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**Civics 101**

**Episode 108: The FBI**

**CPB :** [00:00:00] Civics 101 is supported in part by the Corporation for Public Broadcasting.

**Open:** [00:00:04] Who is the current speaker of the house? Don't even now. Will they rule in the president's favor or take it to the Supreme Court? You can't refer to a senator directly by their name. Congressional redistricting. Separation of powers. Executive order. National security council.

**Tim Weiner:** [00:00:24] I've met Bob Mueller. I've talked to Bob Mueller and if there were ever a person in United States government I would feel comfortable with him handling that amount of power, it's Mueller.

**Virginia Prescott:** [00:00:36] This is Civics 101. The podcast refresher course on how democracy works. I'm Virginia Prescott the Federal Bureau of Investigation is popularly known as the nation's law enforcement agency. It's a force long associated with tracking down threats and fugitives and with operating under the radar. But in the past year there have been some highly visible changes in leadership in the agency including the firing of FBI Director James Comey and Deputy Director Andrew McCabe who was let go last week. And then of course there's former director Robert Mueller a special counsel investigation into Russian meddling. To get a better read on this agency long shrouded in secrecy, we're talking with Tim Weiner journalist and author of Enemies A History of the FBI. Tim welcome.

**Tim Weiner:** [00:01:23] Thank you.

**Virginia Prescott:** [00:01:23] What does the Federal Bureau of Investigations investigate?

**Tim Weiner:** [00:01:27] From the beginning in 1908 the bureau has been a two headed beast. The first as known to one at all is the federal law enforcement agency.

**Tim Weiner:** [00:01:38] But the second known to all too few is the FBI as a secret intelligence service. Going after spies terrorists and other people who threaten the well-being of the United States.

**Virginia Prescott:** [00:01:53] Now people do often call it the nation's police force. Is it?

**Tim Weiner:** [00:01:58] Yes it is. And by design.

**Virginia Prescott:** [00:02:01] How did the law enforcement duties of the FBI then differ from those of other federal law enforcement agencies?

**Tim Weiner:** [00:02:08] The bureau can prosecute anyone for any violation of the Federal Criminal Code a very voluminous document. It also conducts counterespionage counterintelligence and counterterrorist investigations that can span not only the nation but the whole wide world.

**Virginia Prescott:** [00:02:26] You mentioned 1908. Why was it founded.

**Tim Weiner:** [00:02:30] President Teddy Roosevelt founded the bureau mostly in secret and by stealth over the opposition of Congress for two reasons. One was to go up against what TR called the malefactors of great wealth, the trusts all oil coal steel whose mega millionaire owners also owned and operated an astonishingly large number of congressmen and senators. And the second was to go after anarchists. An anarchist had murdered President McKinley and made TR president in 1901. And they'd been killing kings and queens and dukes and earls all over Europe from the 1880s onward. He saw the anarchists as a threat that could crush the United States unless they were crushed first.

**Virginia Prescott:** [00:03:31] Now you said by stealth. Why was it done secretly? Why would creating a domestic investigative agency have to be done under cloak and dagger?

**Tim Weiner:** [00:03:41] Because the FBI would go up against members of Congress who were corrupt. So Congress wasn't going to pass it in an open bill. TR and his attorney general named Charles Bonaparte, and yes he was the great nephew of the Emperor Napoleon, snuck it into a line item appropriation and created the bureau out of nothing with a paragraph in a spending bill.

**Virginia Prescott:** [00:04:07] Now this was when Congress had adjourned for the summer. Did I get that right?

**Tim Weiner:** [00:04:10] Yeah. Summer Recess. Very nice sleight of hand TR.

**Virginia Prescott:** [00:04:14] So at that point it was called the Bureau of Investigation. When did it become the FBI?

**Tim Weiner:** [00:04:19] In 1935 after J Edgar Hoover had been running it for 11 years.

**Virginia Prescott:** [00:04:25] He wielded significant power as head of the agency and a lot of evidence has surfaced since pointing to abusive tactics, intimidation, illegal spying by Hoover and the FBI. Was that how the agency exercised power?

**Tim Weiner:** [00:04:41] Hoover was the law and he had the power to defy the Supreme Court and defy presidents when he chose. The FBI's power is a secret intelligence service was built on warrantless break-ins warrantless bugging and wiretaps warrantless burglaries, black bag jobs they were called, and in nineteen thirty nine The Supreme Court outlawed illegal wiretaps. Hoover went to President Franklin D Roosevelt and said Mr. President how am I going to do my job if the Supreme Court has unanimously banned warrantless wiretapping and FDR, no slouch at stealth himself, wrote out a one page order and signed it saying essentially, screw the Supreme Court. Hoover kept that in his desk all his life and went on to bug and burglarize at will.

**Virginia Prescott:** [00:05:41] What were some of his famous targets?

**Tim Weiner:** [00:05:44] Generally communists and particularly when the Cold War began to eclipse everything else in American public life and American foreign policy after World War II, Hoover became the global face of anti communism in America.

**Virginia Prescott:** [00:06:01] You said Hoover was the law. But when he died 1972 he remained director until his death. How about now. How powerful is the FBI today?

**Tim Weiner:** [00:06:15] Hoover's Long Shadow extended throughout the 20th century and it really wasn't until after 9/11 when Robert Mueller, you may have heard of him, ran the FBI. That the FBI began to actually function as an intelligence service under law. And it took a confrontation between Mueller and the acting attorney general Jim Comey face to face with the president of the United States George W. Bush over an illegal program of warrantless eavesdropping conducted by the National Security Agency.

**Virginia Prescott:** [00:06:55] How does the FBI work with other agencies like the NSA for example or the CIA? Leading up to 9/11 there were a lot of accusations that they did not play well together and therefore missed a lot.

**Tim Weiner:** [00:07:09] It is safe to say that one of the proximate causes of the success of the 9/11 attacks was the failure of the FBI and the CIA to cooperate on anything. From the beginning Hoover bitterly opposed the CIA only because he wanted to run it. He wanted the international global powers of espionage to be under his control and so they fought from the beginning and continue to fight bitterly until the towers came down.

**Virginia Prescott:** [00:07:40] You mentioned that the original Bureau of Investigation was founded in stealth. How about now? How has Congress responded to abuses of power or extending power for the FBI?

**Tim Weiner:** [00:07:56] Back in the 1970s in the wake of Watergate, the Senate held extremely powerful hearings really the first of their kind in the history of the United States looking into what the FBI and the CIA and the NSA had done over the past 25 30 years going back to after World War II.

**Tim Weiner:** [00:08:17] And they found a long train of abuses in specific the warrantless bugging break ins wiretaps that the FBI had conducted including its round the clock surveillance of Martin Luther King. Now remember in general these operations were authorized by presidents. And the difference was that with Hoover gone, the bureau lay open to a season of investigation by the Senate. Out of that investigation came a chastened FBI, came indictments of senior FBI personnel, and came the Foreign Intelligence Surveillance Court which authorized and continues to authorize national security wiretaps.

**Virginia Prescott:** [00:09:05] Right, people listeners may have heard of it as the FISA court.

**Tim Weiner:** [00:09:08] Correct.

**Virginia Prescott:** [00:09:10] The police forces that we know and have more transparency in our local constituencies, they are constrained by the law and the Constitution. Sounds like the FBI for a long time went pretty far rogue of that. How is it constrained by those laws now?

**Tim Weiner:** [00:09:28] The FBI is there to protect and defend the Constitution of the United States. And it is true that for decades under Hoover and thereafter the bureau broke the law in the name of the law

**Virginia Prescott:** [00:09:44] So it protected the constitution by violating the Constitution.

**Tim Weiner:** [00:09:48] Well this was the great dilemma in the era of the Cold War. And again in the age of terrorism. Civil liberties and national security are often in conflict. We want to be safe and we want to be free but these are opposing forces and there is a tug of war continuous between civil liberties and national security.

**Tim Weiner:** [00:10:13] The FBI is charged with upholding the both but it finds itself often trapped between these opposing forces which pull in different directions. I think you have to credit Robert Muller and the 12 years he served as FBI director with trying and often succeeding in reconciling these forces and bringing the FBI into the 21st century as a secret intelligence service under law.

**Virginia Prescott:** [00:10:45] Alright, since you're bringing up Robert Muller I want to clarify something. We do often hear of Robert Mueller's investigation into possible Russian meddling in the 2016 election as an FBI investigation. Is it an FBI investigation?

**Tim Weiner:** [00:10:59] Mueller has the full force of the bureau at his disposal. He has 16 other very skilled prosecutors working in his office. He also has the full investigative powers of the rest of the federal government notably the Treasury Department. He can read Trump's taxes which is an exciting prospect for some people. He can use treasury's money laundering enforcement unit, which has global reach. And he can use the intelligence powers of the CIA, the eavesdropping NSA, and he can tap into the work of foreign intelligence services as well. He is probably the most powerful special prosecutor in the history going back to the Watergate era.

**Virginia Prescott:** [00:11:50] Who does he report to?

**Tim Weiner:** [00:11:52] The Justice Department in the form of the deputy attorney general, the attorney general Jeff Sessions having with good reason recused himself from this case.

**Virginia Prescott:** [00:12:10] Can an FBI agent arrest you?

**Tim Weiner:** [00:12:13] Yes.

**Virginia Prescott:** [00:12:13] What can and can't the FBI do in its investigations?

**Tim Weiner:** [00:12:17] They can't break the law to uphold the law anymore, and that is in great part due to the reforms instituted in the wake of the Nixon administration. They are not the law anymore as they were in Hoover's day. And they have been told time and time again that they can't break the law in the name of the law. Famously, James Comey when he headed the FBI kept on his desk a copy of the order that Hoover had to institute 24/7 365 surveillance of Martin Luther King as an example of how not to use power. And every graduate of the FBI Academy is schooled in this.

**Virginia Prescott:** [00:13:03] James Comey by the way who was fired, relieved of his duties in May of 2017 we see new shots and sometimes footage of FBI sweeping in in their blue slickers. You know FBI emblazoned on their back. They all look like white guys. Is it a diverse organization?

**Tim Weiner:** [00:13:23] No. The bureau is overwhelmingly white and male 95 percent roughly last time I checked.

**Virginia Prescott:** [00:13:30] How does this composition of the FBI affect the kind of cases it follows and how it follows them.

**Tim Weiner:** [00:13:38] In principle it should not. In practice it surely does. I would like to say that it's not as racist as J Edgar Hoover himself was. Hoover was a hater. I hope it is the case, with the recent kerfuffle within the bureau over misapprehending what Black Lives Matter is, suggests they've got a long way to go.

**Virginia Prescott:** [00:14:03] How does the FBI tips process work?

**Tim Weiner:** [00:14:06] Not well, sometimes. Look at the case of the Parkland School shooting where a bureau a field office in Florida was tipped off that this kid was a threat to show up to school. Often for the bureau to give them their due, it's like trying to get a drink of water from a fire hose. Tips pour in and sometimes the bureau gets lost in the volume of tips they're offered.

**Virginia Prescott:** [00:14:35] What are some of the greatest hits and greatest misses of the FBI.

**Tim Weiner:** [00:14:40] Well I think that the bureau would cite the Adam Aspis case as a crucial turning point. I think in more recent days, you can credit the bureau with the and at least one case stopping a potentially catastrophic terrorist attack here in my hometown New York. The bureau has a hard time rooting out wrongdoing in its own ranks and for nearly two decades there was a spy for the Kremlin for Moscow inside the FBI named Robert Hanssen who essentially destroyed the counterintelligence and counterespionage operations of the Bureau for the last two decades of the 20th century before he was identified and arrested.

**Virginia Prescott:** [00:15:31] So obviously huge job. We're talking about a crime fighting force that has to operate on a global network. And things have changed a lot in how the crimes are conducted and investigated. But would you consider the FBI an efficient organization?

**Tim Weiner:** [00:15:47] It has become more efficient in the 21st century. It went kicking and screaming into the age of information technology. It took the 9/11 attacks for the FBI to fess up to the fact that it was a 64 kilobyte agency in a gigabyte age. Agents couldn't share JPEG pictures with one another over the Internet. They could barely e-mail one another. It was a pyramid of paper and again several billion dollars had been poured down a rat hole trying to resolve this and it took Bob Mueller to drag the FBI into a modern technological age.

**Virginia Prescott:** [00:16:36] The FBI has made the case that it has to operate underground remaining pretty obscure to other agencies and people outside of the agency certainly. What do you think, Tim Weiner, is the greatest misconception we in the public have about the FBI.

**Tim Weiner:** [00:16:53] That it is a police force of cops. It is first and foremost an intelligence agency and never more so than in the post 9/11 era that is charged with rooting out unseen invisible threats to the United States knowing that it has to be right 100 times a day and the bad guys only have to be right once. The refocusing of the bureau's energies into intelligence counterintelligence counterterrorism under Bob Mueller was by and large success at the outset 15 years ago. Mueller said that he wouldn't be the guy who went down in history of whom it was said, Well congratulations you won the war on terror but we lost our civil liberties.

**Virginia Prescott:** [00:17:50] Tim Weiner thank you so much for speaking with us.

**Tim Weiner:** [00:17:52] My pleasure.

**Virginia Prescott:** [00:17:57] Tim Weiner he's a Pulitzer Prize winning journalist and author of Enemies A History of the FBI. His latest book is called One Man Against The World the tragedy of Richard Nixon. You can find more at our Web site civics101podcast.org. This episode was produced by Hannah McCarthy our executive producer is Erica Janik, music from broke for free.