

Whoever Runs It, F.B.I. Faces Problem of Political Control

By CHRISTOPHER LYDON

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For 48 years under J. Edgar Hoover, the Federal Bureau of Investigation was "above politics"—not unpolitical, as Mr. Hoover's intimates now confirm in fresh detail, but so nearly sovereign that it dominated relations with Attorneys General, Congress and sometimes Presidents. And then, after Mr. Hoover's death last May, there was L. Patrick Gray 3d.

Ten months of transition under Acting Director Gray—once a political aide of President Nixon's but pictured lately as a "hostage" of the Senate Judiciary Committee—have dramatized again the questions of political control that surrounded the bureau at its birth: Who should give it orders? Who may share its secrets?

Law school authorities, former Attorneys General, independent law enforcement experts and Congressional leaders view them as crucial problems.

Observers differ sharply about the proper lines of authority, but they tend to agree that personal factors—notably the character of the F.B.I. director and his mandate from the President—will always tend to override any tidy definition of roles.

Typically, Thomas L. Emerson, a professor of constitutional and administrative law at Yale, views the director's job as inherently judgmental and offers the disclaimer, "I don't know how to make it responsive and independent at the same time, but that's what it's got to be."

Ineffective Checks

Others note that institutional checks, like Mr. Hoover's nominal subordination to a succession of Attorneys General, are not necessarily what they seem at the F.B.I.

The requirement of Senate confirmation of the new director, for example, was written to take the appointment out of partisan politics. Yet it precipitated the battle over Mr. Gray and may yet lead the Senate Judiciary Committee, after its cram course in the Gray hearings, to claim permanent supervision over the Bureau.

Paradoxically, according to knowledgeable F.B.I. sources, the real impetus behind Mr. Hoover's support of the Senate confirmation requirement was his determination to choose his own successor.

"And with the support he had on Capitol Hill," says a one-time assistant, "he could have."

When he became director in 1924, Mr. Hoover insisted on exclusive control over personnel and on tight insulation from outside politics.

But, says one disenchanted former assistant, "the F.B.I. was head over heels in politics under Hoover." This was a reference to ways in which the director's personal views affected bureau performance and to what was described as Mr. Hoover's subtle but assiduous politicking with other forces in government.

William G. Hundley, who was head of the Justice Department's antiracketeering squad when Robert F. Kennedy was Attorney General, has said that the bureau cooperated in the loyalty and security prosecutions of the nineteen-fifties, Hoover's subtle but assiduous but was not so helpful in the pursuit of organized crime in the nineteen-sixties, which Mr. Hoover sought to avoid.

Career lawyers within the Justice Department who remember the frustration of dealing with Mr. Hoover's F.B.I. say Mr. Gray has made changes that are a dramatic improvement, "a breath of fresh air," one said. Mr. Gray's "responsiveness" has embarrassed him in the Watergate case, but his cooperation on day-to-day criminal investigations seemed to the professionals an overdue reform.

Channels Opened

For the first time in memory, criminal prosecutors say they can communicate directly with the director and get the bureau's help without regard to his personal priorities.

The Criminal Division of the Justice Department has begun, for example, to wean the F.B.I. from its concentration on routine stolen automobile cases under the Dyer Act, an investigative field that some say Mr. Hoover used to fatten arrest statistics.

Under Mr. Gray, the bureau is working on car-stealing gangs and cases that appear to involve organized crime, and leaving the rest to the local police.

"They don't like the new policy," said a Criminal Division lawyer, "but they're going along."

Quinn Tamm, head of the International Association of Chiefs of Police, has applauded what he regards as Mr. Gray's efforts to break the bureau's habitual isolationism. The joint investigation by F.B.I. agents and local policemen into the shooting of John C. Stennis here in January and the recent joint announcement of the arrest of suspects "never would have happened under Hoover," said Mr. Tamm, who feuded with the old F.B.I. boss.

Since Mr. Gray took over, the F.B.I. and the police chief's groups have undertaken a number of cooperative projects in police training.

No Budgetary Review

Not the least part of Mr. Hoover's independence was his freedom from the usual budgetary review—within the Justice Department and the Budget Bureau at the White House, and notably in Congress, where Representative John J. Rooney, Democrat of Brooklyn, an appropriations subcommittee chairman and friend of Mr. Hoover's, used to boast, "I have never cut his budget and I never expect to."

Yet, Congressional reverence for the F.B.I. has clearly been diminished by Mr. Hoover's death, and if the bureau does not meet a direct challenge in the appropriations process this spring, it is expected to be questioned more closely than before on its work outside law enforcement.

Two years ago Senator Sam J. Ervin Jr., Democrat of North Carolina, waged all-out war against the Army's surveillance of domestic dissidents. But deferring openly to Mr. Hoover's political support in the Senate, he stopped short of challenging the F.B.I.'s far wider intelligence activity, though it rests on much the same claim of inherent executive powers that the Army had cited.

When Senator Ervin will reopen that inquiry is unclear, but his staff has advised him that the bureau's authority for surveillance is "shaky."

Opposes Many Dossiers

Senator John V. Tunney, Democrat of California who is an increasingly outspoken member of the Judiciary Committee, remarked in an interview the other day that the F.B.I. should not be keeping dossiers on anybody who has not been charged with a crime—a point that could provoke a major confrontation with the bureau.

Senator John L. McClellan of Arkansas, second-ranking Democrat on the committee and a stalwart supporter of Mr. Hoover, says that on the question whether the bureau's intelligence and law enforcement activities ought to be segregated, he has "no comment"—a point of view that could encourage reformers in the Justice Department and Congress to press for such a change.

Among former Attorneys General, theoretically Mr. Hoover's bosses at the Justice Department, Democrats are more ready than Republicans to discuss the general matter of answerability and control at the F.B.I.

Yet the outspoken views of Nicholas deB. Katzenbach and Ramsey Clark, Democrats who served in succession under

President Johnson in the late nineteen-sixties, are significantly different.

Mr. Clark argues that the Attorney General should set rules, priorities and budget guidelines for the F.B.I. and mediate the relationship between the President and the director. Mr.

Katzenbach respected Mr. Hoover's stubborn ways even when they challenged his emphasis on civil rights and organized crime.

"I'd rather take the frustration,"

Mr. Katzenbach remarked in an interview, than have a "pliable bureau."

Herbert J. Brownell, Attorney General in President Eisenhower's first term and now a lawyer in New York, declined

to be interviewed on the F.B.I. Secretary of State William P. Rogers, who succeeded Mr. Brownell in the Eisenhower Cabinet, and John N. Mitchell, the Attorney General in President Nixon's first term, were unavailable.

Richard G. Kleindienst, the current Attorney General, first agreed to discuss the views of the bureau and then canceled the interview.

Mr. Katzenbach, who sought in vain to have F.B.I. memos to President Johnson routed through the Attorney General's office and remembers Mr. Hoover as "difficult," says nonetheless, "I felt fairly comfortable with that relationship."

Political Independence

The F.B.I. "ought to have a political independence in terms of its director and personnel," Mr. Katzenbach, now a vice president of the International Business Machines Corporation, continued.

"The tradition of the place ought to be the tradition Mr. Hoover put on it: Free of partisan politics if not of ideals and ideas and maybe ideology, but a professional organization with a professional ethic."

The department of Justice is "a good place to have it," Mr. Katzenbach believes, even if the prestige and budgetary

autonomy built up under Mr. Hoover made it hard for an Attorney General to control. The F.B.I.'s vast store of sensitive intelligence will always tempt the White House to make direct contact with the bureau, he believes, and even a strong director could not refuse to give the White House information - even when, as in the Watergate case, the White House staff is under investigation.

"The President of the United States is entitled to know anything that's going on in the United States Government," Mr. Katzenbach said.

More Major Changes

Mr. Clark, who fought openly with Mr. Hoover both in and out of the Attorney General's office, would make major changes with the appointment of a new director.

The Senate's power to confirm the director's appointment should check blatant Presidential politics, says Mr.

Clark, a lawyer in private practice. But he would also limit the director's term to five years - different from the four-year Presidential term to allow some independence from the White House, but short enough to prevent the sort of personal rule Mr. Hoover established.

Like a number of academic critics of the Hoover reign, Mr. Clark proposes to strip the bureau of the intelligence gathering function that Franklin Delano Roosevelt gave it in the years before World War II.

"Intelligence not for prosecutorial purposes - and a lot of it is inadmissible in court anyway - should be segregated and ultimately abolished," Mr. Clark said. "To engage in the accumulation of information about individuals and groups as an end in itself is socially unjustifiable."



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J. Edgar Hoover, who was director of the F.B.I. for 48 years, with President Roosevelt in 1934.