

whether the reader interprets his remarks about the economics of land use as an "erroneous" view personal to Mr. Haar or as a description without too much critical analysis of the "erroneous" views of the British sponsors of the act.

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The Federal Bureau of Investigation. By Max Lowenthal. New York: Sloane Associates, 1950. Pp. 559. \$4.50.

The Bureau was young when I first met it in 1917. Its official title was, "The Bureau of Investigation of the Department of Justice." As such it had no place in the public mind. The newspaper men took its stories but balked at its title. Perhaps they called it "The Secret Service," which made the staff of that ancient and honorable organization unhappy, or perhaps they called it the "Department of Justice," which made uncomfortable those who thought this derogated from the dignity of the United States Attorney. More often, perhaps, the stories would be credited merely to a government or Federal agent. The Bureau was anonymous.

William J. Flynn, head of the Secret Service, became Chief of the Bureau in 1919. He was widely known and had a magazine named after him which published stories appropriate to its title. In 1921 William J. Burns succeeded Mr. Flynn. He was a private detective with a country-wide reputation. In the popular mind he was Mr. Detective himself. But neither Mr. Flynn nor Mr. Burns succeeded in personifying the Bureau's title. Mr. Hoover took over in 1924. The title of the Bureau was changed to "The Federal Bureau of Investigation." Mr. Lowenthal places the date of the change in 1935. Thereafter, under its initials FBI, the Bureau has become a household name and has gathered a popular following that rates it a place in the herd of politically sacred cows.

Mr. Lowenthal raises several questions relative to the Bureau, of which the most significant in his analysis, may be stated thus: "What is the impact of a central police force on American Society, a police force which may be and is dedicated to political purposes?"

He strikes his key note in the opening chapter, where the Bureau's history begins.

It was 1908; Charles J. Bonaparte was Attorney General, Theodore Roosevelt, President. Mr. Bonaparte urged upon Congress the importance of creating a bureau of investigation in his Department. Congress, however, was leery. One member said that it "would be a great blow to freedom and to free institutions if there should arise in this country any such great secret service bureau as there is in Russia and was in France under the Emperor, and one time in Ireland." A contemporary newspaper viewed the proposal in the light of the "Hated Black Cabinet of St. Petersburg" and of Fouché, who was the reservoir of everybody's secrets and intimidated Napoleon himself. It expressed the

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opinion that "There is no desire for a general detective service or a national police organization in connection with the Federal Government. On the contrary, there is in Congress an utter abhorrence of such a scheme."

The 60th Congress, to which the proposal was made, did not merely refuse to go along, it positively forbade the Treasury Department to lend its Secret Service operatives to fellow government agencies, including the Department of Justice. Nevertheless, when the next Congress met the Bureau had been started—informally, of course—but it existed. Under pressure from the President and the Attorney General, Congress made an appropriation for it and in return received solemn assurances that the Bureau would never be used for political purposes.

The manner in which the author develops his story is indicated by the citations given above. He interposes a minimum of his own views and a maximum of cited authority taken from Congressional and court records, from reports and statements of Attorneys General, from contemporary comments of the press, of public men, and of those affected by the Bureau's doings. It is other people, not the author, who discuss the Bureau, pro and con, and from these discussions emerges an understanding of the Bureau's history and of its character which supports those "Prophets of evil" of 1908 who foresaw in the creation of the Bureau the birth of a monster.

[Since there are nearly five hundred pages of text, an impressionistic view of the contents of the book is all that will be attempted.]

When the Bureau began it had an inactive miscellany of laws to watch over. Its first pervasive job came in 1910 when Congress passed the statute generally known as the "White Slave" or "Mann Act."

The First World War gave the Bureau a major assignment. As an index to what happened, I might point out that when the war opened there was one agent stationed in Philadelphia. His territory included the Eastern District of Pennsylvania and the Middle District which extends westward to the Allegheny Mountains: the Southern District of New Jersey, and the District of Delaware. A second agent at the time happened to be working out of the Philadelphia office on a special assignment. He stayed. The first "Agent in Charge" transferred to Washington within a year, and the second agent became "Agent in Charge." Before the war was over, he had some sixty men under him.

It was early announced that the Bureau was in charge of spy catching and was to be the "eyes and ears" of the government. In that capacity it preserved in its files comments of every nature and from any source which indicated pro-German leanings upon the part of any member of the community.

This material became significant in 1918. A hot Congressional fight was in progress. Domestic politics does not shut up shop because of an incidental matter like a World War. Charges were made. A Congressional investigation followed, and, after the armistice, the Bureau's files were given a public viewing. The information therein threw a shadow over a wide circle of persons. There were outcries against "smearing"; against character assassination "by sug-

gestion and innuendo"; and protests against the injustice of attributing "guilt by association"; outcries that since that time have become familiar parts of our vocabulary.

The enforcement of the Selective Service Act was part of the Bureau's work, and, in the performance of this assignment, it conducted draft raids, which were productive of a great deal of excited discussion both in Congress and the press. Its critics maintained that the Bureau lacked the most primitive understanding of the rights of citizens.

After the armistice, the Bureau's interest in pro-Germans and slackers faded. It became devoted to those elements generally classified as "Reds." The climax of the Bureau's battle against them was reached in the Red raids of January 3, 1920. These raids bulk large in the book; at least a quarter of it is devoted to them. They are treated from every angle, and the result of the treatment reveals how brutal and lawless a law enforcement agency can be.

Although the Red raids may have been the climax, they did not terminate the Bureau's hunt, which carried on under Attorney General Daugherty, who was persuaded that the influence of the Third Internationale in this country was real and that it was responsible for many things that happened here of which he disapproved.

With the coming of Attorney General Harlan F. Stone in 1924 under President Coolidge, a ruling was made that the Bureau should confine its activities to the normal procedures of crime detection. The influence of this ruling was effective for some thirteen to fifteen years.

When the European war opened in September 1939 the Bureau's Chief, Mr. Hoover, promptly announced that the President "has instructed the Federal Bureau of Investigation to take charge of all investigative work in matters involving espionage, sabotage, subversive activities. . . ." A short time later he told us, "We have a distinct spy menace."

The activities of the FBI during the war are set forth in one short chapter under the heading of "Spies and Saboteurs," in which a series of cases are mentioned. The part played by the FBI in these cases is so described as to leave the impression that the Bureau caught no one who was not delivered to it duly tagged and briefed, and that everything it undertook from Pearl Harbor to the Coplon case was fumbled.

In the very last chapter, titled "Investigation of Beliefs," the FBI is portrayed as busying itself with labor movements and strikes on the theory that they were communist inspired; with alleged communists and with the Federal employees loyalty program which has become an inquisition into left wing entanglements.

The book closes on this note, with a reference to the dossiers that people the FBI's files in great numbers, and a throwback to 1908. The suggestion is made that the policy followed in collecting the dossiers represents "a realization of the fear expressed during the 60th Congress."

The impression of the FBI reached by a reading of Mr. Lowenthal's book is

an unpleasant one. As a detector of criminals it appears inept; as an oppressor of persons because of their beliefs it is sinister.

The reviewer cannot altogether quarrel with the impression created. He certainly cannot quarrel with the facts presented that go to make up that impression. The bulk of them relate to things done between 1917 and 1924, a period approximately corresponding to his own tenure of office. Nor does he complain of the criticisms which have been cited, and yet he is aware that out of it all comes a creature that bears but a distorted likeness to the FBI.

To begin with, the accusing finger points continually at the Bureau as if it were always the principal actor—in fact the only actor—in the doing of all of those things which we now think should not have been done. Moreover, the acts themselves have a twisted appearance because they are viewed out of context. Many of them have a political cast, and it is impossible to appraise them properly without an understanding of their political background. So, my function will be to present the Bureau in its proper setting in its relation to other government agencies with which it functioned and to show the factors that entered into carrying on the activities that are particularly complained of and to what extent they represented a response to the popular will of the moment.

However, before entering into this broader field, I think it reasonable to comment on the deprecatory references to the Bureau's crime detection work. I don't altogether approve of them. I may have a personal reason, for I sat with the agents of the Bureau and puzzled with them over ways and means of finding the Bombers of 1919. We had several bombings that year in Philadelphia. We did not find the Bombers. Mr. Lowenthal has set forth the pronouncements of the Bureau during the period of the hunt (they were full of promise), and he compares them with the accomplishments of the Bureau which, in that particular, were nil, and makes the Bureau look foolish. I admit we felt foolish, but we took every turn and twist to find a lead, and we worked on every suspect to force a break to the inside, but we got neither a lead nor a break. We had theories, but they proved nothing. So nothing happened.

I might add that in the holding of several official positions I have become familiar not only with the Federal crime detection agencies, but also with our Pennsylvania State Police and our Philadelphia City Police. I learned what we all should realize to be true, that none of these organizations have occult power, although they all may do good work, and that there is nothing mysterious about investigating crime.

I know nothing at first hand of the cases mentioned in the chapter on "Spies and Saboteurs." Whether they were handled well or badly by the FBI is a subject upon which I have no opinion, but before criticizing it for a failure to solve any given problem I would first want to know the facts it had available for the solution and the use it made of them.

In a broader field of public relations the Bureau is criticized because shortly after the armistice, when its files were opened, they were found to contain re-

ports of a slanderous nature concerning a great many people. The question is whether this criticism was justified.

When the war opened in 1917, there was a widespread, popular conviction that the country was infested with spies and enemy agents and that the Government should exterminate the pests. The entire populace seemed to transform itself into one great detective agency. Further, in Philadelphia there were a number of special organizations, for example, the American Protective League, made up of volunteers, two military and two navy intelligence services. We were deluged with reports of suspects and called upon to pass on a continuous succession of cases which, on analysis, would result in release of the suspect. It is true we caught no spies. We learned after the war that the other districts had been equally unsuccessful, but we could not permit any information whether we thought it immediately of value or not, to be ignored. So far as possible, every lead was run down by an agent. He wrote a report on what was told him, what he did and what he learned. He did not appraise it. A copy was sent to Washington and a copy to the United States Attorney. The latter official was called upon to appraise the report and to take such action as it called for. If none were called for, he filed it. Further information might make the original report valuable. That there was much in the reports concerning many people given for reasons other than patriotism was to be expected, and their presentation to the public as though they had the official backing of the Department of Justice understandably aroused great indignation. I can sympathize with the indignation, but at the time I thought the Bureau's procedure was sensible and appropriate to the service it was called upon to render. We were concerned at the time not so much with crimes that had been committed as with endeavoring to identify those persons in the community whose thinking, whose talk, and whose associations were such that they might be suspected of being enemy agents or disloyal. When you are concerned with such intangible matters there is no way to measure the relevancy or irrelevancy of any particular bit of information. It must all go in the file.

The draft raids are another matter for which the Bureau is held responsible and for which it is criticized. The raids occurred in 1918, a year in which there was an uneasy feeling that many men had evaded the draft and that something should be done about them. The answer was the dragnet draft raid, a spectacular demonstration of the Government's activity. I don't know who thought up the idea, but I do recall that the leading figures in the American Protective League, which in a sense represented the public, were supporters of the idea, and they joined the "Agent in Charge" in making the plans. In addition, the League supplied the bulk of the manpower required.

I went on two of the raids that were conducted in Philadelphia as the representative of the United States Attorney's office. Both were filled with interesting incidents. They did result in depriving many innocent persons of their liberty, in an exasperating manner, for a period varying from minutes to ten

or twelve hours. The latter extreme was due to a delay in securing reports from local draft boards. The legal justification for our action was probably dubious, though I doubt that the courts would have denied our right to act as we did. The number of slackers arrested was not substantial for the good reason, I believe, that the number of draft evaders in the country was negligible, but we did not know that at the time. I will let the matter stand at that point. I think it was wise to condemn the raids, but knowing how they came about I cannot be too severe on those who promoted them. They certainly seemed to be a good idea at the time.

Since the political activities of which the Bureau stands accused are largely those directed against the left wing, some history of them may be appropriate.

In 1917 Francis Fisher Kane was the United States Attorney in Philadelphia. He was in command of the Department of Justice in his own district—a Democrat in an overwhelmingly Republican town. President Wilson had made it clear that he believed the guarantees of freedom of speech and liberty of the press persisted in the face of war. He signed the Espionage Act of June 15, 1917, with the declaration that it would never be used to prevent criticism of him or his administration.

In the Republican ranks, the most vigorous spokesman was Theodore Roosevelt. He was a fighting man par excellence. There was a fight on. We had to win. There was only one aim in war—victory. We would win if we had the will to win. Those who questioned the war or its aims weakened our will to win. They were unhung traitors.

In Philadelphia there were at least seven English language newspapers, all of which supported the war. One in particular, the North American, preached as Mr. Roosevelt preached. Also, there was a Socialist Party and a German language Socialist newspaper, the Tageblatt. The former printed a leaflet attacking the constitutionality of the Selective Service Act. The leaflet was distributed on the streets. The local police arrested the distributors and were applauded. When they brought their captives to the Bureau to be held for treason, all were released on orders of the United States Attorney. Mr. Kane was a friend and loyal supporter of the President, and he had convictions of his own which he would not easily give up. These convictions were not understood. No one cared to listen to them. The Tageblatt was opposed to the war and demanded a statement of aims. Its editorials were translated and reprinted in the North American with bitter comments both in the news columns and the editorials. There was a widespread demand for the suppression of both dissenters which went on for months. Mr. Kane's picture was carried in the paper and assigned as the reason why treason flourished in Philadelphia. It was nearly five months after the war opened before United States Attorney Kane directed a raid on the Socialist Party headquarters and shortly thereafter on the Tageblatt. The reasons for his moving when he did are intricate legal ones with which nobody was concerned. Out of the first raid rose the case of *Schenck v. United States*¹; out of the second,

¹ 249 U.S. 47 (1919).

Schaefer v. United States.² The former is probably the most quoted case in our legal literature. I think of the thousands that refer to Mr. Justice Holmes' words relative to "clear and present danger" and to all of them the plaintiff is nothing but an awkward collection of six consonants and a vowel, but he was a man—a mannikin of a man with a pale moon face, a nubbin of a nose and troubled blue eyes, but he had a faith, and he suffered for it.

These two cases constituted our major attack on the dissenting groups. The agents of the Bureau took part in the two raids but under direction of the United States Attorney. The responsibility was his, just as it was his responsibility to refrain from interfering with anti-war and anti-conscription meetings held by the censors, and from interfering in labor troubles.

After the armistice, we looked back and realized that we had come through a storm, and although we had tried and convicted many persons for miscellaneous offenses our chief service had been rendered in tempering the storm. It seems that the fear of thought and the will to suppress it, aroused by the war, was a quality not to be laid aside, so we moved on after the armistice without a break from our hunt for pro-German and the disloyal, to a hunt for the Reds.

In 1919 fear and hatred of the Reds was as virulent as anything that had as yet possessed us. The bombings of 1919 did not allay our fears. Following them came the raids on the Union of Russian Workers in October and on the third of January, 1920 occurred the spectacular "Red" raids. They were directed from Washington. Mr. Kane did not approve of them and resigned from office. He thought them irresponsible and unjustified, not necessary for the safety of the nation, nor conducted within the terms of any act of Congress passed for the purpose.

A question arises as to why these raids occurred. Of course, nobody knows with accuracy, but the following facts may be illuminating. The President was incapacitated and his administration had gone asprawl without any controlling intelligence. The Attorney General was a candidate for the Democratic nomination for President, the nominating convention was to meet in July. The Red issue loomed large in the popular mind. Mr. Palmer had become the nation's champion in fighting against that menace. The Red raids constituted a spectacular demonstration of his championship.

A. Mitchell Palmer was a Pennsylvanian, a large open-faced handsome man with affable manners. The party leaders in sixty-seven counties called him Mitch. I always suspected that his concern for the Bill of Rights was somewhat free and easy. He probably would have said that Frank Kane was too fussy about it. Mr. Kane himself to this day explains Mr. Palmer's action by saying that he was as much obsessed with fear and hatred as other people, and that he had a special reason because his own home in Washington had been bombed. But some of the party philosophers didn't look at it that way. One who was not a learned man but a wise one remarked that playing for the presidency was a

² 251 U.S. 466 (1920).

great game. The stakes had become the greatest in the world and in it anything was expendable.

I have arranged the facts. Motives are always mixed, even the man that expresses them in his actions may not understand them, so any one looking on may interpret them as he chooses.

From Mr. Lowenthal's review of the FBI's political activities they would appear negligible between the years 1924 and 1946, when the Bureau picked up the trail of the Communist. This period, however, was not a political vacuum. It was filled with differences as bitter as any the country has ever known. We entered the Second World War with the most violent opponents of the Administration and its foreign policies in a position where they could be labeled anti-war, pro-German, pro-Nazi and pro-Fascist. What happened to them is a long and unhappy story.

If Mr. Lowenthal is still looking for evidence as to what can be done through the FBI, under its present centralized direction from Washington, to oppress dissenting individuals and groups, it would be well for him to study the period from December 8, 1941 to the end of 1945.

It is an interesting commentary on our political attitudes that this phase of our war activities has been blacked out. In fact, it is the fashion to congratulate ourselves that during the Second World War no such abuses of civil liberties occurred as happened in the First World War. I saw at first hand what happened in both, in my own sector of the country, and will merely say that such self-congratulation is utter hypocrisy.

In summarizing, I would say that the FBI is not of itself sinister. It is merely the symptom of a disease: if you choose to call our present fear of thought and our will to suppress it a disease. We acquired that quality in the First World War, and it has remained with us since. If it persists, the FBI must persist in collecting dossiers on such persons as may be suspected of inhabiting the field of thought of which we are afraid, whether they be pro-Germans, Fascists, Nazis, Communists, or such other similar group as may tomorrow be included in our fears. That is now and will continue to be the FBI's duty, and it cannot be condemned for doing its duty.

What I have said should not be taken to mean that the matters described by Mr. Lowenthal should not be set before us as vividly as possible, for the spotlighting of the symptom of the disease may awaken us to the disease itself. That Mr. Lowenthal has done well, with the care and precision of a lawyer. I congratulate him upon it, though I do wish he had made it clear that in oppressing those suspected of the thought we hate, neither we nor the FBI discriminate between National Socialists and International Socialists.

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