

Dear UChi Readers -- Please don't be fooled by the length of this draft, as it's still quite raw. Indeed, this is its first release beyond our shared Googledoc, and we much look forward to all suggestions, large and small.

Mobility, Criminal Information, and the FBI - 1908 to 1941 and Beyond

I. Introduction

However incoherent may be Trump's claim that there is a deep state and that the Federal Bureau of Investigation is a central part of it, it is certainly true that the Bureau has long been deeply embedded in the American state and psyche. How that came to be has usually been told with reference to conspicuous episodes that have captured the national imagination or triggered its fears: the Palmer raids, the Red Scare, Dillinger, Bonnie and Clyde, Nazi saboteurs, and COINTELPRO, to name a few. Many of these moments have been linked to the creation of a "national security state" and the country's ultimate weapon against domestic threats, with J. Edgar Hoover looming large over most, though not all, of these narratives. None of these narrative strands is necessarily wrong. To be sure, presidents from FDR through at least Nixon turned to the Bureau for investigative assistance and even political intelligence. So have its domestic security capabilities thrived in times of real or perceived national emergencies. And going after Famous Bad Guys has been a strategy for bureaucratic acclaim, however short-lived.

But these familiar stories do not completely explain the Bureau's political staying power and the historical development of its capabilities. Presidential favor, national fears, and high-profile takedowns have their limits in a nation where such patronage presents a double-edged sword, fears come and go, and the supply of notorious criminals are not always steady. Tooting one's own horn helps, and the Bureau's public-relations efforts are legendary. But legends do not drive the appropriations on which the Bureau has need to survive and thrive during shifting winds.

Scholarship on the "overfederalization" of crimes suggest another possible explanation for the Bureau's expansion over the twentieth century. The growing number of federal criminal laws have required more federal law enforcement, which, so the story goes, served to broaden the Bureau's jurisdiction. Many of these accounts interpret this development not only as a violation of basic principles of federalism with its "intrusion" on local police powers but also as an important factor in enabling the Bureau to forge a degree of bureaucratic autonomy. Federal laws, after all, had to be enforced somehow. This literature is of course correct to highlight the impressive number of additions to the United States Code, many of which criminalized conduct that were already addressed under state laws. Moreover, Hoover regularly touted statistics on successful federal prosecutions during congressional appropriations hearings, and often received both praise and continued, if not more, funding as a result.

But notwithstanding the Bureau's growth, its size never reached a sufficient point where the agency could enforce federal criminal laws all on its own. Indeed, it never showed interest in doing so, even with respect to the relatively narrow set of offenses it pursued. A recognition of this structural reality not only takes seriously the real limitations of American federalism on Bureau activities, but it also raises questions about how the Bureau functioned within the

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constraints of its limited size and despite principled opposition to federal involvement in crime and punishment -- not to mention the general unwillingness to pay for a bigger government. More fundamentally, it raises questions about the nature of the American state and its federal law enforcement apparatus. How did the federal government justify its involvement in the traditionally local matter of crime control, and how did the Bureau take part in its anti-crime efforts? More specifically, how did the Bureau grow and flourish at minimal cost and disruption to the federal-state relationship? And how did the way it developed shape the Bureau?

Our story focuses not on what the Bureau¹ is remembered for doing—which is often the product of its own storytelling—and more on what it actually spent its time doing, from its creation to World War Two and beyond. And it looks beyond the statistics that Hoover marshaled to demonstrate the Bureau’s competence and effectiveness, to how, exactly, it pursued its law enforcement mission. Doing so requires serious consideration of the needs of crime control at the local level as well as the realities of a multi-jurisdictional nation in an increasingly mobile world.

At the heart of the criminal justice project anywhere is the acquisition of crime-related information (the criminal complaint) and the use of it (the criminal prosecution). Before the twentieth century, police patrol provided both direct acquisition of information by beat officers and derivative acquisition through contacts with citizens who had information.² But at the turn of the century, especially when mass-produced automobiles gave individuals—and criminals—unprecedented mobility, local law enforcement confronted the reality that they needed information from outside their jurisdictions, which motivated them—or at least the conscientious ones—to seek information-sharing arrangements. But creating an informational infrastructure proved difficult in a federal system. One possibility was to create a horizontal network, but the constitutional requirement of congressional consent for interstate compacts had long impeded state-state cooperation, and the commons problem of state funding for such a network made this option close to impossible. The fact that counties, not states, were the real sites of criminal enforcement didn’t help either. The other possibility was a federal infrastructure. But around this same period, the federal government—called on to address crimes with an interstate aspect—was becoming a potential competitor for the use of this information. Still, local police were willing to take advantage of an informational infrastructure managed by the Bureau and, in exchange, to contribute information to it. For they knew, as did the feds, that all federal enforcement agencies, given their small size and lack of patrol duties, depended on locals for criminal information to bring their cases. The story of the Bureau from its beginning has been about its oversight, cultivation, and use of this informational give and take.

¹ For narrative ease, we use “Bureau” to refer to the agency variously called the “Division of Investigation,” the “Bureau of Investigation,” and the “Federal Bureau of Investigation” (1934 on).

² Christopher Thale, *The Informal World of Police Patrol*, 33 *J. Urban Hist.* 183 (2007); Raymond B. Fosdick, *American Police Systems* (1920); Roger Lane, *Urban Police and Crime in Nineteenth-Century America*, 1, in 15 *Crime & Justice: Modern Policing* (1992).

As a large literature has come to recognize, the nature of a police force’s relationship with the community it serves is a critical factor in the nature and extent of this flow of information. See Tom Tyler, Tracey Meares, Fagan/Richman, and so many more.

This paper explains the Bureau’s capacity-building by reframing the criminal justice “system” in terms of informational economy rather than jurisdictional authority. To be sure, politics and individual agency played crucial roles in the Bureau’s remarkable history. But significantly, the need for information sharing preceded the Bureau’s creation in 1908. And the establishment of the National Identification Division within the DOJ and overseen by the Bureau in 1924 not only preceded FDR’s war on crime by a decade but also laid its foundation and, moreover, would provide the blueprint for the federal government’s anti-crime initiatives throughout the twentieth century. “Autonomy” in this context was highly contingent and, perhaps, never really possible. If the Bureau’s existence seems a foregone conclusion today, then it is more a reflection of the conditions of criminal prosecution in the twentieth-century United States. And whatever “autonomy” the Bureau has developed since then³ must be seen as bounded by these peculiar conditions.

The paper will proceed chronologically, beginning in Section II with the pre-Bureau context of nineteenth-century policing and the new challenges of the twentieth century. It will then move to the Bureau’s origins (Section III) and early cases (Section IV), which will highlight the roles of both local police and the Bureau in the emergence of a national criminal enforcement ecosystem. Importantly, this ecosystem laid the framework for the Bureau’s increasing capacity (Section V) as well as the federal government’s involvement in crime control (Sections VI and VII). The paper will conclude with a discussion of how this history might inform our understandings (and definition) of “bureaucratic autonomy” and the nature of statebuilding in the twentieth-century United States (Sections VIII and IX).⁴

II. Nineteenth Century / Challenges of Mobility

In the nineteenth century, crime control was both a local matter and prosecuted privately. Victims—either the individuals themselves or their insurance companies—investigated and brought charges against their perpetrators, who often did not flee very far. Certainly, jurisdiction skipping occurred, but at a frequency and scale that hired investigators could manage. *Chicago Daily Tribune* in 1926 observed, “Today crime is a national affair, run on interstate lines, made so by the railroads and the automobile, principally the latter.”⁵ But not too long ago, it reminded readers, crime had been “a local affair,” when criminals “operated locally and disposed of their loot locally.”⁶ J. Edgar Hoover likewise reminisced in 1925 (though not from much personal experience):

³ Patrick S. Roberts, How Security Agencies Control Change: Executive Power and the Quest for Autonomy in the FBI and CIA, *Public Organization Review* (June 2009); Beverly Gage, Deep Throat, Watergate, & the Bureaucratic Politics of the FBI, 24 *J. Policy Hist.* 157, 159-60 (2012) (on FBI’s “autonomy” under Hoover).

⁴ Carpenter, JD Huber, & CR Shipan, *Deliberate Discretion: The Institutional Foundations of Bureaucratic Autonomy* (2002); Brian A. Ellison, A Conceptual Framework for Analyzing Bureaucratic Politics and Autonomy, 25 *Am. Rev. Pub. Admin.* 161 (1995); FE Rourke, F. E. American bureaucracy in a changing political setting. 1 *J. Pub. Admin. Res. & Theory*, 111-129 (1991).

⁵ “The Interstate Commerce of Crime,” *Chicago Daily Tribune*, June 17, 1926.

⁶ *Id.*

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In times past (and not so far distant past) crime or the criminal was a more or less local issue. Our local or neighborhood criminal was known, his haunts could be watched, his associates shadowed, the method and nature of the crime often bore within itself the recognizable identity of the criminal. He could often be captured on the scene of the crime, the fastest means of locomotion being either human or equine. Then, too, his means of travel, which were limited, could be traced with comparative ease. Should he escape to some other community, the danger of his capture was still imminent. Every stranger was a marked man, every newcomer aroused suspicion.”⁷

Beginning in the last decades of the nineteenth century, both aspects of crime control—local and private enforcement—were changing. By the 1880s, all of the major U.S. cities had established municipal police forces.⁸ At the same time, Americans’ increased mobility, aided first by locomotive trains and then mass-produced cars, expanded the scope of criminal activities.⁹ The mobility of crime posed immediate challenges for law enforcement, particularly the need to share information about fugitives, arrestees, prisoners, and the recently released. As a New York City police commissioner explained, a New York fugitive who fled to Chicago to commit more crimes and was there arrested, convicted, and sentenced could, upon release, return to New York unrecognized and with New York police unaware that the fugitive had even spent time in a Chicago prison in the first place.¹⁰ Other chiefs similarly observed that “professional thieves are constantly moving from one locality to another, one city to another, one State to another. These professionals make circuits and become national characters, traveling and depredating here, there, and everywhere.”¹¹

In 1893, forty-seven progressive police chiefs gathered in Chicago to form the National Chiefs of Police Union, with the goal of improving “the detection and prevention of crime in the United States.”¹² According to its president’s address given in 1895, the organization’s genesis arose from the “constant telegraphic correspondence” among “the police departments of the larger cities,” whose leaders recognized that “the effectiveness of one department depends upon the police system of other cities.”¹³

⁷ 1925 Proceeding, in *Proceedings of the Annual Conventions of the International Association of Chiefs of Police, 1921-1925*, vol. 4 (New York, 1971), 49. See also 1926 Proceeding, in *Proceedings of the Annual Conventions of the International Association of Chiefs of Police, 1926-1930*, vol. 5 (New York, 1971), 56 (“Crime of yesterday, accordingly, was an entirely local matter—a Main street affair.”).

⁸ John A. Fairlie, *Police Administration*, 16 *Pol. Sci. Quarterly* 1, 7-8 (1901); Raymond B. Fosdick, *American Police Systems*, 58-117 (1920); Roger Lane, *Urban Police and Crime in Nineteenth-Century America*, 1, in 15 *Crime & Justice: Modern Policing* (1992).

⁹ See *Devil in the White City*.

¹⁰ 1924 Congressional hearing, 6.

¹¹ A Bill for the Creation of a National Bureau of Criminal Identification, in *Proceedings of the Annual Conventions of the International Association of Chiefs of Police, 1893-1905*, vol. 1 (New York, 1971), 20.

¹² “Chiefs of Police Coming,” *The Washington Post*, Feb. 11, 1895.

¹³ 1895 Proceedings, in *Proceedings of the Annual Conventions of the International Association of Chiefs of Police, 1893-1905*, vol. 1 (New York, 1971), 9.

One of the Union’s first agenda items was to create “the National Police Bureau” for “the practical exchange of ideas and information pertaining to police business.”¹⁴ In the beginning, that information focused on the identities of perpetrators. The Bertillon system, developed in the 1880s, consisted of measurements from head to toe “based on the principle that no two adult creatures are alike.”¹⁵ But the potential of this identification system would have been limited without a central database available to law enforcement throughout the country.¹⁶

By the early 1900s, the organization, renamed the International Association of Chiefs of Police (IACP)—in recognition of the need to communicate with police agencies in foreign countries as well—set up a “bureau of criminal identification” with the financial contributions of nearly 200 police chiefs throughout the country.¹⁷ This voluntarily organized exchange received “a lot of fingerprints,” which proved even more reliable than the Bertillon system, but the dues gathered from local participating departments—about \$25 a year—were insufficient to pay for the distribution of that information.¹⁸ Also, without buy-in from all, or even a critical mass, of local police departments, the effectiveness of the IACP’s bureau was limited. Twentieth-century mobility made information sharing necessary, but the nation’s federal system, which long impeded state-state cooperation, also made the creation of an informational infrastructure difficult.

So around the same time, in 1901, the IACP drafted a bill for Congress to consider, which sought to establish “a National Bureau of Criminal Identification in connection with the Department of Justice.”¹⁹ The bill (H.R. 10068) provided for the creation of a DOJ division “where shall be collected and filed, so far as may be practicable for record and report, plates, photographs, outline pictures, descriptions, information, and measurements of all persons who have been or may be convicted and imprisoned” for violating any laws of the United States as well as its “several States and Territories, or the [] municipalities thereof.”²⁰ To convince Congress to pay for the new division, the IACP emphasized that “[t]horough co-operation must exist,” and pledged that “the Government would receive a full reciprocal amount of aid and information.”²¹ “The whole arrangement,” it envisioned, “would constitute one great web which the malefactor could not elude, and bring the authorities everywhere, Government and State, into full sympathy and co-operation, the Government being amply repaid for the small expenditure.”²²

¹⁴ “Chiefs of Police Coming.”

¹⁵ 1902 Proceedings, 18.

¹⁶ Jacobs, *The Eternal Criminal Record*, 32-33.

¹⁷ 1924 Congressional hearing, 33.

¹⁸ *Id.* at 7, 21, 24, 67.

¹⁹ 1902 IACP Proceedings, at 14; see also 35 Cong. Rec. 5870 (May 23, 1902) (H. R. 100068). See also Letter from Richard Sylvester, Mayor and Superintendent of the Metropolitan Police Department, Urging Legislation Looking to the Establishment in Washington City of a Bureau to be Known as the National Bureau of Criminal Identification, to Senator George G. Vest (December 13, 1900), Document No. 43, 56th Congress 2d Session.

²⁰ *Id.* at 15.

²¹ *Id.* at 19.

²² *Id.*

Congress, however, needed more persuading.²³ To be sure, many congressmen supported the idea. The House Judiciary Committee reported favorably on the bill; it lifted phrases directly from the IACP's bill to conclude that not only would the creation of "one great web which the malefactor could not elude" would benefit the states, but that the federal government could also be "amply repaid for the small expenditure."²⁴ To give an example, the report pointed out that with identification information, police authorities throughout the country could help find deserters from the U.S. army and navy. Moreover, the heads of the Secret Service, the Post Office, and the federal penitentiaries all gave "favorable and unqualified indorsement" because such a national bureau would place them "in closer touch with the police authorities, and a thorough cooperation [would] follow."²⁵

But those in opposition prevailed. The Senate Judiciary Committee "reported adversely" on the bill, which was thereafter "postponed indefinitely."²⁶ Without the committee's report, the precise reasons for its conclusion are unknown. But the House's report provides some clues. It maintained, defensively, that it was "not proposed that the bureau shall be a detective agency."²⁷ By establishing a federal agency with the authority to compile and distribute criminal identification information, most congressmen feared that they would be creating a national police force, an idea that was anathema to Americans. And so for another two decades, the proposal would languish and the IACP would continue to maintain its own voluntary network of information sharing.

III. The Bureau's Origin

Even as the grand informational infrastructure plans of those responsible for most criminal enforcement in the country were inching along, the modest informational needs of the federal Justice Department -- responsible for prosecuting a relatively narrow range of cases that generally came from the Treasury and Post Office Departments²⁸ -- required Executive attention.

The origin story of the Bureau of Investigation (predecessor to the FBI) offers a powerful example of what Gary Gerstle calls the "improvisational" nature of America's state-building in response to the "governing challenges of the industrial age."²⁹ Before 1908, the Department of Justice (DOJ) borrowed Secret Service agents from Treasury to pursue sundry investigations into violations of the internal revenue, post office, and land laws.³⁰ In 1907, Attorney General Charles

²³ See Mary M. Stolberg, *Policing the Twilight Zone: Federalizing Crime Fighting during the New Deal*, 7 *J. of Policy Hist.* 393, 395-396 (1995), on opposition to Bureau creation.

²⁴ Mr. Jenkins, Committee on the Judiciary, Report on National Bureau of Criminal Identification, Report No. 429, 57th Congress, 1st Session (February 7, 1902), 3.

²⁵ *Id.*

²⁶ Cong. Rec. 1226, February 3, 1902.

²⁷ House Judiciary Committee report, 4.

²⁸ See, e.g. Annual Report of the Attorney General, 1905, at 114-121.

²⁹ Gary Gerstle, *Liberty and Coercion: The Paradox of American Government from the Founding to the Present* 93 (2015).

³⁰ Annual Report of Attorney General, 1906, at 92. In 1905, thirty-two borrowed Secret Service operatives were pursuing investigations for DOJ. Cummings and McFarland, *Federal Justice*, 375.

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Bonaparte (the Emperor's grand-nephew), called on Congress to remedy this "anomaly" and establish a "permanent detective force" under departmental control.³¹ But Congress—some of whose members were implicated in corrupt schemes that DOJ was investigating³²—not only balked at giving the Department a detective force but also moved to preclude its use of Secret Service agents. U.S. Attorney Stimson for the Southern District of New York declared that Congress had threatened to destroy the "fighting power of his office."³³

In response, Bonaparte—encouraged by President Theodore Roosevelt's efforts to protect the Department's investigative capabilities—reached into DOJ funds and created an investigative unit.³⁴ Finally in 1909, under President Taft and ultimately with congressional support, after outgoing Attorney General Bonaparte assured legislators that its authority would not be abused,³⁵ Attorney General Wickersham formally created the Bureau of Investigation.³⁶

The Bureau was thus ushered into formal existence with promises that that it would not become a spy force and would simply support the rather narrow criminal mission of the Justice Department. Bonaparte told Congress: "the detective force which minds its own business, and attends to that, and does nothing else, is more effective as a means of suppressing crime than one which is used for any extraneous purpose."³⁷ The agency's arrival was soon heralded by Wickersham's front-page announcement of coordinated raids on a group of bucket shops based on a wiretap-driven investigation had been started by the "new" bureau.³⁸ Yet given that the bureau lacked arrest powers, and with the real manpower for the arrests coming from the Secret Service, the bureau's ancillary status could not have been clearer.

IV. Early Bureau Work, 1909-1920s

How the Bureau became embedded in the organic mess that was the American policing "system" and established a prominent place within it is a tale of two informational stories coming together -- both driven by the new mobility: one involving raw information sharing across jurisdictions and one involving a new demand for prosecutions that embodied information

³¹ Annual Report of the Attorney General of the United States for the Year 1907, at 10 (1907).

³² John Allen Noakes, "Enforcing Domestic Tranquility: State Building and the Origin of the (Federal) Bureau of Investigation, 1908-1920," at 76-77 (1993 U. Penn PhD Sociology dissertation); Stockham, at 30. But see David Joseph Williams, "Without Understanding: The FBI and Political Surveillance, 1908-1941," at 32 (Ph.D. dissertation, Univ. of New Hamp. 1981) (maintaining that "at no time" did congressional critics "advance their proposals to protect themselves from possible criminal investigation"). Check Willard M. Oliver, *The Birth of the FBI: Teddy Roosevelt, the Secret Service, and the Fight Over America's Premier Law Enforcement Agency* (forthcoming 2019).

³³ Cummings and McFarland, *Federal Justice*, 377.

³⁴ *Annual Report of the Attorney General of the United States for the Year 1909*, at 8-10 (1909); see also John Allen Noakes, "Enforcing Domestic Tranquility: State Building and the Origin of the (Federal) Bureau of Investigation, 1908-1920," at 72-85 (1993 U. Penn PhD Sociology dissertation); Williams, "Without Understanding," 38.

³⁵ Stockham, at 49-63.

³⁶ Cummings and McFarland, *Federal Justice*, 380.

³⁷ Stockham at 57 (quoting Hearings before Subcommittee of House Committee on Appropriations, Sundry Civil Appropriation Bill for 1910 (Washington, D.C.: United States Government Printing Office, 1909), 1003

³⁸ Federal Raids on Bucket Shops, N.Y. Times, Apr. 3, 1919, at 1.

gathered across jurisdictional boundaries. The first -- which we will discuss further in Section V -- had the Bureau emerging as the winning candidate to realize the IACP's vision for a centralized clearinghouse for crime-related information. The second, to which we now turn, had the Bureau pushing forward to handle the federal government's new, morals-driven interest in interstate criminal activity -- an assignment whose operational realities would be shaped by the information coming from citizens and local forces. The Bureau's early years thus illustrate how its legitimacy and expansion depended not just on a mandate to enforce federal laws but more importantly on its ability to serve as the nexus for law enforcement collaboration in a federal system of government.

a. The Mann Act

In its first two years, the Bureau's thirty-five agents—nine recruited from the Secret Service, thirteen reassigned departmental clerks, and thirteen reassigned federal court examiners³⁹—pursued a wide variety of investigations, including land fraud, antitrust, bucket shop, and peonage, as well as immigration enforcement.⁴⁰ Even before the Mann Act, the Bureau's work on immigration had already involved it in white slavery cases.⁴¹ In 1910, however, a febrile mix of “anxiety over young women in urban areas without the protection of fathers or brothers” and “nativist concerns over shifting patterns of immigration and its effect on prostitution”⁴² resulted in a statute broadly targeting the interstate transportation of any “woman or girl” for “prostitution or debauchery, or for any other immoral purpose.”⁴³

The Mann Act's passage put white slavery at the heart of the Bureau's work and, importantly, justified more funds for the fledgling agency. Just as significantly, requests for more funding proved more persuasive when local and citizen groups made the demands, rather than when bureaucrats did so. In early 1911, Attorney General Wickersham and Bureau Chief Stanley Finch assured the House Committee on Appropriations that the sensational reports about the white slave traffic were indeed true and that the Bureau was “endeavoring to make a very comprehensive investigation and enforcement” of the Mann Act.⁴⁴ Doing so, they went on to claim, “has cost [the Bureau] a very large amount of money,” and to continue their work, they argued, “we must have more money ... and a somewhat bigger force.”⁴⁵ Later that same year, after Wickersham reported that the Bureau had run out of funds allocated to Mann Act investigations, Finch “reached out to moral reform and social hygiene activists” to lobby Congress for more money. The following letter-writing campaign prompted Congress to earmark an extra \$50,000 for white slavery cases, increased by another \$200,000 in 1913.⁴⁶

But these infusions of money were still insufficient, and so the Bureau had to rely on “the sense of volunteerism and an experiment of private-public partnerships that characterized

³⁹ Noakes, “Domestic Tranquility,” 86.

⁴⁰ 1909 and 1910 AG Reports.

⁴¹ Jessica R. Pliley, *Policing Sexuality: The Mann Act and the Making of the FBI* 76 (2014).

⁴² Pliley, *Policing Sexuality*, 65-70.

⁴³ David Langum, *Crossing over the Line: Legislating Morality and the Mann Act* 12 (1994).

⁴⁴ Noakes, “Domestic Tranquility,” 109.

⁴⁵ *Id.* **Check**: Did they get the money at that time?

⁴⁶ Pliley, *Policing Sexuality*, 88; Langum, *Crossing*, 52-55 (detailing funding shortfall and Finch's efforts).

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Progressive-Era politics in the United States.”⁴⁷ In April 1912, Wickersham named Finch to be the “special commissioner for the suppression of the white slavery traffic act”—an appointment that came with a significant pay raise—and tasked him with putting together a “comprehensive plan” that would include “the selection of local white-slave officers.”⁴⁸ In “an ingenious scheme to enlarge the reach of the Bureau, while still working in the confines of a rather small federal government,”⁴⁹ Finch established a vast network of local, part-time, and minimally compensated white-slave officers, usually local lawyers.⁵⁰ He also employed the services of “a number of” special agents from the Bureau to rack up over 300 convictions between September 1912 and September 1913 alone.⁵¹

These collaborative engagements with local police and legal communities were not only necessary for a small, new federal criminal enforcement agency in a world where information about criminal activity was usually in local hands. But they also shielded the federal government from arguments that it was meddling in a presumptively local matter. In an early challenge to the Mann Act that reached the Supreme Court, the defendants “condemn[ed the Act] as a subterfuge and an attempt to interfere with the police power of the states to regulate the morals of their citizens”; accordingly, they charged, the Act was “an invasion of the reserved powers of the states.”⁵² But, in a pattern that continues to this day, local police saw no troubling intrusion; rather, they saw an opportunity for collaboration.⁵³ At the 1913 Convention of the IACP, President Richard H. Sylvester touted the extensive cooperation between the Bureau and locals. Chiefs of police brought data about houses of “ill-repute” to Finch’s attention, and the feds took action. He noted that in Washington, D.C., his own jurisdiction, “several” cases had been “disposed of by the United States authorities and the police have been foremost in bringing them to the front.”⁵⁴

Although support from citizens and local police was crucial when Bureau officials went before Congress to justify its existence and request more funds, a resource-strapped federal agency faced with political pressure to rack up cases also became hostage to citizen demands and their corollary flow of information. Finch’s white slavery division tried to focus on commercial prostitution and “avoided using the law to police general immorality among adults.”⁵⁵

⁴⁷ Jessica R. Pliley, *The FBI’s White Slave Division: The Creation of a National Regulatory Regime to Police Prostitutes in the United States, 1910-1918*, 221, 230, in *Global Anti-Vice Activism, 1890-1950* (ed. Jessica R. Pliley, Robert Kramm & Harold Fischer-Tine 2016); see also Brian Balogh, *The Associational State: American Governance in the Twentieth Century* 26 (2015).

⁴⁸ 1912 AG Report, 48.

⁴⁹ Pliley, *White Slave Division*, 221, 230.

⁵⁰ Pliley, *Policing Sexuality*, 89; Langum, *Crossing*, 55-56.

⁵¹ 1913 AG Report, 50.

⁵² *Hoke v. United States*, 227 U.S. 308, 321 (1913).

⁵³ Richman, “Violent Crime Federalism”; “Boundaries”

⁵⁴ *Proceedings of the Annual Conventions of the Int’l Ass’n of Chiefs of Police, 1913-1920*, vol. III (reprinted 1971; June 1, 1913).

⁵⁵ Pliley, *Policing Sexuality*, 99. In 1913, the Attorney General’s office advised the U.S. Attorney in New Orleans that the Mann Act “does not apply to the ordinary case of illicit relations between a man and a woman, when interstate travel happens to be involved.” The now infamous targeting of boxer Jack Johnson in 1913 ought to be seen not as typical for that year but as “a case of political targeting of a celebrity amid standard Jim Crow racial stereotyping.” *Id.* at 102; see also Kelli Ann McCoy, *Claiming Victims: The Mann Act, Gender, and Class in the American West, 1910-1930s*, at 157 (PhD diss., Univ. of Cal. San Diego, 2010) (noting that the “Johnson

Nevertheless, according to David Langum, between 1917 and the late 1920s, the “ardent zeal among the United States Attorneys in their prosecution of noncommercial cases” amounted to a “morals crusade.”⁵⁶ Importantly, they “were often under pressure” to pursue these cases, with DOJ officials receiving “thousands of letters from neighbors, wives, husbands, fathers, and busybodies complaining of sexual irregularities.”⁵⁷ Indeed, in her exploration of casefiles, Pliley found that “private individuals,” usually complaining about “their own familial catastrophes and marital calamities,” initiated most of the noncommercial cases; Hoover suggested figures of 50 and 70 percent.⁵⁸ And McCoy’s review of every available Mann Act case prosecuted in the Western United States from 1910 to the 1930s—about 1,200—found that “a large proportion of cases came to the attention of authorities because family members, friends, and neighbors turned in people who behaved in what they saw as an ‘immoral’ fashion.”⁵⁹ As McCoy observes, although the broad extension of the Mann Act’s “immoral purposes” prong “resulted in the trials of thousands of people who were simply unmarried and traveling together, it also opened up an avenue of power for women who believed that they had been ill-used by male lovers or husbands, and wanted to have the law redress their grievances.”⁶⁰ Pliley also notes that parents “sought to use the law to either control their daughters who were experimenting with new sexual mores of the times or to gain some type of retribution when men callously seduced and discarded their daughters.”⁶¹ The drumbeat of civilian complaints and calls from reformers and local police demanding the prosecution of men involved in “seductions” and other “immoral” behavior inevitably shaped the Bureau’s docket. Given this demand and informational costs, it is not surprising that Mann Act cases soon skewed more toward “immoral” behavior brought to the Bureau’s attention by aggrieved women and paternalistic family members, and less toward harder to investigate interstate prostitution rings.⁶²

The Mann Act is considered to be a turning point in the federalization of crime control and, correspondingly, the Bureau’s expanding powers. But its enforcement—that is, how federal authorities received information about violations that would make up their caseload—demonstrates the contingency of federal law enforcement, which depended on, and was shaped by, collaboration with locals. To be sure, as Noakes has argued, “the Bureau exploited the white slavery scare to gain additional resources from Congress.”⁶³ Once the fear dissipated, however, the Bureau’s appropriations stagnated, which contributed to the precipitous, post-1915 scale-

prosecution was, undoubtedly, part of a concerted effort to establish a particular racial and gender order in the United States,” but was not representative of the Mann Act cases brought).

⁵⁶ Langum, *Crossing*, 140.

⁵⁷ *Id.*

⁵⁸ Pliley, *Sexuality*, 132.

⁵⁹ Kelli Ann McCoy, “Claiming Victims: The Mann Act, Gender, and Class in the American West, 1910-1930s (PhD diss., Univ. of Cal., San Diego, 2010), 22; *see id.* at 117; *see also* Kelli Ann McCoy, “Regulating Respectable Manliness in the American West: Race, Class, and the Mann Act, 1910-1940,” 28 *Western Legal Hist.* 1 (2015).

⁶⁰ McCoy, “Claiming Victims,” 65.

⁶¹ Pliley, *Sexuality*, 138.

⁶² McCoy, *Claiming Victims*, 207 (“between 1910 and 1917, prosecutions progressed slowly and inconsistently along the path from commercial prosecutions—those cases most closely resembling ‘white slavery’—to noncommercial prosecutions.”); *see also* Langum, *Crossing*, 68 (noting pressure from “the public, zealous prosecutors, and the courts themselves” to expand prosecutions to include noncommercial violations involving consenting adults).

⁶³ Noakes, “Domestic Tranquility,” 17.

down of Mann Act enforcement.⁶⁴ The growing concern that the Mann Act could be used to blackmail prominent businessmen also did not help.⁶⁵ Both a federal commitment to a policing project and support from local organizations were necessary to justify the Bureau's existence.

b. World War I and the Red Scare

The Bureau's activities in the lead-up to World War I, during that great war, and the following Red Scare provide one more illustration of these same dynamics: while national concerns helped to gain institutional support from Congress, those concerns were not enough to sustain the Bureau, which consequently required it to rely on voluntarist groups. And of course, once those concerns subsided, so too did congressional largesse. In short, brief moral crusades and national security emergencies were insufficient to offer a stable and sustainable basis for the Bureau to expand and build its capacity.

When attention to white slavery abated, the focus turned to Neutrality Act violations,⁶⁶ and by 1916, these investigations comprised a fifth of the Bureau's budget.⁶⁷ By the time the United States declared war, the Bureau had added nearly one-hundred agents. Within days of the declaration of hostilities, Congress appropriated new funds to pay for them.⁶⁸ To be sure, the Bureau still lacked adequate resources to address its new domestic security challenges, and so it relied heavily on volunteers from the American Protective League (APL). In addition to reporting subversive activities and enforcing alien registration, the APL also aided in routine criminal investigations.⁶⁹ President Wilson had reservations about this collaboration, but Attorney General Gregory persuaded him "that the assistance of APL volunteers was the only way the Bureau could meet the rush of war-time work without adding unduly to the permanent federal bureaucracy."⁷⁰ This was so even with soaring congressional appropriations from 1916 to 1919. In 1918, Gregory could report that the Bureau was "five times as large as it was in the year 1916"; that the "well-managed" APL, "operating under the direction of the Division of Investigation," was an "invaluable" "auxiliary force"; and that "it is safe to say that never in its history has this country been so thoroughly policed as at the present time."⁷¹ Indeed, historians have well-documented APL abuses during this period. Even though the feared wave of German espionage and sabotage did not materialize,⁷² the Bureau soon deployed its new capacity against other targets. During "slacker raids" that were launched in many big cities—with the largest and

⁶⁴ Noakes, "Domestic Tranquility," 136.

⁶⁵ Pliley, *Policing Sexuality*, 116-117; Langum, *Crossing*, 77-96.

⁶⁶ Bengé diss., 274 ("Shortly after the commencement of hostilities, the Justice Department's Bureau of Investigation had quietly begun to shift an ever larger portion of its resources away from its customary enforcement responsibilities (Mann Act violations among them) to cases of reported neutrality violations.")

⁶⁷ Noakes, "Domestic Tranquility," 151-152.

⁶⁸ Noakes, "Domestic Tranquility," 159.

⁶⁹ During the war, the APL broadly assisted DOJ, including white slavery officers, in "all kinds of investigations." Pliley, *Policing Sexuality*, 125; Noakes, "Domestic Tranquility," 160-161.

⁷⁰ Noakes, "Domestic Tranquility," 168.

⁷¹ Annual Report of the Attorney General for the Year 1918, 14-15 (1918).

⁷² But note Black Tom explosion in 1916 (now Liberty State Park).

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most notorious in New York—Bureau agents, along with APL volunteers, local police, and military personnel, detained tens of thousands of draft-age citizens, often at bayonet-point.⁷³

It may have been inevitable that the end of the Great War would bring retrenchment. But the excesses of the slacker raids—which, in turn, sparked a civil-liberties backlash,⁷⁴ and, even more dangerously (from a bureaucratic perspective) strong congressional condemnation⁷⁵—probably spurred even deeper cuts and reorganization for the Bureau. Attorney General Gregory and Bureau Chief Bielaski set about to return the agency to its pre-war size by the end of fiscal year 1919 and to cut its ties to the APL.⁷⁶ With Bielaski soon pressured to resign, William Allen became acting chief, and in January 1919, he reported to Congress that he expected reductions of about 10 percent every month through the end of the fiscal year.⁷⁷ The Bureau's pursuit of draft evaders highlighted the political risks and vicissitudes characteristic of national security policing (then and now), at least when targeting non-insular and non-discrete classes.

The Red Scare, however, put an end to this right-sizing project. Even before the war had ended, the Bureau assisted the Senate Judiciary Subcommittee's investigations of radical groups,⁷⁸ and DOJ higher-ups instructed Chief Bielaski to investigate radical activities, initially in connection with labor unrest among shipyard workers.⁷⁹ After Attorney General Gregory stepped down at war's end, his replacement, A. Mitchell Palmer, was keen to continue pursuing these matters. A series of bombing attempts targeting administration officials, including Palmer, in April and June 1919 put the DOJ and Bureau in high gear. Even though they believed internally that a small conspiracy of a few anarchists was responsible for the bombings, DOJ and Bureau officials publicly portrayed the events as a nationwide attempt to overthrow the government by force.⁸⁰ Palmer quickly capitalized on the attacks to increase the Bureau's capacity and resources. Days after the second wave of bomb attempts, he asked Congress to reverse the recent cutbacks and even suggested that the cuts had emboldened the attackers.⁸¹

⁷³ David M. Kennedy, *Over Here: The First World War and American Society* 165-166 [check]; Schmidt, 84; Williams, *Without Understanding*, 95-97; Christopher Capozzola, *Uncle Sam Wants You: World War I and the Making of the Modern American Citizen* (2010)

⁷⁴ Noakes, "Domestic Tranquility," 201. Check Laura Weinrib, *The Taming of Free Speech: America's Civil Liberties Compromise* (2016).

⁷⁵ Stockham diss., 71-77.

⁷⁶ Noakes, "Domestic Tranquility," 223-224; see also Regin Schmidt, *Red Scare: FBI and the Origins of Anticommunism in the United States, 1919-1943*, 84n5 ("The APL tried to continue its activities in 1919 but was ordered to stop by the new Attorney General A. Mitchell Palmer in April 1919.").

⁷⁷ Noakes, "Domestic Tranquility," 223-224, citing "Testimony of W. E. Allen," January 22, 1919, Hearings before a Subcommittee of the House Committee on Appropriations; see also Stockham diss., 81.

⁷⁸ Stockham diss., 86 ("By assisting the Overman committee's investigation of radical propaganda both during and after the war, Bureau officials increased the Bureau's stature before Congress and found new ways to continue its expansion into domestic surveillance.").

⁷⁹ Schmidt, 127.

⁸⁰ Schmidt, 149; see also Beverly Gage, *The Day Wall Street Exploded: The Story of America in its First Age of Terror*, 179-178, 211-212 (2009) (on Palmer's background and reaction to the bombing of his home, and on the Bureau's theories).

⁸¹ Schmidt, 291.

Palmer would get his funding, although not without some congressional pushback. By 1920, Congress gave the Bureau an increase of \$375,000 over its 1919 wartime budget.⁸² Palmer quickly brought in William Flynn; Palmer touted Flynn, who previously had led the Secret Service, as “the greatest anarchist expert in the United States” to lead the Bureau.⁸³ Yet the Bureau remained small indeed. In 1919 to 1920, staff at headquarters numbered only thirty-one, and only sixty-one special agents worked in the field full-time on radical activities.⁸⁴ Even as it increased the Bureau’s appropriations, Congress kept the agency on a short budgetary leash, refraining from granting the Attorney General’s funding requests.⁸⁵

Unsurprisingly, when the Red Scare ended in the spring of 1920, the Bureau also had to end its raids and found itself having to defend against allegations of widespread illegality and abuse.⁸⁶ Assistant Labor Secretary Louis F. Post played a critical role in this backlash, especially after his department quietly allied with civil libertarian stalwarts like Felix Frankfurter and Zechariah Chafee Jr.⁸⁷ So did liberal lawyers acting in concert with congressional critics.⁸⁸ President Harding’s “lack of interest” in Palmer’s crusade also figured large in the departmental retreat.⁸⁹ The backlash was somewhat limited in part because “bureaucracy had itself put an end to the Bureau’s excesses, and in part because Attorney General Palmer, whom many critics blamed for them, left with the end of the Administration in 1921.” Still, when the Bureau’s new director William Burns tried to “breath[] new life into the moribund Red Scare,”⁹⁰ Congress set the Bureau’s appropriations below requested levels in 1922 through 1924.⁹¹

The Bureau’s role in World War I and the Red Scare—though often cited as key moments in its development of political legitimacy and bureaucratic autonomy—actually shows the dual edge of its domestic and national security work. On one hand, such work did enlarge its sphere. Helping the war effort—and, in the process, taking over some of the activities of the Army’s Military Intelligence Division and the Secret Service⁹²—and going after radicals after the war made the Bureau seem indispensable to key national goals. Moreover, here and later—as

⁸² Schmidt, 152-154; Noakes, “Domestic Tranquility,” 242.

⁸³ Gage, *Wall Street*, 126 (noting that Palmer had discussed the job with Flynn before the bombings).

⁸⁴ Schmidt, 159.

⁸⁵ As Schmidt notes: “The general impression of the Justice Department’s attempts to finance the Bureau’s political operations during the Red Scare 1919-20 is that it had to put considerable pressure, in the form of almost apocalyptic warnings of an impending uprising, on a reluctant Congress. This, in turn, either because of the usual partisanship or because it simply did not see the need for the expenditures, repeatedly reduced the Attorney General’s urgent requests.” Schmidt, 156; see also Gage, *Wall Street*, 230-231.

⁸⁶ Schmidt, 300; Gage, *Wall Street*, 231; CHECK Powers, *Secrecy and Power*, 131, 124.

⁸⁷ Schmidt, 301-306; CHECK Peter H. Irons, “Fighting Fair”: Zechariah Chafee, Jr., the Department of Justice, and the “Trial at the Harvard Club,” 94 *Harv. L. Rev.* 1219-1220 (1981).

⁸⁸ National Popular Government League, *To the American People: Report upon the Illegal Practices of the United States Department of Justice* (1920); see also David Williams, *The Bureau of Investigation and Its Critics, 1919-1921: The Origins of Federal Political Surveillance*, 68 *J. Am. Hist.* 560 (1981); Gage, *Wall Street*, 233-236.

⁸⁹ Gage, *Wall Street*, 231.

⁹⁰ Theoharis & Cox, *The Boss*, 79; Gage, *Wall Street*, 263.

⁹¹ Schmidt, 156-158; CHECK US Congress, House, Subcommittee of Committee on Appropriations, *Appropriations, Department of Justice, 1923, 67th. Cong., 2nd. Sess.* (Washington, DC, 1922), Pt. 2, 131; for the request, see *ibid.*, 123.

⁹² See Noakes, “Domestic Tranquility,” **; and others.

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when President Roosevelt would target anti-interventionists⁹³ and Presidents Johnson and Nixon would target “subversives”⁹⁴—the Bureau’s readiness to take on politically sensitive assignments from the White House ensured presidential support. Indeed, while some scholars tell a Hoover-centric story of bureaucratic autonomy,⁹⁵ more recent work has highlighted the Bureau’s responsiveness to explicit or implicit signals from its political masters.⁹⁶

On the other hand, the Bureau would regularly find that political commitment to its national-security portfolio ebbed and flowed.⁹⁷ Even during the Red Scare, U.S. Attorney Robert Saunders in Western Washington could “ask Palmer to instruct local Bureau agents to stop pursuing futile cases [against labor radicals] and concentrate on ‘the humdrum work developing and returning to this office evidence in the various criminal cases here prosecuted.’”⁹⁸

Given congressional ambivalence about the Bureau’s work and the fickleness of political winds, the Bureau made do. One example is its circumvention of Congress’s refusal to pass sedition laws that would take the place of expired wartime statutes, despite pleas from Palmer and Wilson.⁹⁹ It instead deported aliens, which avoided the niceties of the criminal process and the burden of proving much in the way of evidence. Supervising this strategy was the 24-year-old J. Edgar Hoover, whom Palmer put in charge of the new General Intelligence Division. Although the Labor Department still had formal responsibility for immigration matters, the Bureau “captured almost complete control of the deportation process.”¹⁰⁰ Another tried-and-true workaround to the lack of resources was reliance on voluntary associations. The American Legion especially played a critical role in mobilizing public support and lobbying officials.¹⁰¹

⁹³ Schmidt, 343-349; Douglas Michael Charles, “The FBI, Franklin Roosevelt, and the Anti-interventionist Movement, 1939-1945” (Ph.D. dissertation, Univ. of Edinburgh, 2002); David Joseph Williams, “Without Understanding: The FBI and Political Surveillance, 1908-1941” (PhD diss., Univ. of New Hamp., 1981), 335-374.

⁹⁴ **CITES** Athan Theoharis, *Spying on Americans: Political Surveillance from Hoover to the Huston Plan* (Philadelphia: Temple University Press, 1978); Frank J. Donner, *The Age of Surveillance: The Aims and Methods of America's Political Intelligence System* (New York: Knopf, 1980).

⁹⁵ Michael R. Belknap, “The Mechanics of Repression: J. Edgar Hoover, The Bureau of Investigation and the Radicals, 1917-1925,” 7 *Crime and Social Justice* 49 (1977); Athan G. Theoharis & John Stuart Cox, *J. Edgar Hoover and the Great American Inquisition*, 105 (1988); Mark Ellis, J. Edgar Hoover and the “Red Summer” of 1919, 28 *J. Am. Stud.* 39 (1994).

⁹⁶ Schmidt, at 331 (“The presidents after the Red Scare relied increasingly on the resources of the Bureau of Investigation to keep them informed about social unrest, radical movements, domestic critics, and subversion from abroad.”); see also Kenneth O’Reilly, Herbert Hoover and the FBI, __ *Annals of Iowa*, __ 1983; Kenneth O’Reilly, “A New Deal for the FBI: The Roosevelt Administration, Crime Control, and National Security,” 69 *J. Am. Hist.* --- (December 1982).

⁹⁷ Parallels can be drawn to the ebb and flow of FBI’s domestic intel operations in 1980s-2001 (fall of Berlin War; lack of sustained Admin interest in terrorism until 9/11).

⁹⁸ Noakes, “Domestic Tranquility,” 229, quoting Letter from Robert Saunders, U.S. Attorney, to A. Mitchell Palmer, June 28, 1919, 186701-70-2, (Reel 6) “Department of Justice Investigative Files,” Part I: The Industrial Workers of the World, ed. Melvyn Dubofsky, *Research Collections in Contemporary Radicalism*, General Editors, Mark Naison and Maurice Isserman, University Publications of America, 1989.

⁹⁹ Schmidt, 278. Authority under the Espionage Act of 1917 and the Sedition Act of 1918 expired at war’s end, and the Smith Act, targeting ___, would not come until 1940.

¹⁰⁰ Schmidt, 291.

¹⁰¹ Schmidt, 100; *see also id.* at 96 (“The advantage from the point of view of the federal bureaucracy was that by working through the private interest groups it expanded its power beyond the capabilities of its own limited resources and at the same time kept its involvement hidden.”) **Add** quote on why states wanted federal help.

State and local authorities were even more important as a source of reinforcements. Lacking a federal sedition or syndicalist law to catch citizens preaching radical ideas, the Bureau worked closely with state and local counterparts who did have such statutes (sometimes drafted with Bureau help).¹⁰² Indeed, Schmidt suggests that the Bureau played a substantial role in the 300 convictions under state syndicalism laws during this period.¹⁰³ In exchange, the Bureau could also rely on operational assistance from local police forces in its many raids on radical strikers, anarchists, and communists.¹⁰⁴ As with Mann Act prosecutions, the stream of information coming from collaborations with those on the ground proved crucial in the Bureau's ability to pursue its investigations.

Ultimately, restrictions on the Bureau's political surveillance activities came less in response to its Red Scare excesses and more from the corrupt leadership of Director Burns and Attorney General Daugherty that entangled the Bureau in the Teapot Dome scandal. That forced President Coolidge in 1924 to replace Daugherty with former Columbia Law Dean Harlan Fiske Stone who, in turn, replaced Burns with the recently promoted Deputy Chief Hoover. Stone charged Hoover with (re)professionalizing the Bureau and curtailed its targeting of radicals, mandating that Bureau activities "be limited strictly to investigations of violations of the law."¹⁰⁵ Having been with the Bureau since 1917, Hoover knew at least two key factors determining the agency's fortunes: maintaining close relationships with local officials and voluntarist groups while staying far from the smear of corruption.

c. National Prohibition

For other federal enforcement agencies, 1919 and the new world of the Eighteenth Amendment and the enabling Volstead Act would provide a whole new line of business. But not for the Bureau. Corruption's tendency to taint law enforcement's professionalizing mission, in addition to the lack of cooperation from police departments, easily persuaded the new director that the Bureau should avoid working in this politically and morally fraught area. And other units of government had first dibs anyway.

National Prohibition could not even hope to succeed without broad-based support from local police forces. Although the size of the Prohibition enforcement apparatus was unprecedented—the Bureau of Prohibition was "more than four times the size" of the Bureau of Investigation, according to Lisa McGirr¹⁰⁶—it was nevertheless woefully insufficient to ensure full compliance with the law. The Commissioner of Internal Revenue, who was in charge of enforcement, declared that his bureau could fulfill its task only with "the closest cooperation between the Federal officers and all other law-enforcing officers—State, county, and municipal."¹⁰⁷ Some locales eagerly cooperated. For instance, the Supreme Court's first

¹⁰² Schmidt, 115-117; Williams, *Without Understanding*, 126 (relating how Bureau agents guided New Hampshire police in enforcement of state's new sedition law); Belknap, at 52.

¹⁰³ Williams, *Without Understanding*, 121.

¹⁰⁴ *Id.* at 122 & n185.

¹⁰⁵ Schmidt, 325, quoting Mason, Stone bio, at 151; Williams, *Without Understanding*, 237-238.

¹⁰⁶ Lisa McGirr, *War on Alcohol*, 208.

¹⁰⁷ Commissioner of Internal Revenue, quoted in Post, "Prohibition," 24.

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Prohibition car-search case, *Carroll v. United States*, came out of a joint investigation by federal agents and an officer from Michigan's Department of Public Safety.¹⁰⁸ Unfortunately, cooperation was not forthcoming in most places, with Manhattan perhaps as the foremost example. New York City police, many from ethnic, working-class communities that viewed Prohibition as an indictment against their way of life, did not care to assist the feds, nor were they inclined to obey the law themselves.¹⁰⁹ To compel the NYPD to do its part, the Anti-Saloon League in 1921 successfully lobbied for the Mullan-Gage Enforcement Law, which squarely obliged the police to participate in the Prohibition project.¹¹⁰ Although the number of prosecutions went up after its passage, many police officers still dragged their feet or took shortcuts (bribes).

Since many state and local departments would not voluntarily do their part in Prohibition enforcement, President Coolidge tried out a constitutional argument that the Eighteenth Amendment put "a concurrent duty on the States."¹¹¹ Commissioner of Prohibition James Doran likewise insisted that there was "no doubt" that states were required "to exercise in their appropriate sphere of action the full police powers of the State, in order to properly discharge their obligations under the Eighteenth Amendment."¹¹² New Yorkers promptly ignored these claims and made their views known by replacing Governor Nathan Miller, who had given them the Mullan-Gage Law, with Al Smith, who openly opposed Prohibition.¹¹³ In 1923, just one year after he won office, Governor Smith repealed the state's Prohibition enforcement statute.¹¹⁴ According to Smith, the Eighteenth Amendment was "not a command but an option."¹¹⁵ As several historians have recounted, without state and local participation, the noble experiment was doomed to failure.¹¹⁶ The New York example foreshadowed what might happen throughout the country when Al Smith became the Democratic candidate for president in 1928 and ran on an unabashedly repeal agenda. Although he lost to Herbert Hoover—the dries had successfully made his Catholicism an issue—Smith's support for repeal helped transform the Democratic Party by bringing together a coalition of urban and working-class voters in numbers that nearly doubled those of the previous two Democratic candidates.¹¹⁷

The proverbial nail in the coffin was the corruption of Prohibition agents. Many officers of the Bureau of Prohibition were inexperienced and untrained, and thus susceptible to bribery. Some tales were truly epic, especially those coming out of Chicago and New York. The Bureau's

¹⁰⁸ *Carroll v. United States*.

¹⁰⁹ Michael A. Lerner, *Dry Manhattan: Prohibition in the City 72-75* (2007).

¹¹⁰ *Id.* at 76-77.

¹¹¹ Calvin Coolidge, Third Annual Message (Dec. 8, 1925).

¹¹² James M. Doran, quoted in Post, "Prohibition," 31.

¹¹³ Lerner, *Dry Manhattan*, 239-240.

¹¹⁴ *Id.* at 240.

¹¹⁵ Alfred E. Smith, "The Governor's Statement," *New York Times*, June 2, 1923.

¹¹⁶ See Arthur C. Millsbaugh, *Crime Control by the National Government* 54 (1937) ("Certain of the states failed to assume their share of the task and shifted the distasteful burden to the broad but slightly stooping shoulders of Uncle Sam. Prohibition leaders, misled by unwarranted faith in the omnipotence of federal enforcement, abandoned the localized methods which had gradually created a substantial temperance sentiment."). New York was a leader among these "certain states."

¹¹⁷ According to Michael Lerner, Franklin Roosevelt's election in 1932 "ended all talk of continuing the failed Prohibition experiment and marked the final defeat for a dry lobby." After just nine days in office, FDR asked a special session of Congress to modify the Volstead Act. Lerner, *Dry Manhattan*, 301-303.

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old chief, Bielaski, did a stint as chief undercover operative for the Bureau of Prohibition in New York, which came to an end in 1927, shortly after he admitted to using government funds to operate a decoy speakeasy.¹¹⁸ In fact, the hardline measure embodied in New York’s Mullan-Gage Law backfired when police corruption and abuse of power resulted in public animosity toward the police.¹¹⁹

J. Edgar Hoover’s Bureau itself quietly celebrated its distance from the “Great Experiment.” Its role, the Wickersham Commission would report, was limited to “apprehending fugitives, who have violated the prohibition laws, and in following up interstate vehicle thefts, and impersonations of prohibition officers.”¹²⁰ One gets the sense that during Prohibition, the Bureau’s efforts to widely circulate materials about what enforcement responsibilities it had was primarily to highlight the responsibilities it did *not* have.¹²¹

The Bureau’s experiences with the Mann Act, the Red Scare, and Prohibition demonstrate that neither high-profile cases nor the issues of a discrete contingent of reformers could sustain the Bureau’s growth over a longer period. Its continued existence—and appropriations—would have to be based on a steadier stream of work that not only mattered to everyday life for ordinary citizens but also transcended politics *du jour*.

V. The Bureau’s Capacity-Building

a. *Dyer Act*

The automotive revolution in transportation took off around 1910—Henry Ford perfected the Model T’s moving assembly line in 1914—and magnified the challenges that law enforcement had been confronting. Cars revolutionized individual travel, enabling its drivers to traverse distances in mere minutes or hours that previously would have taken days. Crossing city, county, and, national boundaries likewise became more frequent, and for some, a daily passage from home to work. It was this quick and easy jurisdiction-hopping that made the pursuit of fugitives so elusive for law officers whose authority covered only a single jurisdiction. What made auto theft all the more alluring was that the object of theft provided the best means for escape. The getaway had also become indispensable for the commission of traditional theft, like robbery of banks and stores, as well as other serious crimes, like kidnapping and murder. In short, the introduction of cars in American society had led to an explosion of crime overall.

Not only did motor vehicles aid the criminal getaway, they also created a new crime: auto theft. According to the prominent criminal law scholar Jerome Hall, it seemed “quite extraordinary that theft of automobiles should be of particular importance.”¹²² But he recognized

¹¹⁸ Bruce Bielaski, “Justice Aide, Dies,” *New York Times*, Feb. 20, 1964.

¹¹⁹ Lerner, *Dry Manhattan*, 82-83.

¹²⁰ National Commission on Law Observance and Enforcement, *Enforcement of the Prohibition Laws*, vol. 2 (1931), 223. **Also cite APIB Annual Report.**

¹²¹ See Bureau booklet explaining what it does circulated in 1929 and thereafter (in Dropbox from “govt attic”).

¹²² Jerome Hall, *Theft, Law, and Society*, 230 (1935).

that the phenomenon “loom[ed] up in unique importance.”¹²³ Striking the same note, Congressman Newton from Missouri declared in 1919 that there was “no class of criminals enjoying more lucrative gain as a reward for their industry than the automobile thieves of the country.”¹²⁴ Sheer volume itself presented several issues. In a span of thirty-five years, from 1895 to 1929, the number of cars shot up from just 4 to over 23,000,000. Although mass production made cars much more affordable to a wider class of consumers, they were among the most valuable assets for the average family. Motor cars were expensive enough and, by the 1930s, sufficiently necessary in many parts of the country to support a thriving market for secondhand cars and parts. Standardized cars with standardized parts also helped facilitate this secondary market.

Another factor contributing to the prevalence of auto theft stemmed from the nature of early cars. Without locking devices for doors or the ignition, they were easy to steal. On top of that, it was difficult to confirm ownership. In the early years, few manufacturers stamped automobiles and parts with identification numbers. Even if they had, centralized databanks connecting such identifying information with their owners did not exist. Although many states soon began requiring registration and issuing license plates for public safety and tax purposes, it took decades more for them to create databases with vehicle identification information. As late as 1935, Jerome Hall observed that “[o]ne of the most striking facts about automobile theft [was] that so relatively few arrests are made in proportion to thefts committed.”¹²⁵

Mass-produced cars appeared on interstate highways and Main Streets just when progressive police chiefs were beginning to coordinate their activities with each other. Still, crime control continued to be largely a local affair, and auto theft rings took advantage of a vast and multi-jurisdictional nation. This confirmed for police reformers that local departments had to combine their efforts—assuming that locals were interested in pursuing these cases at all. Even in the first decades of the twentieth century, private groups continued to play an important role in criminal matters. A congressman from Missouri observed in 1919 that “[s]o frightful has this menace [auto theft] become that automobile clubs and automobile protective associations have been formed, and they have been joined by chambers of commerce and commercial clubs all over the country in an effort to stamp out this lawless industry.”¹²⁶ The de-centralized organization of law enforcement that relied on the aid of private groups without the authority of the police power was ill-suited to pursue automobiles that enabled motorists to flee on a moment’s notice to a different jurisdiction. Sophisticated auto theft rings immediately took advantage of this variegated landscape. They would steal cars in one state and sell in another where there was no record that cars had been stolen.¹²⁷ Operations near the Mexican or Canadian border were especially cunning. During National Prohibition, for example, bootleggers could steal a car in New York, drive to Canada, and sell it there. They could then use the proceeds of

¹²³ *Id.* at 231; see *United States v. Turley*, 352 U.S. 407, 413 (1957) (citing Hall when interpreting what “stolen” means under the Dyer Act).

¹²⁴ C.R. House 5474.

¹²⁵ Hall, *Theft*, 254.

¹²⁶ C.R. house 5474.

¹²⁷ As Hoover reported in 1926, “We have bands of automobile thieves who steal machines in one state and pass them over to another band in another state to sell them.” 1926 Proceeding, in *Proceedings of the Annual Conventions of the International Association of Chiefs of Police, 1926-1930*, vol. 5 (New York, 1971), 56.

the sale to purchase liquor in Canada, then steal another car, and transport the illicit goods back to the States, where they could sell the alcohol and the stolen car and make a tidy profit without any start-up costs.¹²⁸

When a vehicle was stolen in the automobile's early years, hapless owners would contact local authorities, but in keeping with the practice of private enforcement, they also posted a reward for the recovery of their cars. As auto theft insurance became more common, owners had their insurers post it. Insurance companies then mailed these reward notices to law enforcement officers within a certain geographic range, usually within a radius of 150 miles or so from the point of theft, since early cars on bad roads could travel only so far.¹²⁹ By 1912, a group of insurers decided to economize their efforts by forming the American Protective and Information Bureau (APIB), whose primary task was to circulate to law enforcement a single report for all the stolen vehicles they insured. In effect, the group served as an information clearinghouse.¹³⁰

APIB also sought to address auto theft by lobbying for legislation.¹³¹ In 1918, APIB manager E. L. Rickards and Michael Doyle, director of the American Automobile Insurance Company in St. Louis, Missouri, brainstormed the idea of a national law criminalizing the transportation of stolen vehicles in interstate traffic, believing that "Federal level involvement" would make a difference in combating the problem.¹³² Conveniently, Doyle knew his congressman Leonidas Dyer, who was receptive to the idea. The following year in 1919, Dyer introduced H.R. 9203 "to punish the transportation of stolen motor vehicles in interstate or foreign commerce," which ultimately became the National Motor Vehicle Theft Act, or more simply, the Dyer Act after its sponsor.¹³³

The House's discussion of the bill centered on several issues. First, as Representative Reavis asked, "How can a Federal law punish a man for stealing an automobile?"¹³⁴ After all, theft was traditionally criminalized by local law. The IACP, unsure whether Congress had the power to criminalize auto theft, instead suggested that the solution might be for all states to enact such legislation.¹³⁵ But in the era of the Mann Act and National Prohibition—within three weeks of the House's debate, Congress would pass the Volstead Act to enforce the Eighteenth Amendment, which had been ratified by the states earlier that year—it did not take much to convince most national legislators that the federal government had the authority to criminalize the transport of stolen cars across state lines.¹³⁶ One congressman argued by analogy that "[i]f the transportation of a woman from one State to another, by means of an automobile, for prostitution, constitutes interstate commerce, then how can it be argued, with any show of color,

¹²⁸ Sauter, *The Origin*, 5.

¹²⁹ NATB, 75th Anniversary, 6.

¹³⁰ Sauter, *The Origin*, 2-3; see also 1920-1921 APIB Annual Report, 3.

¹³¹ APIB, 1920-1921 Annual Report, 3.

¹³² NICB Anniversary Book, 24.

¹³³ C. R. House 5470.

¹³⁴ C.R. House 5473.

¹³⁵ 1918 Proceedings, in Proceedings of the Annual Conventions of the International Association of Chiefs of Police, 1893-1905, vol. 3 (New York, 1971), 29-31.

¹³⁶ See C.R. House 5471 ("The power of the Congress to enact this law and to punish the theft of automobiles in one State and the removing of them into another State can not [*sic*] be questioned, in view of laws of similar nature heretofore enacted by Congress and the decisions of the Supreme Court of the United States touching same.").

that the driving of a stolen automobile from one State to another for profit is not interstate commerce?”¹³⁷ Several of his colleagues also pointed out that the “favorite place for such thefts is near a State line.”¹³⁸ Dyer himself maintained that auto thefts were “particularly” common in the “cities of the Middle West”—especially in his home state Missouri—and that “State laws upon the subject have been inadequate to meet the evil.”¹³⁹ Chief Justice Taft would repeat these arguments in 1924 to uphold the Dyer Act, maintaining that “[t]he quick passage of the machines”—as cars were often called then—“into another state helps to conceal the trail of the thieves, gets the stolen property into another police jurisdiction and facilitates the finding of a safe place in which to dispose of the booty at a good price. This is a gross misuse of interstate commerce.”¹⁴⁰

Dyer and Newton, the congressmen from Missouri, had one more argument that the new bill comfortably fell within “interstate *commerce*” in a more traditional sense, which was to invoke the interests of the insurance industry. In the face of a high risk of loss, “almost every owner in the land [held] a larceny policy.”¹⁴¹ But this was precisely the reason why providing insurance against auto theft proved to be a losing business proposition. “One of the reasons why this legislation is needed so badly,” Dyer maintained, was because “automobile theft insurance has advanced in the past year over 100 per cent on cars costing from \$500 to \$900.”¹⁴² The economics of this situation especially affected ordinary citizens, for “cheaper cars are stolen,” making it “almost impossible for the owners of these cheaper cars to obtain at any rate automobile theft insurance.”¹⁴³ Given the recent precedents of the Mann Act and the Volstead Act, as well as the broad reach of auto theft on the material lives of many citizens, it took just one month for Dyer’s bill to become law, on October 29, 1919.

Legislators had discussed at length whether they had the power to enact a federal law criminalizing conduct that was traditionally penalized under local laws and what conduct, exactly, would be prohibited by their law. But they had not considered how their law would be enforced. The closest mention of enforcement during their debates came from Newton, who noted that with the new law, “the Federal grand jury is empowered to investigate such larcenies.”¹⁴⁴ Indeed, once the Dyer Act was passed, the question of enforcement appears to have been an open question. Two months after enactment, the Automobile Underwriters Detective Bureau wrote to the Attorney General inquiring “how a peace officer should proceed in making

¹³⁷ C.R. House 5476.

¹³⁸ C.R. Senate 6433; see also C.R. House 5474.

¹³⁹ C.R. House 5470, 5471.

¹⁴⁰ *Brooks v. United States*, 267 U.S. 432, 438-439 (1924). See also *Kelly v. United States*, 277 Fed. 405 (4th Cir. 1921); *Whitaker v. Hitt*, 285 Fed. 797 (D.C. Cir. 1922); *Katz v. United States*, 281 Fed. 129 (6th Cir. 1922); *United States v. Winkler*, 299 Fed. 832 (W.D. Tex. 1924); *Hughes v. United States*, 4 F. 2d 387 (8th Cir. 1925).

¹⁴¹ C.R. House 5475.

¹⁴² C.R. House 5472. Lest one be tempted to attribute Dyer’s efforts solely to solicitude for propertied interests and not, say, an expansion vision of the federal role in criminal enforcement, we note that during this same period, Dyer became “the strongest advocate of a federal anti-lynching program in Congress and the institutional voice for the NAACP.” Jeffrey A. Jenkins, Justin Peck, and Vesla Weaver, “Between Reconstructions: Congressional Action on Civil Rights, 1891-1940,” 24 *Stud. Am. Pol. Dev.* 57, 67 (2010); see also Megan Ming Francis, *Civil Rights and the Making of the Modern American State* 98-126 (2014).

¹⁴³ *Id.* [Mention interstate aspect of auto insurance industry above the line?]

¹⁴⁴ C.R. House 5475.

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an arrest and prosecuting under this Act.”¹⁴⁵ Another insurance man wrote to the DOJ, “desirous of being sworn in as a special agent ... to serve without compensation for the purpose of running down ... thieves who have been ... transporting cars from one state to another.”¹⁴⁶ On the APIB’s part, its leaders were under the misapprehension that U.S. Marshals were supposed to be pursuing Dyer Act cases, and so were dismayed at the “laxity” that “existed on the part of the Federal Authorities in the enforcement” of the new law.¹⁴⁷

To make the most of their lobbying efforts, in 1921, APIB manager Rickards and an official from the Chicago Crime Commission met with Bureau Chief William Burns and his assistant Hoover “to discuss methods of closer co-operation between Department of Justice Agents and the Association [and] more effectual enforcement of the National Motor Vehicle Theft Act.”¹⁴⁸ What came out of that meeting was clarification on the roles of the various stakeholders in Dyer Act cases. The insurance cohort and local authorities would inform the feds about potential Dyer Act violations. Law enforcement—feds and locals both—would learn from insurance experts about investigatory methods. The APIB not only served as “a clearinghouse for information in connection with stolen automobiles,”¹⁴⁹ but it also published the “Reference Book” indicating where all the factory numbers and “secret identification numbers” were stamped on different car makes and models.¹⁵⁰ This would turn out to be a fruitful collaboration that exists to this day.¹⁵¹ As the APIB reported in its 1922-1923 Annual Report, “the splendid work [the DOJ and the Bureau] are doing in connection with the enforcement of the National Motor Vehicle Act is most gratifying.”¹⁵² It continued that the group had “made a number of special requests of Director Wm. J. Burns,” and reported that “he has always gladly granted our requests and cooperated to the fullest extent.”¹⁵³

The insurance sector was in agreement that the expansion of the federal government’s role was a necessary good when dealing with auto theft. And the rental car industry pushed for further expansion in 1926 when it lobbied for the addition of “embezzlement” and “conversion” offenses.¹⁵⁴ But it is unclear whether local law enforcement officials were of like mind, and most likely they had mixed feelings about the expanding sphere of federal government authority in traditionally local matters. The IACP was silent on the Dyer Act—neither its proceedings from annual meetings [check] nor its publication *National Police Journal* mention the federal law;

¹⁴⁵ H. M. Shedd to Attorney General (letter, January 29, 1920), RG 60, Class 26, Box 1, NARA.

¹⁴⁶ Frederick Lambert (Mutual Automobile Association) to DOJ (letter, January 24, 1920), RG 60, Class 26, Box 1, NARA.

¹⁴⁷ APIB, 1920-1921 Annual Report, 1. [pdf p 76]

¹⁴⁸ William Burns to Attorney General (memo, June 3, 1921), RG 60, Class 26, Box 1, NARA; see also APIB, 1920-1921 Annual Report, 1 (“arrangements were made for an intensified drive by the Federal Special Agents against the automobile thief”).

¹⁴⁹ APIB, 1920-1921 Annual Report, 2.

¹⁵⁰ Burns to Attorney General, June 3, 1921.

¹⁵¹ See NICB, *Anniversary*.

¹⁵² APIB, 1922-1923 Annual Report, [pdf p13].

¹⁵³ Id.

¹⁵⁴ Amendment of the National Motor Vehicle Act, Hearings on H.R. 3771 & 5834, House of Rep. Judiciary Comm., 69th Cong., 1st Sess., Jan. 18, 1926.

none of its members testified at the congressional hearings in support of the law; and during debates no congressman cited the views of the police.

Although police leaders who had an institutional stake in their profession may have been wary of encroaching federal powers, many other police officials did not hesitate to seek federal help even in cases that could have—and probably should have—been handled locally. Much criticism ensued when it became known that many of the Dyer Act defendants were juvenile joyriders, not sophisticated dealers in stolen cars. An early prosecution in 1921, for instance, involved two Yale students arrested by the Hartford police after they stole a car and drove it to Binghamton, New York, for a “college dance.”¹⁵⁵ Many viewed these cases not as a criminal matter, but as a social welfare issue ill-suited for the federal government.¹⁵⁶ The attorney general testified before Congress in 1929 that the “Dyer Act is producing a great number of prisoners. There is a good deal to be said about the fact that many of those ought to be tried and punished under State law for theft. [But the states] have got in the habit of picking up every boy who takes an automobile across the State line and putting him into a Federal institution.”¹⁵⁷ A few years later in 1931, the Wickersham Commission identified 2,243 kids eighteen or under in federal custody, about 17.5 percent of Dyer Act charges,¹⁵⁸ and noted that “[i]n almost all cases the purpose in stealing cars was not to sell but to go somewhere.”¹⁵⁹ Representative Dyer was so aghast when learning of “mere cases of joy-rides by young men” that he introduced a bill in 1930 to repeal the law that he had initiated.¹⁶⁰ Eventually, after the publication of the Wickersham report, Congress passed a law mandating that in cases of “juvenile offenders” under the age of twenty-one, “the United States attorney of the district in which such person has been arrested is authorized to forego the prosecution of such person” and “surrender him” to state authorities.¹⁶¹

Local officials often passed juvenile cases on to the feds, in part, because courts ruled that joyriding—which did not have the necessary intent “to permanently deprive the owner of his car”—did not amount to a crime under state larceny laws.¹⁶² As late as 1959, a legal

¹⁵⁵ “Yale Students Suffer for Motor Theft,” *New York Times*, March 1, 1921, at 10.

¹⁵⁶ Not everyone bemoaned this use of the Dyer Act. See Bart Campbell, “My Car’s Gone,” *Washington Post*, November 4, 1928 (celebrating the change that Dyer Act prosecutions gave the government to “remake” young car thieves in juvenile facilities).

¹⁵⁷ Appropriations Bill for 1931, Seventy-First Congress, Second Session, December 1929, at 3.

¹⁵⁸ National Commission on Law Observance and Enforcement (Wickersham Commission), vol. 6, *Report on the Child Offender in the Federal System of Justice*, 34 (1931).

¹⁵⁹ *Id.* at 52. See also J. MacDermott to Attorney General (letter, August 9, 1924), RG 60, Class 26, Box 1, NARA. The letter writer wrote a letter to lodge an angry grievance for three boys who, “in spirit of adventure,” stole a car in Portland, Oregon, and drove to Washington State. They were charged under the Dyer Act; two were acquitted, but one, a seventeen-year-old boy “was sentenced to an outrageous term of six years in the state institution at Anamosa Iowa.”

¹⁶⁰ Patch, Buel W. (1932). Proposed expansions of federal police activity. Editorial research reports 1932, vol. 1 (Washington, DC: CQ Press), retrieved from <http://library.cqpress.com/cqresearcher/cqresrre1932040100> Federal Experience Under Dyer Stolen Automobile Act

<http://library.cqpress.com/cqresearcher/document.php?id=cqresrre1932040100#H2> Add AG memo to USAs.

¹⁶¹ Act of June 11, 1932, P. L. 169, 72nd Cong., 1st Sess., Chap. 243; see also 72 Cong. Rec. 2494 (1930); Jerome Hall, *Federal Anti-Theft Legislation*, 1 L. & Contemp. Prob. 424, 428 (1934); L. B. Schwartz, *Federal Criminal Jurisdiction and Prosecutors’ Discretion*, 13 L. & Contemp. Prob. 64, 85 (1948); Hoover signing statement, <http://www.presidency.ucsb.edu/ws/index.php?pid=23125>

¹⁶² Leonard D. Savitz, *Automobile Theft*, 50 J. Crim. L. & Criminology 132, 132 (1959), citing *Impson v. State*, 47 Ariz. 573 (1930).

commentator observed that this was “peculiarly a state problem,” and so the Dyer Act, which was “sufficiently omnibus as to embrace the act of ‘joyriding,’” was used instead.¹⁶³ Some states responded by expanding the statutory definition of larceny or by creating a new criminal offense of “operating a car without the consent of the owner.”¹⁶⁴ But bringing prosecutions under federal law had one more advantage: as Attorney General Mitchell noted in 1930, juvenile joyriders, “upon their arrests, admit the theft and make no difficulty about prosecution.”¹⁶⁵ The fear of federal authority probably prompted many of these guilty pleas, with its accompanying conviction and recovery statistic.

More generally as an evidentiary matter, it was often easier to prove a violation of the Dyer Act with its straightforward stolen car elements than the accompanying substantive crime like robbery, which fell under state jurisdictions. This may explain why many local officials were more than happy to pass along any case that crossed a state border. For instance, in July 1931, Chanute, Kansas, police killed one man, wounded two, and captured a fourth, Lemuel Hawkins—identified as “a former member of the Kansas City Monarchs baseball team”—after the officers tried to arrest the four “in connection with a holdup earlier in the day at Ottawa, Kan[sas].”¹⁶⁶ Hawkins was charged and convicted solely for violating the Dyer Act and sentenced to two years at Leavenworth.¹⁶⁷

Federal prosecution also eliminated the hassles of extradition required by state prosecutions.¹⁶⁸ The main value of Dyer Act cases arose when the police in one locality apprehended someone with a car stolen from another locality, or when the police in a theft victim’s state needed help. As Hoover explained, even simple Dyer Act investigations generally required “interstate inquiries, which the Bureau makes through its various field offices.”¹⁶⁹ He continued:

The state authorities would be extremely handicapped ... by lack of investigative authority extending from one locality to another, by lack of funds requisite to subpoena witnesses from one locality to another, by the necessity of resorting to a complicated system of removal hearings, extradition writs and other legal necessities which it would be necessary to invoke and by what I feel sure would be a very positive disinclination on

¹⁶³ Id.

¹⁶⁴ Id.

¹⁶⁵ Mitchell to Luhring (memo, January 29, 1930), RG 60, Class 26, NARA [v.2 74/129].

¹⁶⁶ “Kansas Bandit Slain,” *St. Joseph New-Press*, July 20, 1931,

<https://news.google.com/newspapers?id=z0tkAAAIAIBAJ&sjid=TnUNAAAIAIBAJ&pg=3101,4406166&dq=lemuel-hawkins&hl=en>

¹⁶⁷ http://pendergastke.org/search-solr/field_theme_term/corruption-1003/field_correspondence_series/lemuel-hawkins-inmate-file-10601?sort=field_year&order=asc [CHECK LINK] On his release, Hawkins, who had been a standout player in the Negro National League, was shot and killed in a robbery in Chicago, in 1934.

¹⁶⁸ See, for example, John H. Jackson, “What’s Happening to the Car Stealing Racket?,” 7 *J. Am. Insur.* 7, 7 (1930) (“Theoretically, the apprehension of automobile thieves is a state matter, but by making the transportation of a stolen car over a state line a federal crime, and thereby putting the matter in the hands of federal officials, the necessity of co-operation between local police and of extraditing the criminal who has been arrested in a foreign state has been eliminated.”).

¹⁶⁹ Hoover to Asst. Atty. Gen. Luhring (memo, December 18, 1929), RG 60, Class 26, Box 2, NARA [pdf 73/129].

the part of various local authorities to incur the expense and trouble to properly enforce the Act where local individuals or individuals of local prominence were not involved.¹⁷⁰

In short, federal prosecution substituted for interstate information sharing and clunky extradition procedures. Even diligent police chiefs sometimes had to rely on the feds given the coordination challenges that local law enforcement faced. At an IACP conference in 1927, Chief J. W. Higgins of Buffalo, New York, complained that although his department assiduously compiled records on stolen and recovered cars, “other cities are not co-operating with us to the extent we co-operate with them.”¹⁷¹ Higgins then went on to tell of a case that could not be made against a bi-coastal car thief until a federal agent drew on the impressive records of the Buffalo Department.¹⁷²

In time, local protocols instructing officers to reach out to the feds whenever they recovered an out-of-state stolen car became common.¹⁷³ For instance, when, in 1927, a Martinsburg, West Virginia, constable found an abandoned car with Florida plates, he scribbled a note to the Justice Department, which got passed to Hoover, who, in turn, assured the assistant attorney general for the Criminal Division that the matter would receive the Bureau’s full attention.¹⁷⁴ The constable appears to have found that car by himself, but Justice Department correspondence indicates that local recoveries were often spearheaded by insurance company representatives accompanied by local police, who then passed the case on to the feds.¹⁷⁵ Far from intruding on local matters, Dyer Act cases amount to the federal collection and packaging of information for the benefit of all concerned.

In fact, just about all Dyer Act cases came from state and local officials, and there were many. Rickards reported that in 1921, of the 10,505,660 cars in the country, 60,145 had been stolen, and 43,664 had been recovered.¹⁷⁶ In a 1922 House appropriations hearing, Chief Burns

¹⁷⁰ Id.

¹⁷¹ J. W. Higgins, *The Theft and Recovery of Automobiles*, 34 Procs. Annual Conventions of IACP 83, 85 (1927).

¹⁷² Id.

¹⁷³ “State Joins U.S. Dept. in Auto Theft Cases,” *Hartford Courant*, July 28, 1921 (reporting that state motor vehicle commissioner committed to notify the federal bureau of investigation “whenever an arrest is made in Connecticut for the theft of a motor vehicle in another state and federal agent will be assigned to the case.”).

Not all states passed the buck. In 1926, explaining why no Dyer Act prisoners came from certain states, the superintendent of prisons noted, “That means only this, gentlemen, not that there are no motor vehicles being stolen, but that the State of Massachusetts, for instance, is rigidly enforcing its local law, and, therefore, we get no prisoners under the national motor vehicle theft law.” Appropriations Bill for 1927, Sixty-Ninth Congress, First Session, January 1926, at 287 (testimony of Luther C. White, superintendent of prisons). Other states trumpeted their own efforts. A 1929 magazine article commented, “One reason why Milwaukee recovers ninety-five per cent of all its stolen automobiles is because it maintains exhaustive records of such stolen property in the Identification Bureau as well as in the traffic department.” Ruel McDaniel, *Wisconsin Gets Her Men*, *North Amer. Rev.* 744, 746 (June 1929).

¹⁷⁴ Correspondence involving Constable Harmon, Assistant AG Luhring, and Hoover between May 23, 1927, and June 14, 1927, RG 60, Class 26, Box *, NARA.

¹⁷⁵ William De Groot (EDNY U.S. Attorney) to Attorney General (letter, October 14, 1926), RG 60, Class 26, Box *, NARA [23/136].

¹⁷⁶ E. L. Rickards to John Crim (Assistant Attorney General) (letter, June 3, 1921), RG 60, Class 26, Box 1, NARA.

noted that the increasing number of Dyer Act cases reflected “a marked tendency on the part of State authorities to shift [] responsibility on[to] Federal authorities.”¹⁷⁷

Regardless what his superior thought about this trend, J. Edgar Hoover welcomed it. In 1923 when Burns was forced to resign because of his involvement in the Teapot Dome scandal, the APIB’s annual report noted that it “received excellent co-operation from Mr. Wm. J. Burns, Former Director, but the present Director, Mr. J. E. Hoover, is more intensely interested in the enforcement of the National Motor Vehicle Theft Act and fully realizes the effect of automobile thievery on general crime conditions.”¹⁷⁸ Hoover collaborated not simply because the locals sought federal help; he also understood that such collaboration was necessary for his Bureau. Notwithstanding portrayals of Hoover as “a gifted bureaucratic entrepreneur” (though he was that) who “carved a personal domain” (though he did that as well), he had to cater to local interests to protect the Bureau’s work (and appropriations). The automobile and insurance industries both closely followed Dyer Act cases and maintained up-to-date statistics on cars stolen and recovered, the monetary values of those numbers, as well as the total amount of fines and sentences imposed. Testifying at a House appropriations hearing in 1926, Hoover mentioned having “just received” an annual report from the Theft Committee of the National Automobile Underwriters Conference, which highlighted that the most recent fine and recovery data “prove conclusively that the Department of Justice, Bureau of Investigation, is enforcing the national motor vehicle theft act and your committee firmly believes that this arm of the Government is serving the public 100 percent.”¹⁷⁹ Hoover was certainly not shy about deploying this broad-based industry support—and the steady stream of statistics—during congressional appropriations hearings. Neither was the attorney general even before Hoover took over. In 1922 Daugherty highlighted both “the value of the stolen motor vehicles recovered by the Bureau of Investigation” and the “[e]xcellent cooperation” between DOJ agents, “peace officers throughout the United States,” and “the insurance companies writing auto theft insurance.”¹⁸⁰

It was especially important to Hoover that the Bureau receive the support of local law enforcement. When, in 1929, Hoover misinterpreted an inquiry from his boss about whether Dyer Act cases should be prosecuted in state courts, he foresaw “considerable embarrassment to the Department” should the suggestion be implemented.¹⁸¹ He warned, “I feel certain that should the Bureau discontinue its investigative activities under this Act, considerable criticism would be developed from large insurance interests as well as automobile and law enforcement interests throughout the country.”¹⁸² While the legend of Hoover as grand manipulator might argue for reading the “*would be developed*” language as an unsubtle reference to what Hoover himself would do, the police’s reliance on the feds in these cases, as well as the crucial part of the

¹⁷⁷ Appropriations Bill for 1923, Sixty-Seventh Congress, Second Session, March 1922, at 128 (testimony of Director Burns); *see also id.* at 262 (Asst. Atty. Gen. Holland notes, “as Federal laws are extended, so that offenses which were formerly punishable by the States are punishable under Federal law, it is very noticeable that State officials sidestep their responsibility and put such responsibility on the Federal Government.”).

¹⁷⁸ APIB, 1923-1924 Annual Report, [pdf p26].

¹⁷⁹ Appropriations Bill for 1927, Sixty-Ninth Congress, First Session, January 1926, at 108. *See also* “Dyer Law Nips 272 Prisoners in a Year,” *Detroit Free Press*, January 20, 1921 (federal achievements in first year of Dyer Act touted in report submitted to the directors of the National Automobile Dealers’ Association in Chicago).

¹⁸⁰ Attorney General Annual Report, 1922, at 70-71.

¹⁸¹ Hoover to Luhring (memo, December 18, 1929), RG 60, Class 26, NARA [pdf v.2 p.73].

¹⁸² *Id.*

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insurance industry from the Dyer Act's birth, counsel taking this more as an easy prediction. The 2,123 Dyer Act convictions obtained in 1929 constituted 53.75% of the 3,950 Justice Department convictions (including 457 Mann Act).¹⁸³

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It wasn't that the Bureau lacked for other matters crying out for its investigative intervention during this period. As David Gram recounts in his wonderful book, *Killers of the Flower Moon*,¹⁸⁴ when, in the spring of 1923, the Osage Tribal Council appealed to the Justice Department to investigate a growing spate of murders targeting its members, Burns had dispatched some agents to pursue some desultory inquiries, largely at the tribe's expense. On becoming Director, Hoover decided "to dump the case back on state authorities in order to evade responsibility for the failure."¹⁸⁵ He was stymied, however, by the outcry that ensued when the outlaw that agents had sprung from an Oklahoma prison to assist in their investigation robbed a bank and killed a police officer.¹⁸⁶ The Bureau did indeed conduct an investigation, but with an inadequacy that Gram makes clear in sad detail.¹⁸⁷ In contrast, Dyer Act cases were manageable matters with the promise of total success.

It was through the Bureau's service to commercial interests and local law enforcement—essentially, by trading favors—that the fledgling agency not only justified its existence but could also expand its capacity beyond its small size. An assistant director at the Bureau explained in 1930 (when seeking to dial back the processing of complaints from federal prisoners in local jails) that "the bureau's representatives in various sections of the country are dependent in very many instances upon the good will of sheriffs' offices and other law-enforcement officials for cooperative support in the conduct of investigations."¹⁸⁸ Hoover further elaborated that the Bureau's close relationships with local police saved money; instead of sending an agent from Dallas all the way to the Panhandle to check up on some subject and his "reputation" as part of a routine investigation, an agent could simply wire the police chief or sheriff who would do it for the Bureau "without any cost to us."¹⁸⁹ In 1935, a columnist close to Hoover disclosed how the "service" aspect of the Dyer Act contributed to the expansion of the Bureau's own capabilities and, perhaps, its relative autonomy:

Before the passage of this act, the run of bureau cases was tied tightly to the business of the Federal Government: there was little opportunity to be of assistance to State and local law-enforcement agencies. The new law widened tremendously the scope of activities. True, if a man robbed a bank, that was not the bureau's business since the robbery of even a national bank

¹⁸³ Attorney General Annual Report, 1929,

¹⁸⁴ David Gram, *Killers of the Flower Moon: The Osage Murders and the Birth of the FBI* (2017).

¹⁸⁵ *Id.* at 110.

¹⁸⁶ *Id.* at 110-111.

¹⁸⁷ CHECK AG REPORTS FOR ACCOMPLISHMENT TOUTING

¹⁸⁸ H. Nathan (Asst. Dir., Bureau of Investigations) to Director (Bureau of Prisons) (letter, August 9, 1930), in Appropriations Bill for 1932 [check], Seventy-First Congress, Third Session, December 1930, at 179-180.

¹⁸⁹ Hearing on Appropriations Bill for 1934, at 92 (1932).

[] was not a Federal crime until less than two years ago. But if that robber stole a car during that holdup and crossed a State line, he then became a fugitive from Federal justice. ... A Federal chase for a violator of the national vehicle theft act has often led to the solution of a local mystery. A motivating crime is found, the theft of the car being the act of the moment, impelled by something quite different—usually the desire to escape from some other law violation. The Federal agency therefore frequently becomes an assisting agency to the enforcement bodies of the Nation, later withdrawing from the case if the State charge is the more serious.¹⁹⁰

This quote illuminates several key aspects of the local-federal relationship. First, in a car society, interstate auto theft often provided a reliable jurisdictional hook for federal involvement. Second, this jurisdictional hook “*widened tremendously the scope*” of the Bureau’s activities. Third, and importantly, the Bureau viewed its activities under the Dyer Act not as encroaching on state and local authorities’ domain, but as providing “*assistance*.” Indeed, the low profile of most of these crimes meant that they usually did not spark turf wars like higher-profile cases. Especially since the Bureau generally pursued Dyer Act cases at the behest of local authorities, there was little risk that “federal intervention” would raise local hackles. In fact, even as local police were usually the source of Dyer Act cases, the Bureau would often pass the gift-wrapped cases back to local authorities (perhaps in another jurisdiction) to prosecute. Hoover noted in 1929 that “in some instances we find that prosecution is instituted in State Courts under local Statutes, particularly where the case holds some local interest or where important witnesses are readily available without the State incurring a large expenditure.”¹⁹¹ And as we shall see, Hoover and his Bureau were more than happy to give credit to locals in exchange for the limelight in higher profile cases that required considerable local assistance.

b. The Identification Division

By effectively aggregating and delivering criminal information for the shared benefit of the Bureau and local enforcers, Dyer Act prosecutions helped tightly engraft the relatively new federal agency into the national policing ecosystem. Making the Bureau even more of a focal point in this growing informational economy was the National Identification Division, which Hoover once described as “a vast, central storehouse of information, a library of criminal records, a collection of identification data” that the federal agency received from state and local departments throughout the country.¹⁹² “There’s a ton of paper there,” he more concisely

¹⁹⁰ Courtney Ryley Cooper, “10,000 Public Enemies: Chapter VI. Chief of the Man-Hunters,” *Washington Post*, July 20, 1935, at 24.

¹⁹¹ [?] to Luhring (memo, January 29, 1930), RG 60, Class 26, NARA [pdf v.2 p.71/129].

¹⁹² 1925 Proceedings, in Proceedings of the Annual Conventions of the International Association of Chiefs of Police, 1921-1925, vol. 4 (New York, 1971), 49.

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explained.¹⁹³ Established in July 1, 1924, and housed within the Bureau of Investigation,¹⁹⁴ the division directly addressed the informational needs that the IACP had highlighted since the turn of the century and, significantly, placed Hoover in the role of facilitating that information. In fact, the division was the long-awaited proposal that the IACP had submitted to Congress back in 1901. As Hoover spoke to IACP members at its 1925 convention, the “Division of Identification is your child.”¹⁹⁵ The following year, he expressed the same sentiment differently: “Of you, by you and for you.”¹⁹⁶ This perfectly encapsulates the history and function of the division. It was established largely because of the efforts of progressive police chiefs (*by you*); it depended on information that local law enforcement shared with the Bureau (*of you*); and it maintained an information clearinghouse that aided the locals (*for you*), not to mention the Bureau as well.

When the IACP first proposed a bill for “a National Bureau of Criminal Identification” in 1901, Congress had declined to take up the measure. So in the meantime, the organization voluntarily set up its own information-sharing network with donations from participating departments. By 1923, the IACP could wait no longer. It took the first step, and before Congress authorized the move, it “unanimously adopted” resolutions to draw up a bill of sale and transfer its own bureau—physically, the office equipment and about 138,000 records—to the DOJ as “an expression of confidence of the chiefs of police of this country in the Department of Justice.”¹⁹⁷ By “confidence,” they meant that they were hopeful that “proper legislation would be enacted later authorizing that transfer.”¹⁹⁸

Congress held hearings the following year in 1924. It was clear that the relevant interest groups—police chiefs, Bureau officials, even the American Bar Association¹⁹⁹—all wanted the federal government to establish and maintain the division. But Congress wanted a better sense of how much money this endeavor would require. In fact, underlying the disagreement about how much it would cost—figures ranged from \$56,000 to \$200,000—was a more significant contention over which department of the federal government would house the new bureau.²⁰⁰ And underlying that contention was the fundamental question about the implications of the division on the federal-state relationship on law enforcement matters—particularly at a time when National Prohibition was straining that relationship.

Unsurprisingly, the chief of the Bureau at the time who testified at the hearing, William Burns, wanted the new division within the DOJ. The Justice Department was in charge of the federal prison at Leavenworth, which was already exchanging prisoner information with police

¹⁹³ 1926 Proceeding, in *Proceedings of the Annual Conventions of the International Association of Chiefs of Police, 1926-1930*, vol. 5 (New York, 1971), 58.

¹⁹⁴ *Id.* at 50. The division was created “under the provisions of an Appropriation Act which had been passed by the Congress of the United States covering the general expenses of the Bureau of Investigation of the Department of Justice.” *Id.*

¹⁹⁵ *Id.* at 50.

¹⁹⁶ 1926 Proceeding, in *Proceedings of the Annual Conventions of the International Association of Chiefs of Police, 1926-1930*, vol. 5 (New York, 1971), 108.

¹⁹⁷ 1924 Congressional Hearing, 27, 35.

¹⁹⁸ *Id.*

¹⁹⁹ The ABA reported, “No other great civilized country is so far behind” than the United States in gathering “reports, statistics, records, photographs, [and] fingerprints.” 1924 Congressional Hearing, pg.

²⁰⁰ *Id.* at 9, 76.

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departments throughout the country.²⁰¹ It made sense, then, that the DOJ would also handle the exchange of other criminal records. Accordingly, Burns calculated that \$56,000 would be enough to expand Leavenworth's operations, and he did "not think" that he would "be asking for an increase year by year."²⁰²

But Police Commissioner Enright for New York City vehemently objected. He wanted "an independent bureau," and "to start an organization" completely from scratch would require at least \$200,000.²⁰³ When Congressman Hersey informed him that "a separate bureau is rather obnoxious to us at Washington," Enright responded, "We feel this way regarding the Department of Justice."²⁰⁴ If Congress did not want to create a new federal bureaucracy, then Enright suggested -- in a canny effort to avoid making the Justice Department the beneficent counterparty to so many transactions in the criminal informational economy -- "putting it under the Department of the Interior."²⁰⁵ This made no sense, Representative Dyer pointed out, because the Interior Department did not handle the enforcement of criminal laws.²⁰⁶ To explain his position, Enright continued that the bureau "must rest on good will" to be successful and receive cooperation—and information—from local departments.²⁰⁷ And "good will will not flow ... from our police departments" to the DOJ, he insisted.²⁰⁸ When Hersey pressed him on why police chiefs felt that way, Enright answered that there was "not very much friendship between the Department of Justice and most of the police departments of our country," he elaborated.²⁰⁹ According to Enright, opposition to the DOJ had "always existed."²¹⁰

Actually, this alleged antagonism was not shared by all police chiefs in the country, and probably reflected the peculiar jealousy that the NYPD then (and not so long ago²¹¹) felt toward federal enforcement authority. At the hearing, two rival police associations appeared and presented two different bills. After the testimony of Enright, president of the International Police Conference, the Detroit superintendent of police William Rutledge, president of the rival IACP, submitted a letter to the Judiciary Committee that a "statement by anyone that there is not much feeling of friendship between police bureaus and the Department of Justice is made either in ignorance of true conditions or deliberate malice."²¹² He pointed out that the IACP's transfer of its identification bureau to the DOJ demonstrated the association's "warmest friendship toward the" DOJ and an "eagerness to cooperate more closely with it."²¹³

²⁰¹ *Id.* at 76.

²⁰² *Id.*

²⁰³ *Id.* at 1, 9 [check page].

²⁰⁴ *Id.* at 5.

²⁰⁵ *Id.* at 7.

²⁰⁶ *Id.* at 10.

²⁰⁷ *Id.* at 6, 7.

²⁰⁸ *Id.* at 6.

²⁰⁹ *Id.* at 5.

²¹⁰ *Id.* at 10.

²¹¹ See Matt Apuzzo & Adam Goldman, *Enemies Within: Inside the NYPD's Secret Spying Unit* (2013); Dafna Linzer, In New York, a Turf War in the Battle Against Terrorism, *Wash. Post*, Mar. 22, 2008.

²¹² *Id.* at 25.

²¹³ *Id.*

Enright's declaration that opposition to the DOJ had "always existed" may have arisen not just out of a generalized fear of federal encroachment but the New York police's well-known hostility toward federal agents in the enforcement of National Prohibition—even if those agents were under the Bureau of Internal Revenue (they would not be under the DOJ until 1930). Perhaps no other city in the country was as resolutely opposed to the Eighteenth Amendment as New York City, and both police officers and citizens in the Big Apple loathed the Prohibition agents who seemed to be imposing an alien power.²¹⁴ When a congressman asked another police chief about whether "the enforcement of the eighteenth amendment got anything to do with" Enright's sentiments, the chief responded, "I prefer not to touch on that. It has not done anything to reduce it."²¹⁵ New York Representative LaGuardia more pointedly answered that he believed "a jealous regard for State rights enters into it."²¹⁶ He agreed with Enright that "we should not do anything under this legislation that would even by implication extend the powers of the Department of Justice."²¹⁷ Both Enright and LaGuardia finally came around that if the new division "was made a separate and distinct organization under the Department of Justice," then "that might not be objectionable."²¹⁸

Even if not all the representatives worried specifically about the expanding powers of the DOJ, they did seriously consider under what authority the federal government could "compel the chiefs of police commissioners to furnish this information to [a federal] official."²¹⁹ It seemed necessary, according to Chairman George Graham, to connect the "constitutional grant of power" to "the purpose of obtaining information" for an existing federal department fulfilling its duties under federal laws.²²⁰ This was where the passage of time and intervening events made a difference. In 1901, when the IACP first proposed the bill, the Mann Act was still nearly a decade away. By 1924, when Congress reconsidered the bill, the federal government had the Mann Act, the Volstead Act, and the Dyer Act. Chief Burns testified before Congress that in the year since the IACP handed over its information bureau to the DOJ, it was already proving to be effective in solving federal crimes, such as "stealing automobiles, the Mann Act, [and] impersonations."²²¹

The mutuality of benefits was precisely why the Information Division finally received congressional approval—and appropriations—and proved so successful. Everyone benefited from the compilation of information, and the IACP reminded its members of this when it called on them to "enlighten Senators and Representatives in Congress from their respective districts regarding the success and value of the Division of Information and Identification, that they may readily comprehend its worth and assist in its upbuilding."²²² The "worth," of course, was the value of cooperation. As Hoover reiterated in his address at the IACP convention just one year after the DOJ's official stewardship over that information, "any real development and progress in

²¹⁴ See Lerner, *Dry Manhattan*; Nicholas Parrillo, *Against the Profit Motive*.

²¹⁵ 1924 Congressional Hearing, 22.

²¹⁶ *Id.* at 31.

²¹⁷ *Id.* at 32.

²¹⁸ *Id.* at 10; *see also id.* at 32.

²¹⁹ *Id.* at 7 (Rep. Dyer).

²²⁰ *Id.*

²²¹ *Id.* at 78.

²²² 1926 Proceeding, in *Proceedings of the Annual Conventions of the International Association of Chiefs of Police, 1926-1930*, vol. 5 (New York, 1971), 65.

crime detection and punishment must, if the modern criminal and latter-day crime is to be successfully combated, be founded upon the rock of universal co-operation.”²²³ Just another year later, Hoover announced that he could “now say that we have achieved a practically unanimity of support for the National Division of Identification of all the Chiefs of Police of all the cities in the United States and Canada of large size.”²²⁴ He was particularly pleased to report that even New York and Chicago—the two cities that had the most fractious relationship with federal authorities during National Prohibition—had come around and “developed a close relationship of mutual interest and cooperation” with the Bureau.²²⁵ Moving forward, the goal was now “to secur[e] every possible extension of the scope, influence and value of the National Division of Identification” by entering “into continued relations with the sheriffs of every county, in each state of the country.”²²⁶

By speaking of extending “the scope, influence and value” of the new division, Hoover most surely had in mind the scope, influence and value of the Bureau as well. New York Police Commissioner Enright had predicted this outcome in 1924, informing the House that the management of the information exchange would be a slippery slope to the usurpation of local control over criminal matters. “We want a medium,” Enright had explained, “but we do not want it in the place it might lead to control.”²²⁷ To be sure, the Bureau did not want to control all local crime control. But it did expand its capacity and authority well beyond its size through its management of information on criminals. Police departments grateful for the Information Division’s services returned the favor by gathering information for the Bureau when needed. As one pundit put it, “When the local officials are puzzled the national bureau clears up the doubt. When Uncle Sam is puzzled, he can call on any of the local officials for information.”²²⁸ This was a familiar dynamic that was well-established in Dyer Act cases.

But aside from its collaboration with local forces, the Bureau also grew along with the expanding scope of the information collected. At least since 1924, when leaders of the IACP appeared before Congress to persuade its members to authorize what was now the Identification Division, they described the possibility that the new agency could also compile a host of facts not strictly limited to the identification of criminals. This included “daily lists of stolen automobiles, names, numbers, and data that might lead to recovery,” and more generally, “reports of crimes,” “reports of threatened or contemplated depredations by enemies of State,” “names and descriptions of outlaw organizations and of persons belonging to bomb gangs,” and “lists of clairvoyants, mediums, etc.”²²⁹ The value—or what they called the “moral effect”—of this task was not just prosecution and enforcement of the laws, but also the “prevention” and “reduction” of crimes.²³⁰ By 1926, IACP leaders were thrilled to report that Congress had

²²³ 1925 Proceeding, in *Proceedings of the Annual Conventions of the International Association of Chiefs of Police, 1921-1925*, vol. 4 (New York, 1971), 48.

²²⁴ 1926 Proceeding, in *Proceedings of the Annual Conventions of the International Association of Chiefs of Police, 1926-1930*, vol. 5 (New York, 1971), 111.

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ 1924 Congressional Hearing, 11.

²²⁸ 1926 Proceeding, in *Proceedings of the Annual Conventions of the International Association of Chiefs of Police, 1926-1930*, vol. 5 (New York, 1971), 58.

²²⁹ 1924 Congressional Hearing, 69.

²³⁰ *Id.*

“endorsed the work” of the Identification Division “by extending appropriations for the advancement of the undertaking” as they had envisioned.²³¹ More significantly, the legislative body was going to study the feasibility of receiving “crime statistics and other subjects germane to the division under the law, all to be afforded enforcing offices as information for the prevention, suppression and detection of crime.”²³²

By the 1920s, calls for better and more statistical data on all things crime related were heard from a diverse array of constituents, from law enforcement to census wonks, from lawyers to social scientists.²³³ They were also in agreement that the present situation of data collection and analysis was woefully inadequate. The National Crime Commission deemed that “the United States had the worst criminal statistics of any civilized country.”²³⁴ A handful of states as well as private associations and the federal government had been keeping some form of criminal records since the nineteenth century; New York was the first to start in 1829.²³⁵ But what everyone wanted was a comprehensive, cohesive, and systematic picture of crimes committed, who was committing them, and what was happening to them from arrest to imprisonment. Columbia law professor Raymond Moley accordingly identified four different categories of necessary information: crime complaints, identification and characteristics of arrested persons, judicial statistics, and penal statistics.²³⁶ The main point of keeping track of these details was to improve the criminal justice system. Progressive reformers had for decades conducted surveys on the belief that data provided the clues to solving social problems. Like the criminal justice surveys undertaken in the 1920s, the Wickersham Commission also included a study of criminal statistics because, its report explained, “[s]tatistics are needed to tell us, or at least to help us tell us, what we have to do now, how we are doing it, and how far what we are doing responds to what we have to do.”²³⁷ The commissioners deplored that “no such data can be had for the country as a whole.”²³⁸ Louis Robinson, an expert on this topic who in 1911 wrote the book *History and Organization of Criminal Statistics in the United States*, revisited the subject in 1928 and declared that he could not find “any satisfaction in what the states have accomplished in the last twenty-five years in collecting and publishing periodically criminal statistics of any variety.”²³⁹

The problem stemmed from the same source that had required the Identification Division: a federal system of government. States (really counties, to a large extent) were in charge of crime

²³¹ 1926 Proceeding, in *Proceedings of the Annual Conventions of the International Association of Chiefs of Police, 1926-1930*, vol. 5 (New York, 1971), 64.

²³² *Id.*

²³³ See Louis N. Robinson, *History of Criminal Statistics*, 24 *Am. Inst. Crim. L. & Criminology* 125 (1933); Beverly Gage, *Counting Crime: J. Edgar Hoover, the Wickersham Commission, and the Problem of Criminal Statistics*, 96 *Marq. L. Rev.* 1109, 1113 (2013); Lawrence Rosen, *The Creation of the Uniform Crime Report: The Role of Social Science*, 19 *Soc. Sci. Hist.* 215, 221 (1995).

²³⁴ National Crime Commission (1927), quoted in Rosen, *Creation*, 220.

²³⁵ Robinson, *History*, 125.

²³⁶ Raymond Moley, *The Collection of Criminal Statistics in the United States*, 26 *Mich. L. Rev.* 747, 748 (1928). See also U.S. National Commission on Law Observance and Enforcement, *Report on Criminal Statistics*, in *U.S. Wickersham Commission Reports*, vol. 3 (1931), 4 (“the statistics which ought to be gathered, compiled, and published authoritatively at regular intervals, fall under three main heads—crime and criminals, prosecution, and penal treatment”).

²³⁷ *Report on Criminal Statistics*, 3.

²³⁸ *Id.*

²³⁹ Robinson, *History*, 127.

and punishment and so also the gathering of data on such matters. Not only did many states not compile criminal statistics, but the states that did so compiled them in different ways that rendered comparative studies futile.²⁴⁰ The Wickersham Commission thus concluded that the “[c]ompilation and publication of criminal statistics should be centralized ... in one Federal bureau.”²⁴¹ But, again, federalism posed several more obstacles. First, the national government could not demand that states collect criminal statistics and share them with a federal agency. To realize a centralized location of criminal statistics, the government would have to depend on the willingness of states to participate, and unfortunately, the commissioners recognized that there was “a long and obstinate tradition of noncooperation.”²⁴² Second, although Article 1 of the Constitution authorized the federal government to gather statistics on *persons*, the commission recognized that that authority was “hardly broad enough to cover all that is needed for a complete system of nation-wide criminal statistics.”²⁴³ Officials believed that the national government’s authority to gather data extended only so far as that data was related to an existing federal activity. As a result, by 1930, three different federal departments managed the compilation of three different types of criminal statistics; the Census Bureau had prison statistics, the Information Division of the DOJ had police statistics, and the Children’s Bureau had statistics on juvenile courts and delinquency.²⁴⁴ To solve all of the above problems, the commission recommended that a “uniform State law with respect to gathering and transmitting of State statistics of criminal justice, should be drafted and enacted.”²⁴⁵ In other words, state law would mandate states to do what federal laws could not.

But who knew how long it would take to persuade all the states to pass such a model law, to do so without too many variances, and to follow through? In the meantime, centralizing the compilation of statistics would have to rely on the voluntary input of state and local departments. This was one reason, the commission acknowledged, for putting the DOJ’s Identification Division in charge. Police authorities had already demonstrated a willingness to cooperate with the Bureau,²⁴⁶ but they “may be unwilling to cooperate with some other bureau not of their own choice.”²⁴⁷ In 1928, Hoover reported to Congress that the IACP had suggested “the Identification Division of the Department of Justice might be a very logical place in which to assemble statistics on crime, because all fingerprints taken in connection with felonies in the United States are sent to us.”²⁴⁸

Nevertheless, the commission insisted that the responsibility ought not to go to the Bureau, and the reason lay in its effort to separate politics from policy, a common concern of progressive reformers. According to the Wickersham report, the compilation and publication of

²⁴⁰ Rosen, *Creation*, 232 (“The major difficulty in implementing a national crime data system in the 1920s was the lack of a central organization with sufficient legal authority to mold a uniform system from the mélange of disparate and relatively autonomous local governmental units.”).

²⁴¹ Report on Criminal Statistics, 5.

²⁴² *Id.*

²⁴³ *Id.* at 7.

²⁴⁴ *Id.* at 9.

²⁴⁵ *Id.* at 18.

²⁴⁶ The IACP formed the Committee on Uniform Crime Records in 1929, which recommended that the Identification Division undertake the work. See Robinson, *History*, 133-134.

²⁴⁷ Report on Criminal Statistics, 16.

²⁴⁸ Appropriations Bill for 1928, Sixty-Ninth Congress, Second Session, December 1926-January 1927, p. 58.

statistics were best handled by “some detached bureau unaffected by the desires of the bureau or agency whose activities are to be pictured”²⁴⁹—in other words, not “any bureau or agency which is engaged in administering the criminal law.”²⁵⁰ Otherwise, the conflicted bureau might tinker with the process or data “to make for itself the most favorable showing possible.”²⁵¹ Apparently, one of the IACP’s motivations for uniform crime records was to counter the impression “taken for granted by many that a crime wave exists.”²⁵² A more accurate picture taken through hard numbers would help to counter the image of law enforcement as ineffective.

It may have been that law enforcement sought to deflect criticism by using criminal statistics to dismiss the existence of a crime wave. But the Wickersham commissioners were worried about an entirely different, and more disturbing, motive, namely, that the Bureau would marshal criminal statistics in an attempt to justify its expanding authority. “It takes but little experience,” the report maintained, “to convince that a serious abuse exists in compiling them [criminal statistics] as a basis for requesting appropriations or for justifying the existence of or urging expanded powers and equipment for the agency in question rather than for the purposes which criminal statistics are designed to further.”²⁵³ Indeed, it had been a year since Congress had vested the Identification Division “with the duty of acquiring, collecting, classifying, and preserving criminal identification and other crime records,” and the commission’s fears had been substantiated.²⁵⁴ The Bureau’s monthly uniform crime reports made “no suggestion as to any limitations or doubts with respect to the utility or authority of the figures presented.”²⁵⁵ “On the contrary,” the report continued, “they contain a graphic chart of ‘monthly crime trends,’ and along with them the bureau has released to the press statements quoting and interpreting them without qualification”—notwithstanding the many “weaknesses” in the Bureau’s numbers.²⁵⁶ Unfortunately, cities were marshaling the reports “to advertise their freedom from crime as compared with other municipalities,”²⁵⁷ and Hoover was touting them in appropriations hearings.²⁵⁸ Among the three federal agencies that dealt with criminal data, the Children’s Bureau had the most experience dealing with court statistics, but its subject matter expertise was obviously limited.²⁵⁹ Accordingly, “as between the Bureau of the Census and the Bureau of Investigation,” the commissioners decided that “the former is much the preferable place” to put “the whole system.”²⁶⁰

But given the status quo, the Wickersham Commission ultimately recommended to stay the course—with the Census Bureau, Children’s Bureau, and Bureau of Investigation gathering

²⁴⁹ *Id.* at 6.

²⁵⁰ *Id.* at 5.

²⁵¹ *Id.*

²⁵² William P. Rutledge, quoted in Lawrence Rosen, *The Creation of the Uniform Crime Report: The Role of Social Science*, 19 Soc. Sci. Hist. 215, 216 (1995). [quote original IACP 1971: 131-32] Regardless whether the police harbored this ulterior motive, they also sought better records to get out of “the absurd position of endeavoring to diagnose and cure a social disease with little knowledge of its causes, its nature and its prevalence.” *Id.* at 216-17.

²⁵³ Report on Criminal Statistics, 5-6. See also Gage, Counting Crime, 1117.

²⁵⁴ Report on Criminal Statistics, 10, quoting Act of June 11, 1930.

²⁵⁵ *Id.* at 12.

²⁵⁶ *Id.*

²⁵⁷ *Id.* at 13.

²⁵⁸ Appropriations Bill for 1932, Seventy-First Congress, Third Session, December 1930 (Hoover).

²⁵⁹ See Robinson, *History*, 132.

²⁶⁰ Report on Criminal Statistics, 15.

their own relevant datasets—“until the ultimate plan is settled,” whatever that may be.²⁶¹ Path dependency and short political attention spans, in addition to the longer-lasting interests of IACP leaders and the relationship they had already forged with Hoover’s Bureau, all explain why, since 1930, the Bureau of Investigation, now FBI, has been in charge of the Uniform Crime Reporting system. Significantly, what had begun as the compilation of fingerprints served a much larger goal of understanding the nature of crime, its environment, and the character of individuals mired in the justice system.²⁶² Hoover once said that “there is nothing romantic or soul-stirring about statistics themselves, yet they represent and portray efforts and endeavors.”²⁶³ His statement pointed to a powerful truth about how the Bureau expanded not only its capacity and power, but also the federal government’s role in anticrime efforts, by serving as the nexus for information that others wanted.

VI. FDR/War on Crime

Historians have pointed to President Franklin Delano Roosevelt’s war on crime as a major turning point in the federal government’s growing involvement in the traditionally local sphere of crime and punishment. Indeed, Congress together with the New Deal administration accomplished much in short time. In 1934, they passed nine crime bills and built Alcatraz prison, and the following year the Bureau of Investigation was re-christened the *Federal* Bureau of Investigation.²⁶⁴ But examining what, exactly, this war on crime entailed suggests a different narrative, a continuation of a decade-long collaboration, particularly over criminal information, punctuated by strategic involvement in high-profile cases to showcase the federal bureaucracy’s effectiveness. This history explains why Roosevelt believed that bolstering the informational infrastructure—already tested to be successful and proven to be popular—might help him sell his New Deal social programs to those skeptical about the federal government’s expanding role in new regulatory areas. This longer periodization also suggests a reconsideration of the causal factors that contributed to the federal government’s activity in criminal matters. Not only does this narrative de-center J. Edgar Hoover, but it also looks beyond New Deal politics to the material needs of law enforcement in a multi-jurisdictional nation in a modern era with an increasingly mobile population.

a. FDR’s New Deal

Franklin Roosevelt did not arrive at the White House committed to fundamentally reshaping the relationship between the states and the federal government when it came to criminal law enforcement. To be sure, years before his presidency, Roosevelt had been keenly

²⁶¹ *Id.* at 17.

²⁶² See also Moley, *Collection*, 752 (“of much more fundamental importance than identification is the scientific study of the criminal population with a view to the formulation of adequate methods of crime prevention.”).

²⁶³ 1926 Proceeding, in *Proceedings of the Annual Conventions of the International Association of Chiefs of Police, 1926-1930*, vol. 5 (New York, 1971), 109.

²⁶⁴ See Stolberg, *Twilight Zone*, 394; Kathleen J. Frydl, *Kidnapping and State Development in the United States*, *Stud. in Am. Pol. Dev.* 18, 20 (2006); Daniel Richman, *The Past, Present, and Future of Violent Crime Federalism*, 34 *Crime and Justice* 377, 387-388 (2006).

interested in crime and punishment.²⁶⁵ But for Roosevelt, crime control was inherently a local issue. In 1929 as the governor of New York, he had bemoaned the national government's "dangerous tendency" "to encroach" on "State supremacy," but noted that the blame rested on the states themselves, particularly with respect to the "new and alarming problems in criminal activity."²⁶⁶ Many states, instead of stepping up to meet the challenges of law enforcement in the twentieth century, had become lazy and depended on the feds. Roosevelt predicted that "we should find the heavy hand of Washington laid on us by Federal legislation" because "State Governments have been inefficient, stupid or negligent."²⁶⁷ As an example of what states could do, Roosevelt called upon them to start collecting crime statistics, noting that his fellow governors ought not "think that this is a matter which can be turned over to the Government at Washington."²⁶⁸ Notably, this was precisely what the Wickersham Commission would recommend just a few years later in 1931.

Even the people Roosevelt put in charge of shaping the crime agenda took federalism seriously and viewed the states as occupying the primary role in criminal law enforcement. Take, for example, his chief political advisor, Louis Howe. Although Howe was in favor of an "American Scotland Yard," he nonetheless recognized "the broad bar of a fundamental constitutional provision in regard to police powers."²⁶⁹ Accordingly, he explained that such a national police force presented "one of the ways in which the Federal Government can help, not by usurping any of the state police powers, but coming ... upon the invitation of the local authorities."²⁷⁰ And it was Howe, with Roosevelt's blessing, who assigned Professor Raymond Moley to work fulltime on anti-crime initiatives,²⁷¹ and Moley's report, published in May 1934, reflected an effort to balance states' rights and the need for a federal role. While he recognized that "[s]ome of the most difficult problems of law enforcement arise from the very nature of our Federal Union," he nonetheless maintained that "it is very important not to permit the citizen or his local government to get the idea that the suppression of crime will be entirely assumed by Federal enforcement machinery."²⁷² Roosevelt's advisors who envisioned a robust national state to tackle the problems of modern society understood that their war on crime could not shore up the Bureau's—and J. Edgar Hoover's—power at the expense of local law enforcement.

Attorney General Cummings, who would take over the anti-crime initiative after Moley left government a few months after finishing his report, also understood that crime fighting would have to remain primarily a local responsibility.²⁷³ When the chief of his criminal division,

²⁶⁵ See Louis M. Howe, "Uncle Sam Starts after Crime," *Saturday Evening Post*, July 29, 1933, 6 ("the present President has been for years a member of the executive committee of the little association of prominent men, known as the National Crime Commission"); Stolberg, *Twilight Zone*, 389.

²⁶⁶ Address before the Conference of Governors, New London, Conn., July 16, 1929, Public Papers of the Presidents of the United States.

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ Howe, "Uncle Sam," 71; *see also* Stolberg, *Twilight Zone*, 399.

²⁷⁰ Howe, "Uncle Sam," 71.

²⁷¹ *Id.* Note that while Moley reportedly got the job to give him something to do after his poorly received work at economic conference, he brought considerable intellectual weight to the project, having been a professor at Columbia, specializing in criminal administration CITES

²⁷² "Moley's Report to Roosevelt on Law Enforcement Measures," *New York Times*, May 23, 1934.

²⁷³ Stolberg, *Twilight Zone*, 400-402.

speaking at an American Bar Association convention, proposed a plan to place all municipal and state law enforcement officers under the U.S. Attorney General's office, Cummings promptly demanded his resignation without consulting the president.²⁷⁴ Even if he was against European-style centralization, Cummings nonetheless recognized that the federal government had a crucial role to play. In April 1934 when he rolled out his "twelve point plan for crime prevention" that would provide the blueprint for Roosevelt's war on crime, he listed several reasons justifying the plan. He took a swipe at local officers and even lawyers who did not maintain the standards of professionalism and entered into "an unholy alliance" with racketeers.²⁷⁵ But he focused most on the "twilight zone," the area in "between the jurisdictions of the Federal and State Governments" where "the predatory criminal takes hopeful refuge."²⁷⁶ This was, of course, a problem that IACP leaders had identified even before the twentieth century. To appease those who were wary of federal government overreach, Cummings made clear that the "Federal Government has no desire to extend its jurisdiction beyond cases in which, due to the nature of the crime itself, it is impossible for the States adequately to protect themselves."²⁷⁷

But already by the early 1930s, the American people did not need much more convincing that, as Cummings noted, the United States was "no longer a nation whose problems are local and isolated" and that many criminal offenses had "an interstate character."²⁷⁸ In 1930, then-President Hoover, the stalwart defender of local rule, announced that the federal government would provide reinforcements in "an intensified cooperative drive against racketeering in Chicago and elsewhere."²⁷⁹ This announcement prompted newspapers to report that "the nation wars on racketeering," that, in fact, it was "more than a war, it is a revolution ... against gangster and hoodlum rule."²⁸⁰ Americans believed that their country had already launched a war against criminal elements before Roosevelt came into office.

To be sure, there were differences between the two presidents' anti-crime initiatives. Hoover acknowledged the need for federal assistance in law enforcement but not for more federal criminal laws, in contrast to the nine bills that his successor would pass. Hoover maintained that he did "not want any new Federal legislation to cover racketeering" because states "had ample laws that cover such criminality."²⁸¹ He would, however, slightly yield on this position just two years later when Charles Lindbergh's twenty-month-old son was kidnapped from his own home. The crime captured the nation's attention.²⁸² Immediately after the kidnapping, Hoover and Attorney General Mitchell directed all federal police agencies, but especially the Bureau, to "cooperate to the utmost with the State authorities," who were led by

²⁷⁴ Bengé, 458.

²⁷⁵ "Attorney General Cummings Outlines Crime Prevention Program Over CBS," Columbia Broadcasting System, April 19, 1934, at 2.

²⁷⁶ *Id.*

²⁷⁷ *Id.* at 3.

²⁷⁸ *Id.*

²⁷⁹ "Topics of the Day: The Nation Aroused to Smash the Racketeer," *Literary Digest*, December 6, 1930.

²⁸⁰ *Id.*

²⁸¹ Hoover, quoted in "Nation Aroused."

²⁸² Kathleen Frydl, "Kidnapping and State Development in the United States," 20 *Stud. in Am. Pol. Dev.* 18, 24 (2006).

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New Jersey State Police Colonel Schwarzkopf (the future general's father).²⁸³ But Mitchell noted—doubtless thinking about the Dyer Act, as there were no other options—that although there was no reason as yet to think that the case fell within federal jurisdiction, agents would be poised to see if it crossed that line. Bureau Director Hoover quickly reached out but was substantially rebuffed by Schwarzkopf, who refused to give fingerprint evidence to the Bureau for testing.²⁸⁴ Subsequent Bureau assistance in the ensuing months did not amount to much either.²⁸⁵ After Baby Lindbergh's body was found two months after the kidnapping, the public demanded a national response.²⁸⁶

Congress promptly considered several bills to make the transportation of kidnapped persons over state lines a federal offense.²⁸⁷ Mitchell was hesitant about this expansion of federal jurisdiction,²⁸⁸ confessing that he could not recommend such legislation in light of his department's budget limitations. He also had a longer-term consequences in mind, noting:

If this law had been on the statute books at the time the Lindbergh case arose, there would have been an outcry demanding that the federal government take hold of the case; the local police authorities would have relaxed their activities and been glad to dump the responsibilities on the federal government; we would have spent thousands of dollars with no better results than the state authorities obtained, only to find out at the end that no federal crime had been committed as there had been no interstate transportation.²⁸⁹

But given the national uproar, Mitchell yielded, stating that he had “no objection to such a measure if Congress desires to pass it.”²⁹⁰ He advised President Hoover not to veto the kidnapping bill.

One might view the passage of a new federal criminal law as an expansion of the Bureau's jurisdiction. But the reality of enforcement was more complicated, as DOJ officials quickly learned during the Lindbergh case, which foreshadowed the conflict that would emerge as the Bureau moved beyond “service” cases and into the public sphere where agencies vied for

²⁸³ “Federal Aid in Hunt Ordered by Hoover: Cooperation of All Government Agencies Offered to States to Find Kidnappers,” *New York Times*, March 2, 1932.

²⁸⁴ Claire Bond Potter, *War on Crime: Bandits, G-Men, and the Politics of Mass Culture* 113 (1998).

²⁸⁵ James D. Calder, *The Origins and Development of Federal Crime Control Policy: Herbert Hoover's Initiatives*, 200 (1993).

²⁸⁶ See R. L. Duffus, “Kidnapping: A Rising Menace to the Nation,” *New York Times*, March 6, 1932; Buel W. Patch, “Proposed Expansions of Federal Police Activity,” 1 *Editorial Research Reports* 231, 231 (1932).

²⁸⁷ See Patch, “Proposed Expansions,” 232-233.

²⁸⁸ Patch, “Proposed Expansions,” 231-232; Mitchell was not the only one with qualms about tasking the feds with these kidnapping cases. The House Judiciary Committee initially proposed targeting kidnappings with a federally deputized task force of state and local officers, with authority from their governors to go beyond state lines, and with the expense born by the state. Like several other proposals for horizontal cooperation, this one would also go nowhere. Horace L. Bomar, Jr., “The Lindbergh Law,” 1 *Law & Contemp. Probs.* 435, 436-37 (1934).

²⁸⁹ Federal Justice, 479.

²⁹⁰ “Federal Aid.”

control and credit. A year after the Lindbergh Kidnapping Act's passage,²⁹¹ Hoover still had to walk a fine line between embracing the Bureau's new interstate responsibilities (or opportunities) and throwing shade on the locals for falling down on their job. During appropriations hearings in 1934, he testified:

During the hearings upon that legislation some chiefs of police testified to the effect that they were severely handicapped where a person was kidnaped in the city of St. Louis, let us say, and taken across the State line into Illinois. They were practically helpless in the matter of locating witnesses and materially handicapped in getting the kidnaper returned to St. Louis. There were innumerable delays, difficulties and endless red tape all working in favor of the criminal. They wanted the Federal Government to have authority to act in such cases. You might say that that was an endeavor to pass to the Federal Government a responsibility resting on local authorities, but I do not think so.²⁹²

The Lindbergh case and aftermath confirmed at least two observations for the new Roosevelt administration—observations that J. Edgar Hoover had also understood for some time during his years at the Bureau. First, high-profile cases could provoke the public into calling for greater government intervention. But, second, that involvement would have to be based on collaboration with local law enforcement.

In June 1933, just months after he began his first term and in the wake of several high-profile kidnappings and the Kansas City murder of a federal agent (and the prisoner he was escorting), Roosevelt declared his war on crime.²⁹³ For one thing, the people wanted it. As Louis Howe observed in July 1933 in an *Saturday Evening Post* article, which announced in its headline that “Uncle Sam Starts after Crime,” the “average citizen at least [was] beginning to consider the organized criminal as a personal danger to him and to his family.” During the economic depression, kidnapping for ransom in particular was making “every man with a comfortable income uneasy lest he, personally, be the next victim.”²⁹⁴ “John Public” was now beginning to understand that “the kidnaper cannot be eliminated without eliminating the gangster, and the gangster cannot be eliminated without eliminating the racketeer.”²⁹⁵ According to Howe, Americans—at least the ones that had politicians’ attention—were realizing that the national criminal enterprises that they had known only from the headlines could come after them and their families, in their homes.²⁹⁶

Roosevelt wanted the American public to understand as well that the solution to the crime problem was one and the same as the solution to the nation’s economic woes, which was why,

²⁹¹ See 18 U.S.C. § 1201 (1932).

²⁹² 1934 Appropriations Hearing, 93.

²⁹³ Potter, 2. See CHECK Robert Unger, *The Union Station Massacre: The Original Sin of J. Edgar Hoover’s FBI* (1997).

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ On prevalence of kidnappings, see Frydl, “Kidnapping.”

unlike President Hoover, Roosevelt was eager to take up the law enforcement challenge. His 1934 State of the Union address reveals that he understood that going after criminals would help bolster support for his larger regulatory program, and he wanted the American public to appreciate that national solutions could be effective in addressing local problems.²⁹⁷ Regarding “home problems,” he remarked that there were “persons or groups who have been living off their neighbors by the use of methods either unethical or criminal.”²⁹⁸ The “first category,” those who flouted “ethical standards of business,” may have violated only “the spirit and purpose of our tax laws,” and so required “stringent preventive or regulatory measures.”²⁹⁹ The “other category” comprised those who did violate the criminal laws, committing “organized banditry, cold-blooded shooting, lynching, and kidnaping”; in these cases, law enforcement would have to step up their efforts. Roosevelt’s larger point, however, was that both of “[t]hese violations of ethics and these violations of law call on the strong arm of government for their immediate suppression.”³⁰⁰

Roosevelt’s State of the Union served to introduce his attorney general’s twelve-point plan, which Cummings unveiled later in April. Actually, the “plan” was the DOJ’s and the administration’s show of support for twelve bills that were then pending before Congress. Seven of Cummings’ points dealt with the creation of new federal crimes. Compared with former President Hoover’s position on no new federal criminal laws, Roosevelt’s embrace was a marked change.

But when examining the actual substance of the bills, it becomes evident that Roosevelt’s legislative program did not break new ground. In fact, Congress had introduced many of them, which enjoyed broad support, during the Hoover administration. For instance, the House in 1932 considered bills on racketeering (Cummings’ point no. 1), stolen property (point no. 2, which was essentially an extension of the Dyer Act), and the interstate shipment of firearms (point no. 11).³⁰¹ Point no. 3 concerned two bills “strengthening and extending the so-called Lindbergh kidnaping statute” that Congress had passed in 1932. The purpose of these bills was to clarify when, exactly, federal agents could join a kidnaping investigation since the interstate nature of a particular crime often would not be discovered until after the conclusion of a case; Congress wanted to specify that “if a kidnapped person is not released after three days, interstate transportation shall be presumed.”³⁰² Even the new crimes—like the prohibition on the robbing of federal banks (point no. 5) and killing federal officers (point no. 6)—were “modest and logical improvements” as one historian described them, and certainly not motivated to grow the federal

²⁹⁷ See Bengé, 395 (“any acknowledgement of the nation’s ‘crime problem’ as an urgent and legitimate federal concern could only have been regarded as part of a more general and certainly welcome expression of federal interest in a whole range of problems - widespread unemployment, failed economic and political institutions, social conflict, and personal hardship among the - then afflicting the body politic.”); Williams, *Without Understanding*, 325 (“Attorney General Cummings and others used the Bureau’s achievements to allay liberal and radical criticism that the government had failed to find adequate solutions to other pressing social problems, most notably economic distress and displacement brought on by the Great Depression.”); Frydl, “Kidnaping,” 16 (“It is worth noting the coterminous advance of the social welfare state with the security state; the threat of economic peril alongside perceived or real threats to basic security provided a shared rhetorical context that legitimized and extended the case for federal power in general.”).

²⁹⁸ 1934 State of the Union.

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ Compare “Cummings Outlines,” 3-4, with Patch, “Proposed Expansions.”

³⁰² Moley report.

bureaucracy.³⁰³ As Moley clarified in his report to the president, there was “no intention that the United States Government should supersede State authorities in these cases, but the bill is to give Federal authorities the power to cooperate with local forces when necessary.”³⁰⁴

Perhaps most revealing is point no. 12—on a “law authorizing agreements between two or more States for mutual cooperation in the prevention of crime”—which was first introduced in the House, also back in 1932. In explaining the purpose of his bill, Representative Sumners pointed out that there was “just one of two things” that the federal government could do in response to the increase in crimes carried out across state lines: either send criminal functions “back to the States” or “reconcile ourselves to be governed by a great Federal bureaucracy.”³⁰⁵ As a national legislator, he had “seen enough slobbering over these criminals and heard enough maudlin sentimentality about them”; he wanted “give two sovereign States the privilege of entering into any agreement they want to, to protect their citizens against people who ought to be shot on sight.”³⁰⁶ In other words, an important part of FDR’s legislative package was a law giving blanket congressional consent to interstate compacts, as required by Article 1 of the Constitution, “for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies”³⁰⁷ as a measure to avoid expanding the federal law enforcement apparatus.

Although the Administration’s promotion of interstate compact suggests a desire to increase state-to-state enforcement collaborations unmediated by federal authorities, it probably had mixed feelings on the matter, or at least didn’t want to put serious money on the table to that end. Conspicuously absent from its program were the sort of financial grants-in-aid to the states that (even if conditional) would have given states -- and perhaps their subdivisions -- more programmatic control.³⁰⁸ The Bureau would thus remain the federal government’s prime negotiator of its relationships with state and local enforcers.

Whatever its intentions, FDR’s war on crime did increase the Bureau’s direct authority over criminal matters. Most directly, Moley revealed that it was “his judgment that if the proposed legislation is adopted, the field investigating force should immediately be increased to not less than 1,000.”³⁰⁹ Hoover himself informed the attorney general that he would need an additional 200 special agents and 70 accountants, which would nearly double the Bureau’s existing manpower.³¹⁰ The Bureau’s capacity also grew in indirect ways that had already been

³⁰³ Stolberg, “Twilight Zone,” 403.

³⁰⁴ Moley report.

³⁰⁵ Sumners statement, 75 Cong. Rec. 8423 (1932).

³⁰⁶ *Id.*

³⁰⁷ 48 Stat. L. 909, Crime Control Compact Consent Act of 1934 (now 4 U.S.C. § 112 (2003)).

³⁰⁸ See Arthur C. Millsbaugh, *Crime Control by the National Government*, 49-50 (1937) (Brookings Institution Report) (noting that the “federal government has not yet made use of financial grants-in-aid to assist the states in their criminal-law enforcement work, but has sought by other means to strengthen, co-ordinate, and supplement state effort.”); Donald C. Stone, *Reorganization for Police Protection*, 1 *Law & Contemp. Probs.* 451, 456-57 (1934) (suggesting that a federal grant-in-aid system might be developed but counseling against leaving standard setting to the more “political” state governments); Potter at 187 (suggesting Hoover helped kill grant proposals); see also Richman, *Violent Crime* (on subsequent federal grant programs).

³⁰⁹ Moley report.

³¹⁰ Stockham, 142.

established in earlier Mann Act and Dyer Act cases: through the informational infrastructure. This was, perhaps, an inevitable consequence of the challenge of delineating when a crime, like kidnapping or robbery, crosses from a state to a federal matter. Moley recognized, for instance, that Senate Bill 2841 as written “practically assumes [federal] jurisdiction in all cases of bank robbery or burglary” and that this was “a very considerable extension of Federal responsibility.”³¹¹ But he clarified that this bill would apply only to “professional criminals who move from State to State and in many instances operate on a national scale” and would “not, [he] submitted, apply to local criminals.”³¹² But the Bureau’s experience with Mann Act and Dyer Act cases suggested that this distinction would not always be so clear-cut. Moley admitted as much when he concluded that ensuring the proper division of local and federal responsibilities would have to “be found in an attempt to operate the bill” and “depend upon the wisdom with which its enforcement is attended.”³¹³ That wisdom would be the discretion of Hoover and his Bureau to determine when to intervene and which cases to leave to the locals, all the while nurturing the collaborative relationship that he had been developing for years.

b. Operational Realities in 1934 and Beyond

The need to “de-center” Hoover historiographically does not mean he and the Bureau were not key protagonists in our narrative. It does, however, improve our understanding of the Bureau’s operations while FDR and Cummings were touting their War on Crime. These operations -- and the way they were presented to the public, to state and authorities, and Congress -- endeavored to walk the line envisioned by Cummings and Moley. Of course, figuring out the degree to which Hoover followed their script is difficult indeed. But one would hardly expect this long-time bureaucrat who wanted to keep his job within the new administration to reject the script. Equally, the script was quite consistent with what the Bureau had been doing already, and with what informational exigencies and the nature of the American enforcement system would have required anyway.

This is not to say that the script didn’t pose its own challenges. Using the discretionary authority licensed by the Dyer Act and the new statutes of 1934, the Bureau would pursue some noted Bad Guys and would, to the extent possible, maintain operational control over those cases, both to ensure success and to credibly claim credit for it. But “to the extent possible” is a critical caveat, as the Bureau could make its high-profile cases only with a high degree of cooperation from the same local authorities it wanted in the shadows. The Bureau’s assiduous work on the informational infrastructure already in progress and on its “service” lines of business, particularly in the form of Dyer Act cases, would more than offset these informational and resource “withdrawals” and would be a low-risk source of local support and the congressional support that inevitably followed.

c. Public Enemies

³¹¹ Moley report.

³¹² Id.

³¹³ Id.

Just a few months into the Roosevelt Administration, the Bureau's new kidnapping jurisdiction and a call to its new kidnapping hotline found it hot on the pursuit of "Machine Gun" Kelly. Kelly, when apprehended in Memphis on September 26, 1933, gave them new visibility with his widely quoted (and possibly apocryphal) "Don't Shoot, G-Men."³¹⁴ But the Bureau was not yet chomping at the bit to take the lead in high-profile cases. According to Burroughs, "[t]he capture of Machine Gun Kelley was anomalous."³¹⁵

The Bureau was willing to give technical assistance when, in October 1933, a sheriff and congressman from Ohio reached out to the Department for help after John Dillinger and his men (using a car that appeared to have been stolen) killed the Lima, Ohio, sheriff while breaking Dillinger out of jail.³¹⁶ In December 1933, Melvin Purvis, Special Agent in Charge of the Chicago Field office, attended a meeting with Chicago police officials at the office of the Cook County State's Attorney "to begin a concentrated effort" to get Dillinger and his gang. Yet, when reporting on the meeting to Hoover, Purvis simply stressed both how cooperative the Bureau was being and how cooperative the State's Attorney said it was being.³¹⁷ And when Hoover gave the Attorney General a progress report on the manhunt in January 1934, he simply noted how Dillinger and his gang were "badly wanted by local authorities throughout Indiana and Illinois."³¹⁸ Indeed, there were those within the Justice Department at the end of 1933 who planned to make its main target the "commercial racketeers" plaguing the cities.³¹⁹

It is surely true that events in 1934 -- a banner year for celebrity bandits -- changed Hoover's plans and put high-profile bandits front and center.³²⁰ The rhetorical use that FDR and Cummings made of these villains in the rollout of their War on Crime made sure of that. From an organizational perspective, however, the pursuit of notorious fugitives, rather than urban mobsters, was overdetermined. Potter suggests that "a campaign against syndicate crime would have challenged the labor unions and political machines that had engineered the Democratic victory in 1932 ... and were then pushing local governments to cooperate in New Deal reforms."³²¹ Even putting such political considerations aside, the choice between, on the one hand, going after a carefully selected group of Public Enemies with the help of local police and, on the other, trying to make cases against racketeers embedded in local ecosystems that often included the police, would have been pretty easy for an agency leader trying to be an indispensable partner in policing nationwide.

This is not to say that chasing famous bad guys was riskless. As Frydl points out: "The known failure of law enforcement to 'get their man' became more problematic thanks to a

³¹⁴ Tony G. Poveda, Notable Cases, 45, 56, in *The FBI: A Comprehensive Reference Guide*; see Bryan Burrough, *Public Enemies: America's Greatest Crime Wave and the Birth of the FBI*, 133-34 (on doubt about the quote and suggestion of actual one).

³¹⁵ Burrough at 147.

³¹⁶ S.F. Cowley, Memorandum for the Director, Murder of Sheriff Jesse Barber, Oct. 24, 1933, Dillinger Gang pt. 1 of 30, p. 43

Bryan Burrough, at 140-141 (2004); see also id at 153-54; 247 (on Hoover's initial lack of interest).

³¹⁷ Letter, M.H. Purvis to Director Hoover, Dec. 19, 1933, vault.fbi Gang pt 2, p. 42.

³¹⁸ Letter, J. Edgar Hoover, to Attorney General, Jan 26, 1934, vault.fbi Gang pt. 2, p. 128.

³¹⁹ Potter at 139,

³²⁰ Potter at 139.

³²¹ Potter at 123.

powerful print media that reported a suspect's escapades to a rapt audience."³²² Still, as its reputation and sophistication in media relations grew, the Bureau could garner unearned points. When, in January 1934, Tucson, Arizona, police apprehended Dillinger, Hoover publicly "expressed his satisfaction with the performance of Tucson and county peace officers."³²³ Immediately, the president of a "scientific protection firm" congratulated Hoover on the success of "your men" and voiced his "suspicion" that Hoover had engineered "the credit" being given to the local police, noting: "I'm sure this will pay you many times in securing the co-operation of the local police departments with your men."³²⁴ Hoover responded, careful not to correct the misimpression, agreeing that "this practice on the part of newspapers will aid materially in securing the cooperation of the local and Federal authorities."³²⁵

Extradited to Indiana, Dillinger escaped from the Crown Point County Jail on March 3 -- with help from corrupt local officials³²⁶ -- and Hoover then mobilized the Bureau to pursue Dillinger, who had, after all, committed multiple Dyer Act violations (a fact always noted in the case heading). This massive federal effort, and the headlines it garnered, came just as Congress was considering the crime legislative package proposed by Attorney General Cummings and doubtless sped its passage.³²⁷ It was not the only conspicuous targeting of a Public Enemy at this politically important time. On April 6, Cummings announced that his Department was entering the search for Bonnie Parker and Clyde Barrow, whom he cited he cited as illustrating the need for "federal assistance in a co-operative effort to suppress this kind of crime."³²⁸ (That said, Hoover "never treated the case seriously,"³²⁹ and no federal agents were involved when former Texas Rangers and sheriff's deputies ambushed the couple on May 23, 1934 -- the same day the Moley report was released.)³³⁰

This political backdrop (and perhaps concerns about local corruption) made federal branding even more important in the hunt for Dillinger and his gang. When Melvin Purvis asked headquarters whether "he should solicit the assistance of local law enforcement" when conducting raids in the case, he was told "such raids should be conducted by Division Agents exclusively whenever possible" with outreach to locals only if "absolutely necessary."³³¹ Still, even with around thirty-eight agents assigned full-time that spring,³³² Dillinger could not be tracked without considerable assistance from local police, like those in Kentucky, where he visited soon after his escape,³³³ and in Port Huron, Michigan, where an under-sheriff was killed in the course of apprehending a man who had escaped with Dillinger (and soon died of wounds

³²² Frydl at 19.

³²³ J. Edgar Hoover Lauds Work of Police, Jan. 26, 1934 Tucson Daily Citizen, clip in FBI files, fbi.vault Gang pt. 3 p. 49.

³²⁴ Letter, President of Federal Laboratories, to Director Hoover, Jan. 26, 1934, vault.fbi Dillinger Gang, pt. 3, p. 15.

³²⁵ Letter, Director Hoover to John Young, Pres. of Federal Laboratories, Feb. 2, 1934, vault.fbi, Gang pt. 3, p. 16.

³²⁶ Potter at 145.

³²⁷ Kenneth O'Reilly, *A New Deal for the FBI: The Roosevelt Administration, Crime Control, and National Security*, 69 J. Am. Hist. 638, 642-43 (1982).

³²⁸ Potter, at 103.

³²⁹ Burrough, at 347.

³³⁰ Potter at 103; Barrow and Woman Are Slain by Police in Louisiana Trap, N.Y. Times, May 24, 1934, at 1.

³³¹ Memorandum to the Director, S.P. Cowley, Mar. 7, 1934, fbi.vault Gang at p. 4, p. 95.

³³² Burrough, at 347 n.*.

³³³ Case Report, Harry Pierpont et al., Mar. 15, 1934, fbi.vault Gang pt.4 p. 97.

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from the shootout).³³⁴ In April, the IACP's president quietly chided Hoover's media-hogging. Noting press reports of Hoover's "constant and devoted search for Dillinger," he observed: "While your faithful agents are making every effort to apprehend this man, it is true that we likewise are making a similar effort." He ended by avowing that the "entire force" of the IACP "are at YOUR disposal."³³⁵ For its part, the Bureau took pains later in the month to shoot down a press report "to the effect that this Division has not cooperated with [local] law enforcement officials": the report had "caused considerable embarrassment particularly because it is not true . . . and secondarily because it has caused collaborators of the Division to feel offended and hurt."³³⁶

Maintaining tight Bureau control over the Dillinger manhunt -- for both political and operational reasons -- while not aggrieving state and local police, who could quickly complain to Congress, could be challenging. A flurry of internal memos followed a newspaper report quoting Senator Copeland of New York (chair of the Senate Racketeering Committee) as noting "a pathetic failure of co-operation between Federal, State and local authorities' in the Dillinger case."³³⁷ Immediately, as Hoover told the Attorney General, local police throughout the Midwest were put "on the defensive" when reporters started asking "where they have failed to cooperate."³³⁸ For instance, the head of the Michigan State Police, Oscar Olander, had told reporters of vainly offering help to the Division/Bureau in apprehending Dillinger in Wisconsin. It turned out that the Michigan official, who was close with Copeland, had been told by his men that when they asked to accompany agents and a sheriff on the raid, an agent had said: "Tell the State Police to go to Hell. When the State Police are wanted they will be called upon." In a subsequent conversation with a Bureau official, Commissioner Olander explained that reporters had asked Olander about Dillinger's presence in Michigan and Olander had to admit that he hadn't known that. So he was put in "an embarrassing position" and made the statements to defend himself after the Copeland remarks, not to criticize the Bureau. Olander assured the Bureau that not only was he a big fan, but when a Michigan congressman had tried to get him to make a "statement against the Division," he had refused.³³⁹

By May 1934, after a bloody failed capture attempt by the Bureau in late April,³⁴⁰ and spurred by Hoover's missives to field offices demanding that Dillinger ("Public Enemy #1") be given priority over all other matters,³⁴¹ agents were closing in. Intergovernmental relations were still critical though. Told by Indiana Governor McNutt that his "chief desire is to have a member of the State Police present when Dillinger was captured," a Bureau official assured him it would call "whenever possible," but took care to substitute the Director of Public Safety, whom they knew and trusted, for the police captain the Governor had suggested (who had been on

³³⁴ Letter From Wm. Larson, SAC, to Director Hoover, Mar. 20, 1934, fbi.vault, Dillinger Gang pt. 6 at 111.

³³⁵ Letter from Chas. A. Wheeler, Pres. IACP, to Dir. Hoover, April 6, 1934, fbi.vault Dillinger Gang pt 10, p. 146.

³³⁶ S.P. Cowley, Memorandum for the the Director, Apr. 26, 1934, Dillinger Gang pt. 21, p. 45.

³³⁷ Lack of Police Co-operation in Dillinger Case Is Scored, Washington Star, Apr. 24, 1934.

³³⁸ Memorandum for the Attorney General from Director Hoover, Apr. 26, 1934, Dillinger Gang pt. 26, at 37-39.

³³⁹ S.P. Cowley, Memorandum for the Director, April 27, 1934, Dillinger, Gang pt. 22, at 211-12.

³⁴⁰ Borroughs, at 292-322.

³⁴¹ See, e.g., Telegrams from Hoover, Apr. 30, 1934, to New York and Chicago offices, Dillinger Gang pt. 22, at 139 -41.

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Dillinger's trail for almost a year).³⁴² Ultimately, it was another Indiana force, the East Chicago police, that provided the critical information. It had an informant in contact with Dillinger, and two officers were eager to help if they could "work with" the Bureau.³⁴³ (They also may have been looking for reward money; they did seek it thereafter).³⁴⁴ The offer was accepted, and Dillinger was ambushed at the Biograph Theater days later.³⁴⁵

d. 1934 Conference

The Crime Conference that closed out this year of Public Enemy headlines and crime legislation and occurred days after two Bureau agents were killed in a shootout with "Baby Face" Nelson,³⁴⁶ put the federal effort into a larger context -- one in which car theft cases loomed large and the Bureau was as much a facilitator as a protagonist. In short, it was context that, on the ground as opposed to in the headlines, only marginally differed from the world when FDR took office.

Attorney General Cummings' opening remarks seem to pick up the conversations President Hoover had with his own attorney general in the wake of the Lindbergh kidnapping:

Where the stealing of a horse a generation ago was a matter to be handled by the local sheriff and the local courts, the theft of an automobile, today, is not only a matter of local law enforcement, but, in the event of interstate transportation, it becomes a federal problem as well. . . Just how far the work of the federal department should go and just what the form of interrelation between the agencies representing the state and federal governments should be, is, of course, one of the crucial questions which faces us in this Conference.³⁴⁷

Former SDNY U.S. Attorney, Secretary of War, and Secretary of State Henry Stimson had an answer and warned that, "in enacting legislation which will impose much larger criminal jurisdiction and much greater burdens upon the central government than ever before," Congress had "gone quite as far as it is safe to go." After all, the Bureau, in part through its Identification Division, had "already developed a system of cooperation between federal and state authorities

³⁴² Office of Director, Memorandum, May 4, 1934, Dillinger Gang pt. 25 at 198; see Burrough at 94-97 (on Matt Leach)

³⁴³ Potter sees this as part of a pattern during this period, with the Bureau "competing with local police to get information first and providing local officers with incentives to circumvent their own commanders and report directly to federal agents." Potter, at 179-80.

³⁴⁴ Telegram to Director, July 22, 1934, Dillinger Part 2 of 3 at 19; see Potter at 160. For a suggestion of even more insidious motivation on the part of the East Chicago police, see Burrough at 415-16.

³⁴⁵ Burrough recounts the story in wonderful detail. See Dillinger Slain in Chicago, N.Y. Times, July 23, 1934, at 1.

³⁴⁶ Outlaw Nelson Found Dead From Slain Officers' Shots, N.Y. Times, Nov. 29, 1934, 1; see also Burrough at 483-73.

³⁴⁷ Procs. AG's Conference on Crime, Dec. 10-13, 1934 at 4 (Cummings). Another point of continuity: The Conference refused to considering lynching as part of the nation's crime program -- a failure that sparked picketing by Howard University students. CITES ; see also Christopher Waldrep, National Policing, Lynching, and Constitutional Change, 74 J. Southern Hist. 589 (2008).

which has become a very long and valuable step in the work of crime detection throughout the country”:

It could become the central station through which their cooperative efforts were united and hooked together. And it might furnish what we have never had—the constant energizing force of a unit which is not only in touch with all work of that sort going on throughout the states but which is itself a shining example of the single-minded and non-political methods upon which alone success could be attained.³⁴⁸

Hoover, for his part, humbly celebrated the Bureau’s central role: The groundwork had been laid for “the best and only kind of a National Police which America will tolerate —local officers with a knowledge of local conditions and local criminals. These men, with the support of the Federal Government, are all that is needed, as far as personnel goes.”³⁴⁹ The Identification Unit was “a Library of Cooperation,” with the Bureau “only its custodian.”³⁵⁰ For after all: “It is the basic desire of the Bureau of Investigation to be of aid. It cannot serve the purpose of the Nation by merely chasing Federal offenders. Cities and States cannot wholly exert their best influences by looking only for local criminals. Each must depend upon the other, a coalition against crime.”³⁵¹

VII. “the way those G-fellows go after automobile thieves”

The year 1934 was indeed a watershed for federal criminal legislation and Public Enemy cases, but Bureau outputs that year and through the New Deal had much in common with the days of the late Hoover Administration. Although Dillinger, Bonnie & Clyde, and other celebrity bandits were classified for Bureau purposes as Dyer Act targets, they would surely not have been prosecuted under that statute, as any number of state capital charges would have been avidly pursued. The federal conviction statistics for this period thus drive home the extent to which Dyer Act cases remained the foundation of the Bureau’s business even as the War on Crime was in full swing. In 1935, out of 3,717 federal convictions, 1,597 were for Dyer Act violations, 79 for bank robbery, and 40 for kidnapping.³⁵² In 1936, out of 3,905 federal convictions, 1,570 were under the Dyer Act, with 73 bank robbery convictions, and 31

³⁴⁸ 1934 Conf. Procs. At 14-15.

³⁴⁹ Id at 25-26

³⁵⁰ Id. at 29.

³⁵¹ Id. at 30. See also Earl Warren, Alameda Cty DA “We believe there must be an integration of all law enforcement activities if life and property are to be made secure in this country. We wish to see this done, not by transferring our local police powers to the Federal Government nor by shifting the responsibility for maintaining law and order to Washington, D. C. but by bringing about a degree of cooperation and coordination of activity that will enable all conscientious law enforcement officers to perform their duties on a sensible and business-like basis — along lines that will give the representatives of the law at least an even break with the criminal.” (322)

³⁵² Annual Report of the Attorney General, 1935, at 144-45.

kidnapping.³⁵³ Dyer Act cases, and the recovery statistics they generated, did good service for the Bureau when legislators questioned its growing appropriations, which regularly occurred.³⁵⁴

The Attorney General soon chafed when glorifications of the Bureau (fueled by Hoover) left him in the shadow.³⁵⁵ But what the Bureau actually did, as opposed to what people talked about, was fully consistent with the federal role Cummings envisioned: to enter the “unpoliced and unprotected” “twilight zone” “[b]etween Federal and state jurisdictions,” with “a structure and a technique predicated upon co-operation with state and local agencies.”³⁵⁶ Those telling a story of the “evolution of the National Security State” speak of how Hoover’s “agenda-setting activities helped secure the institutional resources that the executive could later exploit to its own advantage.”³⁵⁷ And perhaps that is true to the extent that the Bureau’s status as a central and renowned player in the developing national criminal ecosystem provided a reputational cross-subsidy for its domestic security work. Yet the story of the Bureau’s law enforcement exploits within the “twilight zone” during the 1930s and into the 1940s is hardly one of autonomy.

Within this “twilight zone,” Dyer Act cases provided an inexhaustible platform for sustained collaboration in which locals got a large piece of the action whenever they were up for it. Even the celebrated newspaperman Damon Runyon noticed the Dyer Act’s domination of the Bureau’s docket. In a 1939 column, he noted, having just read the Bureau’s annual report for 1937-1938, “What interests us as much as anything else is the way those G-fellows go after automobile thieves.”³⁵⁸ In a 1938 appropriations hearing -- a year when Dyer Act cases produced 2,093 out of 5,420 convictions (with Mann Act convictions a distant second, at 576)³⁵⁹ -- Hoover brushed aside the suggestion that the Bureau was getting cases that were “not really proper matters” for the federal agency:

Take motor-vehicle thefts—if we find that the local authorities are diligent and energetic we let them take the case into the State courts and make the investigation of it. In other words, they handle it. That is true in many of the metropolitan districts. I think in Chicago it is particularly true. The motor-vehicle-theft squad of the Chicago Police Department is quite efficient, and they handle most of the motor-vehicle thefts in that city. The same is true of

³⁵³ Annual Report of the Attorney General, 1936, at 133-34. Need to reconcile these Bureau stats with the stats from the Crim Div 1330 Dyer Act cases terminated and 1108 resulting in convictions. [This is true for all years.](#)

³⁵⁴ Stockham, at 147-49. Maria Ponomarenko also notes, “Throughout the 1930s, J. Edgar Hoover’s ability to assert federal leadership without alienating local law enforcement had depended on a carefully choreographed performance that placed emphasis on local policing, voluntarism, and mutual exchange.” Ponomarenko, at 249.

³⁵⁵ Richard Gid Powers. *The Attorney General and the G-Man: Hollywood’s Role in Hoover’s Rise to Power*, 62 Sw. Rev. 329, 343 (1977) (noting that in *G-Men* (1935) and other period films, “Hollywood had done something Hoover would not have dared order, something that Cummings could not prevent - it had turned the top G-man into a star and it had demoted the director’s nominal superiors to off-screen nonentities”)

³⁵⁶ Homer S. Cummings, *Progress Toward A Modern Administration of Criminal Justice In the United States*, April 27, 1936 Speech at North Carolina Conference for Social Service. <https://www.justice.gov/sites/default/files/ag/legacy/2011/09/16/04-27-1936.pdf>

³⁵⁷ Keith E. Whittington & Daniel P. Carpenter, *Executive Power in American Institutional Development*. 1 *Perspective on Politics* 495, 504 (2003).

³⁵⁸ Damon Runyon, *The Brighter Side*, Apr. 4, 1939, at 19.

³⁵⁹ Annual Report of the Attorney General, 1938, 175-76.

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most of the large cities, so that we direct our efforts only to those cases in which we have primary jurisdiction or where the local authorities cannot or will not function.³⁶⁰

The Dyer Act cases would provide the institutional ballast to offset the relationship disruption threatened when the Bureau swooped in to take kidnapping cases, “alienat[ing] many local cops by always taking full credit for any successful case and blaming local police for any failures.”³⁶¹ The political gains to the Bureau from these cases could only have fueled local resentment. When Skeegie Cash was abducted in May 1938, “nearly one hundred agents, as well as Director Hoover himself, would come to south Florida to assist in the search for the missing boy.”³⁶² This was the very month when Hoover announced the furlough of half of his 670 agents because of a shortage of funds that he attributed to inadequate congressional funding in the annual budget and a series of unexpected kidnappings. The kidnapping elicited the desired response: “howls of outrage from citizens, local politicians, and the news media.” Spurred by this response and the Bureau’s apprehension of the perpetrator, Congress soon granted the Administration’s request for supplemental funding of \$308K.³⁶³ Even though the newspapers highlighted the FBI’s role, the sheriffs office had twenty deputies on the case and actually were the ones who first identified the suspect. But the media took no notice of that.³⁶⁴

Also disruptive would have been the occasional federal foray into vice and corruption that occasionally implicated local police and raised the hackles of their congressional protectors. At a 1940 appropriation hearing, Hoover had to explain to a somewhat hostile Florida Representative Millard Caldwell (soon to be governor) that the Bureau was investigating actual federal crimes when it scrutinized Miami Beach conditions and found that certain police agencies “were not interested or sincere in in the enforcement of law.” It was so bad that local cops had been barred from talking to his agents.³⁶⁵

Adding insult to injury would have been the pay differences between the feds and the locals. In 1937, a Brookings study report noted that, while special agents earned salaries “from \$2,960 to \$5,911,” New York State Troopers started at \$900, with other states paying even lower. Moreover,

[t]he salaries of local policemen throughout the country are on the average less than those of state police and are far below those of the federal “G-man.” For example, the average salary of Indiana policemen in 1932 was

³⁶⁰ Hearings on Appropriations Bill for 1939, Seventy-Fifth Congress, Third Session, December 1937–January 1938, at 166-67; see also Jane Perry Clark, *Interdependent Federal and State Law as a Form of Federal-State Cooperation*, 23 *Iowa L. Rev.* 539, 557 (1938) (noting the “close cooperation” between the Bureau and local authorities in Dyer Act cases).

³⁶¹ Robert Alvin Waters & Zack C. Waters, *The Kidnapping and Murder of Little Skeegie Cash: J. Edgar Hoover and Florida’s Lindbergh Case*, 16 (2014)

³⁶² *Id.* at 19-20.

³⁶³ *Id.* at 26-27; 106; 133.

³⁶⁴ *Id.* at 100, 103, 129.

³⁶⁵ Dept. of Justice Appropriation Bill for 1941, Hrgs.Subcom. of Comm. on Appropriations, 66th Cong., 3d Sess. 167-168 (1940)

about \$1,600; and the figure is probably not much, if at all, higher at the present time.³⁶⁶

With this potential for turf wars and hurt feelings, Bureau's ability to sustain the relationships with local departments without which it could not have functioned (or maintained congressional support) depended on the pivotal infrastructure role it was assuming in the national criminal enforcement ecosystem. The key pieces of infrastructure during this period were the Identification Division; the FBI labs, started in 1932, which increasingly provided technical support to departments throughout the country,³⁶⁷ and Dyer Act investigations, which essentially processed cross-jurisdictional information.

Another piece of the infrastructure that the Bureau added in 1935 was its National Academy, which trained selected officers coming from departments around the country and created a cadre of willing collaborators in a nationwide informational network. As Hoover noted in a 1937 appropriations testimony: The arrangement

removes the argument for the establishment of a national police, which I think is impractical and undesirable. It gives to the local authorities the same control they have now, plus the benefit of additional training, and does not superimpose upon them any bureaucracy from Washington. Added to that fact, it bridges over that gap between local and Federal law-enforcement officers, which is very important. It eliminates the jealousies that sometimes exist and helps to do away with friction which may develop.³⁶⁸

As war neared, the Bureau thus found itself able to tout its cooperation with local police to Congress,³⁶⁹ and offer its Dyer-Act driven recovery figures as a material and political justification for its appropriations.³⁷⁰ Driven in part by concerns that the New York Police Department would move in and start getting tips from the public, Hoover persuaded President Roosevelt to issue a September 6, 1939, order giving the Bureau charge of all investigative work relating to "espionage, sabotage, and violations of neutrality regulations," and requesting all law enforcers in the nation to "promptly to turn over to" the Bureau "any information obtained by them relating to" these activities.³⁷¹ Yet this elevation to *primus inter pares* in the national

³⁶⁶ Millsbaugh at 294

³⁶⁷ CITES re lab work; see FBI Law Enf Bull.

³⁶⁸ Appropriations Bill for 1938, Seventy-Fifth Congress, First Session, January 1937, at 81-82. Add more re National Academy.

³⁶⁹ In hearing on 1938 appropriations, Hoover says that the FBI has excellent cooperation with local police but he also seems to warn against "publicity-mad" police departments. (p. 88-89)

³⁷⁰ In 1941, when Sen Norris criticizes Bu for arresting members of Abraham Lincoln Brigade, one Rep responds: "A member of the House told his colleagues that —when the FBI returns almost \$8 for every dollar it spends, through collection of fines and the restoration of property, we, as Members of Congress, should think carefully before we hastily criticize such a great law-enforcement agency of the Federal Government.") Congressional Record v. 86, 76th. Cong., 3rd. Sess.: 3 January 1940-3 January 1941 (Washington D.C.: United States Government Printing Office, 1941), at 2443. (Stockham at 159).

³⁷¹ Athan G. Theoharis, The FBI's Stretching of Presidential Directives, 1936-1953, 91 Pol. Sci. Q 649, 659 (1976).

security space was supported by the year of criminal law cooperation that preceded it. As Maria Ponomarenko observes: “Though the image of a tightly-integrated reserve army of police professionals was meant to dissuade amateur sleuthing, it also reflected a fundamental reality of Bureau operations – years of working closely with local departments on police training and other matters had left the FBI well-equipped to organize law enforcement efforts during the war.”³⁷² She goes on to note the extent to which the Bureau was able to leverage these relationships into the national security area: “Between October 1940 and October 1942, 135,264 national defense cases were investigated and closed by local or state police – as many as 30 percent of all federal defense cases received in those years.”³⁷³ (Such a high degree of leverage in national security policing continues to this day.³⁷⁴)

War responsibilities took center stage for the Bureau,³⁷⁵ but Hoover still featured Dyer Act cases prominently. In a 1942 appropriations hearing, he noted a “slight decline” in convictions -- from 2,340 (of out ___) in 1941 to 2,282 (out of ___) in 1942.³⁷⁶ Another drop, the following year, was attributed to the “fact that there are not so many automobiles for sale, but principally and probably because of gasoline rationing and the difficulty of getting tires.”³⁷⁷ As the war ended, Hoover noted that auto thefts were starting to spike.³⁷⁸

a. Post-War and Beyond

During the post-war years and into the 1960s, the Bureau ramped up its internal security operations and belatedly began to focus on organized crime and [ADD MORE RE CASE MIX AND DOMESTIC INTEL WORK]. Even amid these forays, however, Dyer Act cases continued to provide a ground bass -- a steady source of statistics justifying appropriations for legislators skeptical of the Bureau’s other work, and an opportunity to be of service to state and local counterparts. In 1946, even as Hoover touted the Bureau’s past wartime successes, he asked for an expansion to 3,000 agents, noting that each agent was currently handling an average of 19.09 cases and reporting that Dyer Act cases (among others) were bound to increase. Of course, he admitted that not all Dyer Act cases were alike: making one against a “young boy” who stole a car from D.C. to Maryland would take two or three days; one against a ring running

³⁷² MP at 177,

³⁷³ MP at 180.

³⁷⁴ See Richman & Waxman.

³⁷⁵ Cites re wartime activities; 1947 Approps Hrgs (1946).

³⁷⁶ Hearing for Appropriations Bill for 1943, Seventy-Seventh Congress, Second Session, January 1942 at 118-119. He also noted: “There is proposed, as you probably know, an act making the theft of automobile tires a Federal offense which may be considered as an amendment to this act. If passed it will result in a tremendous increase in this type of investigative work performed by us. We would undoubtedly have to request additional funds to handle such cases.”)

³⁷⁷ Hearings for Appropriations Bill for 1945, Seventy-Eighth Congress, First Session, December 1943 [295] (testimony of Director of the Bureau of Prison).

³⁷⁸ Hearings for Appropriations Bill for 1947, Seventy-Ninth Congress, Second Session, January 1946 at 155 (noting uptick in auto thefts after war. Crime wave; 27% more automobile thefts between November 1944 and November 1945. 74% increase in auto theft violations from October 1940 to January 1946. 62% of car thefts committed by persons under age 21.)

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cars down South might take three months.³⁷⁹ The need for Bureau resources (and, by extension, their expansion) remained a constant theme. Testifying at a 1953 appropriations hearing, Hoover noted, “[d]uring the past year 13,886 stolen automobiles were recovered in cases investigated by the Bureau, an all-time high.” Calling auto theft “one of the most aggravated criminal problems we are faced with in this country,” he reported that about “215,310 automobiles, with a value in excess of \$288 million, were stolen in 1952.”³⁸⁰

The continuation of Dyer Act cases as a key line of federal business is particularly noteworthy when one recalls the extent to which the absence (in many states) of state police forces and the inadequacy of interstate coordination had justified federal activity before the New Deal. By the post-war period, state police forces had become standard and interstate coordination had increased. Indeed, deficiencies in interstate coordination by this point were, one suspects, less a justification for federal involvement than a result of it. Post-war authorities regularly bemoaned how the federal role had come at the expense of interstate cooperation and “constitutional morality.”³⁸¹ Yet, the thinness of statewide policing operations, and the continued dependence of the feds on the informational resources of local police forces for most federal enforcement projects were shaping a new cooperative federalist “morality” -- one that turned local police into mediators “between federal needs and community sensitivities.”³⁸²

In the 1953 hearing, Hoover reported that, “to cope with [the] very difficult national problem” of car thefts, the Bureau had sponsored 131 “automobile theft conferences throughout the United States,” which drew together “local law-enforcement authorities and private groups interested in bringing about a prevention of and a reduction in the theft of automobiles.”³⁸³ Yet the Bureau pushed forward with its own cases, including those against juveniles.³⁸⁴ [ADD STATS] And it continued to tout its recovery figures.

In the late 1960s, the Bureau began to pull back.³⁸⁵ [ADD re attitude of USAOs to these cases.³⁸⁶] The turning point, however, came in 1970, when the Justice Department issued guidelines that limited Dyer Act prosecutions to “organized crime ring cases and multitheft

³⁷⁹ Dept. of Justice Appropriations Bill for 1947, Hrgs. before Subcomm. of Comm. on Appropriations, 69th Cong., 2nd Sess. 160-162 (1946).

³⁸⁰ Appropriations Bill for 1955, Eighty-Third Congress, Second Session, December 1953[167-168]

³⁸¹ See David Fellman, "Some Consequences of Increased Federal Activity in Law Enforcement", 35 Journal of Criminal Law and Criminology (1944), pp. 16-33; A.C. Breckenridge, The Constitutional Basis for Cooperative Crime Control, 39 J. Crim. L. & Criminol. 565, 582 (1949)

³⁸² Daniel Richman, “The Right Fight,” Boston Review, December 2004/January 2005, at ___.

³⁸³ Appropriations Bill for 1955, Eighty-Third Congress, Second Session, December 1953[167-168].

Reports from these annual conferences are notable for the federal convening role and the absence of suggestion that the feds should be doing less in the area. See Some Results of the 1956 Conferences on Auto Theft, 50 F.B.I. Law Enf. Bull. no. 4, April, 1957, at 3.

³⁸⁴ Juvenile Delinquency, Cleveland Call & Post, June 30, 1956, at 5B (“An area of concern with respect for Federal programs for the treatment of juvenile delinquents and youthful offenders is the high number of such person charged with violation of the Dyer Act.” For fiscal 1954, of the 895 persons 18 or younger in fed institutions, 648 or 72% committed for Dyer Act convictions)

³⁸⁵ Perhaps the Bureau was showing some selectively in the early 1960s. See Car Thief Is Riding High, Hartford Courant, Jan 13, 1963, at 4G (noting that FBI was “mainly concerned with criminals using stolen cars in their crimes, and also with the big professional theft rings. Local and state police handle intra-state car theft.”).

³⁸⁶ See James Eisenstein, Counsel for the United States

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operations unless exceptional circumstances are involved. Under the guidelines, individual theft cases are ordinarily not to be federally prosecuted.”³⁸⁷ Suddenly, even as the number of reported motor vehicle cases climbed, Dyer Act filings dropped from 4,090 cases (10.7% of all filed) in 1970 to 2,408 cases (5.8% of all cases filed) in 1971.³⁸⁸ Cases that the feds declined went to local courts, or may have not been prosecuted at all.³⁸⁹

But the Bureau did not give up this line of business easily. In 1969, Tom Wicker noted:

Every person interviewed for this article pointed out the heavy emphasis the F.B.I. puts on the recovery of stolen cars that move over state lines; but in fact, the F.B.I. does not often send out its agents to chase down these vehicles. A large part of them are recovered by local policemen who turn them over to the Bureau, along with the thief, if he is captured. . . . [T]he Bureau takes the recovered automobiles, adds their value to its statistics, prosecutes the thief if possible, and counts him as another arrest and conviction.³⁹⁰

James Q. Wilson later noted same pattern: [A]gents assigned to auto theft would call up local police departments in search of recovered cars, which, if it could be shown they had come from out of state were listed as ‘FBI recoveries.’”³⁹¹

There was a final moment of clarity (or farce) in 1972, during Hoover’s last appearance before a House Appropriations subcommittee (shortly before his death). Referring to recent allegations that the Bureau used Dyer Act statistics to sway appropriators, Chairman John Rooney noted:

³⁸⁷ Gov’t Acct. Office, U.S. Attorneys Do Not Prosecute many Suspected Violators of federal Laws. GGD-77-86, at 15; see Wilson at 30 (noting DOJ directive “not to prosecute interstate auto-theft cases where the guilty person was under the age of twenty-one and not a serious recidivist or over the age of twenty-one and not previously convicted of a felony, unless the car was one of several cars stolen by a ‘car ring,’ was stripped or demolished, or was used to commit a separate felony”); see also U.S. Plans to Curtail Federal Charges of Automobile Theft, N.Y. Times, May 27, 1970, at 20 (noting that one of every eight cases files in Fed cts involves Dyer Act and 20 percent of all of Fed prison inmates sentenced under Dyer Act).

³⁸⁸ GAO report, at 15.

³⁸⁹ GAO Report at 15 (An analysis of Dyer Act complaints in one district showed that of 733 complaints, the U.S. attorney prosecuted 102 during fiscal years 1975 and 1976. Of the complaints not federally prosecuted, about 196 were considered prosecutable but were not pursued because of priorities or guidelines; 237 were prosecuted by local courts; and the remaining 198 complaints had some type of prosecutive problem, such as lack of evidence.”); see also H.R. REP. No. 851, 102d Cong., 2d Sess. 14, pt. 2, at 14 (1992), reprinted in 1992 U.S.C.C..N. 2847 (quoting 1989 letters from the Justice Department to John D. Dingell, Chairman of the Oversight and Investigations Subcommittee) (Thirty years ago [before the federal government turned most areas of auto theft over to the states], over 30 percent of all federal prisoners were incarcerated because of interstate motor vehicle theft offenses while only approximately 2 percent were serving sentences for drug offenses. Today, the figures are the opposite.)

³⁹⁰ Tom Wicker, What Have They Done Since They Shot Dillinger?, N.Y. Times, Dec. 28, 1969, at SM4.

³⁹¹ James Q. Wilson, Investigators at 98.

We know when a car is recovered that at least six agencies participate in the credit for it, and when it comes to fines and recoveries we know that there are at least five agencies which participate in the credit for that. There is nothing wrong with that. We were never hoodwinked by anything done here, I assure you, because I think all the Members of this Committee are a bit hardboiled.”³⁹²

After Hoover’s death, his successor, L. Patrick Gray, was pressed by the Justice Department’s Criminal Division to “wean the F.B.I. from its concentration on [Dyer Act cases], an investigative field that some say Mr. Hoover used to fatten arrest statistics.”³⁹³ Later, in 1975, after Gray fell “victim” to Watergate, Director Clarence Kelly (responsible for giving James Q. Wilson access to the Bureau) established a broad “Quality over Quantity” program, “designed to downplay statistics for their own sake in favor of more thoughtful priority setting in each field office.” Wilson reported that this had an immediate effect on Dyer Act cases.”³⁹⁴ “When an out-of-state stolen automobile is recovered by a local police department,” Wilson explained, “the Bureau no longer adds the vehicle to its caseload unless it appears to be the work of a criminal ‘ring’ or unless there is a known subject who is a repeat offender.”³⁹⁵ And he noted that the program “was welcomed by agents for the relief it offered from carrying trivial cases for statistical reasons, but since these cases had rarely been investigated seriously, no real changes in agent behavior occurred.”³⁹⁶

That the Bureau was cutting back on Dyer Act cases³⁹⁷ did not mean a reduction in essentially local cases that might normally have fallen to local enforcers. To some extent, bank robbery cases gave the Bureau a similar vehicle for service. In 1978, Wilson observed:

When a bank is robbed, the FBI responds immediately. . . . The FBI must apprehend the suspects in these cases just as if they were local police

³⁹² Wilson, at 173, quoting House Appropriations Subcommittee, Departments of State, Justice et al, 92nd Cong., 2d sess., 1972, pp. 54-55, 73.

³⁹³ Christopher Lydon, *Whoever Runs It, F.B.I. Faces Problem of Political Control*, Mar. 26, 1973, at 30

³⁹⁴ Wilson at 131.

³⁹⁵ Wilson at 132. For an example of a program, fostered by the Bureau and the National Auto Theft Bureau, that promoted state-based auto theft efforts, see James S. McKinnon, *Cooperation--Key to Florida Auto Theft Intelligence Unit’s Success*, 47 *FBI Law Enf. Bull.* no. 89 at 12 (August, 1978) (describing program “conceived” at 1972 meeting of the Intl. Assn. of Auto Theft Investigators).

³⁹⁶ Wilson at 158.

³⁹⁷ The federal interest in motor vehicle thefts continued, even as the Bureau played a far smaller role. See *Motor Vehicle Theft Law Enforcement Act of 1984*. According to NATB Anniversary Book, efforts began in 1975 and the Federal Interagency Committee on Auto Theft Prevention, which was established after a series of meetings between IACP’s Vehicle Theft Committee, State dept, and DOJ. State Dept would use existing treaties and draft new treaties re: auto theft; Treasury would check all vehicles for export; Transportation Dept would develop titling procedures and uniform locking systems; DOJ would pursue prosecutions of interstate organized rings. Bill was introduced by Biden, Percy, and Thurmond. Became Act after 6 years. See pp. 77-78 of NATB Anniversary Book. Act requires NATC as “Designated Agent” for reporting theft and recovery information. Transportation to use this data for 3- and 5-year studies to Congress. (pp.79-80)

officers, but often the charging and prosecution of these cases is turned over to the local police who will also be on the scene.³⁹⁸

Seeking to recenter the Bureau on investigations where it truly had a comparative advantage, like white collar cases, Carter Administration officials and their political allies called for the agency to leave most bank robberies to local authorities.³⁹⁹ In doing so, they overlooked the “service” aspect of these cases -- well appreciated within the Bureau -- and the role such service played in nurturing the Bureau’s relationships with local enforcers and their congressional allies and commercial interests.⁴⁰⁰ Bank robberies did not occur with the same frequency as motor vehicle theft cases. Nor did they provide the massive recovery statistics that Dyer Act cases formerly offered. But the Bureau’s continued commitment to them, and the expectation that it have just such a commitment, have, like the Dyer Act cases of yore, ensured -- at least perhaps until recently -- that the Bureau maintained its central place within the complex American criminal enforcement ecosystem.

VIII. Autonomy

In one sense, the Bureau’s felt obligation to continue doing “service” cases arose out of a lack of autonomy, to the extent autonomy is understood as an agency’s ability to pursue an independent agenda. Yoking oneself to a regular grind of service cases that relieve the obligations of others seems like the opposite of independence. Yet in another sense, it was a key to autonomy, to the extent that the alliances the Bureau nurtured with service cases and other provisions of informational infrastructure ensured support within the political branches and satisfied counterparties among the state and local police authorities on which the Bureau would need to rely for any criminal enforcement program (or domestic security mission). Perhaps the real point is that talk of “autonomy” has analytical value when trying to, say, compare the FBI with ATF, whose politically fraught firearms missions has required it these days to seek sustaining support from the insurance industry interested in arson investigations⁴⁰¹ and the cities that value its targeting of violent crime.⁴⁰² The Bureau has also had far more political security and policy “slack” than the ATF, and has natured an independence that (so far) has withstood

³⁹⁸James Q. Wilson, *The Investigators: Managing FBI and Narcotics Agents* 27 (1978)

³⁹⁹ Bank Robbery: The Federal Law Enforcement Role Should Be Reduced. GGD-78-87; B-179296

⁴⁰⁰ Philip Taubman, F.B.I. Role Dispute in Administration, *N.Y. Times*, June 22, 1979, at A28

Noting that while Carter Administration has been pushing the Bureau to “turn bank robbery investigations over to local law enforcement agencies whenever possible,” it was encountering “resistance from within the bureau and in Congress.” “[W]ith bank robberies occurring at a record rate and the number of convictions for the crime declining, powerful forces in Congress and the banking industry are opposed to the sudden reduction of FBI involvement.” American Bankers Assn lobbies Congress “to resist any further cuts.”

⁴⁰¹Vizzard on ATF; also Abt Associates Inc. (1980). *Program Models: Arson Prevention and Control*. (NIJ report) Ku, Richard, Theodore M. Hammett, et al., 1980. *Arson Control: A Synthesis of Issues and Strategies Based on the Arson Control Assistance Program*.

⁴⁰² See *DR Violent Crime Federalism; Federal Criminal Law (re ATF); Federal-Local Law Enforcement Collaboration in Investigating and Prosecuting Urban Crime, 1982–1999: Drugs, Weapons, and Gangs* M Russell-Einhorn, S Ward, A Seeherman (2000).

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assaults from the Trump Administration and its partisan allies. Relative autonomy ought never be confused with absolute autonomy, however.

The shadow of Hoover and the Bureau's efforts to insulate its criminal work from partisan politics inevitably leads observers to tout (or condemn) its "autonomy." And Hoover's readiness to do yeoman work for his political masters and to manipulate those who feared his secret files surely contributed to his sway within successive administrations. But the very nature of the Bureau, both in its early years, and now, has always made it highly dependent on a network of relationships -- with administrations, funders, the public, and perhaps most of all, police forces around the country, large and small. Its insulation has come not from "autonomy" in a formal sense but from this network of dependent relationships and the Bureau's ability to navigate within the network -- its contingent capacity.

Do such inquiries into the Bureau's "autonomy" argue for a reconsideration of the standard story? Or do they simply demand a better understanding of what it means for a law enforcement agency, particularly a federal one, to have "autonomy"? For without a massive, and politically impossible, restructuring of the FBI -- one that either radically reduced its responsibilities or radically increased its size and resources -- it could never achieve its missions (whether those set by its own leadership or imposed on it by political hierarchs) without being fully embedded in a network into which information is the chief currency. Not the only currency, as money works too.⁴⁰³ But through its mere century or so, the Bureau has depended on the kind of associational relationships -- with state and local police, with commercial beneficiaries, and with legislators spurred into action by the other groups -- that President Hoover would have understood and that Director Hoover worked hard to nurture. Perhaps these were the bonds that set the agency free. Perhaps there's no such thing as real freedom in this context.

Maybe the real lesson is that "autonomy" is relational, even when understood this way, and difficult to identify. Daniel Carpenter writes:

Autonomy prevails when agencies can establish political legitimacy -- a reputation for expertise, efficiency, or moral protection and a uniquely diverse complex of ties to organized interests and the media -- and induce politicians to defer to the wishes of the agency even when they prefer otherwise. Under these conditions, politicians grant agency officials free rein in program building. . . . They even welcome agencies in shaping legislation.⁴⁰⁴

Yet Carpenter's framework can best be understood in relation to the theories of national political leadership he was responding to: McNollgast's focus on "enacting coalitions" and procedural politics and to Terry Moe's focus on "structural politics" (i.e., strategic institutional design).⁴⁰⁵ Having solidified the "multiplicity of ties" to presidents, business groups, congressional leaders,

⁴⁰³ See DR Violent Crime Federalism re grants; other cites re grants

⁴⁰⁴ Daniel Carpenter: The Forging of Bureaucratic Autonomy, at 4

⁴⁰⁵ Id at 356.

and state and local officials, between 1924 and 1941 (the focus of this article) and beyond, perhaps Hoover and the Bureau did develop a “political legitimacy” that gave it considerable “agency” thereafter vis a vis Congress and the Executive.

But those ties needed constant tending between 1924 and 1941, and continued to receive much the same tending thereafter -- even when Dyer Act cases need not have posed much of a challenge to local authorities. Carpenter suggests that “multiple networks” “reduce[] the dependence of agencies [achieving autonomy] on any one group, putting the agency in the role of broker among numerous interests seeking access to the state.”⁴⁰⁶ Yet how does one score the Bureau’s assignment -- whether by choice or default -- of a large proportion of its docket to Dyer Act cases (and later bank robbery and other “service” cases)? Was it harnessing the power of policing and commercial interests or becoming a tool of them? A Carpenter-like story of autonomy-forging can easily overlook the “agency” of the counterparties to the Bureau’s alliances. If the relationship with these networks was symbiotic (as it surely was), is that “autonomy”?

One might say it was a source of bureaucratic autonomy vis a vis Congress. But here we have an observational equivalence problem, since the Bureau was also responding to the efforts of the same policing and commercial interests to work through Congress. The Bureau clearly thought Congress wanted regular updates on its car theft work and cooperation with local authorities. Did it do so to fend Congress off or to oblige it? Some sort of state building was doubtless occurring here, but assigning “ownership” to the construction is difficult, and, we suggest, unnecessary.

Whether this construction can endure when the Bureau’s contributions to its alliance diminish, or are simply taken for granted, remains to be seen. The silence one hears from locals (and the lack of pressure by them on Congress) in the face of the last two years of attacks on the Bureau surely has many causes. Two may simply be the deep support among police rank and file for the Trump Administration,⁴⁰⁷ the coziness of the National Sheriff’s Association and its elected members with the President.⁴⁰⁸ Another may be the assimilation of the concerns of big city chiefs into a larger complex of issues on which they differ from the Administration; they sound like just more progressives.⁴⁰⁹ But one may well be the Bureau’s (to our mind, appropriate) retreat in recent years from the “service work” of Dyer Act cases and bank

⁴⁰⁶ Carpenter at 363

⁴⁰⁷ Michael Zoorob, Blue Endorsements Matter: How the Fraternal Order of Police Contributed to Donald Trump’s Victory, PS (2018) <https://doi.org/10.1017/S1049096518001841>

⁴⁰⁸ See Tim Craig, Tough-Talking Sheriffs Raise Their Voices in Trump Era, Wash. Post, Nov. 12, 2017 (“From deep-blue states such as Massachusetts and New York to traditionally conservative strongholds in the South and the Midwest, locally elected sheriffs have emerged as some of the president’s biggest defenders.”); see also Ashley Powers, The Renegade Sheriffs, New Yorker, Apr. 30, 2018; Alan Greenblatt, Why There Are So Many Bad Sheriffs, Governing Magazine, Apr. 2018 (“the Trump administration seems to have little interest in providing aggressive oversight of local law enforcement. Trump not only pardoned Arpaio last summer, but he also kicked off a White House meeting with the National Sheriffs’ Association by promising them his full backing.”).

⁴⁰⁹ Steve Eder, Ben Protess & Shaila Dewan, How Trump’s Hands-Off Approach to Policing Is Frustrating Some Chiefs, N.Y. Times, Nov. 21, 2017.

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robberies.⁴¹⁰ Sure, the locals continue to get substantial assistance from the Bureau in the form of cases taken on for special federal investment --- perhaps targeting local corruption, perhaps violent gangs -- and support from the Identification Division and the FBI Laboratories, but the balance of payments isn't what it was in the old days.

In the wake of 9/11, the Bureau pulled out of all the “small” stuff with the locals and downgraded things like Bank Robberies in its annual threat banding, thus creating powerful disincentives for field offices to pursue them.⁴¹¹ It also pulled back on police training, which had been a significant feature of fed/local relations. [CITES]. Moreover, while direct federal grants to states that Hoover opposed back in 1934 have become a staple of state budgets (even as the level of government they go to, state vs. local, has long been a matter of political contestation),⁴¹² they scarcely strengthen the Bureau's hand. [Note that federal funding has been conditioned on policy adoption or rejection - see, e.g. Truth in Sentencing, Sanctuary Cities]

The result (however justified) may well have been to weaken the Bureau's relationship with state and local enforcers. The best arguments against an MI-5 model for domestic intelligence turn on the value of having the FBI having a firm foot in the criminal area.⁴¹³ With that anchor comes informational advantages, a culture of legality, and networked accountability to the state and local authorities on which it relies. Similarly, when, on its criminal side, the Bureau has maximal interaction with state and local enforcers, not simply drawing on their informational networks for assistance in national security, organized crime, and other “big” cases, but evening the balance with collaboration on more local projects, it gains not only in networked accountability⁴¹⁴ but in networked support. With less of that reciprocation, its exposure to a President's assaults -- or, worse, his personal agenda -- increases. This is not necessarily an argument for returning to Dyer Act cases or their contemporary equivalents -- violent crime, small-scale cybercrime -- but an awareness of the costs of jettisoning them.

IX. Comparative musing

This story sheds light, albeit in a “negative” way, on the story of interstate cooperation with the EU. The historical sequence in the United States is flipped there: the last forty years have seen development of interstate policing relationships and only recently moved toward strengthening Europol and even more recently Europros. Put differently, the demand for a “federal” agency, and the mutual advantage between that agency and local forces is substantially lessened by the preexistence of the sort infrastructure that was an integral part of the Bureau's rise and development of its contingent capacity. It remains to be seen whether or how much this

⁴¹⁰ Note difficulty of proving this causal suggestion: can't think of any prior situations where local police could have had a distinctive voice and failed to use it in the Bu's defense.

⁴¹¹CITES. The Bureau's bank robbery work had (understandably) always generated strong support from the banking industry. Dept. of Justice Appropriation Bill for 1941, Hrgs.Subcom. of Comm. on Appropriations, 66th Cong., 3d Sess. 148 (1940) (Hoover brings letters from the American Bankers Assn. and an Oklahoma bank organization telling “how they have been able to reduce insurance rates by reason of the effectiveness of agents of the F.B.I.”).

⁴¹²Richman, Violent Crime Federalism,

⁴¹³ Richman, The Right Fight; more on MI-5

⁴¹⁴ Richman. YLJ piece & Accounting for Prosecutors

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preexistence (and comparatively lessened demand) impairs the rise of Europol and Europros as independent players. It will also be interesting to watch the degree to which the EU enforcement agencies court state support by retaining (in the case of Europol) and moving in (in the case of Europros) “service” cases in which states (as opposed to the Union as a whole) are primary beneficiaries.⁴¹⁵

⁴¹⁵ See Carlos Gomez-Jara Diez, *European Federal Criminal Law: The Federal Dimension of EU Criminal Law* (2015); Hugo Brady, *Europol and the European Criminal Intelligence Model: A Non-state Response to Organized Crime*, 2 *Policing* 103 (2008).