

THE NEW YORK TIMES, SATURDAY, FEBRUARY 24, 1973

F.B.I. HEAD TERMED IN POST ILLEGALLY

FEB 24 1973

Proxmire Bids Gray 'Stand
Aside' — Says Law Limits
Temporary Appointments
NYTimes

By JOHN M. CREWDSON
Special to The New York Times

WASHINGTON, Feb. 23—
Senator William Proxmire
charged today that L. Patrick
Gray 3d, acting director of the
Federal Bureau of Investigation,
violated Federal law by
remaining in his post more
than 30 days without Senate
confirmation. He called upon
Mr. Gray "to stand aside at
once."

Senator Proxmire, a Wisconsin Democrat, released the text of a letter from Controller General Elmer B. Staats that concluded that Mr. Gray's continued service after June 3, 1972, was prohibited. It cited a statute allowing vacancies in the executive branch that require Senate confirmation to be filled temporarily "for not more than 30 days."

Mr. Gray was appointed acting head of the bureau by President Nixon last May 3, after the death of J. Edgar Hoover, but his formal nomination was not announced by the White House until last Saturday. 17 FEB

Nonpartisan Position

Mr. Nixon said in May that Mr. Gray would serve in an acting capacity through the Presidential election last November to prevent the nomination to what is viewed as a nonpartisan post from becoming a campaign issue.

Mr. Proxmire said today that he considered Mr. Staats, who heads the General Accounting Office, the auditing arm of Congress, "to be, in my view, the definitive authority" on the question. He called on the President to appoint someone else to head the bureau while Mr. Gray's nomination was under consideration by the Senate.

Mr. Proxmire emphasized that he was not criticizing Mr. Gray, whom he called "a man of great integrity," but rather Mr. Nixon for using "the device of the temporary appointment to put his man in this job without Senate approval."

In January, the Justice Department, at Mr. Staats' request, submitted an opinion in which it argued that the 1868 law containing the 30-day limit did not govern Mr. Gray's appointment.



Associated Press

Senator William Proxmire of Wisconsin during news session at which he challenged the legality of continued service of L. Patrick Gray 3d, acting F.B.I. head.

Contradiction Discerned

But Mr. Staats concluded that the department's contention would lead to the contradiction that Congress "did not intend to require Senate confirmation of the new head of the F.B.I." when it passed a law in 1968 making Mr. Hoover's successor subject to confirmation.

A Justice Department spokesman said today that there was "no question of Pat Gray stepping down."

Mr. Gray paid courtesy calls today to some members of the Senate Judiciary Committee, which will begin hearings on his nomination next Wednesday. Most committee members said they were reserving judgment on the appointment, but Robert C. Byrd, Democrat of West Virginia, the Senate majority whip, indicated that a visit from Mr. Gray earlier in the week failed to dilute his opposition.

In an interview, Mr. Byrd, so far the only public critic of Mr. Gray among the committee's 16 members, characterized the acting director's background as one of "strong partisan activity" and said that he would vote against the appointment rather than "risk politicization" of the bureau.

Speeches Are Cited

Some of Mr. Gray's speeches in the Presidential campaign, Senator Byrd said, "gave the appearance of his being a surrogate" for Mr. Nixon. He also expressed concern about "press reports" that the bureau had supplied the Nixon re-election committee and the White House with information from its investigation of the bugging of the Democrats' headquarters in the Watergate complex.

"I don't think we should run the risk of that agency's becoming the political arm of the White House under any administration or any political party," said Mr. Byrd, who last month introduced a bill to limit the bureau director to a four-year term.

He added that there was little likelihood that any disclosures before the committee

would persuade him to vote in favor of Mr. Gray, who is expected to be the first witness on Wednesday.

Questions Held Serious

Mr. Byrd stressed that he was "not leading a fight against the Gray nomination, but one committee source said there was "a general feeling" among many of the Democratic members that he had "raised some questions that ought to be answered."

Of the committee's nine Democrats, only Senator James O. Eastland of Mississippi, the chairman, and John L. McClellan of Arkansas are said to be leading toward Mr. Gray.

A number of the seven Republicans share their view, including Roman L. Hruska of Nebraska, the ranking minority member. But an aide to Mr. Hruska said that both sides could be expected to have some tough questions for Mr. Gray, because "this is the first time that the Judiciary Committee has had a whack at the F.B.I. and I think they're going to pull their beard a little."