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# COUNTING CRIME: J. EDGAR HOOVER, THE WICKERSHAM COMMISSION, AND THE PROBLEM OF CRIMINAL STATISTICS

BEVERLY GAGE\*

When I received the invitation to this conference about a year ago, I was surprised at the fortuitous timing: I was actually sitting at my computer writing about the Wickersham Commission—an unusual moment for such an obscure historical subject. So of course I said yes right away.

The other reason that I very much wanted to come here is that, thanks to the work of historian Athan Theoharis, Marquette is one of the country's great repositories of historical FBI documents.<sup>1</sup> I am currently writing a biography of J. Edgar Hoover, the former FBI director. Anyone who writes about this subject owes an enormous debt of gratitude to Professor Theoharis, whom you'll be hearing from later on today.

The last item that I want to mention in starting out concerns the name "Hoover." When I talk about "Hoover," I am referring not to Herbert Hoover, about whom we heard so much this morning, but to J. Edgar Hoover, the former FBI director. In particular, I'll be speaking about an incident early in his career as director of the FBI in which he attempted to gain jurisdictional control over the collection of national crime statistics. This campaign took place in the context of a debate at the Wickersham Commission—and within law enforcement more broadly—about what types of criminal statistics ought to be collected, who ought to be collecting them, and who would have the power to make that decision. Hoover entered that debate as a relatively young

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\* Professor of twentieth century U.S. history at Yale University. Beverly Gage is currently writing a biography of J. Edgar Hoover. A version of this talk was delivered at the Wickersham Commission Conference, Marquette University Law School, October 5, 2012.

1. FED. BUREAU OF INVESTIGATION, U.S. DEPT OF JUSTICE, A GUIDE TO CONDUCTING RESEARCH IN FBI RECORDS 29 (2010), *available at* <http://www.fbi.gov/foia/a-guide-to-conducting-research-in-fbi-records-pdf> (“[Marquette’s] collection consists of photocopies of case files, obtained under the Freedom of Information Act by Professor Emeritus Athan Theoharis. . . . The material in the collection largely concerns the FBI’s domestic security investigations.”).

Bureau director seeking to play a more significant role in crime control and in the structure of federal law enforcement.

I'll tell you a little bit about how this story played out in a minute. First, however, I want to say a few words about why I think this moment is especially interesting for thinking about the history of J. Edgar Hoover and the FBI, as well as about broader questions of crime control and the legacy of the Wickersham Commission.

When Hoover began engaging with the Wickersham Commission, the FBI was still known as the Bureau of Investigation. It was a small, fairly insignificant agency—not by any means the monolith that we now know as the FBI. As one might expect from a man who made a career of magnifying his own power, Hoover sought to use the Wickersham Commission in order to expand his political and bureaucratic base, and with it the power and influence of the Bureau of Investigation. This fits quite nicely with our well-established image of Hoover as a behind-the-scenes power broker, someone who sought throughout his career to increase his own jurisdictional reach. But there are certain aspects of this moment that complicate the conventional story, and tell us something slightly different about Hoover as a federal law enforcement official.

While at many moments in his career Hoover sought to expand the Bureau's power, he was actually very strategic about the sorts of things that he wanted the Bureau to do. He had specific ideas about which duties did and did not suit the Bureau's interests. In his view, new law-enforcement activities should never subject his agents to the kinds of corruption and temptation that plagued local police forces. In the 1920s, this meant that he wanted absolutely nothing to do with Prohibition enforcement or any kind of drug policing. Hoover also wanted the Bureau to be involved only in areas of law enforcement where his agents would perform well in a purely technical sense.

He saw the collection of statistics as one of these areas. But there were many other activities that he rejected, because they were too difficult, because they seemed too politically controversial, or because they threatened to put the Bureau in the middle of a partisan Washington struggle. For instance, Hoover resisted aggressive enforcement of civil rights law before 1964, when Congress passed the Civil Rights Act and President Lyndon Johnson (one of Hoover's close friends) encouraged the FBI to open a new office in Jackson, Mississippi. Finally, Hoover did not want to be engaged in forms of law enforcement that he himself objected to ideologically. His resistance to civil rights enforcement was again a case in point—as much the result of

Hoover's views on race and his suspicions of communist subversion as of any jurisdictional or legal questions.

The point is this: When we think about Hoover as a figure, and about his interactions with the Wickersham Commission, we want to understand his campaign not only as an attempted expansion of power, but as a very particular set of strategies and visions for the Bureau.

I'd also like to mention one other area for consideration: We often imagine Hoover as someone who maintained his political power by keeping files on powerful people. This was partly true, especially in his later years. But at the moment he engaged the Wickersham Commission, he was quite a young man—basically a mid-level employee of the Attorney General. He was not someone with the power to intimidate higher-ups. So it's interesting to look at the kinds of techniques that he tried to use in order to transform the Bureau into a powerful and effective bureaucracy during these years in particular—well before he had any ability to shape his political environment through strong-arm tactics.

One of my larger aims in writing a biography of J. Edgar Hoover is to get away from the one-dimensional image of Hoover as a villain, supposedly manipulating the world with his secret files. Instead, my book tries to situate him in a broader story about American political history, especially about the growth of the American administrative and bureaucratic state. Some of Hoover's career did involve secret files and illegal activities. But his power also rested on his bureaucratic strategies, political alliances, and networks of grassroots support—a much less well-known story. All of those came into play in his early showdown with the Wickersham commission over the problem of criminal statistics.

As I said, J. Edgar Hoover—not Herbert Hoover—was a relatively young man at the moment that the Wickersham Commission began its work. He had been born in Washington, DC, in 1895, and in many ways he was a product from birth of the federal bureaucracy. He graduated from law school at George Washington University, which in those days was famous for producing federal bureaucrats and lawyers who worked for the American government. Like many federal employees, he attended GW's night school program, working by day at the Library of Congress and going to law classes in the afternoon and evening.

Hoover entered the Justice Department in 1917 and rose quickly through the ranks. During World War I, he helped to administer the "enemy alien" program, aimed at both naturalized and non-naturalized Germans living in the U.S. In 1919 and 1920, as the first director of the

Justice Department's General Intelligence Division, he assisted in orchestrating the Palmer Raids, a series of controversial deportation raids against anarchists and communists during the postwar Red Scare. In 1921, he became assistant director of the Bureau under a famous swashbuckling private detective named William J. Burns. Three years later, Burns was fired in the midst of the Harding administration's many scandals. Hoover stepped in as acting director at the age of 29. By the end of 1924, still just 29 years old, he won appointment as the permanent director of the Bureau. He held that job for the next 48 years, serving under eight different presidents, from Calvin Coolidge to Richard Nixon.<sup>2</sup>

Though it may be hard to imagine today, when Hoover came to office he was largely viewed as a reformer—the sort of man who could clean up the Bureau and make it run efficiently. During those years, future Supreme Court Justice Harlan Fiske Stone—then the attorney general—became one of Hoover's chief mentors. Stone instructed Hoover not to engage in the sort of political intelligence activities for which the FBI had been criticized under Attorney General A. Mitchell Palmer. And during the mid-1920s, Hoover mostly did hold back from investigating political subversives and conducting the sort of campaigns we now associate with his name. In that sense, the late 1920s and early 1930s stand out as a unique period in his career.

So what was he up to? Hoover spent most of those years trying to re-create the Bureau as a model federal bureaucracy. He wanted the Bureau to improve police forces throughout the country by serving as a model of professionalism and “scientific policing”—basically, bringing the insights of modern science and management to bear on police work. He was very strategic about what he believed the federal government could and should do in terms of law enforcement. His major accomplishment during his first few years as director was the creation of a national fingerprint division, in which the Bureau became the central repository for fingerprints from police departments across the country.

Fingerprinting was a new science at that point, and there was

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2. For basic biographical information on Hoover, see generally CURT GENTRY, *J. EDGAR HOOVER: THE MAN AND THE SECRETS* (1991); RICHARD GID POWERS, *SECRECY AND POWER: THE LIFE OF J. EDGAR HOOVER* (1987); ANTHONY SUMMERS, *OFFICIAL AND CONFIDENTIAL: THE SECRET LIFE OF J. EDGAR HOOVER 12* (1993); ATHAN G. THEOHARIS & JOHN STUART COX, *THE BOSS: J. EDGAR HOOVER AND THE GREAT AMERICAN INQUISITION* (1998). Where not otherwise cited, background information is drawn from these sources.

substantial debate about who would have access to criminal fingerprints, and who was most capable of using them to provide identification services to police forces around the country. By the mid-1920s, Hoover had successfully campaigned to have the various national fingerprint collections consolidated at the FBI. This became a model of what he wanted to do with his federal agency: Collecting and analyzing fingerprints required expertise, would not subject his agents to vice or temptation, and could be done effectively only by a centralized organization at the federal level. Our panelists this morning discussed the ongoing debate over federal vs. state power during those years. The fingerprint division provided a very useful model for how law enforcement might work out this relationship. Officially, police departments acted voluntarily to send in their fingerprints, and the Bureau in turn acted as a coordinating agency. Hoover viewed this, at least in the 1920s, as the ideal for a balanced federalist law enforcement system. When the Wickersham Commission decided to address the question of criminal statistics, he immediately recognized another opportunity to put this model into action.<sup>3</sup>

In the 1920s there was widespread agreement within law enforcement, at the highest levels of the Wickersham Commission and among social scientists, that the United States had terrible—and terribly inaccurate—crime statistics. Basically, nobody knew what was going on when it came to crime. Much of the language of the period emphasized the contrast with countries such as Great Britain, which had a much more centralized policing structure. In sum, there was a lot of anxiety about the fact that Europe was eating America's lunch when it came to centralized crime statistics.<sup>4</sup>

Since everyone agreed that getting better crime statistics would be a good thing, another question came to the fore: Who was going to gather the statistics? It was in this context that Hoover jumped in to make his case. He was particularly concerned with the opinions of the Commission's social scientists, many of whom lacked any practical law enforcement experience. (It's worth noting that J. Edgar Hoover

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3. See 1925 ATT'Y GEN. ANN. REP. 122–23 (highlighting Hoover's early views on fingerprinting).

4. See NAT'L COMM'N ON LAW OBSERVANCE & ENFORCEMENT, REPORT ON CRIMINAL STATISTICS 6 (1931) [hereinafter REPORT ON CRIMINAL STATISTICS] (discussing the Commission's concern over the European question); see also Grove Patterson, An Address, in PROCEEDINGS OF THE ATTORNEY GENERAL'S CONFERENCE ON CRIME 84 (1934) (providing a later example of the concern over the European question).

himself had no practical police experience. He was a lawyer who had risen through the white-collar ranks at the Justice Department, but he never served in a local police force.)

Hoover began his campaign by mobilizing the networks he had built among police organizations and police officials at the local level—most notably, through the International Association of Chiefs of Police. At Hoover's urging, police officials from across the country wrote in to the commission to declare their faith in the Bureau. At the same time, they had a stick to go with their carrot. As part of their support for Hoover, police chiefs made it clear that they would refuse to send their local statistics to anyone else at the federal level.<sup>5</sup> In effect, Hoover mobilized police networks to support the Bureau as a central public repository for crime statistics, but also to make it very difficult for anyone else to do this job effectively. He deployed this strategy throughout his career, mobilizing civic organizations and law enforcement organizations to support the Bureau at key moments.

Hoover's second tactic in the statistics campaign takes us back to the discussion of staff power from last night. Once the Wickersham Commission got underway, Hoover made sure to become very friendly with its staff members. As part of my book research, I filed a Freedom of Information Act request with the FBI to receive its documents on the Wickersham Commission. The file contains a wealth of ingratiating letters from Hoover to various staff members advertising all of the wonderful things that the Bureau was doing to fight crime. In an odd twist, these letters were being sent to a Commission staffer named Max Lowenthal. If you know anything about FBI history, you know that a few decades later Max Lowenthal would write a searing takedown of the FBI as the country's ruthless ideological police.<sup>6</sup> Hoover ended up hating Lowenthal—no surprise there. But in this earlier moment they were allies, with a shared goal of amassing scientific information to determine what was happening in the sphere of crime.<sup>7</sup>

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5. REPORT ON CRIMINAL STATISTICS, *supra* note 4, at 16; Memorandum from E.K. Thode for the Director of the Fed. Bureau of Investigation (April 18, 1930) (on file with author (section 3, FBI FOIA 62-21747-96 (Wickersham))).

6. See MAX LOWENTHAL, THE FEDERAL BUREAU OF INVESTIGATION 444 (1950).

7. For early exchanges between Hoover and Lowenthal, see Memorandum from J. Edgar Hoover, Dir., Fed. Bureau of Investigation, on the Conference with Mr. Max Lowenthal (August 8, 1929) (on file with author (section 1, FBI FOIA 62-21747-17 (Wickersham))); Letter from J. Edgar Hoover, Dir., Fed. Bureau of Investigation, to Max Lowenthal, Wickersham Comm'n Staff (August 10, 1929) (on file with author (1929, section 1, FBI FOIA 62-21747-17 (Wickersham))).

Hoover was very self-conscious about developing these relationships with staff, and he was similarly strategic about developing his political relationships with Congress and within the Herbert Hoover administration. The two Hoovers shared many ideological and reformist assumptions—most notably, the associationalist idea that the federal government should serve as a coordinator for voluntary activities at the state and local level, and within the private sector. In the end, J. Edgar Hoover decided to use both his practical and sympathetic connections in Washington circles to jump the gun on the Wickersham Commission. In June of 1930, before the Wickersham Commission could issue its report on criminal statistics, Hoover solicited and won Congressional authorization to begin collecting crime statistics for the nation.<sup>8</sup> In other words, he simply started doing it long before the Commission had a chance to weigh in on the question. By the end of 1930, the Bureau had begun issuing its Uniform Crime Reports, statistical surveys of national police data that mark the beginning of the FBI statistical reports we all know and use today.<sup>9</sup>

As a result, when the Wickersham Commission finally got around to considering the statistics question, the matter of who would collect the numbers was already a *fait accompli*.

In closing, I want to finish up with one more question: Did the Wickersham Commission think that this was a good idea? Hoover's actions obviously posed something of a problem for commission's social scientists and legal experts, who had been tasked with sorting out the statistics question in a non-partisan manner. In their report on criminal statistics, one of the 14 volumes issued by the commission, the authors affirmed once again that the nation deserved accurate crime statistics.<sup>10</sup> "Statistics are needed to tell us, or at least to help tell us, what we have to do, how we are doing it, and how far what we are doing responds to what we have to do," the report declared.<sup>11</sup>

While they emphasized the need for better statistics, however, the Commission expressed considerable skepticism that Hoover's Bureau was the right agency to perform this task. The Commission laid out three possibilities for the collection of criminal statistics. The first was

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8. JAMES D. CALDER, *THE ORIGINS AND DEVELOPMENT OF FEDERAL CRIME CONTROL POLICY: HERBERT HOOVER'S INITIATIVES* 89–91, 95 (1993).

9. *REPORT ON CRIMINAL STATISTICS*, *supra* note 4, at 10–11.

10. *Id.* at 3.

11. *Id.*

that the Bureau should indeed be placed in charge of compiling and disseminating the statistics—basically, preserving the status quo.<sup>12</sup> The second was that the task should be performed instead by the Bureau of the Census—objective social scientists working within the government, skilled at recording demographic information.<sup>13</sup> The third was that the job should be divided up by specialty: the Children’s Bureau would count juvenile delinquency, the Bureau of Prisons would provide prison information, etc.<sup>14</sup>

The commissioners quickly determined that this last model, in which separate agencies would produce their own crime statistics, was far from desirable. Part of the problem, after all, was that the nation didn’t have uniform categories for measuring crime. Having separate agencies involved, the report concluded, would only make it harder to compare what was going on in Nebraska or Wisconsin with what was happening in Florida or Maine or California. That left a single pressing problem: If statistics were to be the purview of a single agency, which agency should it be?

The report was initially quite deferential to the Department of Justice. The authors noted,

If the question were one only of police statistics we should feel obliged to say that the work going on in the Bureau of Investigation in the Department of Justice had proceeded so far and the achievement of cooperation between the Federal Government and the municipal police was so notable and of such augury for the development of a general and much needed spirit of administrative cooperation, that we ought to say nothing which might impair the results . . . .<sup>15</sup>

This praise, however, turned out to be little more than a starting point for a devastating critique of the Bureau’s methods. The remaining sections of the report argued in great detail that the Bureau should *not* be placed in charge of criminal statistics, much to Hoover’s dismay.<sup>16</sup>

The first argument was a technical critique, focused on statistical

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12. *Id.* at 15.

13. *Id.*

14. *Id.*

15. *Id.* at 13.

16. After the report’s publication, Hoover ordered a full Bureau assessment of its contents. See Memorandum from J. S. Egan for the Dir. of the Fed. Bureau of Investigation (April 28, 1931) (on file with author(section 3, FBI FOIA 62-21747 (Wickersham))).

methodology. While the Bureau might have been adept at collecting police statistics, the report suggested, there were many other areas of statistics that the Bureau simply was not equipped to handle: court statistics, probation statistics, imprisonment statistics. The more important critique—and this gets at precisely what Prof. Zimmer was talking about last night—is that the Bureau was far too self-interested gather any sort of statistics accurately. If the country allowed a law enforcement agency to be in charge of national statistics, the report predicted, that agency would inevitably use crime numbers to serve its own interests.<sup>17</sup> The Bureau, for instance, would likely document only the trends that it was interested in documenting—namely, trends that would help it make appeals for appropriations.

Based on this concern, the report recommended that the Bureau of the Census—not the Bureau of Investigation—be placed in charge of collecting national crime statistics.<sup>18</sup> It was a very powerful recommendation, and the report's authors spent considerable time and effort crafting their arguments. However—and here is Hoover's moment of triumph—they also acknowledged the political difficulties of changing the status quo at that late date. For the moment, the report suggested, the Justice Department and the Bureau of Investigation should just keep doing what they were doing.<sup>19</sup> The report offered a tepid hope that politicians would take up the challenge of transferring operations to the Census Bureau at a future date, when “matters are ripe for the ultimate system.”<sup>20</sup>

What actually happened, of course, is that this problem never got sorted out. And this brings us back to the question we've all been wrestling with at this conference: What, in the end, was the significance of the Wickersham Commission? Did it matter at all? In this case, the Commission produced a very powerful study on criminal statistics, and made some very compelling arguments. But what came out at the end was exactly the opposite of what the Commission recommended. It was a disappointment conclusion for an ambitious government study.

In closing, I'd like to suggest that the story of the Commission's attempt to intervene in criminal statistics is nonetheless important for a few key reasons. The first is that gives us a sense of the influence, but

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17. See REPORT ON CRIMINAL STATISTICS, *supra* note 4, at 14.

18. *Id.* at 15.

19. *Id.*

20. *Id.*

also the limits, of commission power. The Wickersham Commission changed the national debate over criminal statistics, bringing the issue to the forefront of public discussion. At the same time, its recommendations held little practical weight. Hoover went on throughout his career to do exactly what the Commission warned about: He used and shaped statistical reports in order to increase the Bureau's appropriations. In that sense, the Commission's report offers a warning about the weakness of the commission model for achieving lasting political change.

The Commission's report also raises interesting questions about our own knowledge of crime in the 1920s and 1930s. Do we, as historians and scholars, actually know what was happening during those years? We can say with some confidence that Americans were very concerned about crime in the 1920s, and that their concern escalated in the 1930s. However, I would argue that we still don't have a clear sense of what was driving those concerns. Was this a cultural panic? A bid for increased federal power? A response to genuine crime trends? Many scholars have wrestled with these questions, but the issues that the Wickersham Commission was dealing with are the same issues that we end up dealing with as historians: the eternal problem of determining what, in a factual sense, was actually going on.<sup>21</sup>

And this, finally, leads back to the present-day problem that Prof. Zimring raised last night in his keynote address. How accurate are the criminal statistics we rely upon today? Hoover's engagement with the Wickersham Commission in the 1920s and 1930s reminds us to think critically about the numbers we encounter, and always to ask who's counting crime.

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21. For crime trends in the 1920s and 1930s, see for example, CALDER, *supra* note 8, at 90-91, 95, and CLAIRE BOND POTTER, WAR ON CRIME: BANDITS, G-MEN, AND THE POLITICS OF MASS CULTURE 33-39 (1998).