



Department of Justice

STATEMENT

OF

GRIFFIN B. BELL
ATTORNEY GENERAL

BEFORE

THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING

FBI CHARTER LEGISLATION

ON

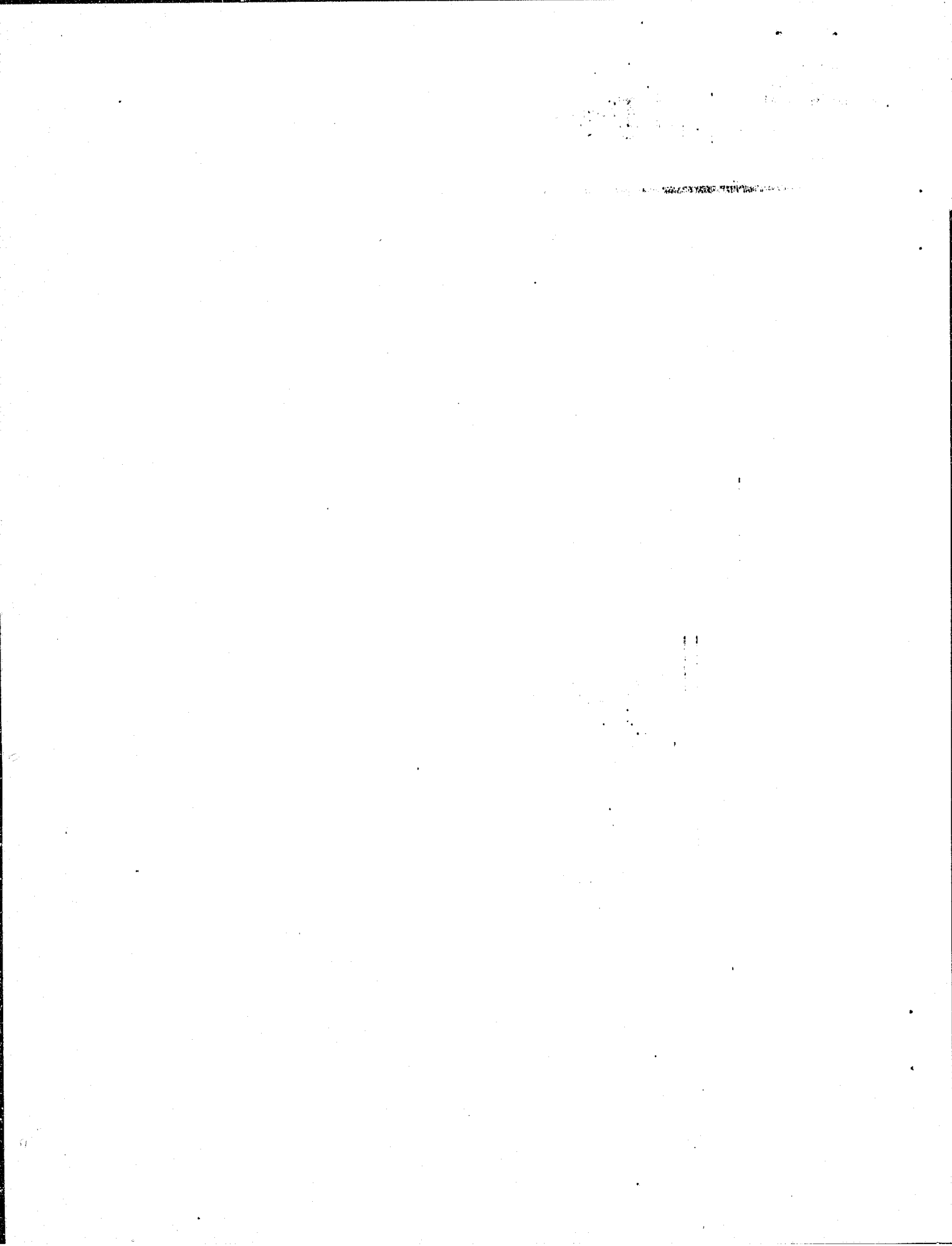
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Mr. Chairman and Members of the Committee:

I am pleased to meet with you today to discuss, in general terms, the outline of a charter for the Federal Bureau of Investigation. I think it is important that we begin with exploratory discussions, such as you have outlined for this hearing, before attempting to draft specific legislative proposals.

Since I first appeared before this Committee, during my confirmation hearings, I have been committed to the idea of a legislative charter for the FBI. I must admit candidly that at that time I did not appreciate the complexity of the issues which must be resolved before such a charter can be drafted.

As you know, we began almost immediately working with this Committee, the Select Committee on Intelligence, as well as with the House of Representatives on legislation to provide judicial warrants for electronic surveillance in the field of foreign intelligence and counterintelligence. We have reason to hope the Foreign Intelligence Surveillance Act will become law this year. In addition we have begun discussions with the Intelligence Committee on the preparation of charters

for the intelligence community, including the intelligence components of the FBI. Much work remains to be done on those charters, but it is important that we move ahead at the same time developing charters for the non-intelligence functions of the FBI. It is these functions I want to discuss with you today.

I.

Despite its long history, the Bureau has received very little statutory guidance. There are, basically, only three provisions defining its duties: 28 U.S.C. 533, 28 U.S.C. 534 and 42 U.S.C. 3744. In only the most general terms, these provisions authorize the FBI to detect and prosecute offenses against the United States, assist in the protection of the person of the President, investigate matters under the control of the Department of Justice and the Department of State, collect crime records and exchange them with federal, state and local agencies, and provide training for state and local law enforcement. These limited provisions provide little assistance in understanding the role that the FBI performs today. Accordingly, it may be helpful if I review the work presently done by the Bureau, outside the intelligence area.

The FBI is, of course, our premier law enforcement agency. It has responsibility for investigating most of the offenses defined in our federal criminal code but, as you are well aware, some specific offenses are the responsibility of other federal agencies. In some cases, the dividing line between federal investigative agencies is clear -- the Secret Service investigates counterfeiting and the FBI does not. In other instances, jurisdiction is less precise -- the Bureau of Alcohol, Tobacco and Firearms investigates most bombing matters, but those relating to terrorism are within the jurisdiction of the FBI. FBI jurisdiction also overlaps that of the states. In many instances conduct prohibited by federal law is also proscribed by the states. In addition, flight to avoid prosecution under state law is a federal offense and the FBI investigates to locate fugitives who have fled across state lines.

In the past, the investigative efforts of the FBI were directed primarily at identifying and apprehending those who committed specific violations of federal law. Increasingly, in modern times, the FBI has been asked to determine the existence of federal law violations in the first instance, as well as identifying those responsible for criminal acts. Complex organized crime, political corruption and fraud cases

often require extensive investigation to determine whether, in fact, a federal law has been violated and who is ultimately responsible for directing the criminal enterprise. Since it is less clear at the outset what the dimension of the criminal conduct may be, the investigation may range more widely in scope than in, for example, a clear-cut bank robbery case. This presents unique problems for the FBI, since it will involve collecting information on a larger number of citizens and initiating an investigation without necessarily having probable cause to believe a specific crime has been committed.

Similar problems arise in connection with the investigation of terrorist groups which may be involved in a pattern of conduct, some of which is legal, some of which violates state law, and some of which violates federal law. Determining when activities of these groups fall within federal jurisdiction and identifying who is ultimately responsible for directing the terrorist acts, without exceeding FBI jurisdiction or branching too far afield and investigating legitimate protest groups who speak of violence in the abstract but do not engage in it, is a problem with which both the FBI and the Department have been grappling for the past four years.

Difficult, as the problems of criminal investigative jurisdiction may be, they are at least grounded in the criminal code -- a code which this Committee has made great strides in clarifying. The other functions which the FBI performs have even less specific statutory guidance.

At the request and direction of the Department of Justice, the FBI undertakes a variety of civil investigations both of an enforcement nature and for the purpose of defending suits against the government. Civil rights statutes, economic regulatory provisions, civil fraud, antitrust and general civil enforcement provisions fall within the jurisdiction of the Department of Justice. Some of these laws are both criminal and civil in nature; others are purely civil. Many of them require complex factual showings in order to bring enforcement proceedings. When necessary, the Department calls upon the FBI to collect the facts needed to bring action to enforce these laws. On occasion the Department also asks the FBI to provide facts required for the defense of suits against the United States. While we believe these functions fall within the broad mandate of 28 U.S.C. 533(3), it would be helpful to have this responsibility of the FBI clarified.

The resources of the FBI are also called upon increasingly

to provide background investigations for persons under consideration for a variety of government offices. In a few cases this is expressly authorized by statute or by executive order, but for the most part these investigations are conducted as a matter of tradition or custom. For example, there is no statute or executive order directing the FBI to conduct background investigations for presidential appointees but, as you know, this is done routinely. Nor is there any statutory authority for the FBI to conduct investigations on behalf of congressional committees in connection with appointments to their staffs. In this Congress, however, the FBI is conducting such investigations at the request of twelve separate committees. It is time that we consider whether this is a proper role for the FBI and, if it is, we should expressly confer this responsibility by statute.

To a limited extent the role that the FBI performs in furnishing both information and training to state and local law enforcement is conferred by statute. 28 U.S.C. 534, 42 U.S.C. 3744. The statutes, however, do not specify the manner in which crime information may be exchanged with the states or whether the exchange of information may cover such other matters as missing person information. As I will discuss later, the provision of crime information to state authorities by the FBI

has been criticized, and it is time that we reexamine whether we want the FBI to continue to perform these services and, if so, under what conditions. It is unfair to give the FBI a broad general mandate in terms so vague as to permit a variety of interpretations and then to criticize it for its interpretation.

II.

I have briefly reviewed the varied functions that the FBI performs today because I believe that the underlying issue in any charter is whether the FBI should continue to perform some or all of the functions it now undertakes. A charter is, by definition, a statement of functions, powers and duties. Before such a statement can be drafted in legislative form, we must decide precisely what the basic functions, powers and duties of the FBI should be.

In the area of criminal investigations, there are several basic decisions which must be made. Should the FBI be responsible for all federal criminal law enforcement or should it continue to share responsibility with other federal agencies such as the Drug Enforcement Administration and Secret Service? These are questions now under study by the President's Reorganization Project Law Enforcement Study Team. They present difficult policy issues. Centralization of functions promises greater

efficiency and coordination but it also inevitably leads to a concentration of power which our constitutional scheme has sought to avoid. Decentralization, on the other hand, inevitably results in overlapping jurisdiction, sometimes destructive competition, and lack of coordination. We must carefully weigh these concerns in deciding whether to expand FBI criminal investigative jurisdiction or leave it essentially in its present form.

We face equally difficult choices in determining whether the FBI should confine itself to the classic detective role -- apprehending the individual responsible for committing a specific criminal act -- or should also be responsible for detecting the existence of criminal activity and preventing its continuance or reoccurrence.

Because of abuses which occurred in the past in connection with so-called domestic security cases, some have suggested that the Bureau should never play a role in detecting the existence of crime or in preventing crime. I disagree. Surely the investigative forces of the federal government should not be monitoring the legitimate First Amendment activities of our citizens because the views they are expressing are controversial or even antithetical to our constitutional

system. But just as surely, the FBI should not stand idly by while terrorist groups seize hostages or set off bombs merely because the terrorists purport to act in the interests of a "cause." If we have information that a group is preparing to commit a violation of law or is engaged in a continuing pattern of federal law violation, I believe it is incumbent upon us to protect our citizens by preventing violations if we can.

Similarly, the FBI should continue to work with our organized crime strike forces in determining where criminal enterprises are engaged in or planning violations of federal law rather than concentrating exclusively on each specific violation as an isolated act. In my judgment, the mandate to "detect and prosecute" violations of federal law extends to determining when such violations are occurring as well as identifying the individual criminals. Because these questions have been raised, however, it becomes important that a charter spell out clearly whether the FBI is to be responsible for detecting and preventing crime as well as detecting and prosecuting criminals.

We must also decide whether the Bureau should be a criminal investigative agency exclusively, or whether it

should continue to investigate civil matters for the Department of Justice. I am inclined to believe that civil enforcement is as important as criminal and that the Department of Justice should be able to call upon the FBI to develop cases for civil fraud or civil rights enforcement as well as for prosecution. If this work is to continue, however, Congress should make clear that it expects the Bureau to perform these duties.

More difficult issues are posed in connection with the background investigation of federal officers and employees. As you are aware, the Executive Orders covering this matter are old and out of date and the statutes seem to have been passed on a hit-or-miss basis. Moreover, many of the investigations now conducted by the Bureau are based entirely on custom and have no clear statutory authorization. If this work is to continue, the FBI should be given a clear mandate and should not be asked to exceed that mandate as a matter of comity to other agencies, the Congress or the Judicial Branch.

While Congress has directed the FBI to engage in various support services to state and local law enforcement, it has also criticized the FBI for the manner in which it does so.

One example is the National Crime Information Center, particularly the computerized criminal history portion of that system. Attorneys General have, in the past, been asked to delay approval of the decentralization of this system until Congress has had an opportunity to address the issues, but no legislation has been forthcoming. We have now begun discussions with interested congressional representatives on the issue. As with all of the charter issues, we will work closely with Congress to ensure clear policy direction to the FBI and the states which use the system.

III.

The primary role of a charter is to define the functions, powers and duties of an organization. A new charter for the FBI should also contain limitations and restrictions on the exercise of those duties to ensure that the mistakes of the past will not be repeated. It is important, however, that the drafting of restrictions to meet particular problems not evolve into the statutory enactment of an operating manual.

As this Committee is aware, the Department of Justice has promulgated various guidelines and policy statements governing the conduct of particular types of investigations and the use of certain sensitive investigative techniques. In addition,

the FBI has its own comprehensive manual setting policy for investigative activities. These are very detailed in some respects and require case-by-case determinations to be made on the conduct of particular investigations. I do not dispute the desirability of exerting this type of control over FBI activities. I suggest, however, that it is a degree of control more appropriate to internal directives than to permanent legislation.

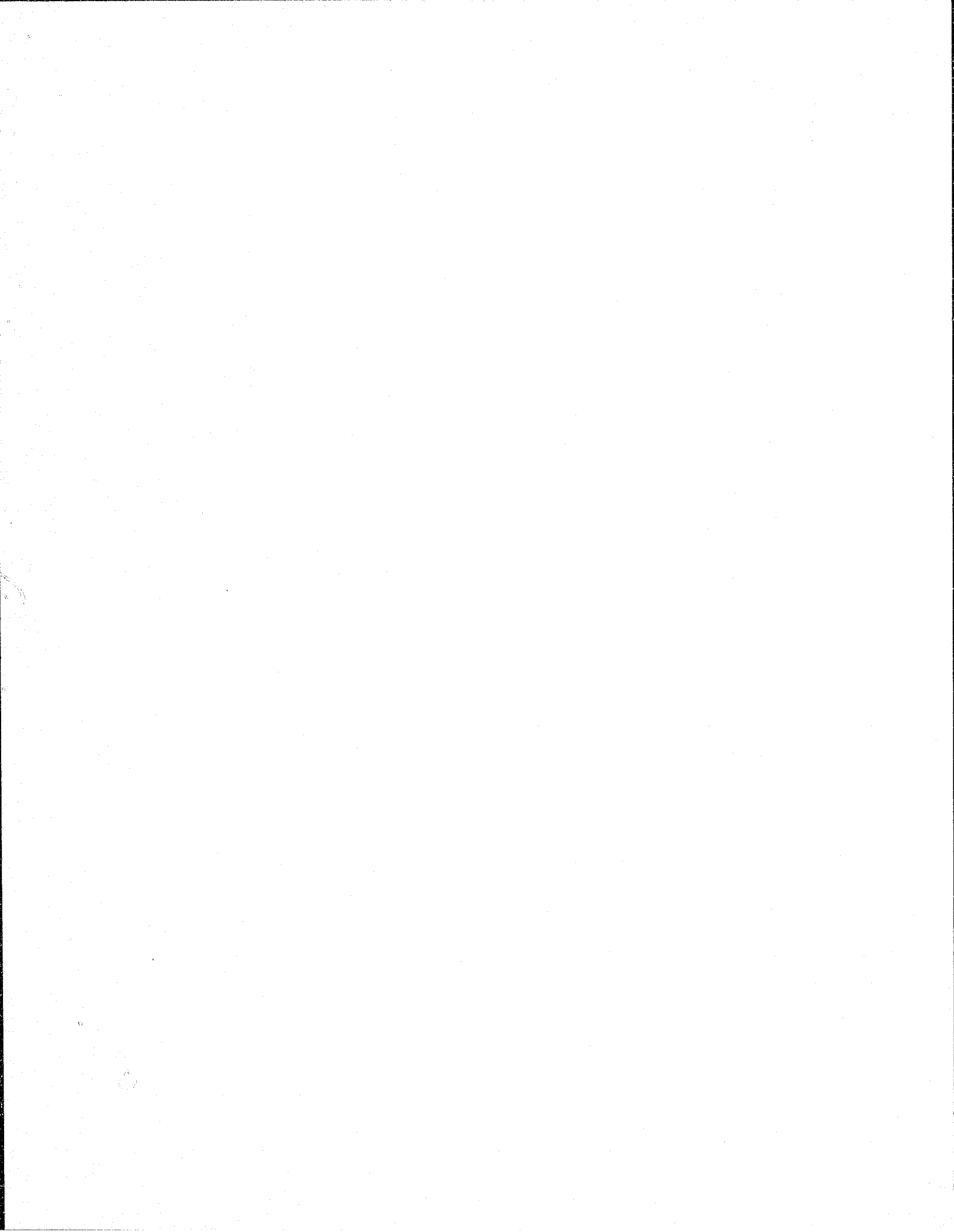
It is my view that legislation should establish the fundamental limitations which are to be applied, provide adequate legislative oversight, and fix executive responsibility. It should not attempt to dictate the day-to-day functioning of an executive agency with diverse responsibilities.

IV.

I have described in very broad terms issues which we are considering in relation to an FBI charter. I do not have specific proposals to make to you today. Indeed, I have not resolved many of the questions in my own mind. It is important to begin thinking about these matters now, however, and to develop a dialogue between the legislative and executive branches. We must not underestimate the complexity of drafting a proper, fair and effective charter for the FBI. It will

take some time to reach decisions in all of the areas in which statutory guidance is needed and to draft language to implement those decisions effectively. Perhaps it will be necessary to legislate in stages, taking a few pressing issues at a time and attempting to find legislative resolutions for them,

In my judgment, you have made a wise decision in undertaking to assess the full dimensions of charter legislation in exploratory hearings such as this before attempting to draft any specific proposal. I pledge the full cooperation of the Department of Justice and the FBI in working with you to develop a lasting and comprehensive charter.



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