

WXPPost Overseeing the Executive Branch

Is Congress capable of reasserting itself as an effective branch of government? Oversight of executive branch agencies and programs is certainly one means to that end. But the current bickering about long-needed oversight of the Federal Bureau of Investigation illustrates the long road the legislators still must travel.

For the 40 years that J. Edgar Hoover was FBI director, the bureau went its way with almost no congressional or, for that matter, Justice Department control. Hoover's only regular appearance on Capitol Hill each year was before a House Appropria-

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tions subcommittee, where for half a day he would rattle off statistics and stories about the FBI's "amazing" accomplishments. Allegations of illegal or unethical bureau operations were never seriously discussed in those sweetheart sessions.

In the two years since Hoover's death, however, news of FBI misdeeds has come to light, primarily from within the post-Hoover bureau. First there were the allegations of improprieties involving Hoover's successor, L. Patrick Gray III. Then there was the disclosure of 17 so-called "national security" wiretaps of newsmen and government officials. More recently, details of a massive 15-year "counterintelligence" program initiated by Hoover on his own authority became public. Using a variety of techniques, including forgery, the bureau infiltrated and attempted to destroy organizations and individuals engaged in activities Hoover determined contrary to the best interests of the country. William Sullivan, once the No. 2 man in the FBI, recently submitted an extraordinary paper to an American Trial Lawyers Foundation conference. Sullivan wrote that "the FBI, as it is now structured, is a potential threat to our civil liberties . . . To be candid," he added, "the 'right to privacy' was not at issue nor was it an impediment to solving cases. It mattered not whether electronic devices or other techniques were used. . . ."

Given these disclosures of improprieties, what has Congress done to reassert its oversight of the FBI? In the wake of the Senate Judiciary Committee's confirmation hearings of former

acting Director Gray, Chairman James Eastland (D-Miss.) last year established an FBI oversight subcommittee with himself as chairman. One researcher was hired and the subcommittee—using part-time assistance of one committee aide—had some initial sessions on the bureau's controversial domestic intelligence operations. Impeachment and vice presidential confirmation hearings halted that endeavor.

Last May, FBI Director Clarence Kelley and Attorney General William Saxbe asked to meet with the oversight subcommittee to discuss an important matter. Thanks to a Freedom of Information lawsuit brought by NBC newsmen Carl Stern, the FBI was being pressed to disclose details of Hoover's counterintelligence program, called "cointelpro" within the bureau. Saxbe and Kelley gave Eastland and the ranking Republican, Sen. Roman Hruska (R-Neb.) the details of a Justice Department study of "cointelpro" and suggested their oversight subcommittee make the study public and hold hearings. To Saxbe,

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much of the Hoover program was—as he later termed it—"abhorrent in a free society." Internal Justice Department-FBI relationships were such, however, that the Attorney General wanted Congress to take the lead in exposing the former director's improprieties.

Eastland and Hruska declined the suggestion. Instead, they encouraged Saxbe to keep the whole thing quiet. Meanwhile, word of the Justice Department "cointelpro" study reached members of the House Judiciary Committee who were struggling to find a way to oversee the FBI. In the House committee, however, the attitude toward the bureau was far different from that exhibited by Eastland and Hruska. The committee's chairman, Rep. Peter Rodino—deeply involved then in impeachment—showed no interest in taking FBI oversight on as his own. He refused to be briefed by

Saxbe on "cointelpro." Instead he turned responsibility over to a subcommittee headed by Rep. Don Edwards, who was a former FBI agent but had been critical of the FBI's domestic intelligence operations. Edwards immediately asked for a copy of the Justice "cointelpro" study and never got an answer. Through his subcommittee, he called on the General Accounting Office (GAO) to investigate the bureau's entire domestic intelligence program and "cointelpro" specifically.

In addition, a second House Judiciary subcommittee chaired by another FBI critic, Rep. Robert Kastenmeier, was interested in what the bureau was doing in the field of wire-tapping. Fifteen separate bills sponsored by 50 members had been introduced in the House dealing with national security wiretaps and, since April 1974, Kastenmeier's subcommittee had been pressing in vain for details of the FBI program.

Faced with the prospect of giving bureau files to the GAO, "cointelpro" information to the Edwards subcommittee and facts about wiretaps to the Kastenmeier group, the bureau balked. It refused to respond to both subcommittees and began negotiations over what information it would or would not give to congressional auditors.

On Nov. 16 Saxbe and Kelley asked for a hurried meeting with Edwards and the subcommittee's ranking Republican, Rep. Charles E. Wiggins. The congressmen were to get a private briefing on the "cointelpro" report three months after they first sought it—and just before it was to be given to newsmen. To add insult to injury, the "cointelpro" story appeared in the Washington Star-News before the private briefing took place. The congressmen were furious and demanded a public appearance before their subcommittee the following week. It was an expression of pique rather than a serious concern for effective oversight that prompted the calling of the meeting. And it was recognition that injury had been done to congressional pride rather than a desire for serious questioning that brought FBI Director Kelley, Deputy Attorney General Lawrence Silberman and Assistant Attorney General Henry Petersen to the committee hearing on Nov. 19.

Standing alone, the session was hardly satisfactory to either side. The desire of congressmen to expose the inner workings of the Hoover operation rankled Silberman and Kelley. They have no taste for repeatedly condemning something in which many still active FBI agents took part. Silberman's assurances that he had established "procedural safeguards with a capacity to monitor" FBI programs was neither reassuring to the congressmen, nor explored in any detail to make it any more understandable. The mistrust and misgivings on both sides were unmistakable.

What should oversight of the FBI entail? William Ruckelshaus, who served briefly as FBI Director, believes that Congress—either through established subcommittees or a new, joint House-Senate subcommittee—must get more involved in the work of the FBI. Ruckelshaus believes that, in so doing, the legislators eventually will share in responsibility for the standards—if not the specifics—of bureau operations. As for Congress itself, it seems too concerned with appearances and prerogatives to get at the more serious question of what would serve the public interest. That's the sort of attitude that led to Watergate—it would appear that nothing has yet changed it.