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A Battle Congress Could Win

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By Tom Wicker

The Senate's failure to override President Nixon's veto of a bill to aid the handicapped amply demonstrates that Congress, as now organized and led, cannot seriously compete with the White House on the spending issue. But the expanding executive dominance of the legislative branch can be slowed or reversed in other ways—and the continuing battle over L. Patrick Gray 3d is the best opportunity.

Mr. Gray, now the acting director of the F.B.I., appears unlikely to win confirmation by the Senate—perhaps not even in the Judiciary Committee—as permanent director. The hearings on his nomination have disclosed too many questionable activities in the Watergate investigation, such as it was, and in the re-election campaign of Mr. Nixon. Nor does Mr. Gray have the imposing personal or law-enforcement background that might enable him to surmount these shortcomings.

But few if any of the questions about Mr. Gray have been questions about the F.B.I. itself—what its role is and should be, what its limitations are and ought to be, how it has played whatever role it has and observed whatever limitations exist. But these questions may well be more important than the identity of the new director, crucial as that is.

After all, J. Edgar Hoover ran this most important and least scrutinized of major agencies for 48 years, with iron will, iron hand and iron resistance to oversight, not to mention supervision. He became the most unchallengeable power in American Gov-

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ernment; and while one may have been for or against him and the way he ran the F.B.I., surely it is not too much to ask that once in a half-century the institution itself ought to be thoroughly examined. Mr. Hoover's death and Mr. Gray's nomination to succeed him, together with the Senate's duty to confirm or reject Mr. Nixon's selection, to provide a splendid opportunity for that examination.

Mr. Nixon has already missed one opportunity. When Mr. Hoover died last year and Mr. Gray was made acting director, the President could have appointed a blue-ribbon commission of law-enforcement professionals, members of Congress, Government officials and public members to evaluate the F.B.I. and to make recommendations as to how it ought to evolve in its post-Hoover phase.

Instead, he sent Mr. Gray's name up as a one-for-one substitute for Mr. Hoover in the existing agency, and while it is true that Mr. Gray already has initiated welcome reforms—women as agents, for example, and less nitpicking bureaucracy—that is not the same as and is far more limited than a thoroughgoing review and evaluation by outside examiners. On taking office, Mr. Gray himself seemed to sense the need; as he told the Judiciary Committee, he then asked the bureau's "best brains" to determine—among other things—whether it had legislative authority to investigate "subversion" when there had been no "specific violation of Federal law."

Unfortunately, the committee did not follow up this intriguing opening, and Mr. Gray has not been required to say what the bureau's "best brains" concluded, or to describe the bureau's policies on this and other matters, or even to state his own attitudes.

While testifying in the Gray hearings, Norman Dorsen of the Committee for Public Justice raised many of the necessary questions (after pointing out that there had never been a real Congressional investigation of the

F.B.I.) He suggested, for instance, that the Gray hearings ought to be used to establish the extent of electronic surveillance with and without court orders by the bureau, on its own behalf or for others, and what safeguards it has against unauthorized taps or the receipt of information from unauthorized taps by other police agencies.

Another important question, Mr. Aryeh Neier of the American Civil Liberties Union has charged that of seven to eight thousand public agencies that received bureau information in 1970, less than half were law-enforcement agencies; it is not clear what private organizations, if any, have such access.

Should the director be more or less responsible than he now is to the Attorney General, who is often a political figure? Should crime-fighting be separated from counterespionage? Should the F.B.I.'s counterespionage mission necessarily imply jurisdiction over domestic subversion? What does the bureau do and how much should it do in investigating local and state police misconduct?

As the Gray hearings resume, or if Mr. Nixon makes another nomination, all these matters should be examined exhaustively. They are important in themselves, but such an inquiry also would be an excellent example of what Congress can do that Mr. Nixon has failed to do.