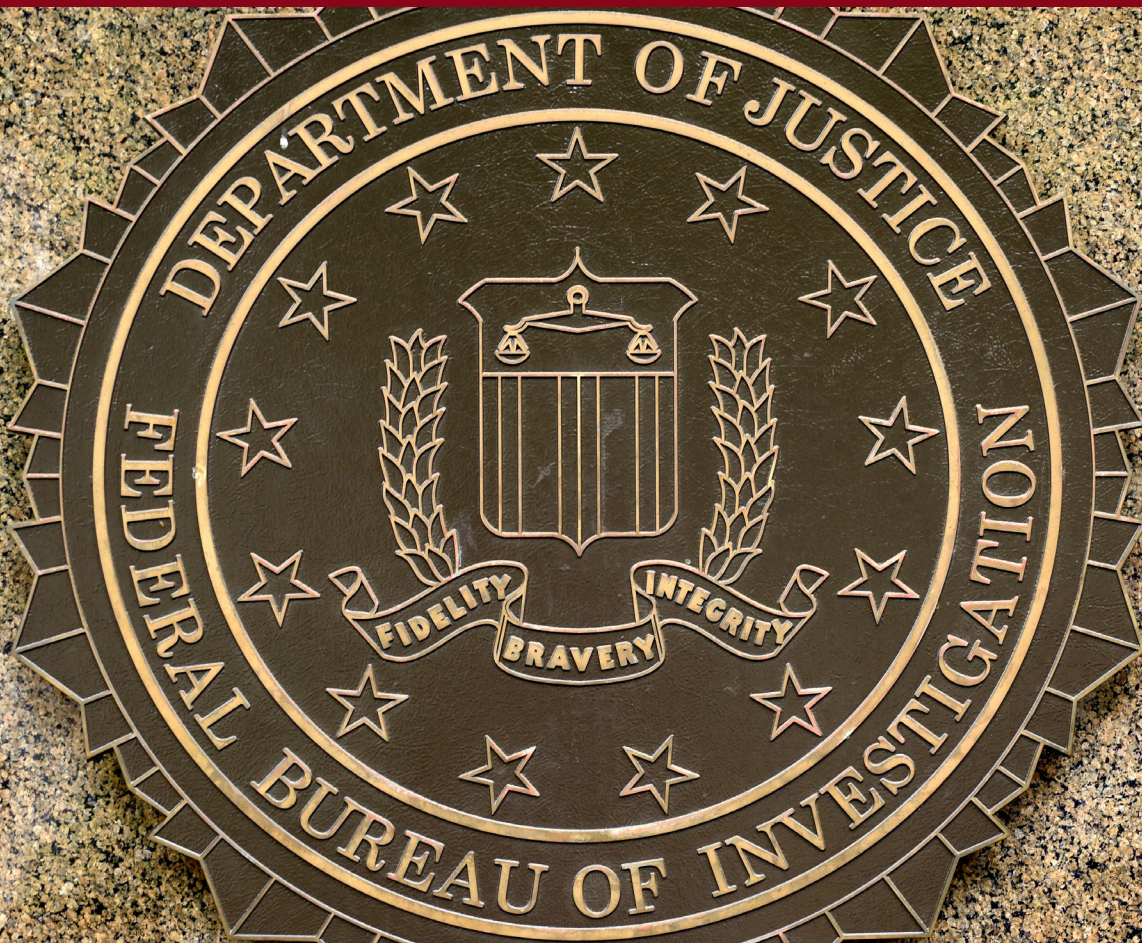


# How to Fix the FBI: An Initial Proposal to Start a National Discussion

BY J. MICHAEL WALLER



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With all the talk of “abolishing the FBI,” few envision what would happen to our country if we were suddenly left without a federal service to fight interstate crime and child trafficking, conduct effective counterintelligence, and come up with the necessary technology and training for law enforcement and investigators.

Here is an initial plan to get a national conversation started.

The Federal Bureau of Investigation, as its name states, is only a bureaucracy. It is not a sacred institution. It is not a brand to be protected at all costs. It is a bureaucratic structure mandated by law to perform necessary functions to investigate federal crimes, combat foreign spies, and not much more.

When that structure fails to do its job well, when the people within it fail to live up to the professionalism necessary to enforce the law objectively, and when that bureaucracy loses the public trust necessary to perform its lawful duties, it's time for a change.

The danger of considering an institution “sacred,” as some do with the FBI, is that it is somehow beyond question, permanent, untouchable, indeed sacrosanct.

The danger of protecting a brand at all costs is that, when the integrity of that brand has been compromised, the institution resorts to any form of deception and intimidation to protect the façade from even constructive criticism. Director Christopher Wray has filled J. Edgar Hoover's shoes in that regard.

It's time for such a bureaucracy to go. The Bureau has become too large, too centralized, too opaque, too politicized, and too duplicative of other agencies to continue.

Like it or not, America needs federal law enforcement. It needs solid counterespionage and counterintelligence capabilities to combat foreign spies and agents and to neutralize their operations. The country needs strong and professional capabilities against child trafficking, illegal narcotics trafficking, cyber crime, financial crimes, terrorists, and crimes against the federal Constitution. It needs some sort of federal mechanism



to help states fight crime in their own jurisdictions.

That doesn't mean the FBI is still the answer. We already have a Drug Enforcement Administration. We have a number of counterterrorism services. We have a standing cybersecurity organization with police powers. We already have a world-class financial crimes capability in a separate agency. And so on.

Over the past two decades, the FBI has returned to what longtime Director J. Edgar Hoover had turned it into: A domestic intelligence service with police powers. This is incompatible with our constitutional form of government. Thomas J. Baker, an FBI veteran who started his career under Hoover and, even in retirement, continued working with the Bureau, saw the entire metamorphosis up-close as he related in his new book, *The Fall of the FBI: How a Once Great Agency Became a Threat to Democracy*.

## **Time for the FBI to go the way of the OSS**

After World War II, the country reassessed its entire national security structure, abolished certain agencies – even ones that performed with extraordinary success and heroism – and carefully considered something new. It abolished the Department of War, reorganized it, merged it with the Department of the Navy, and created the Department of Defense. It abolished its wartime foreign intelligence bureaucracy, the Office of Strategic Services, and later created an entirely new Central Intelligence Agency – being careful to vet the CIA of the Communist Party members who had proliferated through the OSS. And so it's time for the FBI to go the way of the OSS, but without a centralized replacement.

Unfortunately, the realities of the world require our

government to have most of the capabilities that the public expects the FBI to perform. To start a national conversation about what to do with the FBI, here is an initial proposal after years of consideration. This proposal does not claim to have all the answers. It provides a rough blueprint to break up the FBI while preserving important national functions. It recognizes that legal authority, administrative and personnel issues, training, ethos, and so forth are far larger matters that deserve separate consideration.

## **FBI structure and what to do with it**

The latest major reorganizations in the George W. Bush and Barack Obama administrations divided the FBI into six major branches, each of which are divided into units called divisions. These branches and divisions are important to understand if we are to figure out what to do with the Bureau. The six branches are:

1. National Security Branch;
2. Intelligence Branch;
3. Criminal, Cyber, Response, and Services Branch;
4. Science and Technology Branch;
5. Information and Technology Branch; and
6. Human Resources Branch.

All perform or support an awkward and unstable combination of law enforcement and domestic intelligence functions.

Let's look at each branch one by one. We can then see what functions complement or duplicate those of other agencies, and transfer those branches or divisions to those respective agencies, paring down

the Bureau as we go. The idea is not to create new agencies of any kind.

**National Security Branch.** The National Security Branch is arguably the most politicized and compromised component of the entire FBI. This branch must be broken apart.

Within the National Security Branch is a Counterintelligence Division, whose most famous chief was Peter Strzok. This division has seldom done well to combat foreign intelligence services in a strategic fashion, which is why the independent Office of the National Counterintelligence Executive was created in 2001. Unfortunately, after a promising start under non-FBI counterintelligence professionals, the office, since-renamed the National Counterintelligence and Security Center (NCSC), was virtually taken over by the FBI and rendered it ineffective as a strategic counterintelligence entity. The FBI Counterintelligence Division has become extremely politicized, going along with the Steele Dossier and Russia collusion narrative and treating legally protected speech as treason. Interim solution:

- Transfer the FBI Counterintelligence Division to the NCSC under a new leadership and ethos, with a limited number of personnel billets to force undesirable FBI personnel out of the transfer. NCSC says its role is to “lead and support the U.S. Government’s counterintelligence and security activities,” so the FBI division is redundant. This is a dangerous move, though, because the NCSC is both flaccid and politicized.
- Parcel out the Counterterrorism Division, the Terrorist Screening Center, and related elements of the National Security Branch to the National Counterterrorism Center (NCTC), and remove NCTC from the Department of Homeland

Security into an independent and small counterterrorism agency.

- Move the Weapons of Mass Destruction Directorate of the National Security Branch to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (to be dealt with later).

These steps will leave the FBI without a National Security Branch, while keeping the important public functions, and remove the most toxic branch out of the Bureau.

**Intelligence Branch.** The FBI Intelligence Branch is responsible for the collection and synthesis of information into analytical products and coordination with other agencies. The fact that the FBI has an entire Intelligence Branch shows that it is no longer a law-enforcement agency but, indeed, a European-style domestic intelligence apparatus with police powers. There are legitimate reasons for different agencies the federal government to have strong intelligence analysis, but when centralized into a single agency or bureau, that analysis is subject to abuse. The Intelligence Branch is also opaque and armored against constitutional checks and balances like legislative oversight. Interim solution:

- Divide the Intelligence Branch along topical and functional lines, and parcel them out to other agencies with the legal authority and obligation to perform those varied work functions.

**Criminal, Cyber, Response, and Services Branch.** The third branch, Criminal, Cyber, Response, and Services Branch, performs an amalgam of functions patchworked together since 9/11. This is an important branch of the FBI and, though manipulated politically from the Justice Department, is said to be not as politicized as the National Security

Branch.

Just as a patchwork is not an integrated body but is sewn together, this branch can be carefully taken apart. The Criminal Investigative Division of the branch does the important work of combating organized crime, transnational crime, certain violent crimes, certain crimes against children, investigation of public corruption and financial crimes, and violations of civil rights laws. Interim solution:

- Transfer as many criminal investigative functions as possible to the states, with federal block grants to states that wish to, but cannot afford, to perform these functions on their own.
- Transfer the financial crimes unit to the Securities and Exchange Commission.
- Transfer the remainder of the Criminal Investigation Division to the United States Marshals Service, the nation's oldest law enforcement agency, with few scandals in its history and little politicization.

The branch's Cyber Division duplicates the functions of other agencies. Interim solution:

- Transfer the Cyber Division's security functions to the Cybersecurity and Infrastructure Security Agency (CISA), and move CISA out of the Department of Homeland Security to become an autonomous agency.
- Transfer the Cyber Division's cyberintelligence functions and resources to the National Counterintelligence and Security Center (NCSC).
- Transfer the Cyber Division's law enforcement functions and resources to the very competent U.S. Postal Inspection Service.

The Response portion of the branch, called the Critical Incident Response Group, is a crisis management unit that puts the FBI at the center. Interim solution:

- Transfer the Critical Incident Response Group to the Federal Emergency Management Agency (FEMA), which needs a whole new rejuvenation of its own; and to states that seek those resources and responsibilities.

The Services component is to assist victims of terrorism and crime. A separate unit, International Operations, coordinates federal law enforcement abroad to investigate transnational crimes. Interim solution:

- Transfer Services to other agencies like FEMA and the Department of Health and Human Services, and, with the support of block grants, to any willing state governments.
- Transfer experienced International Operations personnel to other agencies that perform law enforcement work abroad

**Science and Technology Branch.** This small branch creates new scientific and technological methods, products, and training for the rest of the FBI's operations. It provides important support to state and local law enforcement. Its forensic sciences department is responsible for fingerprint, DNA, and other biometric analysis, scientific analysis necessary for criminal investigations, computer forensics, and safe transporting and preservation of evidence and hazardous materials. It also runs the FBI's world-class crime lab, FBI information services, the National Crime Information Center, and technical collection and analysis. Interim solution:

- This branch provides so many important uses

nationwide that it should become an autonomous stand-alone center like FEMA, but run by a rotating board of state governors.

**Information and Technology Branch.** With its principal purpose to manage FBI information and maintain and upgrade the Bureau's information system, this branch can be abolished, with necessary talent and resources transferred to other agencies that assume the above FBI functions.

**Human Resources Branch.** With all the other FBI branches now transferred to other agencies, there is no more need for a Human Resources Branch. Interim solutions:

- Most of its staff have become so politicized that they are unsuitable for government service and should not be transferred anywhere.
- The sole exception is the FBI Academy, which sits in this branch. The FBI Academy has a valuable purpose as basic training for FBI agent recruits and for other types of training. Since it offers almost no national security or counterintelligence training, the Academy performs more of a law enforcement training function and should be transferred to the U.S. Marshals Service.

With these transfers – the reverse of the creation of the Department of Homeland Security, which absorbed independent entities into a centralized bureaucracy – the United States will maintain its necessary federal law enforcement and national security functions without an FBI.

## Other issues

Dividing and scattering the FBI's key functions is easy to propose but very complicated to do. One of the key problems is personnel: Substandard and bloated management at the top (few if any should be transferred anywhere except out), politicization and unprofessionalism in certain branches and field offices, a training and bureaucratic ethos at odds with the agencies that would inherit FBI functions, and a danger that an influx of FBI management into those agencies would have the opposite of the desired effect without strong leadership.

Material and personnel resource transfers to other agencies should be reduced in size to force the attrition of redundant, non-essential, and substandard personnel at the discretion of the receiving agencies.

As we redistribute the functions of the FBI central apparatus, we face the problem of providing too much power to other agencies, especially elements of the Department of Homeland Security bureaucracy. One of the virtues of transferring certain FBI functions to DHS is that it removes them from the hyper-politicized Department of Justice. DHS is a separate matter in itself and is another main target for downsizing, and decentralization, and depoliticization, but that must follow the dismantling of the FBI.

And then there is the very serious question of the power of the central government as a whole. Many FBI functions can be given up completely and left up to the states, funded where necessary by federal block grants that permit the states to spend the money as they see fit without federal interference.

Like the OSS did in World War II, the FBI has performed extraordinarily valuable functions. As with the OSS, the FBI has become fatally flawed with

personnel unsuitable for, or dangerous to, government service. While one can romanticize about the OSS and the FBI, the fact is that neither is or was a “sacred” institution. Neither operated with a congressional charter. Indeed, the idea of the FBI being sacred smacks of secret police-speak, for it was the Soviet KGB that called itself the “holy of holies.”

The Federal Bureau of Investigation is just a bureaucracy and a brand that must use obfuscation, deception, and intimidation to maintain its luster. It has failed to execute its constitutional potential. It has serially abused its authority and the public trust. It has become too politicized to function legally. It is a rogue organization that resists congressional oversight. And it is populating itself with new, politicized cadres who will make tomorrow’s FBI far worse.

The only way to fix the FBI is to take it apart, parcel out the useful functions, and close down the rest. Now it’s time for a good national discussion about how to do it.

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