



L. PATRICK GRAY III, ACTING DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION, AND THE LATE DIRECTOR J. EDGAR HOOVER

THE ADMINISTRATION/COVER STORY

The Fight Over the Future of the FBI

ONE day last week L. Patrick Gray III, the embattled acting director of the Federal Bureau of Investigation, was summoned to the White House to discuss the status of President Nixon's controversial move to make him the permanent successor to the late J. Edgar Hoover. After the meeting, Gray returned to FBI headquarters and dispatched a Teletype message to his top officials throughout the nation. Marked "Personal and Confidential," it read in part:

"Regardless of the outcome of the confirmation hearings, the FBI will continue to be one of the great institutions in our democracy. It is not now and will never be subject to political influence. I know this because I know the men and women of the FBI. I know their spirit, their temperament, their dedication and their professionalism." The message ended on an intriguing note: "Directors and acting directors may come and go, but only you can guarantee the viability of the FBI as a great institution."

That may—or may not—have been a subtle signal from Gray that he was giving up hope of winning his confirmation battle with the U.S. Senate. His nomination looked hopelessly blocked in a divided Judiciary Committee precisely because many Senators believed that, despite Gray's wire, he has permitted the FBI to be improperly influenced by base political considerations during his ten-month temporary tenure.

A former Navy captain who has demonstrated a career-long obsession with loyalty to his superiors—as a sub-

marine officer, a Pentagon naval aide and in second-level posts in the Nixon Administration—Gray was selected by Nixon as acting director because of, above all else, that subservience. And it is his devotion to Nixon that has created the nomination controversy and has thrust the President and the Senate toward another classic collision over their respective powers. Nixon may well be forced to abandon the nomination, or he may persuade Gray to withdraw—something that anyone who respects the chain of command as Gray does would obligingly do.

Crossroads. Whether or not Gray gives up, far more is at stake than the fate of one man. At issue is the FBI's well-deserved reputation for disregarding political considerations in its dogged pursuit of the facts upon which evenhanded justice must be based. On a more fundamental level, the struggle raises difficult questions about the role of a national police force in a democracy and just who should be entrusted with policing the police. The FBI after J. Edgar Hoover is at a crossroads, and the national interest is clear: a balance must be found between a police power that is largely unchecked and one that swings prejudicially with each political shift in the White House.

The nomination fight has not been waged in such principled terms. It has become mixed in what is rapidly becoming the Nixon Administration's most persistent pain: the break-in and bugging of the Democratic National Committee headquarters at the Watergate complex in Washington last June.

Directed and financed by officials of the Committee for the Re-Election of the President, this operation has been adjudged by courts to be a clear-cut crime. After two weeks of hearings on the Gray nomination, most Democrats on the Senate Judiciary Committee contend the testimony indicates that Gray, out of loyalty to Nixon, failed to push the FBI's Watergate investigation hard enough into high White House levels, where it might have further embarrassed the President. The hearings do indeed lead to that kind of conclusion, although Gray denies any such thing.

Gray's critics on the committee contend that his political favoritism is demonstrated by the close manner in which he worked on the investigation with one of Nixon's top legal aides, Presidential Counsel John W. Dean III. Gray readily admits having transmitted to Dean more than 80 FBI reports on the probe, including accounts of illegally monitored telephone conversations at the Democratic headquarters. Gray even allowed Dean to sit in on FBI interviews with White House aides suspected of involvement in the Watergate affair or other political sabotage. The Judiciary Committee voted unanimously to call Dean to testify about this cozy relationship with Gray. Nixon, invoking the broadest interpretation that any President has ever tried to apply to the concept of Executive privilege (see box page 28), said that neither Dean nor any other present or former White House aide will testify before any congressional committee.

The Gray nomination was thus

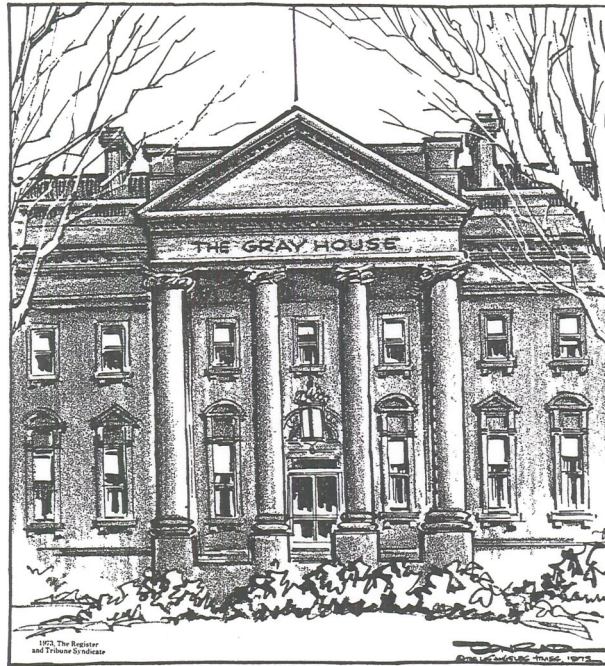
deadlocked. Nixon was right, in a sense, when he noted at an impromptu press conference last week that Senators might hold Gray as "a hostage" in order to force Dean to appear. Yet if they were to judge Gray's fitness for his powerful post, the committee members had every right to ask Dean about his involvement in the Watergate investigation. Nixon's claim that he would never rely on Executive privilege to withhold "embarrassing information" but use it only to protect "the public interest" ought to free Dean to appear. Political embarrassment for Nixon is precisely what Dean's appearance might create, but the public interest could well be served by a full disclosure of the FBI's relationship with the White House. Without Dean's appearance, the Judiciary Committee seemed split seven to seven, with two other members undecided, on whether to send Gray's nomination to the Senate floor.* A tie vote would kill the nomination. But even if the committee recommends that Gray be approved, it seemed doubtful that the full Senate would go along.

So many legitimate questions about Gray's stewardship of the FBI have been raised that the image of the bureau would be seriously impaired by his confirmation. That image, under Hoover, was always overburnished by excessive pressagentry. Americans grew up in the 1930s listening to radio's *Gangbusters*, and kids eagerly wrote in to get tin badges as "Junior G-Men." Hoover used his headquarters flacks to ghost-write hundreds of magazine articles glorifying the FBI under his byline. Then came a succession of movies (*The House on 92nd Street*, *I Was a Communist for the FBI*). In its prime *The FBI* was watched by 45 million viewers a week. The movie and TV scripts, rigidly supervised by FBI officials, were often only remotely based on actual FBI files.

Elite. Although the FBI in its early days concentrated on auto thefts and illegal sexual conduct (Mann Act violation), its publicity was focused on its more dramatic gun battles with such romanticized thugs as "Baby Face" Nelson and John Dillinger. Later the FBI exploited its World War II investigations of Nazi saboteurs and its cold war arrests of Soviet atom spies. The FBI never completely lived up to its mythology, and effectively obscured many of its bungled efforts. Example: It first recovered the wrong baby in the kidnap-

ing of Charles Lindbergh's son in 1932. The celebrated 1957 gathering of more than 60 underworld bosses in Apalachin, N.Y., was neither anticipated nor detected by the FBI; it was discovered by New York State troopers. The FBI had been inexplicably reluctant to concentrate on organized crime, until it was spurred by this event.

Yet the FBI that Hoover created almost singlehanded in his 48 years as its autocratic boss may well be the world's most effective and proficient police organization. He took over a collection



"THIS IS YOUR FBI"

of poorly trained Justice Department investigators in 1924. By the time of his death, at 77, last year, he had assembled a force of 8,500 agents who are the elite of U.S. police officers, better-paid and better-trained than any others. They share an *esprit de corps* that has only recently been endangered by the controversy over Gray.

The FBI's jurisdiction is vast, covering nearly every federal crime except narcotics and tax violations. Its well-funded crime laboratory is superb, its files on some 6,000,000 Americans are if anything too complete, and its computerized collection of the fingerprints of some 90 million people forms a huge identification resource. The bureau's services, dispensed from about 500 field offices, are invaluable to some 4,000 state, county and local police agencies, which can get FBI information through Teletype networks.

Hoover employed that huge reservoir of intelligence and investigative talent with a free hand that no President or Attorney General, ostensibly his immediate superior, seriously challenged. Political liberals often assailed Hoover for being too preoccupied with suspected Communist subversives—and later with antiwar radicals and black militants. Liberals and other critics charged

that he was an eager cop out of control and responsible to no one. Yet he was never accused of using the extensive powers of the FBI to further the partisan ends of any Administration.

He was not, however, reluctant to curry the favor of Presidents by feeding them gossip out of FBI files. Lyndon Johnson often chortled at the "secret" material on politicians that Hoover passed to him; L.B.J. would show some of it around the White House. One high Johnson aide exploded in anger when he saw his own dossier and found that an FBI informant had described him as a homosexual. This false report had been based on an off-hand bit of name-calling by a Southern politician at a public rally and was dutifully recorded without checking by the FBI's man.

Ordinary citizens, of course, do not see their own files. One Johnson aide who was given a look at some files found an unusual preoccupation with sex in them. "There were long paragraphs devoted to anonymous information about men's sex lives," he recalls. One man being checked for a Washington job was described by an agent as living with a woman other than his wife; actually, he had remarried and was living with his second wife. Hoover's worst transgression of this type was to permit an aide to play tapes for selected newsmen of intercepted telephone conversations involving Martin Luther King Jr., the black leader whom Hoover despised, and various women.

Reckless and wrong though such conduct was, Hoover never cooperated with the White House, as Acting Director Gray has, in feeding information involving a serious investigation to officials under suspicion.

Ill-Temper. In fact Hoover spurned some orders from Presidents. He chaired a committee under Nixon in 1970, for example, that explored new tactics to investigate espionage, racial unrest, campus disorders and antiwar radicals. He was the lone dissenter when representatives of the CIA, the National Security Agency and the Defense Intelligence Agency urged that agents be allowed to expand surveillance to break in or otherwise "surreptitiously" enter the residences of suspects and examine personal papers or other documents. The White House approved the tactic and ordered its use, but Hoover continued to protest—and the order was finally abandoned at the suggestion of Attorney General John Mitchell.

As Hoover grew older and more irascible, high officials of the Nixon Administration knew that his displays of ill-temper were hurting the bureau, and they considered firing him. Mitchell and

*The lineup last week: For Gray—Republicans Marlow Cook, Hiram Fong, Edward Gurney, Roman Hruska, Hugh Scott, Strom Thurmond and Democrat James Eastland. Against Gray—Democrats Birch Bayh, Quentin Burdick, Robert Byrd, Sam Ervin, Philip Hart, Edward Kennedy and John Tunney. Undecided—Republican Charles Mathias and Democrat John McClelland.

Two of his top associates at Justice, Richard Kleindienst and Robert Mardian, discussed a search for someone to replace Hoover. Often mentioned was Supreme Court Justice Byron White, who has proved to be highly independent, although the FBI job does not necessarily require anyone of that lofty status. There could be some merit in de-emphasizing the FBI role with a lesser, but nevertheless unassailable choice. After Hoover died last May, quick action was taken to find an acting director.

Kleindienst and Mardian discussed possible successors, concentrating on three veteran FBI men and William C. Sullivan, former No. 3 man at the FBI. He had been forced out of the bureau by Hoover in 1971 because he had disagreed too often with Hoover's ideas (TIME, Oct. 25, 1971), including Hoover's obsession with Communist subversion. The four possibilities were suggested to John Mitchell, who balked at the selection of anyone from within the FBI because he might prove to be just as independent of the White House as Hoover had been. Clearly the White House wanted to get control of the FBI. It was Mitchell who suggested Gray instead of Sullivan—and Nixon promptly approved that choice. Gray thus became heavily indebted to Mitchell.

Nixon took another ten months to decide that Gray should be made the permanent director. First he explained, reasonably enough, that he wanted to keep the matter out of the 1972 political campaign. Yet as late as last month, the appointment was still a matter of sharp controversy within the White House. Some presidential aides, including John Ehrlichman, felt that Gray was vulnerable to attack and had hurt the FBI because he had made too many political speeches during the fall campaign. The name of Sullivan was again raised by the anti-

Gray staffers as a possible permanent FBI chief.

A key intercession was made at this point by Presidential Counsel Dean. He asked the advice of Gray's No. 2 man at the FBI, veteran Agent W. Mark Felt. A longtime foe of Sullivan, Felt said that Sullivan's appointment would throw the bureau into chaos. Dean accepted that judgment at face value, strongly advised the selection of Gray—and Nixon nominated Gray on Feb. 17. Thus Gray became indebted to Dean as well as to Mitchell.

Early Riser. What qualifies Gray to head the FBI? The son of a railroad worker, Gray grew up in a closely knit family that moved from St. Louis to Houston. He won an appointment to Annapolis in 1936, and graduated 172nd in his 456-man class. In the Navy he was an early riser and a man who devoted himself intensely to any task. Volunteering for submarine duty, Gray took part in five combat patrols against the Japanese in the Pacific. After the war, he was given command of a sub, the *Tiru*, then promoted to head a division with six advanced submarines.

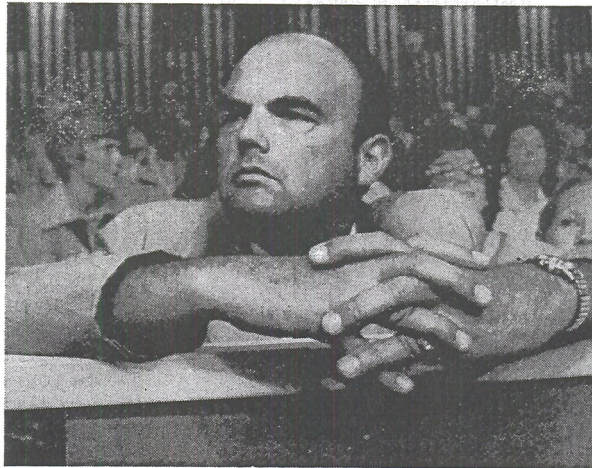
Except for those two command posts, Gray spent most of his 20-year naval career in highly responsible positions as an aide to a higher officer.

While an adviser on tactics and training for the Atlantic submarine fleet, he wrote speeches for the admiral of the fleet. At his retirement in 1960 he was assistant to Air Force General Nathan Twining, then Chairman of the Joint Chiefs of Staff. Admiral Arleigh Burke, then Chief of Naval Operations, tried to talk Gray into remaining in the Navy, but, Burke recalls, "he was all steamed up about helping Nixon."

Gray was, indeed. He had first met Nixon in 1947 at a black-tie dinner at Washington's Chevy Chase Club. Gray was then attending George Washington University, sent there by the Navy to get his law degree. Nixon was a freshman Congressman making headlines with his Alger Hiss investigation. The two got along well and struck up a correspondence. Early in 1960, when Nixon was Vice President, Gray worked for him as an advisor on military matters. When Nixon ran for President against John Kennedy, Captain Gray quit the Navy, giving up some retirement benefits to join the campaign.

He was quickly picked up by Robert Finch, who was heading Nixon's California campaign. Gray became what Finch calls "my right arm," demonstrating "an inordinate capacity for work and an incredible sense of loyalty, both to me and to Nixon." Gray and Finch helped Nixon narrowly carry California, but when the national election was lost, Gray moved to New London, Conn., where he had been stationed at the submarine base. He joined the law firm of Suisman, Shapiro, Wool & Brennan. Gray specialized in trusts, estates and taxes; he also spent many

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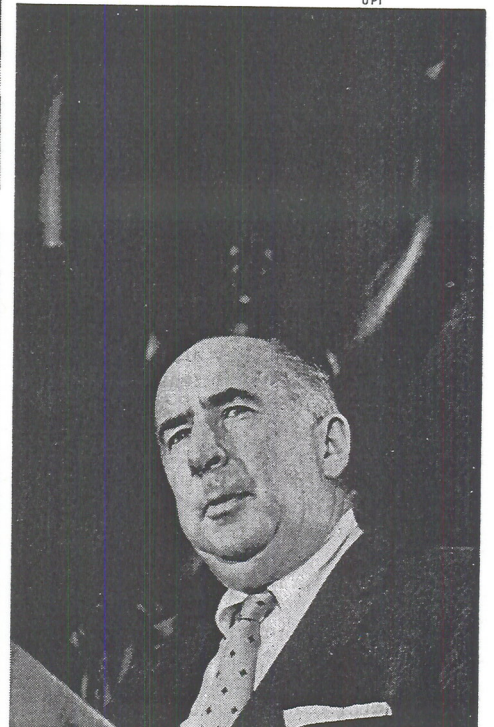
NIXON AIDE EHRlichman



ATTORNEY GENERAL KLEINDIENST
WHITE HOUSE LAWYER JOHN DEAN



TOICHI R. OKAMOTO



FORMER ATTORNEY GENERAL MITCHELL
Questions about cozy relationships.

THE NATION

hours without charge to close the estates of sailors who went down with the submarine *Thresher* in 1963. Although New London is not big league in legal circles, it took Gray six years to become a partner in the firm—hardly a speedy climb.

When Nixon ran again for President in 1968, Gray helped gather information on the strategy and organization of New York Governor Nelson Rockefeller, one of Nixon's opponents for the nomination. There was nothing surreptitious about this, but it was curious that Gray later told the Senate Judiciary Committee that he had played no role in Nixon's 1968 campaign.

After Nixon won, Gray was not selected for any Washington appointment until, a bit desperately, he filled out a routine application. It was forwarded to Finch, then the HEW Secretary. He

hired Gray as his executive assistant, and Gray proved to be just the kind of administrator that the less organized Finch needed. Gray generally worked standing up at a high draftsman's type of table rather than a desk. He ate lunch in the office, jogged and did sit-ups to keep in shape, taking breaks only for a brisk midday walk. Today, at 56, he seems in superb physical condition.

It did not take Gray long to demonstrate his feelings about landing on Nixon's team. Gray gave a remarkable speech to the officials he supervised at HEW. "Each one of us is here because Richard Nixon was elected to the high office of President of the United States," he said. "Obviously, we are a chosen few, an elite group. We must be dedicated and devoted to the concept that our Republican President will be a great President and that he will be re-elected.

Above all other qualities of character that we hold near and dear, we must have deep, abiding, sincere loyalty to our President and to our Secretary."

Loyalty to a President is, of course, desirable in a department official, although Gray's zeal sounds extreme. It is not at all appropriate, however, in a police official whose agency prides itself on arriving objectively at facts. A political police force is obviously anathema to a democracy. It may well have been asking far too much to expect Gray to abandon such deeply held attitudes after he was shifted to the FBI.

When Gray left HEW in January 1970, the paperwork at HEW bogged down, and Finch developed a reputation as an inept administrator. Gray became an Assistant Attorney General, mainly at the urging of Mardian, a right-wing ideologue who had also worked with

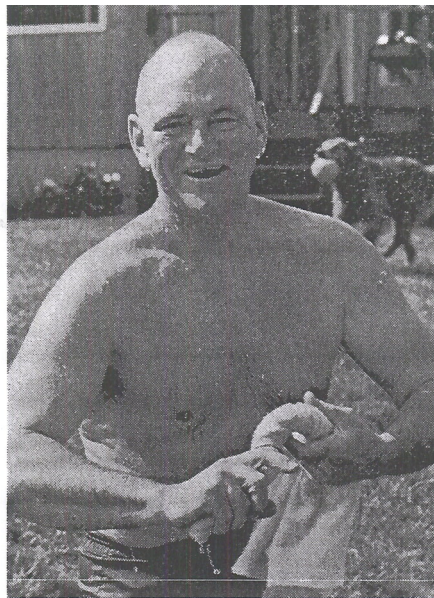
him at HEW. Gray impressed his superiors, Mitchell and Kleindienst, while heading the Justice Department's Civil Division. When Mitchell moved over to Nixon's re-election committee and Kleindienst became Attorney General, Gray was designated Deputy Attorney General.

Well-organized, methodical and a habitual note-taker at every policy discussion, Gray has been essentially a follower and a kind of supersecretary rather than a leader. He has also been an adroit backstage operator. When the Kleindienst nomination ran into controversy over allegations that International Telephone & Telegraph Corp. had been given favorable treatment by the Justice Department in the out-of-court settlement of several antitrust cases, Gray worked with the FBI in exploring the matter. Ironically, he had the duty of advising Kleindienst on how to handle questions from the Senate Judiciary Committee—a task that Gray himself is now painfully performing.

Heaven. As acting director of the FBI, Gray was at first well received by field agents. He sent out a flurry of directives loosening some of Hoover's harsh restrictions on their conduct. He said that he had "no hangups on white shirts," and permitted more colorful attire and allowed agents to wear longer hair. He dropped some of the Monday-morning second-guessing from Washington. Agents could for the first time keep Government cars at home overnight instead of having to drive to a central garage after a long day. They could even drink coffee at their desks. With all those reforms, however trivial, said one veteran, "the agents thought they had died and gone to heaven."

Soon many agents became disillusioned. Much of each week he was away from Washington, where decisions were either being delayed or handled by assistants. Some officials there began calling him "Two-Day Gray." Gray was out making speeches to help Nixon get re-elected. Concerned that he might become a hijack victim, he kept his political and bureau appointments by chartering Air Force planes at a cost to the FBI of a hefty \$500 per hour, running up \$100,000 in travel expenses within eight months.

In response to a White House memo saying that "Ohio is crucial to our hopes in November," Gray flew to Cleveland. There he talked about much more than crime, boasting: "We are on the threshold of the greatest growth pattern in our history—growth in the quality of life for all our citizens—growth in our total effort to eradicate the imperfections in human society." He was on another campaign trip when an incredible Teletype message went out over his name from Washington to 21 FBI field offices. It ordered agents to speedily gather information on topical matters of criminal justice in their regions that might have political implications. This was to be done, "in order for John Ehrlichman



GRAY IN POOL AT HOME

to give the President maximum support during campaign trips over the next several weeks."

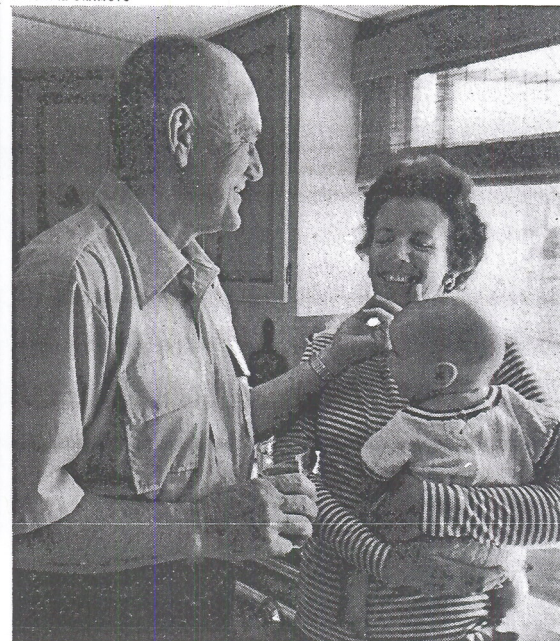
A few agents refused to comply, considering the order an improper political use of the FBI, as it certainly was. Asked about it by agents at the FBI Academy, Gray accepted responsibility for the wire and asked: "Wouldn't you do that for the President?" (He has since denied saying this.) Yet when news of the order was printed (by TIME), Presidential Aide Ehrlichman termed the order improper. He said that the memo, which had originated in his office and gone to the Justice Department, should never have been sent to the FBI.

All that political activity was damaging enough to FBI morale, but it was the Watergate investigation that totally soured many agents on Gray. Five men with electronic eavesdropping equipment were caught on June 17 inside Democratic National Headquarters. Also implicated were two former White House aides, G. Gordon Liddy and E. Howard Hunt Jr. All seven were convicted of conspiracy and wiretapping. Trial testimony indicated that Nixon's re-election committee had put up at least \$89,000 to finance this spying.

Obviously, the involvement of former White House aides and Nixon's closest campaign workers would lead any investigative agency to suspect that presidential advisers might have inspired the operation. If ever there was to be a test of whether the FBI could pursue its purely police function and stand aloof from partisan politics, this was it. Gray flunked the test.

In fact, he severely limited the FBI's initial probing at the behest of Attorney General Kleindienst and Henry Petersen, the Justice Department's liaison man with the bureau. Gray was convinced that there was no need to try to find out who had originally contributed the \$89,000 that financed the bugging. This money had been given by secret donors in Texas to Robert H. Allen, president of Gulf Resources & Chemical Corp. of Houston. To hide the

YOICHI R. OKAMOTO

WITH WIFE BEATRICE & GRANDCHILD
Intense and steamed up.

identity of the donors, it had then been channeled through a Gulf Resources attorney in Mexico and was finally sent to Washington. There it wound up with other cash in a safe in the office of Maurice Stans, former Secretary of Commerce and head of the Nixon re-election finance committee. The money has since been returned to Allen at his request, but the names of the original donors are still secret.

Petersen also persuaded Gray at first not to have the FBI look into the activities of a California lawyer, Donald Segretti, who had been named in news accounts as having been hired to disrupt and spy on the campaign of Nixon's potential Democratic opponents. Segretti, too, had reportedly been paid out of secret cash from the re-election committee. Later, when three FBI agents insisted on pushing the Watergate investigation to question White House involvement, two of them were transferred by Gray to bureaus outside Washington and one retired rather than be transferred.

The heat—mainly from newsmen—continued, and the Justice Department eased its restrictions on Gray. He then permitted his agents to interview 14 White House aides. But he accepted the condition that Dean, who had been assigned by the President to conduct his own investigation and was not representing the White House aides, sit in. This could have discouraged any official who might have wanted to volunteer information implicating the White House.

When FBI agents similarly interviewed 58 employees of Nixon's re-election committee, Gray permitted top attorneys for that committee to listen. Worried about this inhibiting presence, three of those who were interviewed asked to see FBI agents alone. After they did so, Gray forwarded transcripts of

THE NATION

types of persons on whom such information is kept should be sharply restricted and the control over the dissemination of such information tightened. Almost any Government agency, as well as banks and insurance companies, can get the arrest record of any prospective employee. These records often filter into credit agencies. Yet when an arrest is found unwarranted or a person is declared innocent of a crime, the FBI rarely corrects the record. At a minimum, individuals should be allowed to challenge any false information from FBI files that is used against them.

Some 30 professors, writers, former Justice Department officials and ex-FBI

agents recently held a conference at Princeton on the FBI. One suggestion called for creation of a board of overseers to review FBI policies and especially to safeguard civil liberties. It could be composed of distinguished persons both within and outside the Government. Others urged development of an ombudsman system, through which anyone could seek help if he felt that his rights were being violated by FBI practices. The conference suggested giving FBI agents the right to criticize FBI policies without facing disciplinary action.

The idea of a reviewing authority, including closer supervision by designated committees of the Congress,

seems sound. In its hearings on the nomination of Gray, which are scheduled to continue this week, the Senate Judiciary Committee has been performing a most useful supervisory function and showing a high regard for the proper role of the FBI. What the FBI needs is a director—as well as an Attorney General, with whom he must work closely—who possesses an unshakable sense of the difference between the pursuit of justice and the protection of political interests. The distinction is not all that fuzzy. It seems to have eluded L. Patrick Gray—and Richard Nixon, who appointed him—but an FBI chief who understands that crucial difference should not be hard to find.