

## DISORDER AT THE FBI

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The FBI is supposed to be about law and order but right now it looks like the FBI is more about disorder. None of this should be shocking to anyone who has worked with the FBI over the years. The FBI is, has been and will in the future be a potential political tool.

Did FBI Director James Comey want to see Hillary Clinton defeated? Did he or others within the FBI want to prevent Donald Trump from becoming President? The answer is both yes and no. The FBI is made up of individuals, who can act with great hubris, and may feel that they have the individual responsibility of directing the fortunes of the Republic. Hillary Clinton was not a favorite among many in the FBI but then again neither was Donald Trump.

It may very well be true that James Comey was not trying to tilt the game board but his sin, and possible criminal conduct, was that he took it upon himself to make decisions that were not the legitimate concern of the FBI. "Insubordination" is not a stranger to those working in the government service. My old client Mitch Harrison once said to me, "There is nothing more dangerous than someone with a badge on his chest and sawdust for a brain." While there are many fabulous, committed, honorable, decent public servants, there are also those who understand that power is the greatest aphrodisiac.

We may never be able to peer into the mind of James Comey or his subordinates as to why they publicly declared just days before the election that they were going to reopen the e-mail investigation concerning Hillary Clinton or why they thought it was a public duty to make sure that Donald Trump did not become President.

My first real dealing with the FBI is when I worked for Henry Rothblatt in Washington, D.C., on the Watergate case. The evil activities of the Nixon administration were not really revealed by the FBI but rather came to light thanks to the Special Prosecutor, Congress and the Democratic Party which were on a mission to defang Richard Nixon. Nixon was no saint. The President lied, schemed and ultimately was tripped up by his own thirst for control.

When I came to Williamsport, I watched the FBI, prosecute countless cases in the Middle District of Pennsylvania. It was amusing to hear every agent who took the stand proudly declare himself a "Special Agent" of the FBI. I learned quickly that all agents carry that designation. Many of the cases that we witnessed arose out of Lewisburg Penitentiary. The FBI agents considered every defendant and most of the witnesses scum and frequently treated them as such. The FBI agents relied upon prison snitches who in return for favorable treatment would make up any story they could about a fellow inmate charged with a crime. The FBI not only went along for the ride but in many cases built the rollercoaster themselves.

Then there was Special Agent John Doe. That is not really his name of course. I was representing an inmate out of Lewisburg. Naturally the witnesses against him were other inmates. The FBI had come up with one witness in particular who, in return for favors, was going to testify against my client. However, I had information that it was the witness who committed the crime and not my client. The American Bar Association guidelines absolutely require defense counsel to interview all relevant witnesses and I did that. The next thing I knew, the FBI was accusing me of obstruction of justice as a result of my interview. Naturally I went screaming to the Judge who immediately held a hearing. The inmate government witness, who had revealed to me his own role in the crime, made it clear that no one obstructed justice or did anything improper. The FBI walked away a little red-faced from that encounter but there was never any repercussion against either the agent or his superiors for what clearly was an attempt to intimidate counsel in his representation of a client. Oh well, that's just the FBI way.

On another occasion, I represented a young woman who was the subject of an FBI interview. I was shocked to learn that a citizen could be criminally charged with perjury as a result of an FBI interview when there was no transcript. That is what sent Martha Stewart to jail, along with countless others. When I saw what was happening, I immediately terminated the interview. The FBI threatened to bring my client before the grand jury. It was always my view that the two FBI agents had other reasons for wanting to spend a lot of time with my attractive young female client. I told them so and they were not happy campers. The FBI took the young woman before the grand jury and nothing whatsoever transpired. The matter was dropped.

It is said that Jimmy Hoffa was charged and investigated many times until the government could finally jail him on a conviction involving federal taxes. I learned, as have many other Americans, that if the FBI works hard enough to get someone, they will sooner or later.

There is often a comfortable relationship between the FBI, the prosecutors and the judiciary. Many more judges come from the prosecution side than from the defense side. When I went to the White House with a group of other lawyers to complain about President Obama's slow nomination of federal judges, one of the concerns expressed by the leader of the group was that so many of Obama's appointments were former United States attorneys and corporate lawyers. Not much came of that meeting except slightly enhanced activity of the President in making nominations. It was great, however, to be in the Roosevelt Room and observe the absolutely breathtaking art, particularly the enormous painting of Teddy Roosevelt charging up San Juan Hill. Very cool indeed.

As with any other political issue, a little healthy balance and looking at both sides of the equation would be in order. James Comey and the FBI are neither demons nor heroes. They are failed human beings working within a bureaucracy that has little or no outside supervision other than the press and Congress. In other countries, there has been an effort made to create much greater independence than the FBI has in this country. All United States attorneys are appointed by the President of the United States, although subject to congressional confirmation. FBI agents, while going through a civil service

type process, serve under the auspices of essentially political appointments who in turn report to the Attorney General. Who appoints the Attorney General? The President of the United States with the advice and consent of Congress.

We do not have a great system in this country for vetting what are essentially political appointments, receiving complaints about those people or investigating the integrity of those who serve in high political positions. The concept of an independent prosecutor and judiciary has been winnowed over the years by the great enhancement of well-funded political interest groups. The special interests control the politicians and the politicians select law enforcement and judges. Thank goodness that at least in Pennsylvania we still elect judges, a system frequently under attack by the Bar itself and other misguided do-gooders.

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