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Source: *The Journal of American History*, Vol. 68, No. 3 (Dec., 1981), pp. 560-579

Published by: [Organization of American Historians](#)

Stable URL: <http://www.jstor.org/stable/1901939>

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The Bureau of Investigation and Its Critics, 1919–1921: The Origins of Federal Political Surveillance

David Williams

Unless the methods used by the Department of Justice are severely condemned by Congress and the American people they will be repeated in future emergencies.

Zechariah Chafee, Jr., January 25, 1921¹

In the hope that legislation can bar the resumption of political surveillance, Congress is considering a comprehensive charter for the Federal Bureau of Investigation (FBI). Unfortunately, history provides scant grounds for optimism. Indeed, the failures of past efforts to limit the FBI's investigative authority need to be examined closely if Congress is to ensure that the proposed charter will not legalize the very abuses it has so recently condemned.²

In 1924, after the infamous "Red Raids" and in the wake of charges of corruption, Attorney General Harlan Fiske Stone ordered the Bureau of Investigation (BI), forerunner of the FBI, to limit its investigations to violations of federal law. Like many members of Congress and fellow cabinet officers, Stone believed that BI investigations during the early postwar years were confined to socialists, communists, and radical labor organizers—unpopular fringe groups which, because of their beliefs and abstract advocacy of "revolutionary" goals, were not assumed to be entitled to the First Amendment rights accorded to "legitimate" organizations. In light of this assessment, Stone did not think a

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¹ Press release, Jan. 25, 1921, box 29, Zechariah Chafee, Jr., Manuscripts (Harvard Law School Library, Cambridge).

² U.S. Congress, Senate, Select Committee to Study Governmental Operations with Respect to Intelligence Activities, *Hearings on Intelligence Activities: Federal Bureau of Investigation*, 94 Cong., 1 sess., Nov. 18, 19, Dec. 2, 3, 9, 10, 11, 19, 1975; U.S. Congress, Senate, Select Committee to Study Governmental Operations with Respect to Intelligence Activities, *Final Report* (3 vols., Washington, 1976), Vol. II: *Intelligence Activities and the Rights of Americans*, Vol. III: *Detailed Staff Reports on Intelligence Activities and the Rights of Americans*; "The Federal Bureau of Investigation Charter Act of 1979," S.1612/H.R.5030; U.S. Congress, Senate, Committee on the Judiciary, *FBI Statutory Charter: Hearings*, 95 Cong., 2 sess., Apr. 29, 30, June 12, 27, July 12, Aug. 10, 15, 1978, pts. 1–3; Association of the Bar of the City of New York, *A Charter for the Federal Bureau of Investigation* (New York, 1980); John T. Elliff, *The Reform of FBI Intelligence Operations* (Princeton, 1979).

full-scale investigation of the BI's surveillance activities was necessary, nor did he order the bureau to turn over any documents relating to these investigations. What the attorney general and Congress failed to fully comprehend, and what a serious departmental or congressional inquiry would have revealed, was that many conventional political figures had also been the target of politically motivated, noncriminal investigations into their political beliefs and associations and their private lives.³

The scope of surveillance prior to the 1924 reform is particularly evidenced by the bureau's files on the critics of the deportation raids of 1919–1920. Directed by J. Edgar Hoover, then chief of the General Intelligence Division (GID), these investigations demonstrate that FBI surveillance of its opponents began earlier and was more pervasive and systematic than previously recognized. When read together with what is already known, they strengthen the view that the modern surveillance of political dissent must be dated not from the eve of World War II but from the high noon of World War I.⁴

On Friday night, January 2, 1920, agents of the BI with the aid of local police arrested 10,000 "members" of the Communist and Communist Labor parties in simultaneous raids throughout the country. The Justice Department, in cooperation with the Immigration Bureau, hoped to deport alien members of the parties and thereby suppress radical dissent in the United States. The newly opened records confirm that many persons not affiliated with communist parties and not mentioned in arrest warrants were seized simply because they had attended lawful political or social functions that Hoover and his staff regarded as subversive. For example, in Nashua, New Hampshire, 141 men and women

³ Frank J. Donner, *The Age of Surveillance: The Aims and Methods of America's Political Intelligence System* (New York, 1980), 52–78; Elliff, *Reform of FBI Intelligence Operations*, 7; Athan Theoharis, *Spying on Americans: Political Surveillance from Hoover to the Huston Plan* (Philadelphia, 1978), 69; Sanford Ungar, *FBI* (Boston, 1976), 100–03. In February 1909, eight months after he had established the Bureau of Investigation (BI), Attorney General Charles Bonaparte assured Congress that the Justice Department would not use the BI "for political purposes, or any purpose that is clearly outside of their legitimate work." Satisfied that Bonaparte's organizational plan would effectively check improper activities, Congress did not impose any restrictions on the BI. The appropriations act provided money, however, only for the "detection and prosecution of crime." *Memorandum Relating to the Secret Service*, 60 Cong., 2 sess. (1910), 143–53.

⁴ In 1977, the National Archives acquired the investigative records, 1908–1922, of the Federal Bureau of Investigation (FBI), and these records form the basis of this essay. "Accessions and Openings," *Prologue*, 9 (Spring 1977), 48. The file includes field agents' reports describing the subject under investigation, investigative techniques, polished compilations of the raw data, summaries of various investigations, and intradepartmental and interdepartmental memorandums. In 1976 the FBI and the National Archives initiated a file destruction program of FBI field office files. Because the records compiled between 1908 and 1922 escaped destruction, they are, in the words of one historian, "a unique scholarly resource." John Anthony Scott to David Williams, Dec. 28, 1979. Of the several recent studies of FBI political surveillance, Theoharis, *Spying on Americans* is the most complete analysis, but as Athan Theoharis explains: "Because FBI investigations of political activities were only authorized in 1936 by Franklin Roosevelt's verbal order, this study begins that year rather than with J. Edgar Hoover's appointment as FBI director in 1924." Theoharis, *Spying on Americans*, xi. Because all of the recent literature shares Theoharis's focus on FBI activities from 1936 until the present, our understanding of their origins remains quite limited. See Morton Halperin et al., *The Lawless State: The Crimes of the United States Intelligence Agencies* (New York, 1976); David Wise, *The American Police State: The Government against the People* (New York, 1976); Ungar, *FBI*; Donner, *Age of Surveillance*.

were arrested at a Socialist party rally held at St. Jean Baptiste Hall. In Manchester, BI agents arrested everyone at a dance sponsored by the "Tolstoi Club." The partygoers were taken to the Manchester police station where immigration inspectors unsuccessfully tried "to connect them up with the warrants." Police in Lynn, Massachusetts, acting on a Justice Department request, raided a hall where thirty-nine bakers were meeting to discuss the organization of a cooperative. About half of the bakers were United States citizens, but police jailed them all overnight, docketing them as "suspects."⁵

Denied legal counsel by a recent change in Immigration Bureau regulations, the immigrants seized in the raids faced hostile immigration inspectors whose orders were "to get results." Following his arrest, Koly Honchekoff, a Portsmouth, New Hampshire, shipyard worker, denied that he was a member of the Communist party but admitted that he had belonged to a union for three years. The immigration inspector put down three years in the Communist party, and the questionnaire became part of the official record. Anton Harbatuk, arrested at a Lincoln, New Hampshire, paper mill, also denied that he was a party member. He had merely joined a club at the mill because he had "no other place to go and thought that [he] should belong to some organization." Fred Chaika, arrested at the same time as Harbatuk, did not know that he was listed as a member of the Communist party until "the first meeting with the immigration inspector." "When the policeman showed me a membership book he asked me whether that was my name and I said yes," Chaika later testified. "Then he said the book was a membership book in the Communist party." Although all three men denied party membership, immigration officials found them guilty and held them for deportation. In all, the Immigration Bureau determined that about three thousand persons arrested during the raids were deportable and transferred them to jails in Boston, New York, and Detroit to await final adjudication.⁶

Public reaction to the raids was favorable at first. For almost a year, "red hysteria" had engulfed the nation. Many people feared that labor militancy and strikes in the steel and coal industries would paralyze the country, making it ripe for revolutionary upheaval. Consequently, otherwise principled and conscientious individuals argued that the national emergency justified temporary suspension of the constitutional rights of radical aliens. As John Wigmore, dean of the Northwestern University Law School, observed: "When you are trying to protect the community against moral rats you sometimes get to thinking more of your trap's effectiveness than of its lawful constitution." On January 5, 1920, three days after the raids, the *New York Times* exclaimed:

⁵ Zechariah Chafee, Jr., *Free Speech in the United States* (Cambridge, 1941), 206; David Williams, "'Sowing the Wind': The Deportation Raids of 1920 in New Hampshire," *Historical New Hampshire*, 34 (Spring 1979), 20-21. In late December 1919, Acting Secretary of Labor John Abercrombie changed rule 22 of the Immigration Bureau's deportation regulations in order to exclude defense counsel from the preliminary hearings before local immigration inspectors. General Intelligence Division (GID) chief Hoover, who was instrumental in the rule change, argued that attorneys would only bog down the hearings unnecessarily, and that "defeats the ends of justice." William Preston, Jr., *Aliens and Dissenters: Federal Suppression of Radicals, 1903-1933* (Cambridge, 1963), 216-19.

⁶ Williams, "'Sowing the Wind,'" 22-23; Donner, *Age of Surveillance*, 38-39.

"If some or any of us, impatient for the swift confusion of the Reds have ever questioned the alacrity, resolute will, and fruitful, intelligent vigor of the Department of Justice in hunting down those enemies of the United States, the questioners and doubters now have cause to approve and applaud." Many members of the bar also believed that the raids were necessary. "There is only one way to deal with anarchy and *that is to crush it*," one law journal explained, not with "*a slap on the wrist, but a broad-axe on the neck*." On January 10, the Senate passed Sen. Thomas Sterling's peacetime sedition bill, in effect endorsing Attorney General A. Mitchell Palmer's antiradical policies.⁷

The indiscriminate arrests also prompted a public campaign to end governmental repression and popular intolerance and restore political freedoms restricted during World War I. The National Popular Government League (NPGL), founded in 1914 to advance political and social reform, led the opposition to the raids. The Interchurch World Movement (IWM), established in 1919 by over one hundred Protestant denominations to work toward postwar reconstruction, sponsored a survey of the men and women held by the Immigration Bureau for deportation. The Commission on the Church and Social Service of the Federal Council of Churches of Christ in America (FCCCA) also spoke out against the attorney general's goals and tactics.⁸

Within days of the arrests, disaffected government officials and liberal lawyers criticized the raids. On January 12, 1920, Francis Fisher Kane, the United States attorney for eastern Pennsylvania, resigned in protest against the arrests. In an open letter to the attorney general, Kane warned Palmer that "the policy of raids against large numbers of individuals is generally unwise and very apt to result in injustice." Several immigration inspectors refused to cooperate with BI agents and were dismissed or transferred by the commissioner general of immigration, Anthony Caminetti. As reports of violations of basic constitutional rights filtered out of the Immigration Bureau prisons, sympathetic attorneys offered to represent the aliens at the final deportation hearings. Following department policy, BI agents and immigration inspectors steadfastly refused to allow aliens legal counsel. Taking a different tack, defense attorneys turned to the federal courts for writs of habeas corpus.⁹

⁷ U.S. Congress, Senate, Committee on the Judiciary, *Charges of Illegal Practices of the Justice Department: Hearings*, 66 Cong., 1 sess., Jan. 19–March 3, 1921, 573; *New York Times*, Jan. 5, 1920, p. 10; Jerold S. Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America* (New York, 1976), 130.

⁸ The most complete account of criticism of the deportation raids is William Anthony Gengarelly, "Resistance Spokesmen: Opponents of the Red Scare, 1919–1921" (Ph.D. diss., Boston University, 1972). National Popular Government League literature, press releases, and legislative proposals can be found in several manuscript collections. See Judson King Papers (Library of Congress, Washington); Chafee Manuscripts; American Civil Liberties Union Archives (Princeton University, Princeton).

⁹ The *Survey* published Francis Fisher Kane's letter of resignation and A. Mitchell Palmer's reply in their entirety. See *Survey*, 43 (Jan. 31, 1920), 501–04; J. Edgar Hoover to Anthony Caminetti, Dec. 19, 1919, file OG 368487, Bureau of Investigation Investigative Records, 1908–1922, Records of the Federal Bureau of Investigation, RG 65 (National Archives); Hoover to Caminetti, Jan. 2, 1920, *ibid.*; Hoover to Caminetti, Jan. 7, 1920, *ibid.*; Hoover to Caminetti, Jan. 20, 1920, *ibid.*; Caminetti to Hoover, Jan. 22, 1920, *ibid.*

The critics of the raids, especially the NPGL, came to rely heavily on evidence developed at the habeas corpus hearings held in Butte, Montana, and Boston, Massachusetts, to prove their charges of illegal Justice Department actions. By January 1920 official terrorism was part of everyday life in Butte. Beginning in 1916, federal agents regularly disrupted meetings and physically assaulted and arrested members of the radical labor union, the Industrial Workers of the World (IWW). In cooperation with the Justice Department, the Immigration Bureau held alien members of the IWW for deportation on evidence seized without warrants from their union halls and homes. John Jackson, one of the Justice Department's victims, petitioned U.S. District Court Judge George Bourquin for a writ of habeas corpus. Judge Bourquin, an outspoken critic of the Justice Department throughout the war, had been the target of BI criticism since March 1918 when he refused to send draft resisters to jail. Butte agents pleaded with John Lord O'Brian, special assistant to the attorney general, to relieve Bourquin or to have him transferred to another district. In his reply, O'Brian reminded the agents that "there is no methods by which Judge Bourquin can be transferred." O'Brian also dismissed the agents' charges that Bourquin had acted in bad faith when he sentenced the draft dodgers to public service work at the local poor house and hospital.¹⁰

On February 12, 1920, Bourquin ordered the Immigration Bureau to release Jackson. The judge found little evidence that Jackson had personally advocated the violent overthrow of the government. "He and his kind are less a danger to America than those who indorse or use the methods that brought him to deportation," Bourquin concluded. "These latter are the mob and the spirit of violence and intolerance incarnate, the most alarming manifestation in America today."¹¹

On May 5, 1920, BI agent David Gershon submitted a weekly survey lamenting the lack of activity "in combatting radicalism by the local, city, state and federal officials" and charging that Judge Bourquin "is unquestionably in sympathy with the radicals, his decision in Jackson v. U.S. bearing out this deduction." The radicals, Gershon continued, used Bourquin's decision to block attempts by BI agents to arrest and search anyone or seize radical literature without "being clothed with proper legal warrants." In October, agent D. F. Costello investigated the IWW's defense attorneys, including Bourquin's son George, Jr., who "like his father, is inclined toward radicalism." A month later agent Baldwin Robertson commented that "the situation in Butte is indeed a serious one and not the least of the difficulties is his honor Judge Bourquin." In the same report, agent F. W. Kelley, a BI troubleshooter, echoed

¹⁰ *Ex Parte Jackson*, 263 Fed. 110 (1920) at 110, 113; Butte field office correspondence, George Bourquin dossier, file OG 147403, Bureau of Investigation Investigative Records, 1908-1922.

¹¹ *Ex Parte Jackson*, 263 Fed. at 110, 113. See also "A Federal Judge Speaks Up," *New Republic*, 22 (March 31, 1920), 135; Arnon Gutfeld, "The Ves Hall Case, Judge Bourquin, and the Sedition Act of 1918," *Pacific Historical Review*, XXXVII (May 1968), 163-78; Paul L. Murphy, *World War I and the Origin of Civil Liberties in the United States* (New York, 1979), 198-203.

earlier requests to remove Judge Bourquin, claiming that it would "be in the best interests of the Bureau."¹²

The habeas corpus hearings in Boston, at which Judge George Weston Anderson presided, proved to be even more irritating to the Justice Department. A friend and colleague of Supreme Court Justice Louis Brandeis, Anderson had served as U.S. attorney in Boston during the first months of World War I. Despite the heavy concentration of defense-related industries in the district, Anderson did not succumb to the wartime hysteria. Experience taught him that "99 percent of the spy plots were pure fake"; consequently, only a few people were prosecuted and one was convicted for violating the Espionage Act in Massachusetts. In 1918, after Anderson had served a year as a commissioner on the Interstate Commerce Commission, President Woodrow Wilson appointed him to the federal bench.¹³

In order to insure a fair and scrupulously judicious process, Anderson invited Felix Frankfurter and Zechariah Chafee, Jr., professors of law at the Harvard Law School, to serve as amici curiae during the hearings. Frankfurter, who taught administrative law, questioned Immigration Inspector Henry Skeffington and the chief of the BI's Northern New England District, George Kelleher, to develop the facts relating to the planning and execution of the deportation raids. Chafee, who was at that time preparing the first treatise on First Amendment law, advised Anderson on limitations of government power and other constitutional questions raised by the mass arrests. Both men later helped Anderson draft his opinion at the judge's Brookline home.¹⁴

Throughout the hearings Anderson questioned witnesses to clarify points of fact and law. Government attorneys, led by Assistant U.S. Attorney Louis Goldberg, claimed that the twenty-eight petitioners were bona fide members of either the Communist or Communist Labor parties and were, therefore, subject to deportation under the provisions of the 1918 Immigration Act. To prove party membership, Goldberg relied primarily on statements collected from the aliens by immigration inspectors on the night of the arrests. Defense attorneys Morris Katzef and Lawrence Brooks challenged the validity of the questionnaires that the aliens had "signed" by asserting, among other things, that at least three of their clients had never heard of the party until their arrest.

¹² David Gershon report, May 5, 1920, file OG 291596, Bureau of Investigation Investigative Records, 1908-1922; A. B. Coxe to Hoover, June 9, 1920, *ibid.*; Baldwin Robertson report, Nov. 11, 1920, file BS 195397, *ibid.* The Baldwin Robertson report contains another report by F. W. Kelley.

¹³ For biographical information on George Weston Anderson, see *Survey*, 44 (July 3, 1920), 489-90; *Nation*, 111 (July 3, 1920), 7-8; *New Republic*, 23 (July 14, 1920), 189-91. In addition to the fact that there was only one conviction for violation of the Espionage Act in Anderson's district while he served as U.S. attorney, there was no sabotage of defense industries in the Boston area, 1914-1917. See Joan Jensen, *The Price of Vigilance* (Chicago, 1968), 158-72, and *The New York Times Index* (New York, 1914-1917), s. v. "Bomb Explosions," "Anarchists," and "United States—European War—Plotters and Agitators."

¹⁴ For a description of Felix Frankfurter's role during the habeas corpus proceedings, see Liva Baker, *Felix Frankfurter* (New York, 1969), 93-98. For Chafee's explanation of his participation in the proceedings, see Committee on the Judiciary, *Charges of Illegal Practices of the Justice Department: Hearings*, 165-205.

Anderson, confused by the conflicting testimony, directed questions to key government witnesses. During examination by the bench, Kelleher revealed that BI informers had infiltrated local immigrant social clubs and helped to schedule meetings for the night of the planned raids. Many persons, Kelleher admitted, were held without warrants and remained in custody for as long as two weeks without cause. Anderson also raised questions about Justice Department involvement in the deportation process. He noted that Congress had specifically delegated authority to enforce the immigration laws to the Labor Department, while Skeffington and Kelleher both conceded that the Justice Department involvement in the deportation process had no statutory basis.¹⁵

On April 24, 1920, Anderson released the twenty-eight petitioners and reduced bail from \$5,000–\$10,000 to \$500. The judge held that the aliens could not be deported solely for membership (even if it could be proved) in the Communist party or Communist Labor party. On June 22, Anderson entered the opinion of the court. Taking issue with the government's claim that unlike those of citizens, the rights of aliens were not constitutionally protected, Anderson argued that all "persons" were entitled to "due process." As a consequence, the Labor Department had wrongfully denied the aliens counsel when the acting secretary amended the regulations on the eve of the mass arrests. Although Anderson could have decided the case on due process grounds alone, he chose to address other fundamental questions raised by the government's entire strategy. The judge found the provisions of the 1918 Immigration Act unconstitutionally broad. Guilt, Anderson posited, was personal, and the government could not deport persons because of membership in certain political or labor organizations. Immigration officials had to prove that the individual had advocated violence, conspired to overthrow the government, or participated in terrorist activities. Guilt by association, he declared, had no place in American society and ran counter to all Anglo-American legal traditions. Anderson also found the illegal activities of government agents (warrantless searches, seizures, and arrests) particularly reprehensible. Paraphrasing Thomas Erskine May, the nineteenth-century constitutional scholar, Anderson condemned the use of informers, spies, and agents provocateurs by the Justice Department: "I cannot adopt the contention that government spies are more trustworthy or less disposed to make trouble in order to make profit therefrom than are spies in the private industry. . . . The spy system destroys trust and confidence and propagates hate." The government appealed Anderson's decision, claiming that Congress had allowed the secretary of labor to establish the criteria for deportation decisions and the secretary's decision was not subject to judicial review. The government did

¹⁵ *Boston Globe*, April 7, 1920, p. 1; *Boston Post*, April 13, 1920, p. 1. Because I have been unable to locate a copy of the transcript of the hearings, I have relied on the portions of the testimony that were reprinted in National Popular Government League, *To the American People: Report upon the Illegal Practices of the United States Department of Justice* (Washington, 1920), 37–55.

not address the questions of warrantless arrest, forced confessions, administrative irregularities, and lack of due process.¹⁶

Encouraged by Anderson's decision, NPGL secretary Judson King and NPGL attorney Jackson Ralston solicited support for a publication critical of the deportation raids. Eleven lawyers with extensive experience in public and private law assisted Ralston and lent their names to the final report. Swinburne Hale, a former officer in Military Intelligence who had argued that membership in the Communist party or Communist Labor party was not grounds for deportation in a hearing before Secretary of Labor William Wilson in January 1920, helped Ralston collect evidence and prepare the first draft of the report. Six academics, departing from majority opinion in the law schools, edited the pamphlet. Ernst Freund of the University of Chicago Law School, the nation's foremost authority on administrative law and limitations of state and federal police power, joined Frankfurter, Chafee, and Dean Roscoe Pound of the Harvard Law School. Alfred Niles, former U.S. district court judge and professor of law at the University of Maryland, and Dean Tyrell Williams of the Washington University Law School also supported the effort.¹⁷

Two former government officials and two lawyers in private practice completed the citizens' panel. Kane joined the committee after he resigned as U.S. attorney. Frank Walsh, President Wilson's choice to cochair the War Labor Board, David Wallerstein of Philadelphia, and Richard Brown of Memphis signed the report as a protest against "the ruthless and brutal disregard of the rights of the poor and defenseless people shown by the employees of the Department of Justice."¹⁸

Defending the rights of suspected radicals at the height of the Red Scare was risky business. During World War I, bar associations criticized, disciplined, and, in some cases, disbarred lawyers who represented persons charged with sedition; and "their exuberant nationalism . . . remained potent after the Armistice." To avoid charges of unprofessional or unpatriotic behavior, the NPGL's lawyers had to be absolutely sure that each charge against the attorney general and his subordinates was accurate and fully documented. Accordingly, the completed pamphlet *To The American People: Report on the Illegal Activities of the United States Department of Justice* included sworn testimony, notarized statements and depositions, photographs, and copies of department

¹⁶ *Colyer v. Skeffington*, 265 Fed. 17 (1920), as quoted in Sidney Howard, "Judge Anderson's Decision," *Survey*, 44 (July 3, 1920), 489. Hoover's reaction to the decision is particularly interesting. After Judge Anderson accused the Justice Department of using spies and undercover agents to operate "some part of the Communist Party," Hoover told reporters that the judge's statement was an "unjustifiable misconception of the facts" and was the "construction which 'the most perverted mind' could not put upon the evidence presented at the hearings." *Boston Globe*, April 21, 1920. For a detailed discussion of bureau investigations prior to the raids and substantiation of Anderson's position that the BI's undercover agents were involved in party activities, see Williams, "Sowing the Wind."

¹⁷ Gengarely, "Resistance Spokesmen," 202-03.

¹⁸ Committee on the Judiciary, *Charges of Illegal Practices of the Justice Department: Hearings*, 270-71.

instructions and memorandums. The NPGL had two primary objectives: first, to publicize Palmer's abuse of power and the department's disregard for the law; and, second, to use the report as the basis for administrative reform of the deportation process and legislative reform of the BI. The league mailed copies of the report to newspaper editors, federal judges, Supreme Court justices, and congressmen. Later that year, the American Civil Liberties Union (ACLU) helped to distribute the report. In January 1921, a Senate Judiciary Subcommittee investigated the charges against the attorney general. By the end of the year the report had reached a national audience.¹⁹

News of the NPGL's work reached Hoover's office on May 5, 1920. In a letter addressed to the attorney general, a staff member of the league sent copies of newspaper editorials critical of the Justice Department and noted that "this may interest you Palmer. Those who trample and ignore the law are the real anarchists." On May 8, GID chief Hoover ordered a "discreet and thorough investigation of all essential facts." In a memorandum to an assistant, Hoover stressed that the investigation must remain secret because no criminal activity was involved: "The Bureau desire[s] to know who they are and to obtain full information concerning the NPGL. The inquiry should be directed as soon as possible, without precipitating issue."²⁰

Agents from the BI's Washington field office quickly went to work on the request, and on May 19 special agent P. M. Kemon transmitted the results of the investigation. The NPGL, he found, referred to itself as "a permanent, central organization to promote Constitutional and Legislative measures which will democratize our political machinery and establish control by the people." Kemon listed its officers, including Sen. Robert L. Owens, the league's president, and the league's Progressive-style platform (initiative, referendum and recall, direct nomination and election of the president, and effective publicity and corrupt practices acts). Kemon also provided personal information about King, the league's secretary, Thomas Everitt, its business manager, and Linus Bailey, a mechanical engineer who was active in its affairs. In addi-

¹⁹ Auerbach, *Unequal Justice*, 106; Chafee, *Free Speech*, 554; National Popular Government League, *To the American People*, 3-8. Commenting on two deportation cases involving members of the Industrial Workers of the World (IWW), the *New York Law Journal* warned: "Lawyers especially may well consider most seriously whether they should give legal aid to such dangerous adversaries of our government and of our fundamental rights and liberties." "The I.W.W. Organization—Its Alien Members Subject to Deportation—Its Tenets," *New York Law Journal*, 61 (April 18, 1919), 224. On December 4, 1919, Hoover wrote to John Creighton that a New York lawyer who had criticized the November 1919 raid on the offices of the Union of Russian Workers in New York City "ought to be 'disbarred from further practice before immigration authorities.'" Donald Johnson, *Challenge to American Freedoms: World War I and the Rise of the American Civil Liberties Union* (Lexington, Ky., 1963), 138. For a representative expression of the legal profession's intolerance of dissenters' right to freedom of speech, see John Wigmore, "'Abrams v. U.S.': Freedom of Speech and Freedom of Thuggery in Wartime and Peace Time," *Illinois Law Review*, XIV (March 1920), 539-61. Also see a letter written by a member of the Montana bar criticizing the informal sanctions brought to bear against lawyers who defended IWW members during and after the war. "Defenders of the Despised," *Nation*, 110 (Feb. 14, 1920), 202.

²⁰ Hoover to Mr. Ahern, May 8, 1920, file OG 379228, Bureau of Investigation Investigative Records, 1908-1922.

tion, Kemon mentioned their marital statuses, their wives' occupations, their home addresses, and their physical appearances.²¹

In his next report, dated June 2, Kemon outlined the NPGL financial situation, named financial contributors, and listed the remaining officers of the league, its advisory council, and its member organizations. After failing to secure data concerning the NPGL's finances from "confidential sources," Kemon reported that he visited the Munsey Trust Company in Washington, D.C., "in order to secure inside information." Kemon interviewed the bank's vice-president, who felt "under the circumstances he was forced to give our department information." Vice-president Pope informed Kemon that King was "simply a 'nut' with political phantasies" and was "financially irresponsible." Pope produced the league's financial ledgers and a complete list of donors, the amounts of donations, and league expenditures, which Kemon passed on to the BI.²²

Kemon's final memorandum, submitted on June 9, described the "Reconstruction Conference" that the league had sponsored a year earlier in Washington. The memorandum brought to Hoover's attention the fact that the new Labor Department administrator of the deportation program, Assistant Secretary Louis Post, had addressed the league's conference on the topic of industrial democracy. Although Post personally believed that no one should be deported for mere membership in a political party, no matter how radical the party might be, he felt obliged to carry out his department's policy. In January 1920 Secretary William Wilson had determined that the Communist party (but not the Communist Labor party) was opposed to all forms of organized government and that its members, therefore, were subject to exclusion under the 1918 Immigration Act. Applying this standard, Post released all but 563 of the men and women the BI had seized. Angered by this action, Hoover concluded that Post's speech to the NPGL's conference was only the tip of an iceberg of radical sympathies. He promptly ordered an investigation of the assistant secretary and requested Military Intelligence to search its files for evidence that would implicate Post with involvement with the Communist party and the IWW.²³

On January 15, 1920, worried that Assistant Secretary Post might undermine the Justice Department's deportation program, Hoover asked several BI field offices "for information linking Post to the IWW." BI agents found out that Post had met with George Andreychine, an IWW organizer, and Lincoln Steffens, the journalist, sometime in 1919. The bureau also learned that Post "had made a sworn statement attesting to the character of an anarchist named Turner" and had advised aliens arrested by the Justice Department "to institute habeas corpus hearings in order to get around the deportation orders." Five

²¹ P. M. Kemon report, May 19, 1920, *ibid.*

²² Kemon report, June 2, 1920, *ibid.*

²³ Kemon report, June 9, 1920, *ibid.*; John Lombardi, *Labor's Voice in the Cabinet: A History of the Department of Labor from Its Origins to 1921* (New York, 1942), 344–45.

months later, on May 17, 1920, the New York field office sent an agent on an "unsuccessful search" of area bookstores for "Post's *Ethical Principles of Marriage and Divorce*." Another BI memorandum "erroneously stated that Post owned 50 percent of the *New Republic*. The agent had apparently confused the then defunct *Public* [a journal Post had edited some 20 years earlier] with the *New Republic*." The Bureau also kept tabs on Post after he left the Labor Department. Thus, in 1921, BI agents from the Boston field office "attended and reported on public lectures given by the former assistant secretary (at the Harvard Student Liberal Club)." Post's biographer Dominic Candeloro concludes that "though Hoover obviously believed Post to be a Communist sympathizer, no solid evidence to discredit him could be found."²⁴

The lawyers who signed *To The American People* were subjected to similar scrutiny. Acting on instructions from Frank Burke, chief of the bureau's Washington headquarters, and from Hoover, field agents investigated all twelve men. The reports included their dates and places of birth, marital statuses, religious beliefs, and educational backgrounds. More significantly, agents closely examined their political ideas, organization and party ties, and professional activities.²⁵

On January 23, 1920, Hoover asked Military Intelligence to provide the bureau with information about Hale's "past history and connections" because Hale had displayed "somewhat peculiar attitudes" when he represented the Communist party in January. Several weeks later, the bureau's Boston office placed Hale's home in Scituate, Massachusetts, under surveillance because Hale had allowed a friend, Max Cohen, to stay there on a visit to Boston. The GID noted that Hale had "spent considerable time at the Soviet office in New York . . . [and] assisted in raising bail for James Larkin [an advocate of Irish independence] and Ben Gitlow [a member of New York's Communist party]." Hale also appeared "voluntarily . . . in most of the cases against the aliens in the Union of Russian Workers, an anarchist organization."²⁶

On October 16, 1920, "confidential informant 1080" reported to the bureau's Pittsburgh office that "Hale is shortly to issue an article in 'The Nation'; which is a most libelous attack on the government and the Court of Common Pleas of Allegheny County, Pa.'" Division Superintendent R. B. Spencer brought a copy of the manuscript to the attention of Judge Sweringen of the Court of Common Pleas in an attempt to persuade state officials to indict Hale under an 1836 contempt law. In the article, Hale criticized the court's

²⁴ Dominic Candeloro, "Louis F. Post and the Red Scare of 1920," *Prologue*, 11 (Spring 1979), 46-49.

²⁵ Ernst Freund dossier, file OG 379228, Bureau of Investigation Investigative Records, 1908-1922; Felix Frankfurter dossier, *ibid.*; Zechariah Chafee, Jr., dossier, *ibid.*; Alfred Niles dossier, *ibid.*; Tyrell Williams dossier, *ibid.*; Francis Fisher Kane dossier, *ibid.*; Frank Walsh dossier, *ibid.*; David Wallerstein dossier, *ibid.*; Richard Brown dossier, *ibid.*; Jackson Ralston dossier, *ibid.*; Roscoe Pound dossier, *ibid.*; Swinburne Hale dossier, *ibid.*; Frank Burke to George Kelleher, May 20, 1920, file OG 120964, *ibid.*; Lewis Baley to Philadelphia field office, Dec. 14, 1920, file OG 379228, *ibid.*; Baley to New York field office, Dec. 14, 1920, file BS 213251, *ibid.*

²⁶ Hale dossier, file OG 379228, *ibid.*; Hoover to Marlborough Churchill, Jan. 23, 1920, file BS 213251, *ibid.*; Churchill to Hoover, Jan. 31, 1920, *ibid.*; William West report, Feb. 14, 1920, file BS 202600-1622, *ibid.*

decision disbaring Jacob Margolis for defending members of the IWW and for his continuing support of the Union of Russian Workers. Although "Judge Sweringen seemed to be very gratified in receiving this advance information," Spencer was advised that "Hale could not come under the scope of the local statute." In January 1921, Hale applied for and received a passport to travel to England to visit with his children. On January 18, Hoover, noting that "Hale is divorced from his wife," requested W. L. Hurley of the State Department to "obtain information concerning his activities while abroad and the identities of his associates."²⁷

On June 24, 1920, special agent E. A. Solanka wrote from St. Louis that Williams "was well known for his socialist leanings." Solanka's sources reported that "Williams was always a malcontent seeking publicity . . . [and] every member of the bar knows this and considers his views indispensable by reason of his queer mental make up." Solanka also informed the bureau that Williams had attended "the conference of the Committee of '48 in St. Louis December last year," but did not actively participate "in the meetings." Wallerstein, agent J. F. McDevitt reported confidentially, was "a Democrat in politics and was formally connected with former Judge James Jay Gordon," a local judge "very prominent in democratic politics" who "left the bench 'under a cloud.'" During the investigation, the Philadelphia office procured a letter written to Wallerstein that thanked him for defending Walsh, who had represented Alexander Berkman and criticized the prosecution in the Tom Mooney Case. In a recent speech, the report continued, Kane defended the New York socialists who had been expelled from the state legislature and told his audience that a "curb on freedom and governmental violence may create harm." In an address to a group called the Young Democracy (referred to by the bureau as a "radical organization"), Kane argued that the Supreme Court had "gone too far" in the Victor Berger case, that the law "has been made to apply to people who are not guilty of conspiracy, and that the laws against Bolshevism are unnecessary."²⁸

On December 17, 1920, special agent M. J. Davis reported that Walsh "has been looked upon as a sympathizer, financial contributor, speaker and power among the radical element of [New York City], if not throughout the entire country . . . and was actively engaged in an endeavor to obtain the release of Thomas F. Mooney, the convicted bomb thrower of California." Walsh, Davis noted, had been "mixed up in Sinn Fein activities in this locality, being attached to that faction which follows Eamon DeValera [President of the Irish Republic]," and he had recently addressed the Bronx Community Forum, where he "is alleged to have made favorable comments on Eugene V. Debs and to have said that 'The men who backed Harding intend to chain down

²⁷ R. B. Spencer to Hoover, Oct. 16, 1920, file BS 213251, *ibid.*; M. J. Davis report, Dec. 17, 1920, *ibid.*; Hoover to W. L. Hurley, Jan. 18, 1921, *ibid.*; Swinburne Hale, "U.S. Steel vs. Margolis," *Nation*, 111 (Nov. 3, 1920), 498.

²⁸ Tyrell Williams dossier, file OG 379228, Bureau of Investigation Investigative Records, 1908-1922; Wallerstein dossier, *ibid.*; Kane dossier, *ibid.*; E. A. Solanka report, June 24, 1920, *ibid.*; J. F. McDevitt report, Dec. 14, 1920, *ibid.*

American labor to its tasks.' " Walsh's GID dossier concluded that he "is still active at the present time in revolutionary circles" and accused him of " 'whitewashing' the crimes of the miners in Colorado" when he served on the War Labor Board.²⁹

According to BI sources, Chafee, an active member of the League for Democratic Control, was "busily engaged in pacifistic propaganda and in assisting in violating the Espionage and Selective Service Acts." The bureau also asserted that Chafee had helped "Frankfurter, Brooks and others in their unsolicited propaganda for the communists." In a June 1921 survey of "radical activities in [Boston area] public and private educational institutions," Division Superintendent William West wrote that Chafee was "prominently mentioned as a radical" and had written a "book entitled 'Freedom of Speech,' in which he has paid particular attention to the decision of Federal Judge Anderson in the case of Colyer versus Skeffington." Chafee, the report continued, had also "personally appeared before the Joint Committee on the Judiciary of the Massachusetts Legislature and spoke against the enactment" of the Massachusetts Anti-Anarchy Act. Pound's dossier referred to his efforts to free Mollie Steimer and Jacob Abrams, who had been convicted of violating the Sedition Act in 1918. Another accusation claimed that Pound was "anti-English and pro-German" during the war and, as dean of the law school, had hampered efforts by students to procure their degrees "before going to war."³⁰

Frankfurter, because of his prominence as a progressive social reformer, attracted more attention from the bureau than any other NPGL lawyer. Frankfurter and his mentor Brandeis had mediated labor disputes in the New York garment industry before the war, and, in 1917, Frankfurter had been appointed by Woodrow Wilson as secretary and counsel to the President's Mediation Commission. The commission, despite its successful settlement of disputes in the mining, lumber, and meatpacking industries, drew frequent criticism from business leaders. The commission's investigation of the Mooney murder trial was perhaps its most controversial assignment. Mooney, a prominent San Francisco labor leader, had been convicted of planting a bomb at a Preparedness Day parade in 1916 that killed nineteen and wounded forty persons. Under Secretary of Labor William Wilson's supervision, Frankfurter prepared the commission's final report, which urged the president to ask the governor of California to grant Mooney a new trial because "a solid basis exists for a feeling that injustice was done." After reading news of this report, former president Theodore Roosevelt accused Frankfurter of excusing murderers, traitors, and anarchists who threaten "democracy and civilization."³¹

²⁹ Walsh dossier, *ibid.*; Davis report, Dec. 17, 1920, file BS 213251, *ibid.*

³⁰ Chafee dossier, file OG 379228, *ibid.*; Pound dossier, *ibid.*; Burke to Kelleher, May 20, 1920, file OG 120964, *ibid.*; Memorandum for Mr. Hoover, June 15, 1920, file OG 379228, *ibid.*; William West, "Radical Activities in Public and Private Educational Institutions and Organizations," June 8, 1921, file BS 202600-1622, *ibid.*

³¹ Baker, *Felix Frankfurter*, 58-84. Theodore Roosevelt to Frankfurter, Dec. 19, 1917, copy in Frankfurter dossier, file OG 120964, Bureau of Investigation Investigative Records, 1908-1922. A special agent reported that Frankfurter "undoubtedly accepted" former president Theodore Roosevelt's "characterizations as a Bolshevik and Anarchist as more complementary than defamatory." Davis report, Dec. 17, 1920, file BS 213251, *ibid.*

The BI started to assemble its dossier on Frankfurter while he was serving as *amicus curiae* at the habeas corpus hearings in Boston. On May 17, the BI's Boston office sent Hoover its first report, which emphasized Frankfurter's involvement with the Amalgamated Clothing Workers of America (ACWA). That organization, special agent Louis Nolan observed, "is to Massachusetts trade unions what the IWW is to the laboring classes of the West." Confidential information showed that the main goal of the ACWA "was to control the raw and finished products in the clothing industry, so that in the event of the radicals getting a foot-hold in this country, they would be able to have the clothing situation in their hands." Samuel Zorn, the ACWA's business manager in Boston and one of Frankfurter's associates, was "the most dangerous man in Boston" and had "nothing on Trotski." Frankfurter, Nolan implied, was a member of the "Jewish element furnishing the brains for the radicals and making the bullets which the ignorant of other nationalities fire."³²

The report further developed Frankfurter's connections with other critics of government policy. On November 19, 1919, Frankfurter and members of the Harvard Liberal Club had urged normalization of relations with the new Soviet government as a means of insuring a lasting peace. In his report on that event, Assistant Superintendent West found that these were the same people who had urged violation of the Selective Service Acts and had assisted "violators of the Espionage Acts." West charged that Frankfurter had displayed "unpatriotic attitudes during the war" (as evidenced by Frankfurter's report on the Mooney trial and Roosevelt's reply) and was "still voicing opposition to the government—not to its prosecution of treasonable offenders."³³

On May 20 Washington headquarters telegraphed Boston to ask whether Frankfurter and Chafee had volunteered to serve as *amici curiae* or had appeared at the request of Judge Anderson. Hoover, who attended the Boston habeas corpus hearings, initiated the request to find out what had motivated the two men to defend "communists." George Kelleher reported that "Frankfurter and Chafee may have been urged to appear by outside influences." The BI then asked the Boston office to investigate Anderson because of his "well-known sympathy . . . with the 'liberal movement.'" "His name," the GID later recorded, "is a household word among the reds," and his decision to grant the writs of habeas corpus "was evidently intended for propaganda—and has been seized upon by radical papers and organizations both here and abroad." The GID concluded that because Anderson had refused to prosecute participants in "German spy plots" when he was U.S. attorney, he was unable to judge impartially the "facts" relating to the international communist conspiracy.³⁴

³² Louis Nolan report, May 17, 1920, file OG 120964, Bureau of Investigation Investigative Records, 1908–1922. There are anti-Semitic overtones throughout this report, including comments by other agents that Louis Nolan compiled.

³³ *Ibid.*; George Kelleher report, May 26, 1920, *ibid.*

³⁴ Kelleher report, *ibid.*; Burke to Kelleher, May 20, 1920, *ibid.*; George Weston Anderson dossier, file OG 379228, *ibid.*

A separate BI investigation of Rep. Phillip Campbell, chairman of the House Rules Committee, turned up the fact that Frankfurter planned to attend the International Zionist Conference in London in July 1920. The House Rules Committee had recently completed an investigation into the administration of the immigration laws and had rejected a resolution to impeach Post. On June 5, 1920, special agent W. W. Grimes procured a copy of a telegram sent by Frankfurter to Campbell from the congressman's Washington office "under circumstances not necessary to divulge." In the telegram, Frankfurter urged Campbell to investigate the Justice Department's role in the deportation raids, particularly its use of agents provocateurs to arrange meetings to facilitate the arrests, but regretted that he would be unable to testify after June 14, 1920. Agent Grimes forwarded his copy of the telegram to Hoover, who then wrote Hurley at the State Department, seeking more definite information about Frankfurter's plans. Hurley advised Hoover that Frankfurter would sail from New York aboard the S.S. *Rotterdam* or the S.S. *Laplant* and added that the State Department had issued a great many passports to persons planning to attend the Zionist conference.³⁵

The GID did not wrap up its investigations of the NPGL until late 1921, after the Senate Judiciary Subcommittee completed hearings into the charges made by the league against the Justice Department. Hoover, who believed that the NPGL lawyers were in "absolute ignorance of the facts," directed his employees to draft rebuttals of the attorneys' testimony and in a memorandum for his files observed that their testimony was "typical of the intense propaganda indulged in by their organization." The GID also became involved in an attempt by Austen G. Fox, a New York attorney, Harvard University overseer, and graduate of the law school, to have Chafee dismissed from the university because of his public criticism of the Justice Department. Upon request, Hoover supplied Fox with information to support his allegation that Chafee's charges had been reckless and untrue. In addition, GID clerks collected newspaper clippings of the Harvard investigation, which ultimately concluded that Fox's allegations were inaccurate and recommended that "no further action be taken."³⁶

In addition to raising important legal and political questions, the deportation raids demonstrated the vulnerability of minority groups in the United States to arbitrary administrative action. Since the Justice Department had singled out Eastern European immigrants for deportation, many liberal clergymen believed the arrests were the result of intolerance, cultural hostility, and racial

³⁵ W. W. Grimes report, June 5, 1920, file OG 120964, *ibid.*; Hurley to Hoover, May 11, 1920, *ibid.*; Baker, *Felix Frankfurter*, 83–84.

³⁶ Austen Fox to Francis P. Garvan, Feb. 12, 1921, file BS 209115, Bureau of Investigation Investigative Records, 1908–1922; Hoover to Fox, Feb. 28, 1921, *ibid.*; Archibald Thacher to Hoover, March 3, 1921, *ibid.*; Hoover to Thacher, March 8, 1921, *ibid.* See also Arthur Sutherland, *The Law at Harvard: A History of Man and Ideas* (Cambridge, 1967), 254–58; Jerold S. Auerbach, "Patrician as Libertarian: Zechariah Chafee, Jr. and Freedom of Speech," *New England Quarterly*, XLII (Dec. 1969), 511–31; and Peter Irons, "'Fighting Fair': Zechariah Chafee, Jr., the Department of Justice, and the 'Trial at the Harvard Club,'" *Harvard Law Review*, XCIV (April 1981), 1205–36.

prejudice. Thus, in January 1920, five Episcopal bishops criticized the raids in an open letter published in the *New York Times* and the *New York Sun*. "We . . . are moved to make an appeal to the people of the churches of America on account of certain measures . . . which threaten the basic principles of our Government. . . . we urge the people . . . to use their influence for the return to that old faith in the fundamental principle of our civil liberty."³⁷

In February 1920, the IWM commissioned an investigation of conditions in Immigration Bureau jails where aliens were held while awaiting deportation and the effects of the arrests on the individuals, their families, and their communities. Founded in 1919 to study pressing social and economic problems, the IWM chose Rev. Constantine M. Panunzio to head the investigation. Following an exhaustive examination of all the available evidence, including Labor Department case files, Panunzio concluded that "only a small number of these aliens could be classed as dangerous radicals. The simplicity of their testimonies, their obvious straightforwardness, testify to the fact that the majority of the persons . . . entertained no purpose hostile to the American government or the American people." The report, *The Deportation Cases of 1919-1920*, remains the finest profile of the individuals arrested by the Justice Department.³⁸

Within weeks of its initiation, Hoover learned of the IWM's inquiry. On March 27, 1920, special agent William Hazen informed Hoover that Panunzio was interviewing aliens in custody in Hartford, Connecticut. Hazen assured Hoover that "there is no cause whatever for any complaint amongst the arrested aliens confined in the Hartford County Jail." Aware that the IWM had recently called for a congressional investigation of the BI and suspecting that the IWM's religious affiliations merely masked its "ultra-radical" sympathies, Hoover directed the bureau's Pittsburgh office to investigate the IWM. Special agent H. J. Lenon promptly filed two reports summarizing the history and activities of the IWM. On April 7, Lenon reported that "men with ulterior motives have crept into the movement," and were trying to influence "certain gullible preachers to appeal to the Labor Movement and to leaders of radicalism . . . in order to fill their pews and increase their collections." Some ministers, Lenon continued, have "fallen for the idea." Lenon feared that the churches would become "open forums for radicals of every hue and color." Luther Freedman, pastor of the Emory Methodist Episcopal Church, Lenon's sources reported, had invited Harry Ward, president of the ACLU to speak in what was "commonly believed" to mark "the beginning of a 'Free Speech' campaign . . . in defiance of all law."³⁹

Lenon's second report, completed on May 6, outlined the IWM's ties with other "radical and anarchistic" organizations, primarily the ACLU. The IWM

³⁷ *New York Times*, Jan. 9, 1920, p. 2; *New York Sun*, Jan. 28, 1920, p. 1.

³⁸ Interchurch World Movement, *Report on the Steel Strike of 1919* (New York, 1921), 3-18; Constantine M. Panunzio to Charles B. Ames, June 19, 1920, file BS 204040, Bureau of Investigation Investigative Records, 1908-1922; Justice Department to Panunzio, June 30, 1920, *ibid.*; C. M. Panunzio, *The Deportation Cases of 1919-1920* (New York, 1921).

³⁹ William Hazen report, March 27, 1920, file OG 341677, Bureau of Investigation Investigative Records, 1908-1922; H. J. Lenon report, April 7, 1920, file BS 207588, *ibid.*

investigators, Lenon explained, were "more or less radical" and were the tools of William Z. Foster, a leader of the 1919 steel strike and a "confessed syndicalist anarchist." Lenon listed the IWM's publications and summarized its platform and program. Lenon also included short biographies of Ward and Roger Baldwin, founder of the ACLU, in the report. The investigation revealed that the ACLU and the IWM had cooperated with the Amalgamated Textile Workers, whose members had struck mills in Lawrence, Massachusetts, and Paterson, New Jersey. The textile workers, Lenon advised the GID, were engaged in "fomenting a general strike in all the textile industry," and he added that the bureau would find the IWM's report on the Lawrence strike "very interesting." Roger Baldwin, Lenon suggested, "because of his education, training and executive ability . . . must be regarded only in the light of a dangerous man."⁴⁰

Alluding to the IWM's report on the 1919 steel strike, which was highly critical of the steel industry, and to the projected report on the deportation raids, Lenon concluded that the IWM was an "apparent utilization of religious movements to spread impossible and false theories and untruths concerning conditions [in the United States]." Lenon found the influence of the IWM "hard to gauge when one considers these words and slogans" are sponsored by an organization representing practically all the Protestant denominations in the United States and "are mouthed and reported and given the stamp of approval of about 26,000,000 enrolled church members."⁴¹

In November 1920, the FCCCA voted to reorganize the council and incorporate the IWM. The FCCCA, founded in 1896 to unite all Protestant denominations in a body to promote moral reform throughout the United States, took up the work of the IWM. The FCCCA condemned the raids and called for an investigation of the Justice Department's role in the deportation process. In 1921, at the hearings before the Senate Judiciary Subcommittee, representatives of the FCCCA testified that "the evils involved in the raids 'are of the first magnitude and should at once engage the attention of the public and of Congress.'"⁴²

The GID investigation of the FCCCA began on December 12, 1920. Hoover telegraphed the bureau's New York office, asking Division Superintendent George Lamb to prepare a report on the general principles and activities of the FCCCA, together with "individual and detailed statements upon . . . the various officers and persons prominent in the organization." The FCCCA "is a very large and prominent organization," Lamb replied, and its administrative

⁴⁰ Lenon report, May 6, 1920, *ibid.* On December 23, 1920, agent Edward Anderson investigated Constantine M. Panunzio. He interviewed a Catholic priest, the postmaster, and police chief of White Plains, N.Y. Because Anderson "did not deem it advisable" to interview individuals more intimately acquainted with Panunzio, the investigation "was discontinued pending the receipt of further instruction." Edward Anderson report, Dec. 30, 1920, file BS 207588, *ibid.*

⁴¹ Lenon report, May 6, 1920, *ibid.*; Interchurch World Movement, *Report on the Steel Strike of 1919*, 18.

⁴² Max Lowenthal, *The Federal Bureau of Investigation* (New York, 1950), 265. For the reorganization of the Interchurch World Movement and the Federal Council of Churches of Christ in America, see *New York Times*, Nov. 6, 1920, p. 12.

staff "includes the names of leading clergymen and laymen in the country." Lamb informed Hoover that he had instructed his agents to place an informer in the FCCCA to find out who was responsible for the council's condemnation of the deportation raids. Lamb reasoned that the council had been infiltrated by mean-spirited radicals because no organization whose members included John D. Rockefeller, Jr., and Charles Evans Hughes could have meant what it had said about the Justice Department. Only a few dissidents, probably of the "parlor bolsheviki" ilk, Lamb concluded, were responsible for the council's criticism, and he would transmit their names to the GID as soon as possible. Hoover also had the files of Military Intelligence and the State Department searched for evidence, but neither department turned up any information linking the FCCCA to subversive organizations.⁴³

This preliminary study of the origins of FBI political surveillance leads to several conclusions. First, the tone of these investigative reports demonstrates not only the BI's extreme antiradicalism but also its hostility toward ethnic and religious minorities. According to the bureau's narrowly conceived standards, those who challenged the conservative political order in any way were somehow unpatriotic or "un-American." Thus, the bureau's reports insinuated that Irish-Americans who favored Irish independence, Jews who advocated the establishment of a national homeland in Palestine, civil libertarians who defended the rights of dissidents, and anyone who argued that the United States should recognize the Soviet Union were engaged in "subversive" activities. Even the most cursory analysis of BI investigative reports from the early postwar years leads to the conclusion that the bureau thought of itself as a political police force whose mission was not limited to purely criminal investigations.⁴⁴

Second, while some of the bureau's excesses might have shocked many Americans, Congress and the president made no effort to uncover such abuses as those described in this essay. Only a few liberal congressmen, lawyers, and clergymen condemned the wholesale suppression of radicals during the Red Scare, and, because many Americans assumed that restrictions on the First Amendment rights of radicals were the "price of vigilance," their libertarian position attracted little popular support. The courts, supported by the organized bar, reinforced the belief that the government should protect the public from the pernicious effects of radical propaganda. With few exceptions, the courts applied the common law tests of criminality (bad tendency and presumed intent) in espionage and sedition cases—tests that Zechariah Chafee found to be "wholly inconsistent with freedom of speech and any genuine discussion of public affairs." Similarly, only a handful of lawyers and judges questioned the legality of the BI's sweeping general intelligence investigations or criticized the use of particularly intrusive investigative techniques (for example, wiretapping, electronic surveillance, and breaking and entering) to

⁴³ George Lamb to Hoover, Dec. 24, 1920, file BS 204048, Bureau of Investigation Investigative Records, 1908–1922; Hoover to W. W. Grimes, Dec. 28, 1920, *ibid.*

⁴⁴ This suspicion of religious and racial minorities could explain why the bureau employed very few Jewish and no black special agents until the 1970s. See Ungar, *FBI*, 327; Donner, *Age of Surveillance*, 120–22.

gather intelligence information. Instead, many members of the legal community presumed that the postwar emergency justified widespread federal political surveillance. As a consequence, liberals failed to muster sufficient public or congressional support for a vigorous examination of the BI's antiradical policies, an inquiry that could have laid the groundwork for fundamental reform of the bureau.⁴⁵

Third, it would be a mistake to conclude that, because the bureau failed to silence its early critics, these investigations are unimportant and have no contemporary relevance. As head of the GID, Hoover learned that Congress and the president would tolerate the bureau's antiradical activities as long as it appeared that its efforts were limited to silencing dissident voices. At the same time, Hoover came to understand the importance of secrecy and confidentiality. Following the deportation raids, Hoover appreciated the need to respect due process, at least publicly, and realized that, if the BI engaged in constitutionally questionable activities, these investigations had to remain secret. In view of these restraints, it is little wonder that the BI did little more than collect information about its distinguished critics. Yet, however halting and inconsequential these investigations might have been, an important precedent had been established. For the next fifty years, fear of adverse publicity continued to be an important, if not central, element in the formulation of FBI internal security policies. Once the bureau concluded that an operation was "safe" and likely to turn up valuable intelligence information, questions of policy and law were largely ignored.⁴⁶ Thus, while Stone's 1924 order forced the bureau to abandon, at least temporarily, aggressive intelligence tactics, the directive did not terminate FBI surveillance of lawful political activities. Documents recently acquired through a Freedom of Information Act request show that between 1924 and 1936, when Franklin D. Roosevelt secretly rescinded Stone's directive, the FBI hired paid informers to collect information on the activities of liberal and radical political and labor organizations. It did not try to intimidate or harass individuals active in these organizations, however, in part because such actions might have drawn attention to political surveillance that was clearly in violation of Stone's mandate.⁴⁷

⁴⁵ Chafee, *Free Speech*, 24–27, 80–85. See also Gengarelly, "Resistance Spokesmen," and Murphy, *World War I and the Origins of Civil Liberties*, 179–247. The exceptions to this consensus include Learned Hand's decision in *Masses Publishing Co. v. Patten*, 244 Fed. 535 (1917); Charles Amidon's decision in *Ex Parte Starr*, 263 Fed. 145 (1919); and George Bourquin's ruling in *United States v. Hall*, 248 Fed. 150 (1918). More representative of judicial restrictions on free speech are the following cases: *Goldman et al. v. United States*, 245 U.S. 74 (1918); *Schenck v. United States*, 249 U.S. 47 (1919); *Debs v. United States*, 249 U.S. 211 (1919); *Frohwerk v. United States*, 249 U.S. 204 (1919); *People v. Gitlow*, 111 N.Y. Misc. 641 (1920).

⁴⁶ In November 1975, former assistant chief of the FBI William Sullivan made the following deposition: "During the ten years that I was on the U.S. Intelligence Board . . . never once did I hear anybody, including myself, raise the question: 'Is this course of action which we have agreed upon lawful, is it legal, is it ethical or moral?' . . . The one thing we were concerned about was this: will this course of action work, will it get us what we want, will we reach the objective that we desire to reach." Theoharis, *Spying on Americans*, 229–30.

⁴⁷ See the FBI files on American Civil Liberties Union activities (copies at the office of American Civil Liberties Union, New York, N.Y.), and FBI files on International Labor Defense, Workers' Ex-Servicemen's League, United Mine Workers, and United Textile Workers (copies at the FOIA

The BI's investigations of its early critics, when analyzed in view of these newly declassified documents, should call into question the conclusion that FBI abuses are the result of "the radical impact of the Cold War on American values and institutions." The development of "a strong elite-dominated government with authority to make decisions and the gradual acceptance of the need for secrecy" was well under way before 1945. Given their initial impetus by American involvement in World War I, the BI's domestic intelligence responsibilities grew dramatically during the first Red Scare, and by 1924 the foundation of a permanent surveillance apparatus was firmly in place.⁴⁸

Congress now must decide whether "surveillance and disruption [will continue to be] the covert forms of control that a constitutional system uses to suppress dissent it cannot otherwise manage." If the past is any guide, congressional failure to prohibit specifically FBI surveillance of lawful political expression and association and disruptive COINTELPRO-type activities will enable the executive to change the present guidelines governing the bureau's intelligence operations and allow the FBI to resume widespread political surveillance in "future emergencies."⁴⁹

Reading Room, J. Edgar Hoover FBI Building, Washington, D.C.). These files were released through Freedom of Information Act requests by the American Civil Liberties Union and by David Williams respectively.

⁴⁸ Theoharis, *Spying on Americans*, 230.

⁴⁹ William Preston, Jr., "In Security's Name," *Progressive*, 43 (May 1979), 55-56. FBI charter issues are discussed in "Symposium: Chartering the FBI," *Nation*, 229 (Oct. 6, 1979), 294-301. The FBI's COINTELPRO (counterintelligence program) was initiated in August 1956 without prior presidential approval. For a description of COINTELPRO activities, see Theoharis, *Spying on Americans*, 135-55, and Donner, *Age of Surveillance*, 177-240.