Department of Justice

FEDERAL BUREAU OF INVESTIGATION
DISTINGUISHED LECTURE SERIES:

ADDRESS

OF

THE HONORABLE GRIFFIN B. BELL

ATTORNEY GENERAL OF THE UNITED STATES

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One of the proudest and most rewarding aspects of my tenure as Attorney General has been my association with the Federal Bureau of Investigation. In these two and a half years, we have come a long way together.

Today, the FBI can point to many accomplishments and the basic credit must go to the thousands of men and women of the FBI who go about their daily tasks dedicated to the cause of justice.

The steps that we have taken together were made possible in part by the solid foundation left by Attorney General Levi, President Ford, and Director Kelley. During the past year, under the distinguished leadership of Judge William Webster, the FBI's accomplishments have been immense.

There is a new FBI today. Past problems are in perspective. The Bureau is confident and knows its mission, and public trust in the FBI continues to rise.

Not too many years ago, it was the conventional wisdom around Washington that the FBI frequently went its own way and merely tolerated the Department of Justice. There is no doubt today that the FBI feels firmly a part of the Justice Department and responsible to the Attorney General on matters of law and policy. We work as partners on a wide range of complex activities.

A number of efforts are underway in the Department that will have an impact on the FBI's ability to do its work well. I would like to discuss two of them in some detail -- the FBI domestic charter and proposed amendments to the Speedy Trial Act.

The Charter would outline in statute, for the first time, the authority for all criminal investigations by the FBI. In many ways, it does not represent a radical shift. The Charter would codify many current practices now conducted under diverse pieces of authority.

Director Webster and I have long sought a workable Charter -- one that would confer clear authority, outline a regulatory framework, and provide for detailed Attorney General guidelines for FBI conduct to supplement the sound principles established in statute.

Over the past 10 months, Department lawyers have worked with FBI officials to refine the Charter drafted at the Bureau last summer. The final drafts were personally reviewed -- word-by-word -- by Director Webster, Deputy Attorney General Civiletti, and me.

I believe that our proposal will be endorsed by the Administration and cosponsored by a wide array of members of both the Senate and House.

Enactment of our Charter in this Congress could not come at a more auspicious time. We need to formalize the philosophy and practices of law enforcement the Bureau has been following faithfully the past few years. In this way we can help put to rest the lingering doubts and fears stemming from disclosures of some past investigative activities.

The Charter would help law enforcement. It would make clear what FBI agents can do and how they would perform those duties. It would represent express authorization by Congress for the wide range of functions the FBI is expected to perform.

The FBI would no longer be subjected to the impossible conditions of the past, being criticized retrospectively for conducting investigations ordered by the Executive Branch and sometimes demanded by Congress or the public. The Charter would let every Bureau agent know the rules of the game in advance and establish mechanisms to ensure adherence to those rules.

To be fully effective, FBI agents must have complete confidence that what they are doing is lawful. They must know that they will not later be subjected to personal embarrassment, civil law suits, or congressional criticism if they follow the principles established in the Charter and in Attorney General regulations.

Success in investigations requires great skill, strong courage, and high morale on the part of investigators. It also requires the cooperation and trust of all segments of the population. The Charter is essential to replenish the reservoir of trust and goodwill so that the Bureau can count on cooperation from the people of this country.

In a sense the Charter would be a contract between the FBI and the people. It would represent a mutual agreement on what the FBI will do, what it will not do, and how it will go about its important business.

For example, the Charter's investigative standards will ensure that Americans will be investigated for criminal activity, not for their First Amendment activity.

The Charter would also help solve two of the greatest problems facing the FBI today.

First, it would give the FBI administrative subpoena power -- a vital tool in investigating white-collar crime, fraud against the government, and public corruption. Without it the FBI would be seriously handicapped. At present, banks and others that hold needed records are often reluctant to furnish them without formal, compulsory process. It is ironic that Inspectors General throughout the government and some regulatory agencies have this authority and the FBI does not.

Second, the Charter would bar disclosure of an informant's identity pursuant to court order in any criminal case, civil damage case, or Freedom of Information Act suit. At the same time, the Charter would help restore public and Congressional confidence in FBI use of informants by providing a rigorous system of accountability and control over informant practices.

The Charter contains restrictions on certain sensitive investigative techniques. Some techniques -- such as physical search and seizure or electronic surveillance -- have been subjected to extensive limitations over the years by court decisions and statute.

The use of confidential informants is a technique largely unregulated either by the courts or Congress. The Charter seeks to do this in a realistic manner. It would not require either "probable cause" -- which is a standard that would justify an arrest -- or a judicial warrant for use of informants to infiltrate a group under criminal investigation. However, the Charter does contain significant safeguards. First, procedures would require prior authorization and review by higher officials. Second, written reports on critical informant decisions and on general informant practices would have to be made to the Director. Third, in certain limited instances, similar reports to the Attorney General would be required.

This provides a system for controlling informants that would substantially reduce the potential for problems.

The Charter recognizes that use of informants can involve risks to innocent parties. It reserves to Bureau officials at various levels the responsibility for making the decisions on use of informants in a flexible enough manner to meet the changing needs of ongoing investigations but within a framework of accountability and control.

The use of informants is a volatile subject -- one that has generated controversy for decades. More than a century ago, Sir Thomas Erskine May wrote in The Constitutional History of England: "The relations between the government and its informers are of extreme delicacy." On one hand,

May saw that "not to profit by timely information" was a foolish practice for a government. On the other hand, he elucidated the risk:

> "to retain in government pay, and to reward spies and informers, who consort with conspirators as their sworn accomplices, and encourage while they betray them in their crimes . . . . No government, indeed, can be supposed to have expressly instructed its spies to instigate the perpetration of crime: but to be unsuspected, every spy must be zealous in the cause which he pretends to have espoused."

Properly controlled, informants are an indispensible law enforcement resource. Let me emphasize again, however, that the Charter would provide a system under which the Bureau would control its informants -- informants would not be given any sanction to take off in directions of their own.

I believe that the Charter would greatly benefit the nation. I hope the Congress will give it prompt consideration and strong support.

The other topic I want to discuss concerns our proposal to Congress to help Federal prosecutors and investigators deal with serious problems that have developed in trying to comply with the Speedy Trial Act.

The Act is being phased-in over a four-year period -- with the final time limit of 100 days from arrest to trial to take effect on July 1. The sanction for exceeding the statutory time limits, after deducting certain specified excludable

periods, will be mandatory dismissal of the case.

The Department supports the Act's major objectives of preventing oppressive pretrial detention; limiting the possibility that the defense of the accused will be impaired; and preventing further criminal activity.

However, our experience indicates that the Act does not properly balance those interests against the necessity of adequate trial preparation by both defense counsel and prosecutors. Unless the Act is amended, complying with its strict time limits could be very costly.

During the past four years, the Department's efforts to comply with the Act have had substantial success. There has been a steady decline in the amount of time it is taking U.S. Attorneys' offices to bring cases to trial.

Nevertheless, there are limitations on our ability to comply with the Act's final time limits and the costs of such compliance are high. In many cases, the 100-day provision does not give prosecutors time to complete post-arrest follow-up investigation or allow prosecution or defense counsel to prepare adequately for trial after indictment.

Time is needed to collect and review investigative reports and other evidence. Time is needed for investigators to follow leads, for prosecutors to explore thoroughly the case in the grand jury, and for chemists and other experts to complete scientific analyses. Investigating complex cases may involve traveling to other judicial districts, obtaining telephone or

bank records, obtaining search warrants to find evidence or contraband, and subpoenaing witnesses.

The prosecutor must schedule grand jury time to present his case within the prescribed time limits, and this is often a problem. The proliferation of pretrial motions, the increase in discovery, and the collateral questions that must be aired before trial also make it more difficult to meet the strict deadlines.

If the Act is not amended, we will, of course, continue to try to comply with its provisions. However, compliance with the strict time limits will have its costs.

The most dramatic cost is the potential dismissal of criminal cases. Without the dismissal sanction in effect, it is not possible to be certain how the system will respond. However a recent Department study presents a "worst-case" picture that indicates the number and type of cases not now meeting the 100-day limits at each stage, and thus how many cases must be brought into compliance to avoid dismissal.

The study estimates that if the Act's permanent time limits and dismissal sanction had been in effect in the year ending last June 30, the court would have been required to dismiss 5,174 cases. The sample indicated that, of the cases most frequently out of compliance, 57 percent involved burglary, larceny and stolen property, drugs, weapons, and violent personal

offenses. Another 31 percent were white-collar crimes -- such as fraud and embezzlement, forgery, and counterfeiting.

While the system simply could not allow 5,000 such cases to be dismissed, the estimate shows the risks are high and that compliance with the Act will be a major task.

The costs of avoiding dismissals are already being seen:

- In some districts, the 100-day limits are already in effect by local court rule. Prosecutors are bringing cases to the grand jury or to trial without complete preparation.

- Some prosecutors have used "holding" indictments and followed up thereafter with superseding indictments. Others have only been able to include only a limited number of violations in the indictment, because a complete investigation could not be finished on time.

- There are instances where prosecutors have instructed law enforcement agencies to avoid making arrests before indictment when possible. The reason is obvious -- an arrest "starts the clock," but an investigation, uninterrupted by an arrest may continue to completion without artificial limitation. One consequence of such deferrals is that persons who might otherwise be detained remain at large to continue their criminal activity.

The Department's legislative proposal would amend the Act in a manner consistent with the intent of Congress to safeguard the speedy trial rights of criminal defendants. We suggest expanding the Act's final time limits to require that a defendant be charged within 60 days of arrest, and that trial begin within 120 days of the filing of the charge. The penalty of dismissal would continue to apply, as under the current law, to cases that exceed these time limits.

An important feature of this new proposal is that defendants detained pending trial and those designated "high risk" by the prosecutor would not be subject to these somewhat longer time limits. These cases would continue to be subject to the 90-day time limits of the Act in its current form.

Our study indicates that the proposed expansion of the overall time limits would significantly increase compliance levels. Increasing the period from arrest to indictment from one month to two would result in a 15 percent increase in compliance. Changing the indictment-to-trial interval from 70 days to 120 days would lead to a 16 percent increase in compliance. Overall compliance would increase to more than 97 percent.

The enlarged time limits would assure that most federal cases would be tried promptly without injury to public justice or the rights of the defendant. Crime would be reduced and unwarranted dismissals kept to a minimum.

The Speedy Trial proposals and the FBI Charter are only two of our many steps to help make the Justice Department more effective. As individuals, each of us can do a better job. As an institution, the Justice Department -- and its components -- can undoubtedly perform better.

From time to time, I have seen suggestions that the great days of the FBI were behind it and that the Bureau had settled into a sort of complacent middle age. Don't believe it. The FBI has had some great accomplishments, but its greatest days are ahead.

In the years to come, the challenges will grow as both criminal activity and law enforcement techniques become more sophisticated. The public's expectations and reliance upon the Bureau will also grow. I am confident the FBI will respond with the utmost professionalism and unswerving allegiance to the rule of law.