

Chasing Spies: How the FBI Failed in Counterintelligence But Promoted the Politics of McCarthyism in the Cold War Years

Intelligence in Recent Public Literature

By Athan Theoharis. Chicago: Ivan R. Dee, 2002. 307 pages.

Reviewed by David Robarge

Since the 11 September 2001 attacks by al-Qaida, the FBI has taken on a counterterrorism function that more closely resembles espionage and counterintelligence than traditional law enforcement. The Bureau has had trouble managing this transition from “cop” to “spook,” and it undoubtedly will encounter more problems now that its counterterrorism responsibilities have grown under the new homeland security legislation. Counterintelligence and counterterrorism share many operational characteristics, as well as a sense of urgency and a high frustration factor that can lead to procedural corner cutting. While we construct a new

domestic security apparatus to help fight international terrorism, we should pause to examine Athan Theoharis's *Chasing Spies*, a useful, although at times tendentious, cautionary tale about how the FBI conducted counterintelligence against the Soviets from the 1930s through the 1950s.

Theoharis—a historian at Marquette University and a prolific scholar and critic of the FBI—wants us to be aware of what he sees as the FBI's checkered record on hunting Soviet spies during those years, when, he argues, counterintelligence quickly mutated into (often unlawful) surveillance of dissidents, nonconformists, “unfriendly” politicians, and sundry “radicals.” As Bureau investigators threw their nets farther and wider to snare Kremlin agents, they became seized with finding “the enemy within” because their superiors, especially J. Edgar Hoover, pursued an ideological agenda that subordinated law enforcement to anticommunism. That history, Theoharis suggests, provides a lesson for us in the current climate of anxiety and suspicion: Counterterrorism directed at mysterious foreigners with alien creeds could easily lapse into the same excesses that anti-Soviet counterintelligence did not so long ago.

Although Hoover is gone, Theoharis argues that his legacy of politicized counterintelligence may endure. With the cases of Wen Ho Lee, Robert Hanssen, Timothy McVeigh, and the Ruby Ridge militia in mind, the author has observed, in interviews about homeland security, that: “If you are going to give agents broad authority, how do you keep them from roaming far afield? The history is not pretty.” [1]

In *Chasing Spies*, Theoharis uses mostly FBI releases secured under the Freedom of Information Act and declassified decrypts of KGB messages to move the discussion of Soviet espionage in America into territory familiar to him: what the Bureau did about Kremlin spying, and why. According to his research, the FBI's investigations of Soviet espionage in the 1930s, 1940s, and 1950s were far more extensive and intrusive than we have previously known, yet few spies were caught and even fewer tried. Possible reasons are: (1) The Bureau was incompetent; (2) Democratic administrations, out of indifference or partisanship, inhibited the FBI from investigating Soviet espionage; (3) Soviet operational security was very good; (4) there were not that many Soviet spies to catch; (5) the Bureau's information was collected illegally and could not be used in court; and/or (6) the FBI was using its counterintelligence capabilities for purposes other than finding Kremlin agents and their supporters. Theoharis's assessment: mostly (5) and (6), with a bit of (3) and (4) thrown

in, as he concedes that “Moscow rules” were tough to work against and he tends to play down the scope and effect of Soviet espionage in America.

Between 1936 and 1952, the Bureau’s budget ballooned from \$5,000,000 to \$90,000,000, and the staff went from 1,580 employees to 14,657. According to Theoharis, FBI managers used some of the new money and personnel to conduct not only standard investigations but also an unprecedented array of then-illegal operations—break-ins, wiretaps, bugging, and mail opening—against American communists and communist sympathizers. [2] But all that detective work was mostly for naught, the author concludes. “From a law enforcement or legitimate counterintelligence standpoint, the information accumulated . . . had little value . . . because [it] either was illegally obtained . . . thus negating prosecution . . . or did not document the violation of a federal statute.” [3] Or at least not a federal *espionage* statute—under the Smith Act’s sedition provisions, Communist Party leaders were indicted and convicted for conspiring to overthrow the US government by force or violence.

In some instances, the FBI’s only information came from the ultra-secret decrypts of Soviet communications from the VENONA project, which had to be protected. Los Alamos physicist Ted Hall provides the best example of the FBI having a spy dead to rights, but not being able to arrest him because it needed to conceal its source. If collateral information were available, as with the Rosenbergs, then prosecution could go ahead. [4]

Most of the Bureau’s dilemma was of its own making; the problem was less one of compromising sensitive sources than of having to disclose that the incriminating information on which a case hinged was acquired illegally. In short, improper methods impeded law enforcement; investigatory means took control of justiciary ends.

Theoharis presents another reason why the FBI was better at catching criminals than at tracking spies. Its “massive monitoring of the American Communist Party and other left-wing political and labor union organizations from the 1920s on . . . focused not on espionage but on Communist influence in American society.” For example, a large program that targeted the Communist International apparatus in the United States showed that American communists advocated radical political, social, and economic change, and received money from their Soviet sponsors, but that very few committed espionage for Moscow. Even when they had, they could not be prosecuted because the information against them was acquired illegally. Most of the few “real spies” the FBI uncovered had stopped their clandestine work by the time they were caught, but the

Bureau—trapped in another counterintelligence dilemma of never being able to prove the negative—kept investigating Soviet fronts, leftist organizations, and Stalin apologists in the off-chance that it might find a stray agent or two.

The reason for the FBI's persistence, Theoharis writes, was political and ideological. Hoover was more concerned with educating the American people about the "Red Menace" than about putting Soviet spies in jail. As depicted in *Chasing Spies*, Hoover was less a conservative anti-communist than a reactionary countersubversive. [5] He passed on derogatory information about the radicals his agents had under surveillance to a network of ideological kinsmen in politics and journalism whom he cultivated assiduously. Through FBI officials' covert alliance with selected congressmen, congressional committees, and reporters and columnists, the Bureau had put itself in a win-win situation. [6] It could hide its counterintelligence shortcomings behind a wall of secrecy and national security while Democratic administrations got blamed for not doing enough to stop Soviet espionage and communist subversion. [7]

Although Theoharis has compiled a troubling account of FBI abuses, he overstates the extent to which the Bureau still operates in Hoover's shadow. Potential targets of FBI counterterrorism investigations probably have more to fear from xenophobic vigilantes than from Bureau superpatriots. Undoubtedly FBI agents will make mistakes, especially in the frenzy after a major attack, but the vast majority of its errors seem more likely to result from bureaucratic inertia, institutional culture clashes, outdated technology, and a steep learning curve than from any ideological fixation.

Theoharis did not set out to write a comprehensive history of FBI counterintelligence from the late 1930s to the mid-1950s, but his focus on the Soviet Union nonetheless leaves some important questions unanswered. He could, for example, have usefully compared the Bureau's anti-Soviet operations with its work against German, Japanese, and Italian spies and "fifth columnists" in the United States during World War II. By all accounts, Hoover's G-Men shut down Axis espionage and subversion networks quickly using traditional detective methods that led to prosecutions and convictions. Why was the FBI more successful against those targets? Why did it not have to use the same battery of illegal techniques against the fascists that it did against the communists? Were the Axis nations' operations run differently, or were the Soviets' activities harder to uncover and interdict, or did the Bureau apply a double standard

in dealing with the respective threats?

Chasing Spies is much more effective at detailing the FBI's transgressions than at dealing with the massive and incontrovertible evidence of Soviet espionage in America during the 1930s and 1940s that has accumulated in the past decade. [8] Theoharis goes awry when he tries to find a historiographical peg on which to hang his latest research on the Bureau, which can stand well enough on its own. In a semi-polemical preface, he takes some unwarranted shots at post-Cold War studies of Soviet spying that are based on VENONA decrypts and documents from KGB and Comintern archives. (The GRU's archives remain closed.) [9] It is true that parts of this genre have a score-settling bite and a "we always told you so" smugness, and occasionally the writers overreach when interpreting vague or limited evidence. Overall, however, they have demonstrated conclusively that Moscow had seeded the United States far and wide with spies and sympathizers whose theft of secrets and influence on policy damaged US national security, a conclusion that Theoharis himself actually shares. [10] In counterpoint to this scholarship, some left-wing historians and what may be called "VENONA deniers" have accused the post-Cold War espionageists of flawed research and assorted political biases—"liberal anticommunism," "right-wing triumphalism," and, worst of all, "McCarthy rehabilitation." [11]

Theoharis accepts that the Americans so prominently accused of spying for Moscow—Alger Hiss, the Rosenbergs, *et al.*—were guilty. He does not try to obscure the issue, as VENONA's most dogged critic, Victor Navasky of *The Nation*, has by saying that they were "innocent of whatever it is people mean by espionage." [12] But some of his reasoning follows the general progression most VENONA deniers have undergone: First, resist accepting that Americans did much spying for the Soviets; next, when presented with evidence that they did, carp at the details, stress any inconsistencies or ambiguities, and urge caution at reaching conclusions based on one source; finally, when shown corroboration for VENONA, claim "what's new?" and argue that the spying had little effect on anything important.

This "so what?" argument—that Soviet spies did not steal much of value, so we should not have worried so much about them—is fallacious. Besides assuming that the secrets stolen were not that valuable, the argument is flawed by *ex post facto* reasoning. How could we have determined what damage Soviet agents caused without investigating

them? Even granting some of the “so what?” view, the deterrent effect that the US government’s counterintelligence work had must be taken into account. If the Soviet espionage network had not been so badly disrupted by the late 1940s, future spies might have done much greater harm than those who got caught.

In attempting to discredit the work of the revisionists, Theoharis sometimes argues like a defense lawyer trying to keep incriminating evidence from a jury. Especially when discussing some of the celebrated spy cases of the early Cold War—for example, Hiss, Elizabeth Bentley, and staff members of the journal *Amerasia*—he places more emphasis on the questionable means used to acquire the information than on what it reveals: that the accused were guilty as charged. Illegally obtained facts may not be admissible in court, but the Bureau’s methods and motives should not deter historians from using all information to reach their conclusions. The evidentiary standards of legal proceedings and historical writing differ.

In the mid-1990s, ahead of the wave of books informed by VENONA and Soviet documents, historian Maurice Isserman wrote: “That espionage has suddenly emerged as the key issue in the debate over American communism probably has as much to do with marketing strategy as with any reasoned historical analysis.”^[13] The voluminous new information on Soviet espionage in America before, during, and after World War II has disproved Isserman’s observation except to a dwindling band of ideological holdouts. Theoharis, through his industrious mining of that and other material, now adds an important perspective on a troubling manifestation of official anti-communism in those years. *Chasing Spies* offers a worthwhile admonition against politicized law enforcement and counterintelligence—and, in its few less scholarly moments, against politicized history, also.

Footnotes:

[1] Bill Miller, “Ashcroft: Old Rules Aided Terrorists,” *The Washington Post*, 31 May 2002, p. A13; Edward P. Lazarus, “At the F.B.I., It’s Always Been Washington vs. the Field,” *New York Times*, 11 August 2002, sec. 4, p. 4.

[2] The Foreign Intelligence Surveillance Act of 1978 and the Patriot Act of 2001 expanded the FBI’s authority to use those techniques in counterintelligence investigations. The US Foreign Intelligence Surveillance Court of Review affirmed the Bureau’s powers in a November

2002 decision.

[3] *Chasing Spies*, p. 140.

[4] This dilemma has been well described in what remains the best book on the FBI and counterintelligence: Robert Lamphere and Tom Shachtman, *The FBI-KGB War* (New York, NY: Random House, 1986).

[5] Theoharis's portrayal of Hoover resembles that by Richard Gid Powers in *Secrecy and Power: The Life of J. Edgar Hoover* (New York, NY: The Free Press, 1987) and *Not Without Honor: The History of American Anticommunism* (New York: The Free Press, 1995).

[6] *Chasing Spies*, p. 198.

[7] On the last point, Theoharis asks, "Did President Roosevelt's indifference make possible Soviet espionage, and did President Truman's partisanship or indifference foreclose FBI investigations of Soviet espionage activities that could have ensured the prosecution of guilty spies?" He answers both questions, "No."

(*Ibid.*, p. 33.)

[8] In this respect, Theoharis's book is an FBI-centered case study that complements Ellen Schrecker's more expansive treatment of official anti-communism during the "Second Red Scare" of 1945-1955, *Many Are the Crimes: McCarthyism in America* (Boston, MA: Little, Brown, 1998).

[9] Major works in this group include: Joseph Albright and Marcia Kunstel Albright, *Bombshell: The Secret Story of America's Unknown Atomic Spy Conspiracy* (New York, NY: Times Books, 1997); Christopher Andrew and Vasili Mitrokhin, *The Sword and the Shield: The Mitrokhin Archive and the Secret History of the KGB* (New York, NY: Basic Books, 1999); Robert Louis Benson and Michael Warner, *Venona: Soviet Espionage and the American Response, 1939-1957* (Washington, DC: National Security Agency and Central Intelligence Agency, 1996); John Earl Haynes and Harvey Klehr, *VENONA: Decoding Soviet Espionage in America* (New Haven, CT: Yale University Press, 1999); Harvey Klehr, John Earl Haynes, and Fridrikh Igorevich Firsov, *The Secret World of American Communism* (New Haven, CT: Yale University Press, 1995); Kathryn S. Olmsted, *Red Spy Queen: A Biography of Elizabeth Bentley* (Chapel Hill, NC: University of North Carolina Press, 2002); Ronald Radosh and Joyce Milton, *The Rosenberg File: A Search*