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Attorney General Weighs Ban On 'Preventive Action' by FBI

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Attorney General Edward H. Levi is considering a ban on the FBI's practice of taking "preventive action" — extra-legal steps involving deception or intimidation aimed at preventing an imminent use of force or violence.

Levi, in what would be a reversal of an earlier position, may abandon the program rather than try to draft new legal guidelines for the FBI that would, according to one source, say "it is okay to lie in certain circumstances."

Under guidelines approved by Levi last December, the FBI was authorized to undertake such "preventive action" with the approval of the Attorney General when there was "probable cause" that an immediate threat to life or property was involved.

Levi has not approved any such programs, according to a Justice Department spokesman.

In normal circumstances when violence is about to be committed, the FBI or other law enforcement agencies make arrests or obtain search warrants. FBI Director Clarence M. Kelley has argued that the additional "preventive action" steps are needed when "there is a strong sense of urgency because of an imminent threat to human life."

At a December hearing, Kelley cited as an illustration the situation where a water department employee had been overheard threatening to poison a city's water supply. Asked what he would do under "preventive action," Kelley responded he would remove the employee from his position but did not say how.

The exact steps involved in the FBI's program have not been outlined. But preventive action developed from the FBI's counterintelligence (COINTELPRO) program from 1954 to 1971 in which agents secretly under-

took legal and illegal disruptive acts, including giving out false information against such targets as the Communist Party, Ku Klux Klan and Black Panthers.

Levi, in hearings before the Senate intelligence committee last December, defended the practice, saying, "I believe under special circumstances and with proper controls most would believe this to be a proper function."

Congressional criticism however, forced Levi last month to revise his initial guidelines and include specific prohibitions against some former COINTELPRO techniques including the incitement of violence, anonymous dissemination of information, use of false identities or release of material to hold "an individual or group up to scorn, ridicule or disgrace."

Levi now is faced with further demands for guideline revision and, according to an aide, "he doesn't want to get into a box of providing exceptions" to the prohibitions he has established, nor "putting into guidelines that you can lie."

Last Tuesday, Levi met with Sen. Walter F. Mondale (D-Minn.), who chairs the domestic subcommittee of the Senate intelligence committee, to talk about proposed legislation for the FBI. Mondale has criticized what he termed "the notion that you can go beyond the law and courts to stop something you don't like," but he said recently he was "not willing to reject all nonviolent actions in extreme situations."

FBI officials would not comment directly on Levi's apparent change of mind toward preventive action. "The proposed guidelines are still being formulated," one FBI spokesman said yesterday, "and there will be no further comments" from Kelley.

A recently released General Accounting Office study criticized the FBI domestic intelligence operations in part for the bureau's failure to develop significant "advance knowledge of planned subversive or extremist acts or activities, particularly violent acts."

In another development, FBI Director Kelley yesterday denied a story in The New York Times that said the bureau over the past 10 years had "halted most of its efforts to identify and track down undercover agents" of the Soviet Union

and other countries operating in the United States.

The Times story, attributed to "a number of well-informed sources," said efforts at tracing illegal underground agents had been "phased out by (the late FBI Director) J. Edgar Hoover in the late 1960s early 1970s."

Kelley said yesterday that "counterintelligence and espionage investigations continue as one of the FBI's highest priorities and although changes in investigative procedures have occurred over the years, they in no way represent a de-emphasis . . ."