

FBI Pondering Intelligence Role

Third in a series

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"Is the Constitution a suicide pact?" asks an aide to FBI Director Clarence M. Kelley. "Do we have to wait until the bomb goes off and people are killed or injured? Or can we act while the fuse is still sputtering?"

The questions were posed by Bill Reed, Kelley's executive assistant. He was talking about the task of spelling out strict new rules for what the Federal Bureau of Investigation can and cannot do in the exercise of its controversial "intelligence functions"—a bureau euphemism for keeping watch on potential spies, terrorists, subversives and other threats to national security.

The FBI has good reason for viewing this question with urgency. It has become a national concern—one that has preoccupied Congress, taken up huge amounts of space in the press, and



plunged the bureau into crisis. Triggering the controversy has been the disclosure of how the FBI, under the late J. Edgar Hoover, used its intelligence-gathering powers for years to invade the privacy and trample on the civil rights of those who didn't meet Hoover's standards for patriotic orthodoxy.

During recent months, the public has been inundated by a torrent of horror stories about

the FBI's infiltration and wiretapping of antiwar and civil rights groups in the 1960s, its use of "counterintelligence" (COINTELPRO in FBI parlance) to slander and cause trouble for its targets, and its compliance with improper requests from White House aides for information on political opponents.

The result has been widespread fear that the FBI

might turn into the Frankenstein's monster warned against by Harlan Fiske Stone, when, as Attorney General in 1924, he appointed Hoover to head the FBI. At the time, Stone said:

"There is always the possibility that a secret police may become a menace to free government and free institutions . . . When a police system passes beyond these limits, it is dangerous to the proper administration of justice and to human liberty

For a long time, Hoover resisted efforts to turn the FBI into a national police force or to otherwise expand its power. But the power was thrust on him by World War II legislation giving the bureau responsibility for investigations relating to espionage and subversion and by the tendency of successive Presidents and Attorneys General to turn their backs

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and give him a blank check about security decisions.

As Hoover grew older, his judgment became increasingly subject to his own rigid ideas of permissible political expression.

Those above him failed to challenge his arbitrariness because they feared his influence in Congress and his control over FBI files containing details about the lives of millions of people.

Calming this fear is now the main job facing Kelley, the bluff cop who came from Kansas City 2 1/2 years ago. His is the task of restructuring the bureau's intelligence activities in a way that will allow it to move effectively against subversion and terrorism without abusing the rights of citizens.

"It's a fiendishly difficult thing to reconcile," said Reed. "Kelley is determined that the bureau should not forget the First Amendment rights of U.S. citizens. But we also face the situation that terrorism and other problems falling into the domestic intelligence field are increasing, and it's still our duty to deal with that."

"At what point does legitimate free speech verge over into real or potential violence?" he asks. "There has got to be a reasonable means of determining if there will be violence or danger to the national security and if the country can take preventive action to protect itself."

But the "reasonable means" of which he speaks have always been elusive, and Kelley has said that "we must be willing to surrender a small measure of our liberties to preserve the great bulk of them."

That is the rationale offered by top FBI officials to explain some of the bureau's past excesses. W. Raymond Wannall, the assistant director in charge of intelligence, said:

"We weren't able to look into a crystal ball back in the 1960s when the streets were burning and predict whether the trouble wasn't going to lead into revolution. If nothing else, the FBI was very responsive to the clamor from government officials, from the Congress and from the public to do something about what a great many people perceived

as serious threats.

"We were told to stop the Klan, to stop the rioting in the cities, to stop the upheavals on the campuses. They were situations you couldn't handle with the methods you'd use to solve a bank robbery. We had to find new methods. In the process, a lot of stupid things were done. We had to toss the coin several times a day, and we made some bad calls.

"But we also did what we were under pressure to do, and that's something a lot of people have forgotten—that we did help save the campuses from destruction and upheaval."

It's an argument with which many would disagree. They contend that the quieting down of the college campuses was due to other factors such as changing student attitudes and the U.S. withdrawal from Vietnam. If anything, these critics charge, the FBI only exacerbated the situation by persecuting innocuous and nonviolent civil rights and antiwar groups and, in the case of potentially dangerous extremist organizations, sometimes incited more violence than it prevented.

Extensive conversations with FBI agents indicate that Wannall's argument is widely shared within the bureau. The agents will concede that there were abuses which can't be

excused or explained. In the main though, they clearly feel that the FBI is unfairly under fire for having done a dirty job in the only way that was possible.

Many add, in retrospect, that the bureau would have been far better off if it had never had responsibility for intelligence and security.

They note that unlike the security job, which he grabbed with both hands, Hoover always adamantly opposed calls for the FBI to take charge of narcotics suppression work.

"They're both scummy businesses," says one agent. "You can only deal with them by using informers, undercover infiltrators, wiretaps and other shady tactics. It's impossible not to get into either one without getting dirty yourself."

Kelley believes that the FBI

would be shirking its responsibilities if it gave up its domestic security activities. He is particularly concerned about the increasing nationwide incidence of terrorist bombings, and he feels that the FBI is still the organization best equipped to deal with it.

"When I refer to terrorism, I'm not talking about legitimate dissent or free speech," he says. "I'm talking about the deliberate resort to oppressive tactics that are dangerous and that can cause injury or death. That's a criminal act, not political theory or philosophy. And criminal acts of this nature are governed by the federal statutes and (are) part of our mandate."

His principal strategy for restoring confidence has been to agree that the FBI's former freewheeling ways in the security field should be subject to greater control by Congress and the Justice Department.

The more controversial practices of the Hoover era have been ended and Congress is moving toward preventing future directors from duplicating Hoover's entrenched power by imposing limits on the number of years anyone can hold the director's job.

Even with these changes, Kelley is aware that he's going to be a long time before the public is again willing to let the FBI make decisions about security matters without someone looking over its shoulder.

It's well-known that the FBI still maintains files on some 6.5 million Americans, that it has roughly 160 million fingerprints on file, that it regularly taps telephones under court authorization, and that it could, without controls, slip back into unauthorized taps and "black-bag jobs" (illegal burglaries).

Because of the nervousness that this knowledge causes, Kelley insists: "I have no objection to guidelines, to oversight, to criticism. I welcome them."

Some oversight has already been provided by Attorney General Edward H. Levi, who has overall responsibility for FBI operations. Earlier this month, Levi unveiled the Justice Department's long-awaited draft guidelines on

FBI domestic surveillance activities.

Among other things, the guidelines would permit the FBI to investigate domestic dissidents only if there is a "likelihood" that they are involved in violent or illegal activities.

The guidelines require the FBI to keep the Attorney General informed of all domestic security investigations and expressly forbid the bureau to engage in

the old COINTELPRO tactics of trying to disrupt or discredit suspect organizations unless there is no other way to prevent "an immediate risk to human life."

However, the guidelines have been criticized as vague and it's unlikely that Levi's move to slip a leash on the FBI will end there. Congress, which has spent so much time delving into the bureau's past, seems certain to weigh in with some kind of legislation designed to curb domestic security abuses.

Again, the official line at the FBI is that this, too, will be welcomed. Deputy Associate Director James Adams, who has carried most of the burden of testifying before the Senate intelligence committee and other congressional inquiries, says:

"What we would like to see is a single, joint House-Senate committee to oversee the bureau's intelligence activities. What we don't want is the current proliferation of oversight that has 12 congressional committees claiming some kind of jurisdiction over us.

"The FBI will die if that continues. I realize there's a weakness in expecting that one joint committee will reflect and express the will of the entire Congress. But there are too many things in the intelligence area that are too sensitive—sometimes literally, involving a man's life—for them to be spread out before the members and staffs of a dozen or more committees."

While the bureau waits for Congress to act, Associate Director Nicholas Callahan, the second-ranking official after Kelley, says: "We're in

the situation of going down the road, without the tools and the direction that we need. That makes for perilous navigation. So until we get the necessary direction, we're going to go very slow and be very careful to stay in the middle of the road."

Day-to-day control of intelligence activities is handled by Wannall, who was picked by Kelley for the job. His intelligence division has responsibility, for investigations under the federal statutes involving both domestic intelligence (terrorism and subversion of a home-grown, native-American nature) and foreign counterintelligence (espionage by foreign governments within the United States).

Wannall denies that the FBI devotes an inordinate share of its resources to watching and pursuing suspect groups. "If you total up those groups in which we have an interest from a domestic security angle, you'd come up with more than 1,100," he said. "We're not covering anywhere near that number. And the number of pure informants that we employ in keeping tabs on the groups that we're actively covering is less than 1,100."

"What's more," he said, "we're constantly redirecting and restructuring our activities according to changing situations. In November, 1972, we had more than 1,200 agents in domestic intelligence. Our latest survey, done in April this year, showed that the number had dropped to less than 800 agents—out of more than 8,500 agents in the bureau."

The biggest shot in the FBI's intelligence locker is the network of informers it has infiltrated into radical organizations. Wannall is concerned that the current controversy, with its exposure of informers and the suggestion by some critics

that future use of informers should be subject to court-order restrictions, might shatter the network. "Because of all the publicity, there are fewer people who want to cooperate with us," he says.

The use of informers is essential, Wannall contends, because the main purpose of

domestic intelligence is "prevention." That's what is meant by the phrase heard so much within the FBI—"acting before the bomb goes off"—and Wannall warns that if the prevention capability is taken away, the alternative is likely to be death or injury to terrorism's intended victims.

As part of the effort to insure against harassment of innocent people, the bureau has instituted various procedures of its own to govern domestic intelligence investigations.

When information is received that a specific group is engaging in activities that might end up as terrorist activity, the FBI field office in the area where the group is located opens a preliminary investigation. This is called "an established source check" and consists of checking informants and local police to see whether they can provide additional information.

Within 90 days, the field office must decide whether the preliminary investigation has turned up any information that would warrant going further. If not, the investigation is closed.

However, if the preliminary check does give some indication of substance, the field office must report it to Washington and obtain permission to intensify the investigation.

Wannall explains that "if we have indications that the group is doing something like caching weapons or having its members acquire sidearms and take regular target practice, we would be likely to conclude that the investigation should be intensified."

Still, critics continue to find shortcomings in the FBI's approach to intelligence. Recently, the General Accounting Office, which acts as a watchdog on government spending and operations for Congress, overcame the bureau's resistance to outsiders looking at its files and made a study of FBI domestic intelligence.

After studying 676 cases where the FBI investigated an individual because of a suspected involvement with a radical group, the GAO found that in 344, or 51 per cent, of the cases, the FBI was unable to establish a link between the individual and the group.

Richard Fogel, the GAO

assistant director who headed the study, says that in many of these cases "the investigations were initiated on very flimsy grounds such as third-hand rumors picked up from an informant or even nothing more substantive than a field agent's hunch."

As a result, the GAO study noted, only 16 of the 676 cases, or less than 3 per cent, wound up being referred for prosecution. Of the 16 referrals, seven were prosecuted, and convictions were obtained in four cases.

The GAO also drew a bead on what has been called a sub-level of the intelligence problem: What should be done with intelligence once it's been collected?

As former Watergate Special Prosecutor Henry S. Ruth Jr. said: "The analysis function in intelligence never receives enough attention. You get so caught up in collection, that you tend to forget that it's not much use unless you analyze it properly and learn something from it."

Yet, the GAO report said: "FBI officials told us that evaluation of domestic intelligence has never been a responsibility of the bureau. They stated that as an investigative agency its job is to collect and report the facts. Justice Department officials also stated that they do not routinely evaluate the FBI's domestic intelligence reports from an 'intelligence' standpoint but review the reports primarily to make prosecutive determinations."

As Ruth says: "For 25 years, all the judgments and decisions about national security were made in the dark. There was no public debate about it—only a series of unspoken understandings that saw top government officials turn their backs and allow the FBI to make subjective judgments."

"Now for the first time, we're having this debate. And it involves judgments in areas—free speech, intimidation, fear generated by a police presence—that go beyond simple questions of law enforcement. In the end, I think it's going to be a very salutary thing for the FBI and for the country."

Next: The FBI as gangbusters.