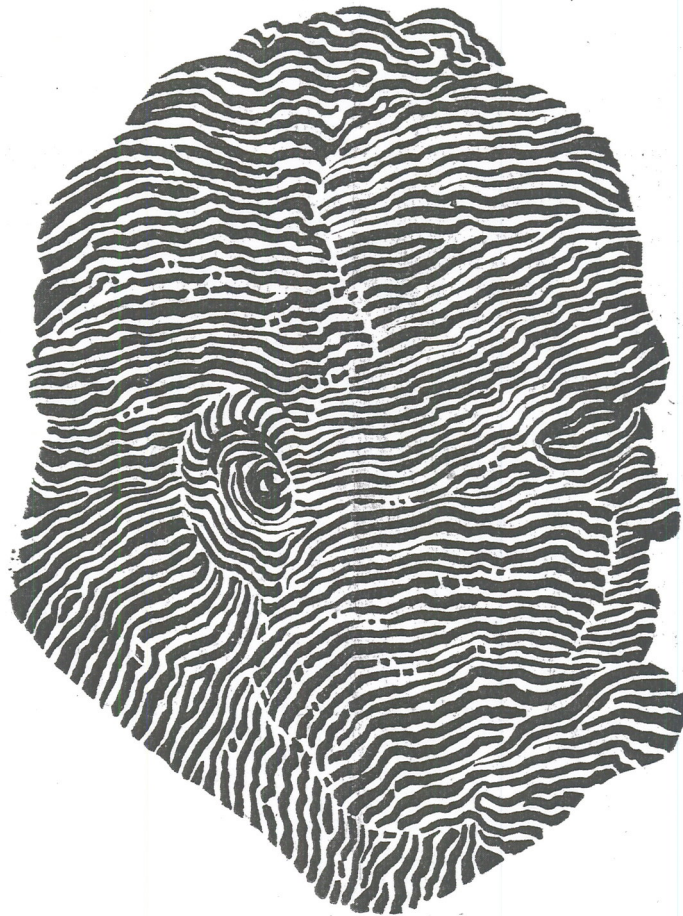


Can the FBI Rebuild Itself?

By Burke Marshall

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THE FEDERAL Bureau of Investigation, at least until the Watergate tide, stood alone as the most important criminal investigative agency in the world that had never, even at the most routine and lowest level of its work, been accused, much less convicted, of corruption of any sort.

This extraordinary record was the result of the strong, authoritarian mastery of the bureaucracy by J. Edgar Hoover. The agents of the bureau were given rules for all occasions. Administrative punishment for violations of the rule was swift, harsh, and, for the most part, sure. Hoover tolerated no interference with his power to distribute rewards and punishments—not from Congress, not from the attorney general, and not from the White House.

The question now is whether a system built on the personal authoritarian rule of one man can survive his loss. The unquestioned costs of this manner of maintaining efficiency and incorruptibility lie in three areas: First, the problem of oversight, or leaving bureau responsibilities to outside persons or agencies; second, the problem of priorities, including overemphasis on surveillance of left wing political activity, as contrasted with ineffectiveness in civil rights cases and the efforts against organized crime; and third, the problems of investigative technique, particularly the use of wiretaps and unlawful electronic methods of surveillance.

In the first of these areas, it was fashionable until recently for bureau-watchers, mostly liberals, to insist that the bureau and its director be made more responsive to persons in the executive branch, particularly the President and the attorney general. One reason for this was the reputation of Hoover, whose job was not even a presidential appointment subject to Senate confirmation, for being a law unto himself.

Another was the difficulty encountered by the director's supposed superiors in getting the bureau to move effectively in civil rights enforcement, and against organized crime. Robert Kennedy was praised by liberals for being the first attorney general to gain control over the bureau, and then criticized, in the rush of anti-Kennedy revisionism, for not doing so effectively. The thesis of Victor Navasky's entire book, "Kennedy Justice," is that Atty. Gen. Kennedy failed to bend the bureau to his priorities and his political guidance.

"Political Responsiveness"

THE ABBREVIATED stay of L. Patrick Gray III in the bureau showed the price of political responsiveness in terms of the integrity of the bureau,

and reminded those who had forgotten that attorneys general are not beyond corruption themselves and that their priorities vary with their political beliefs and those of the President. Gray stood in sharp contrast to his predecessor. He had no political constituency of his own, and hence no independence. His job was the gift of the President, and his loyalties were to the White House. He may have been an authoritarian petty officer, but he was a subservient servant to his superiors.

From those factors came the willingness to curtail the scope of the Watergate investigation, and the absolutely incredible spectacle—to anyone who was acquainted with the bureau under Hoover—of the destruction of files by the bureau's director.

But while the simple solution of a need for political responsiveness may have evaporated, the problem of oversight remains to be faced. One recent suggestion is for an oversight committee consisting of congressional and distinguished public representatives, responsible to the Congress as well as to the President, to bring continuing public supervision to all domestic national law enforcement agencies, including the bureau.

Some have called for variation of the appointment process and the term of office — for example, strict statutory qualifications coupled with office for a term of years, in some versions followed by a statutory prohibition against reappointment. All suggestions attempt to effect a reconciliation between the irrepressible status of complete independence, and the equally unsatisfactory possibility of permanent political responsiveness, with directors subject to change at the wish of the President.

My own view is that an oversight committee will not work. One has been in existence for some time in an effort to check our foreign intelligence activities, and it has been ineffective. As a practical matter, the work of the bureau and other law enforcement investigative agencies is too complex and vast to be mastered by the members of a part-time committee.

As a political matter the committee would function in futile competition with the House Appropriations Committee and the Office of Management and Budget in the executive branch, since they are the appropriate oversight institutions for other purposes, and there is no reason that they should not function for the bureau now that the historical accident of the reign of Hoover is at an end. The FBI must necessarily revert to management by ordinary men and women.

The office of the director would, however, be made less subject to temporary political pressures by making it

secure for a term of years during which the director could establish himself with the kinds of healthy political constituencies that are needed — a reputation for incorruptible, objective and even-handed law enforcement.

A Difference in Priorities

THE EMPHASIS on the need for oversight of the FBI does not, of course, rise simply from a public desire for administrative neatness. It arises inexorably from concern over the other major bureau problems I have referred to — a gap between the bureau's priorities and those of the nation, and its use of investigative techniques associated with the methodology of espionage and a secret police.

The priorities of a bureaucracy are

established through its budget, so that in a properly functioning world institutional controls placed on the bureau's budget should operate to affect its priorities. It has not worked that way for at least three reasons.

One is that the bureau's budget (\$334 million in 1971) has been unusually obscure, making it impossible to tell how much money was to be spent in civil rights matters, how much on stolen cars, how much on tracing of fugitive felons, how much on organized crime, or even how much on public relations.

A second is that in the course of acquiring power, Hoover effectively co-opted those persons designated to watch his expenditures. No comprehensive review of the bureau's budgets has been made for decades by either

the subcommittee of the House Appropriations Committee, chaired by John Rooney, or by the Bureau of the Budget, now the Office of Management and Budget, in the White House. Neither has the Department of Justice, within memory, made an attempt at review.

Most importantly, differences in priorities have involved trying to make the bureau do something it did not want to do, rather than trying to stop it from doing something it wanted to keep on with. The principal examples, already mentioned here and widely reported during the Kennedy administration, are in the areas of organized crime and civil rights. I personally also believe that the bureau has wasted much money for years, and has in other ways adversely affected the national interest, in its uncritical preoccupation with surveillance of left-wing political activity and domestic communism, but I know of no effort by any administration to try to restrain that activity either through budget control or otherwise.

"A Reluctant Dragon"

IT IS TEMPTING but on the whole I think quite wrong to generalize on the basis of this experience about the bureau and the approach to its control in the future. The bureau was a reluctant dragon in the investigation of organized crime partially because Hoover always resisted working with other agencies, no matter what the problem, but Hoover's jurisdiction was shared with those concerned with taxes, narcotics, smuggling, and non-federal crimes like murder.

Those investigations required a commitment to shared effort—the task force approach pushed by Robert Kennedy and later perpetuated and enlarged by his successors. It was on the rock of interagency cooperation that the organized crime effort foundered at first—ironically the same rock that precluded Hoover's acceptance of the secret Nixon plan in 1970 to use burglary and other espionage techniques to deal with what the President claimed were internal security problems.

The bureau was competent and in principle willing to pursue organized crime, but on its own terms, not working with others. The problem with the civil rights effort was the opposite. Agents were not competent by training or background to investigate civil rights violations in the South, and the bureau had no desire to change that fact. Hoover personally distrusted and disliked civil rights leaders and had no understanding of or compassion for the victims of racial discrimination.

While there is no magic structural way of eliminating problems of this sort, the bureau's reluctance in both areas was affected by bad publicity, embarrassment, or bureaucratic black-

mail. The bureau multiplied its work against racial violence in Mississippi after Atty. Gen. Kennedy first sent down a task force of Department of Justice lawyers to investigate Ku Klux Klan activities, and President Johnson followed by asking Allen Dulles, the former director of the CIA, to look into the situation and report to him. The bureau similarly increased its efforts in organized crime after months of reports and news stories on its refusal to work in the area.

I admit to having been extremely frustrated with the bureau while in charge of the civil rights division of the Department of Justice, but on the whole I felt then, and I still feel, that we are all better off if the bureau is not too easily pushed into programs that constitute the priorities of particular presidents and particular attorneys general.

Public Support Necessary

THE BUREAU and its directors are as dependent as other public institutions in the long run on the conviction of the people that they are doing a good job. If there is public demand for effective action against organized crime, and to protect civil rights, as there was in the 1960s, a President who deserves his office and an effective attorney general can bring the bureau around to doing its part.

This brings us finally to the third area of concern about the bureau—its use of police state surveillance techniques—wiretapping, bugging, and dependence on informers and *agents provocateurs*. It is my belief that this area should be subjected to the most searching public scrutiny, and that now is the time to do so. Until 1965 I did not know that the bureau engaged in unlawful electronic bugging without authorization or review by anyone outside the bureau. I have since learned that it did so on a wide scale basis for a number of years, until brought under control by direction of Atty. Gen. Nicholas Katzenbach in 1966.

Until very recently I did not believe that the bureau tapped the telephones of White House aides and reporters. Until the Berrigan and other cases against antiwar and student groups, I believed that the bureau made controlled and appropriate use of informers, but would not hire *agents provocateurs*, or incite crime. Again, I now do not know what to believe.

But the revelations of the Nixon plan, and the accumulation of other doubts concerning the bureau's conduct of its investigative work, make it clear that the public confidence which the bureau must have, and which on the whole I still think it deserves, cannot be restored without a complete and public analysis of what it has done, and what controls have been put on it for the future.