

Not Above The Law

By Anthony Lewis

WASHINGTON, March 17—Fifty years ago Attorney General Harlan F. Stone said the Bureau of Investigation, as the F.B.I. was then called, "is not concerned with political or other opinions of individuals. It is concerned only with their conduct, and then only with such conduct as is forbidden by the laws of the United States."

That principle, so essential for a Federal police agency, has been dangerously violated in recent years. The F.B.I. not only investigated individuals because of their lawful opinions, we have learned, but persecuted some because their opinions offended the F.B.I. director. And all this went on without any effective restraint by the Justice Department, Congress or the courts.

From here on, such abuses will be much less likely. The reason is a series of guidelines laid down by the present Attorney General, Edward H. Levi, to govern the work of the F.B.I.—not only the guidelines themselves but the spirit that informs them. It seems right to note a genuinely reassuring development in Washington.

One exceptional aspect of these guidelines is that, instead of presenting Congress with the usual Executive fait accompli, Levi actively consulted Congressional committees in drawing them up. The version announced the other day was the 28th draft made by a Justice Department committee, and the final form reflected Congressional suggestions made during the long process.

"He was very open about it," one experienced and often skeptical Congressional staff expert remarked. "There was no attempt to slip things past us."

The biggest change was made in the draft of guidelines for domestic security investigations. The final version omitted a section allowing "preventive action" by the F.B.I. to stop

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anticipated violence threatening "life or property." Although the early draft had tried to put careful restrictions on such action, Congressmen continued to fear that the rules might allow black-mail or other disruptive tactics used in J. Edgar Hoover's Cointel Program.

The final Levi rules for domestic security neither allow nor prohibit "preventive action." That continues to trouble some who would like a flat ban. But there is a fundamental safeguard in the Levi guidelines in this

area. The F.B.I. is to work on domestic security matters not at large but for purposes of law enforcement. Levi testified, in words reminiscent of Stone's:

"The purpose of the investigation must be the detection of unlawful conduct and not merely the monitoring of disfavored or troublesome activities and surely not of unpopular views."

That principle would exclude such things as the most notorious of Hoover abuses, the wiretapping and harassment of Dr. Martin Luther King Jr. The Levi guidelines in fact put special restraints on taps and other intrusive investigative techniques.

Electronic surveillance, mail covers and infiltrated informants are barred altogether in preliminary security investigations. They can only be used in so-called "full investigations," which have to be approved by headquarters on a strict showing of possible crimes involving force or violence and must be reported to the Attorney General within a week.

The rules also prohibit use of planted informants after someone has been charged with a crime, or to obtain "privileged information." These restrictions are designed to prevent, for example, an informant listening to a defendant's talks with his lawyer—a practice attributed to the Government in one political prosecution of the Nixon era.

Guidelines have been approved or are being drafted in a half-dozen areas of F.B.I. work apart from domestic security. One, for example, is personnel investigations for the White House—where some of the Nixon abuses came.

One approved guideline says that field investigations of potential appointees shall be made only when requested by the President or a handful of his top aides, and only when the prospective appointee himself has consented. These provisions would prevent such an episode as the F.B.I. investigation of Daniel Schorr that the Nixon White House ordered for purposes of intimidation and then explained, falsely, as related to an appointment for Schorr.

Of course the best internal guidelines can be avoided, or changed by future officials. But Levi has urged Congress to write some rules into statutes, and he is about to call for a new law restricting electronic surveillance in security cases. Most important, he has introduced a new mood in which the F.B.I. expects and has begun to accept scrutiny by the Justice Department and Congress.

In this performance Edward Levi has justified the hopes placed in him when he took office last year. I have been critical of him for taking too favorable a view, as I felt, of executive privilege and secrecy in foreign affairs. Perhaps in those matters he has a certain respect for "experts" that he would not have in his own domain of domestic law. In both areas it is important, as Harlan Stone said, that agents of the American Government be "not above the law."