

FBI - II

F.B.I., in Worst Crisis Ever, Looking to Its Next Director

Carter's Choice Viewed as Key to Reform Program That Was Begun by Kelley to Prevent Future Abuses

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WASHINGTON, Dec. 31—With public confidence in its rectitude undermined by disclosures of illegal activity, internal corruption and abuse of power, the Federal Bureau of Investigation that the Carter administration will inherit Jan. 20 is in the midst of its worst internal crisis ever.

Under the cautious leadership of its director, Clarence M. Kelley, the bureau recently began to redefine its mission and to install administrative safeguards designed to prevent future abuses of the sort that have sullied its once-impeccable image.

But the ultimate success of those reforms will depend to a considerable extent on the man Jimmy Carter chooses to head the nation's foremost law-enforcement agency over the next few years, a period of transition that promises to be the most crucial in the bureau's 50-year history.

Key Role for Bell

It will also depend on Griffin B. Bell, the Attorney General-designate, who has thus far reserved to himself his views about the future of the bureau, but to whom the responsibility will fall for setting a moral tone that will determine much about that future.

One example of the elements that can contribute to such a climate was contained in a recent recollection of Edward H. Levi, the present Attorney General, that shortly after he took office last year he was approached by an F.B.I. agent who presented him with a request for a national security wiretap and then stood by waiting for him to sign it.

"I asked the agent to leave the request with me—I think, perhaps, to his surprise

—so that I could consult other officials in the department," the Attorney General recalled.

Although the President-elect and Mr. Bell have indicated that they are considering keeping Mr. Kelley in place, sources close to both men are persuaded that the present director has no chance of remaining for more than a few weeks after Mr. Carter takes office.

Carter Campaign Comments

Mr. Carter, the sources recalled, expressed dissatisfaction in his campaign with the pace of Mr. Kelley's reforms and even said at one point that had he then been President he would have discharged the director for having permitted the bureau's carpenters to redecorate his suburban apartment.

The summary of Mr. Kelley's three-and-a-half year tenure as director is mixed. He has reorganized the bureau's intelligence division, a small part of its overall operations but the one that contributed most heavily to the record of abuse, and has reduced the number of its domestic intelligence investigations from several thousand to a few hundred.

But he has, on occasion, been as surprised as those outside the bureau at the reports that some bureau agents and informers have taken part in illegal activities, in a few instances under his very nose. Justice Department lawyers investigating those illegalities have reportedly concluded that they have evidence to bring criminal charges against 10 to 20 past and present bureau officials.

The bureau has been badly stung by

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disclosures that J. Edgar Hoover, its late and longtime director, misused his authority in a variety of ways and countenanced practices by his agents that the Senate Select Committee on Intelligence Activities characterized as "unworthy of a democracy and occasionally reminiscent of the tactics of totalitarian regimes."

Disbelief From Hart

"This is what my children have told me was going on," observed Senator Philip A. Hart, the late Michigan Democrat who served on the special Senate committee that unearthed many of the abuses. "I did not believe it," Mr. Hart said.

The F.B.I., whose executives have spent much of the last 18 months testifying before that committee and several others on Capitol Hill, might well have recovered fully from the criticism and public disillusionment provoked by the unveiling of its blemished history.

But Mr. Carter's bureau director will have more than history to contend with. The most stunning blow thus far, one with ramifications for the future, has been the discovery that dozens of present and former bureau agents and officials

have been caught up in an ongoing Justice Department inquiry into the recent use of such illegal investigative techniques as burglaries and the "systematic theft" of Government property.

Tension inside the bureau has occasionally run high as a hand-picked team of agents, known derisively as the "dirty dozen" and working at the direction of the Justice Department prosecutors, has been digging into the alleged crimes of fellow agents.

Agents Against Agents

At one point, bureau sources reported, members of the special team were confronted by agents in the bureau's giant Manhattan field office as the special team attempted to remove official records thought to reflect some of the illegal activities.

That confrontation passed without incident, but other sources say that old friends are no longer speaking in the corridors as some of those under investigation, granted partial immunity from prosecution, have begun to testify against their colleagues before Federal grand juries in New York City and Washington.

As the stream of adverse disclosures grew from a trickle into a torrent, Mr. Kelley struggled to contain the damage to the bureau's image and to keep its investigative machinery turning smoothly. But his success has not been unqualified, and in some instances his efforts have only exacerbated internal divisions and further diminished the bureau's already dismal morale.

And when, out of apparent deference to the bureau's old guard, he delayed in removing Nicholas P. Callahan as his top deputy, Mr. Kelley caused some chafing among younger, less doctrinaire agents who saw the old Hoover lieutenant as the last guardian of outmoded and unfair traditions within the bureau.

Mr. Callahan's dismissal last July, a result of his implication in the bureau's administrative scandals, was followed by the quiet departures of several other longtime officials, and although Mr. Kelley has insisted that he was never under the sway of the "Hooverites" it was only after they began to leave that he reorganized the bureau's intelligence division and its mossy executive hierarchy.

Deceived by Own Aides

The shakiness of Mr. Kelley's command up to then, and an object lesson for whoever follows him, was illustrated by the director's acknowledgement that he had been "deceived" by his aides into believing that burglaries by bureau agents had been halted by Mr. Hoover 10 years ago.

Justice Department prosecutors have since established that such burglaries have taken place with some frequency this decade, a few of them under Mr. Kelley's administration although apparently without his knowledge, and they have also confirmed the rumors of illegal wiretapping by bureau agents that the director once dismissed as "patently false."

Although assessments of Mr. Kelley's performance as the nation's top law-enforcement officer vary, he has received much praise from Attorney General Edward H. Levi, who this week declared that the director had done an "outstanding" job in effecting a "complete transformation of priorities in the F.B.I."

Whether Mr. Kelley would have taken such steps without being compelled by the public disclosures of illegalities and improprieties is an open question, but it has lately become clear that he is committed in his own way to setting the bureau right.

Reforms for Successor

Some of that commitment has been inspired by Mr. Levi, a distinguished legal scholar and confirmed civil libertarian, who by all accounts is distressed at what he has learned about the F.B.I. But the managerial and organizational reforms that Mr. Kelley has implemented in recent months will stand as his principal legacy to his as yet-unnamed successor.

Mr. Kelley is trying to redirect more

resources toward the prosecution of white-collar and organized crime cases, cutting back on the marginal criminal investigations that have for years been the bureau's staple and have buttressed its statistical performance records.

He is liberalizing personnel policies, introducing modern planning techniques and pushing a career development program that identifies and speedily promotes agents with management ability.

But most important, he has dissolved the bureau's old domestic intelligence unit, the fountainhead of many of the bureau's past abuses, and reduced the number of "internal security" investigations by 98 percent, dramatically reversing the trend toward increasing political surveillance of Americans begun four decades earlier when Franklin D. Roosevelt

first asked Mr. Hoover to monitor Nazi and Communist sympathizers in this country.

In recent Senate testimony, Mr. Kelley attributed the cutback in domestic intelligence investigations in large part to the end of the Vietnam war, which he said had eliminated "a major cause for divisiveness in this country." He might also have mentioned, but did not, the decline in urban violence that occupied much of the bureau's time in the late 1960's.

But sociological factors are only part of the reason that the bureau's interest in Americans with divergent political views has fallen off from 21,414 active investigations three years ago to fewer than 300 today (the bureau handles some half-million cases of all kinds each year).

Another part is the bureau's own initiative in closing out the least productive of those cases, based on what Mr. Kelley terms a "quality over quantity" approach to deploying his manpower.

Of equal importance in the bureau's housecleaning, however, has been the role of the Justice Department, which earlier this year issued guidelines, the first ever, that substantially limit the grounds for opening and pursuing domestic security investigations.

Annual Reviews of Cases

In addition, a group of Justice Department lawyers is now reviewing existing domestic security cases on an annual basis with an eye toward whether they should be kept open, and it was that panel that recently told the F.B.I. to drop its 38-year investigation of the Socialist Workers Party on the ground that none of the party's current activities appeared to violate the law.

Mr. Levi's initiative in imposing standards on the bureau's gathering of domestic intelligence and in seeing that they are adhered to is a notable departure from the acquiescence of past Attorneys General who, according to the Senate committee, gave to the bureau "only the most general guidance for the investigation of organizations."

Taken together, the reorganization of the intelligence division, Mr. Kelley's broader effort to rejuvenate the bureau's management and the strictures handed down by Mr. Levi represent the first significant attempt at reforming the bureau since Mr. Hoover began to clean up the corrupt Bureau of Investigation, as it was then known, in 1924.

Although some of the scandals have evolved from the same sort of internal corruption that existed then, Mr. Kelley has said that most of what he collectively refers to as "our current problems" have resulted from "a certain amount of arrogant belief at high levels in the infallibility and appropriateness of all F.B.I. activities and policies," coupled with "a lack of accountability" to outside authority.

Drop in Public Support

It is perhaps inevitable that Mr. Hoover's bureau, protected as it was against the prying eyes of Congressional and executive branch critics alike, would ultimately breed the sort of high-handedness and disregard for law that, according to the Gallup Poll, has caused a precipitous decline in the number of Americans who

now hold the bureau in high esteem.

But the history of improprieties is nearly as old as Mr. Hoover's F.B.I. itself, and its roots can be traced back to the moment in 1936 when the bureau, then preoccupied with bank robberies and kidnappings, was first given the power to gather information about the political beliefs of American citizens.

Acting on that directive from Mr. Roosevelt and a few subsequent grants of Presidential authority, the bureau bugged, tapped and burglarized suspected Nazi collaborators during World War II and then, with the advent of the Cold War, turned these and other disruptive techniques against members of the Communist Party and those believed to be working as Soviet and East European agents inside the United States.

Later, as domestic dissent increased in the 1960's through the movements for civil rights in the South, for student power in the universities and against the Vietnam war, the bureau reacted by employing many of the same weapons against domestic radicals that it had used earlier in the national security cases.

Searching for 'Cominfil'

Convinced at first that Communist influence underlay much of the discord of the last decade, the bureau began countless searches for "Cominfil" (its term for Communist infiltration) in numerous broad areas, including "political activities, legislative activities, domestic administration issues, [the] Negro question, youth matters, women's matters, cultural activities, veterans' matters, religion education and industry."

In explaining to the Senate committee why the bureau's sensitive counterintelligence techniques had been "brought home against any organization against which we were targeted," William C. Sullivan, the bureau's longtime domestic intelligence chief, said simply that "this is a rough, tough business."

Mr. Sullivan was dismissed by Mr. Hoover after publicly stating a few years ago that he had, after all, not found the Communist Party to be responsible for domestic unrest. He acknowledged to the Senate panel that "never once did I hear anybody, including myself, raise the question, 'Is this course of action which we have agreed upon lawful, is it legal, is it ethical or moral?'"

"We never gave any thought to this line of reasoning," Mr. Sullivan said, "because we were just naturally pragmatic."

Kelley Shows Faith

In testifying recently about the domestic intelligence cutbacks before a new, permanent Senate oversight committee, Mr. Kelley declared that the bureau would henceforth be guided in its investigations by the unfamiliar principle that "there must be the least possible intrusion on the rights and privacy of our citizens, including their sacred right of legitimate dissent."

Despite the subterranean grumbling

from some agents and officials who greatly resent the criticism of the bureau and the exposure of its operations, Mr. Kelley is careful not to display any sign that he has less than complete faith in the wisdom of the transformation.

Asked by Senator Jake Garn, Republican of Utah, whether the bureau might be "going overboard" in its cutbacks, he calmly reassured the oversight committee that the steep reduction had been a "judicious" one.

"I don't think it will emasculate us," he told the conservative Republican.

Another member of the intelligence committee, Senator Joseph R. Biden, Democrat of Delaware, expressed a contrary fear, that the bureau's reforms might be transitory, a pragmatic response to the disclosures that would fade with time or collapse under the weight of renewed domestic dissent.

"These changes are not cosmetic," Mr. Kelley replied with equal conviction.

The real value of the bureau's reforms may not become apparent for years, possibly not before the nation has undergone another wrenching experience like the Vietnam war that would provide the bureau with an occasion for reverting to its old tactics of coping with domestic dissent.

But if they are to endure, the new principles of accountability to outside authority and scrupulous concern for individual rights will have to be enthusiastically enforced by both Mr. Bell and the next director.

Intelligence Division Breakup

While much depends on the environment inside the bureau that is engendered by the Carter administration, some of Mr. Kelley's changes are less fragile, such as the breakup of the intelligence division, which until last August was composed of three principal sections.

One was the espionage section, which concerned itself entirely with the serious business of tracking hostile foreign intelligence agents who operate within the United States.

Another was the extremists section, which watched over radical black, Puerto Rican and American Indian organizations, "white hate" groups and other such movements.

The third was the internal security section, which had the responsibility for investigating Marxist and other "revolutionary groups and organizations" and that in its fervor eventually collected files on nearly everything touched by the left in this country, from Antioch College, a small, liberal institution in Ohio, to what the bureau generically termed the "womens' liberation movement."

Mr. Kelley eliminated from the intelligence division both the extremists and internal security sections, transferring their sharply diminished caseloads to a new "domestic security section" in the bureau's larger general investigative division, which is responsible for policing most of the Federal statutes that the bureau enforces.

Omitted From Scandals

The general investigative division, like most of the bureau's 12 other divisions and the agents who work for them, has been untouched by the current scandals, and Mr. Kelley said he hoped that the change of atmosphere would "better facilitate" the bureau's efforts to carry out domestic political investigations in accordance with the constitutional guarantees in the new Justice Department guidelines.

When Mr. Kelley declared that the ex-

purpose of the shift was to permit cases to "be managed like all other criminal cases" in the general investigative division, he seemed to be saying that the bureau would henceforth ignore those Americans who, however virulent their political beliefs, displayed no intention of violating Federal law.

That implication—that the bureau would confine itself to investigating those radicals and revolutionaries who, like ordinary criminals, had already broken the law or appeared to be on the verge of breaking it—diverged somewhat from Mr. Kelley's contention in a speech last year that regulations governing criminal investigations could not "be transferred in toto and applied to our national security efforts."

Another question about the efficacy of the reorganization was raised by Mr. Kelley's assertion in a civil deposition a few weeks ago that the shift was essentially a physical one, and that many of the bureau personnel who handled "security" cases under the intelligence division had simply picked up their files and moved to the offices of the general investigative division.

Timing Is Central Question

It therefore remains to be seen to what extent the bureau will actually wait until it detects an impending violation of law before prying into the political activities and personal lives of Americans with informers and to wiretaps, bugs and the rest of its arsenal of investigative techniques.

The question of timing is a central one, in view of the bureau's longtime argument that its responsibility for enforcing the internal security statutes, among the most ambiguous on the Federal lawbooks, has meant that it must remain alert to the possibility that a given group or individual may someday engage in rebellion, insurrection or seditious conspiracy, whether they have before or not.

It was that attitude that led to a principal abuse of the old intelligence division, thoroughly documented by Senate and General Accounting Office investigators, in which the F.B.I. cast its net too widely and snared, along with genuine subversives, countless individuals whose rhetoric was not matched by a history of violence or sedition.

Though such Americans were never charged with or in many instances even suspected of committing a crime, their files rest nonetheless in the bureau's archives, alongside the eight-million page dossier on the Socialist Workers Party.

Inquiries Called Too Broad

The General Accounting Office, the investigative arm of Congress, recently studied hundreds of domestic intelligence cases that were opened before Mr. Kelley's reforms went into effect, and it found that the bureau's inquiries had been "too broad in terms of the number of individuals investigated and the scope of the investigations."

In addition, the accounting agency's auditors concluded that in too many instances individual agents had been left to decide for themselves whether to investigate some member or aspect of a group that the bureau, and often no one else, had termed "subversive."

Only three out of every hundred cases studied, the accounting agency found, had produced evidence to support a prosecution. In fewer cases still was the F.B.I. able to acquire advance knowledge of a

group's activities to help it fulfill its "primary goal" of preventing violence.

By limiting investigations to activities "which involve or will involve" violations of Federal law, the new Justice Department guidelines make clear that there must now be a strong probability, and not merely a possibility, that a specific crime will occur before the bureau can open a case.

In addition, the guidelines call for the Justice Department to decide through an annual review whether domestic security cases that have reached the stage of a "full" investigation can be continued.

Latitude Left to Bureau

The guidelines still give the bureau considerable latitude, however, reserving to it the decision whether to open an investigation in the first place and whether to elevate it to the status of a full investigation, and it is the potential for abuse provided by that latitude that underscores the importance of continuing external scrutiny of the bureau's activities.

But guidelines and housecleanings are, in the end, only as effective as those who run the F.B.I. and the Justice Department want them to be, and the bureau's transition from the Cold War to a time of domestic detente will have barely begun by the time that Mr. Levi and Mr. Kelley are replaced.

While it will be up to their successors to continue the reforms over the short run, the responsibility for the long-term cleanup will fall to Congress, whose self-inflicted ignorance of how the bureau has done its job made a disproportionate contribution to the bureau's record of abuse.

The special Senate investigating committee, headed by Senator Frank Church, Democrat of Idaho, which by itself held five times as many hearings on F.B.I. intelligence activities as had all other Senate panels combined over the previous five years, concluded that Congress had "not effectively asserted" its responsibility for overseeing the bureau.

But for that failure, the committee said, "many of the excesses" might not have occurred.

While the Church committee's effort in cataloguing the bureau's excesses, improprieties, abuses and illegalities was a historic and vital step, equally important was its recommendation, adopted by the full Senate last summer, to establish a new select committee to serve as a permanent watchdog and to begin laying down legal limits on the domestic intelligence-gathering activities of all Federal agencies.

Tradition to Overcome

The new committee, headed by Senator Daniel K. Inouye, the Hawaii Democrat who achieved national prominence three years ago with his sober and surgical questioning as a member of the Senate Watergate committee, will have to overcome a long record of Congressional negligence.

For, as the record of the Church committee makes clear, the bureau's growth to superpower status among Federal agencies depended to a remarkable degree on Congressional acquiescence, the willingness of both the Senate and the House of Representatives to allow it to conduct investigations and build awesome files in a nearly perfect political vacuum.

That vacuum was punctured last September, however, when, in the futuristic, heavily guarded and slightly eerie meeting room of the Congressional Joint Committee on Atomic Energy, borrowed for the occasion, the 15 members of the new intelligence panel sat down to begin what one of them heralded as the first routine oversight hearing on F.B.I. intelligence

in the bureau's history.

That such a hearing was held at all, much less in the presence of reporters and television cameras, was a sign that Congress had finally begun to transcend, though not without some self-struggle, whether out of fear or out of awe, the attitude of fear and fawning with which it once faced Mr. Hoover's F.B.I.

Significance of the Session

The significance of that brief session did not lie in the questions about domestic intelligence operations put to Mr. Kelley, although the specter of Mr. Hoover submitting in public to such pointed and sometimes hostile probing is beyond imagination.

Rather, it was in the fact that the Senate, if not yet the House, had, by setting up the select committee, finally acknowledged its constitutional obligation to find out for itself what the bureau does and how it does it, and to impose carefully drawn controls, in the form of a legislative charter, that will reinforce the administrative guidelines and provide insurance against future abuses.

The Inouye committee did not have an opportunity to meet again on the bureau before Congress adjourned in October. But at that seminal hearing, Senator Inouye emphasized his determination to make up for decades of Congressional acquiescence by pointing out that the failure to play "a significant role in monitoring the activities of the intelligence agencies" had been "by agreement on the part of Congress" itself.

Congressional sentiments for reform are notorious for fading as soon as the ink on the investigative reports has dried. But the public commitment by Senator Inouye to prepare a legislative charter, along with Mr. Kelley's assurances that the bureau would welcome such a document, leave little question that statutory guidelines of some sort eventually will supplant the current administrative ones.

Should that happen, Clarence Kelley's most enduring contribution to the future of the bureau may well prove to be not the rules and regulations he has imposed on it but the philosophy that he has endeavored to get across to the men and women who run it: that the bureau will never again be able to conduct itself free from external scrutiny, guidance and criticism and that it must learn to function under the ever-present eyes of Congress, the Justice Department and the press.

Or as Mr. Kelley puts it, "The sanctuary which we had is no longer there."