

The Abandoned Nominee

Gray's FBI Work, Once an Asset, Is Now a Liability

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When L. Patrick Gray III was formally nominated to be director of the Federal Bureau of Investigation a month ago, his chances for Senate confirmation seemed excellent and his nine months as acting head of the bureau were cited as his best qualification.

Today, as he returns for a new round of questioning by the Senate Judiciary Committee, his prospects are very bleak indeed and his performance in the job may be his biggest problem.

Gray's nomination has been submerged in a thicket of political and legal controversies—over the White House interpretation of "executive privilege," the quality of the FBI's investigation of the Watergate bugging case and the question of congressional access to the FBI's "raw files."

Although the acting director himself has sworn off any contact with the press until the confirmation process is over, some of his close associates in the bureau

are confident that he can survive the crisis.

At worst, they insist, Gray will squeak through a vote on his merits in the Judiciary Committee and there will be a bitter, protracted fight over his nomination on the Senate floor.

But even Gray's allies outside the FBI—there are fewer of them than there were a month ago—consider that assessment foolishly optimistic.

Administration sources favorable to the nominee say that the White House and the Justice Department have virtually abandoned him. What little lobbying there was on Gray's behalf was apparently suspended last week after President Nixon made it clear he would not compromise on the issue of executive privilege.

The best Gray can hope for, say the sources, is that his appointment will be blocked in committee on procedural grounds and that he will be permitted to remain temporarily in J. Edward Hoover's old seat until the Senate's special investigation of the Watergate case is completed about a year from now.

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That was the solution proposed Sunday by Sen. Sam J. Ervin Jr. (D-N.C.), chairman of the select committee investigating the Watergate affair and related acts of alleged political sabotage during last year's presidential campaign.

However, it may not be acceptable either to Gray's opponents or to the White House.

Both sides are expected to assert that the FBI, at a crucial turning point in its history as an institution, requires firm and self-confident leadership over the next four years.

(Hoover's death last May triggered the application of a 1970 law requiring that all future FBI directors serve at the pleasure of the President and be confirmed by the Senate.)

Thus, Assistant Senate Democratic Leader Robert C. Byrd (D-W. Va.), a member of the Judiciary Committee and Gray's most outspoken critic, may force an up-or-down vote on the merits of the nomination.

Alternatively, President

Nixon, if advised that there is no prospect for Gray's confirmation this year, could withdraw the nomination and send to the Senate the name of someone else not connected with the Watergate controversy.

In that event, the fights over executive privilege—whether a congressional committee can force White House aides to testify on Capitol Hill—and access to FBI files could be reserved for the volatile Watergate hearings.

As things stand before Gray's appearance today, the Judiciary Committee was deadlocked 7 to 7 on Gray's nomination, with two swing votes in between.

Favoring the nominee on the merits are Democratic committee chairman James O. Eastland (Miss.) and Republicans Marlow Cook (Ky.), Hiram Fong (Hawaii), Edward Gurney (Fla.), Roman Hruska (Neb.), Hugh Scott (Pa.) and J. Strom Thurmond (S.C.).

Opposed are Byrd, Ervin and fellow Democrats Birch Bayh (Ind.), Quentin Burdick (N.D.), Philip A. Hart (Mich.), Edward M. Kennedy (Mass.) and John V. Tunney (Calif.).

Caught in the middle are John L. McClellan (D-Ark.), who is generally loyal to Eastland's leadership but concerned about Senate prerogatives, and Charles McC. Mathias (R-Md.), who often disagrees with his GOP colleagues but has been under intense pressure from the White House over the past year to respect party unity.

Gray's supporters would need both those votes to report the nomination to the Senate floor, but his opponents require only one of them to block it with an 8-to-8 tie vote.

Senate Republican sources said yesterday that Mathias — backed by Scott, Cook and other Republican "moderates" — is desperately eager to avoid an up-or-down vote on Gray, but that if it comes, the Marylander will probably vote against the nominee.

Congressional Republicans and presidential nominees caught in such a bind can generally count on lobbying assistance from the White House, but the Senate sources said there has been none this time.