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The FBI: Phase II

Having spearheaded the effort to turn back President Nixon's nomination of L. Patrick Gray III to be director of the FBI, Sen. Robert Byrd (D-W. Va) has turned his attention to quite serious issues of the governance of the bureau which flow both from J. Edgar Hoover's 48-year tenure in the director's chair and from the Gray hearings. Senator Byrd has introduced a bill which he hopes will improve the bureau and take it out of politics. The central purposes of the bill are to take the bureau out of the Department of Justice and make it an independent agency and to limit the director's term in office to seven years. Sen. Henry Jackson (D-Wash.) is introducing a bill which would give the director a 15-year term with no possibility of reappointment and require that the nominee have at least 10 years experience in the FBI.

There can be little doubt that the issues which these two measures seek to address are extraordinarily important. The dangers of politicizing the FBI or even giving the appearance of doing so have been graphically demonstrated in the last few weeks. It is not simply the distribution of John Ehrlichman's request for information which would be useful in the campaign to FBI field offices last year or even the appearance that Mr. Gray acted at least like a quasi surrogate for the President in the campaign. Those things are bad enough. More to the point is the nightmarish position of a few employees of the Committee for the Re-election of the President who, wanting to discuss matters involved in an FBI investigation freely and out of the presence of their superiors, arrange to do so and then find that their information has made a full circuit right back to the people whose intervention they sought to avoid in the first place. Finally, of course, there is the sad story of Mr. Hoover's ossifying political views and concurrently ossifying control over the FBI in his later years.

Although these two bills attack very real problems, we are not, at least at this juncture, persuaded that the remedies proposed are either appropriate or wise. The establishment of the bureau as an independent agency, while attractive at first blush, might create more problems than it solves. In a very real and substantial sense, the FBI serves as the investigative arm of

the federal criminal process. As such, it is imperative that it have the closest and most cooperative relationship with the lawyers who are trying to develop cases and who ultimately will have to try them. During the last years of Mr. Hoover's tenure, that relationship was either nonexistent or constricted and carried out with the greatest difficulty by lawyers within the Justice Department for, although Mr. Hoover was nominally the Attorney General's subordinate, he and the bureau were in a very real sense independent. Sen. Byrd's bill would simply perpetuate that problem.

We have already addressed the fixed term proposals in this space. Sen. Jackson's 15-year idea with the requirement that candidates be drawn from people who had put in at least 10 years in the bureau seems to us unduly restrictive of the President's freedom to choose the best person available, no matter what he or she might be engaged in at the time of the vacancy. Moreover, the trouble with a fixed term, whether it be 7 years or 15 or something in between, is that it would prevent the President from firing a person who had turned out to be his or some past President's mistake. Despite the perils of politicization, we think the system can be made to work if the President and his Attorney General are convinced that the Congress actually wants and is prepared to work to achieve a truly non-political and highly professional FBI.

And that, it seems to us, is the healthiest aspect of the Byrd and the Jackson proposals. For Sen. Byrd said some very important things when discussing his reasons for introducing his bill. He said that there was a real need to take a careful look at the FBI after Mr. Hoover's long rule, that he did not want the directorship to become a patronage plum and, most importantly, that he considered his bill a stimulus to congressional oversight and study of this whole matter. That last is the nub of it. If Congress can mount serious and sustained oversight on the problems of the governance of the bureau, all of these problems will be manageable. If it cannot, no gimmicks like fixed terms for the director will work. In providing a stimulus to active congressional participation in the management of the FBI, Sen. Byrd and Sen. Jackson have performed a useful public service.