideological bent, Attorneys General usually preferred to let the FBI set its own guidelines or, where it sought direction, to grant whatever investigative authority the Bureau desired."

Elliff believes that the result of the recent disclosures, the drop in public confidence in the bureau, and the direct reform actions of Edward Levi, the former attorney general, and Clarence M. Kelley, the former FBI director, were new domestic security guidelines that have, in fact, brought an end to 40 years of investigations of lawful political activity.

The question, of course, is how long the reforms will last. Guidelines have been set before, only to collapse like beanbags the first time the White House pressured the bureau for quick results. A major theme of Elliff's book—and the thing the committees shaping the new FBI charter would do well to heed—is that true reform in the long run requires both rational priorities and a reliable mechanism for seeing that they are followed.

"Whatever the standards for intelligence investigations," he writes, "they are no more effective than the means adopted to enforce them." This would seem to be obvious, except that even now—four years after the start of the Church Committee investigation, and well into the debate over the proposed charter—it's not clear that any such mechanism will be put into place. □