

Bureaucratic Wrangling over Counterintelligence, 1917–18

Early Days of the Intelligence Community

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As the United States prepared to send troops to fight in France in 1917, the country faced a serious intelligence failure: foreign agents had been acting largely with impunity on domestic soil for three years. Treasury

“Echoes from that earlier row over counterintelligence responsibility resonate today.”

Secretary William Gibbs McAdoo made what might appear to be a reasonable proposal: centralize all intelligence responsibility, especially counterintelligence, in a Bureau of Intelligence to be run by the Department of State or the Treasury Department. Instead of solving the problem, his proposal exacerbated a bureaucratic battle underway between the Treasury Department and the Department of Justice over how counterintelligence—including counter-espionage, countersabotage, and countersubversion—should be handled on the homefront. When the dust settled following the armistice of 1918, Justice's Bureau of Investigation—the predecessor to the Federal Bureau of Investigation (FBI)—came out on top as the agency in charge of domestic counterintelligence, a responsibility that has not been changed since that time. Strong echoes of the issues and arguments from that earlier row

resonate in the debates about homeland security since the terrorist attacks of 11 September 2001.

Ineffective Homeland Security

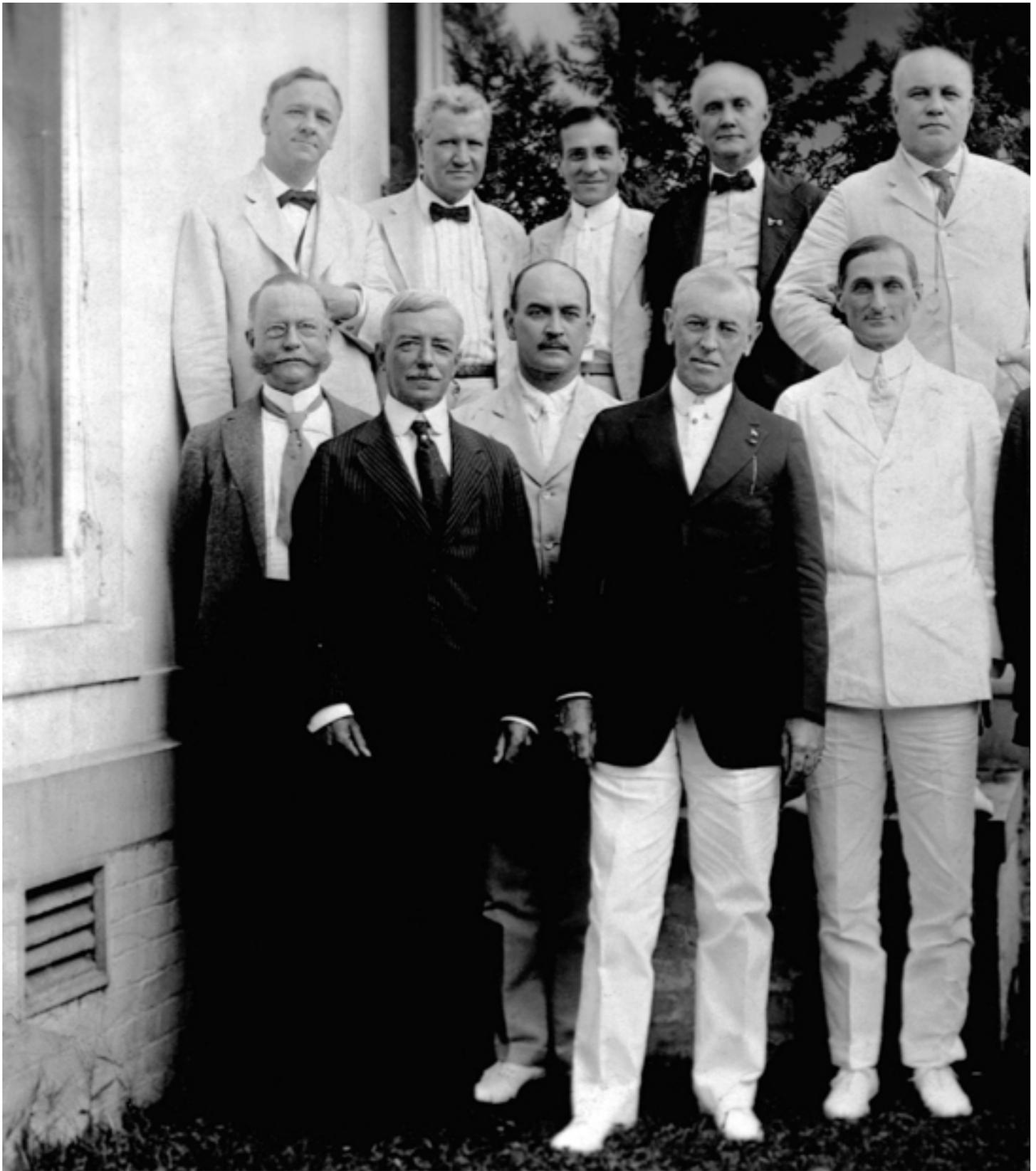
When war broke out in Europe in 1914, Germany and England both launched serious propaganda campaigns and engaged in espionage against the United States. Germany also waged a strong campaign of sabotage and subversion. America was ill-prepared to deal with these intelligence threats. The New York City Police Department's bomb squad provided most of the investigators targeting German saboteurs and subversives, but the squad was handicapped by jurisdictional limits and local focus.

The federal response was fragmented and ineffective. The State Department was primarily responsible for tracking the actions of hostile intelligence agents on US soil, but it had no investigative arm. Instead, State borrowed detectives from Justice's Bureau of Investigation and Treasury's Secret Service. The Office of Naval Intelligence (ONI) and the Army's Military Intelligence Division (MID) had counterintelligence capabilities, too, but were limited to investigating activities related to military facilities and responding to certain neutrality problems on the US-Mexico border—matters in which the Bureau also played a role.[1] All told, in 1914 there were fewer than 300 federal agents collecting intelligence and identifying and countering foreign intrigues against the United States. [2]

Justice Department

The bulk of federal investigators resided in the Bureau of Investigation, but in the years before the US entry into the war, as German intrigues escalated, the Bureau largely pursued criminal matters. Its only intelligence responsibility came during the investigation of neutrality law violations.[3] Attorney General Thomas Watt Gregory argued against an expansive approach to counterintelligence issues by the Bureau, saying that his

detectives should only investigate those matters that involved violation of federal law and, at the time, espionage, sabotage, and most subversion were not addressed in that law.



President Wilson and his cabinet in 1917. Directly behind him stands Attorney General Gregory; to the president's left (in white) is Treasury Secretary McAdoo. Secretary of State Robert Lansing (wearing a dark suit and tie) is on Wilson's right.

Gregory, though, did not ignore those threats. The rise in the number of sabotage incidents in 1915 “led the Department of Justice to unprecedented exertions to secure new laws.”[4] In June 1916, Assistant Attorney General Charles Warren drafted a series of legislative changes to give the federal government the authority to arrest and prosecute saboteurs and other foreign agents and their supporters for specific acts. The newspapers of the day, however, condemned the proposals as requests for arbitrary power. Such protests against Warren's so-called Spy Bill were echoed by members of Congress and continued up to the eve of America's declaration of war in 1917.

Treasury Department

The Treasury Department's Secret Service was less restricted than the Bureau of Investigation.[5] Treasury Secretary McAdoo, whom one historian describes as “the most politically ambitious member of Wilson's cabinet,” broadly interpreted the service's authority to make investigations, despite recent congressional action to curtail such interpretations.[6] His willingness to pursue intelligence matters, in contrast to Attorney General Gregory's reluctance to do so without explicit legal sanction, meant that the Secret Service felt free to probe the activities of German diplomats. McAdoo pressed President Woodrow Wilson to support this interpretation and, in May 1915, the president ordered the service “*to increase its surveillance of the German Embassy, its personnel, and other Germans.*”[7]

The Secret Service acted quickly on Wilson's command and did so with some success. By the end of July 1915, service agents tailing a German diplomat had acquired the briefcase of his companion, German agent Dr. Heinrich Albert. Albert had accidentally left the briefcase on a bus seat and did not return for it in time to prevent a quick-thinking Secret Service agent from grabbing it and exiting by the rear door of the bus. The briefcase contained a wealth of information about German propaganda efforts. Its contents were quickly leaked to the press.[8]

Rivalries Grow

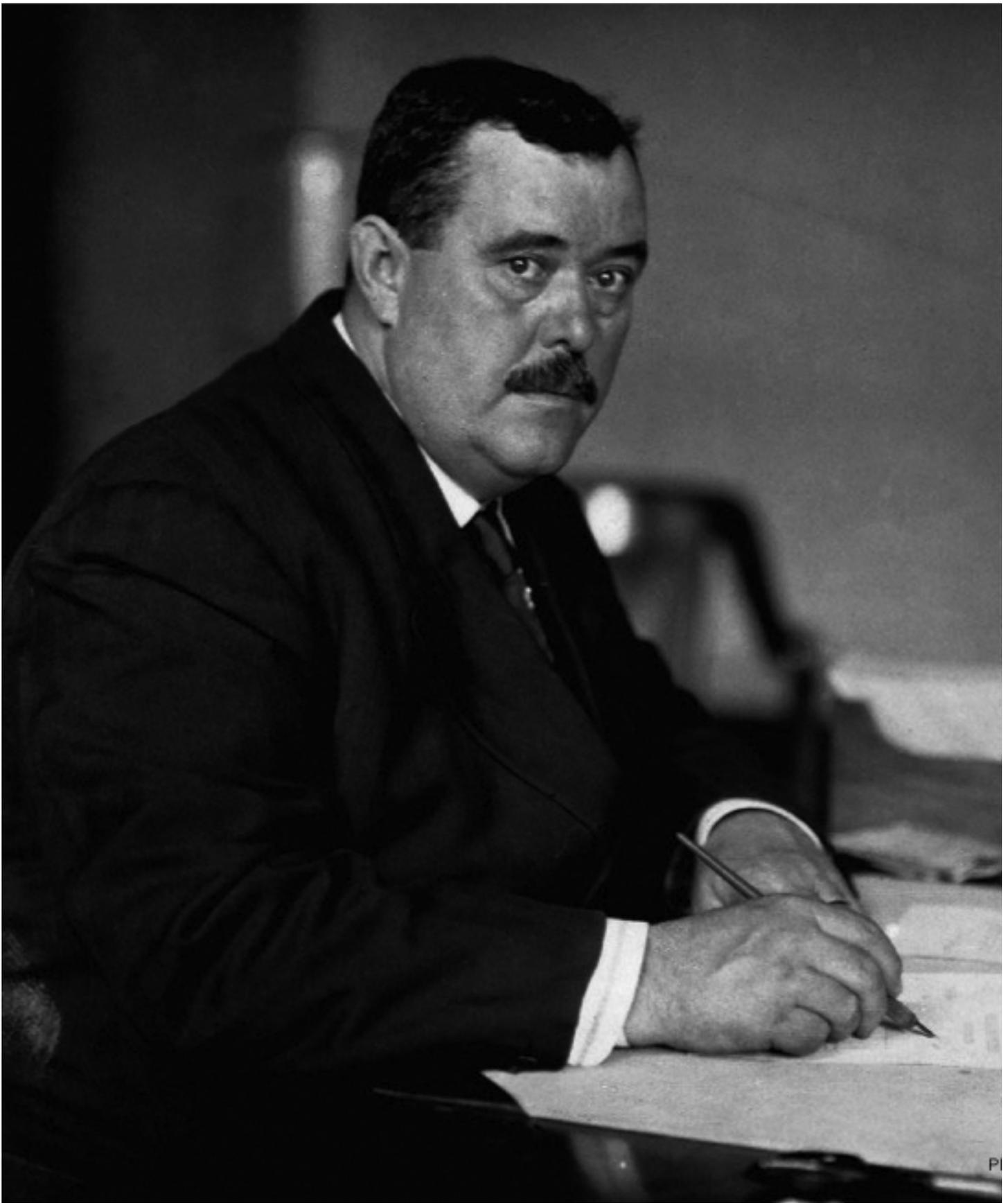
The briefcase incident not only proved a major embarrassment to Germany, but also sparked bureaucratic infighting in Washington over counterintelligence policy. Attorney General Gregory and Bureau Chief Alexander Bruce Bielaski had opposed leaking the material from the briefcase, arguing that it was counterproductive because Justice could not prosecute Albert. Justice also feared that the president's critics would charge that he was soft on German intrigue because the United States was unable to put the foreign agent in jail.[9] This dispute was a harbinger of conflicts in succeeding years between McAdoo and Gregory over who would control counterintelligence matters.

Meanwhile, the Bureau was becoming a serious rival to Treasury's Secret Service for control of the government's "secret service" activities.[10] The Bureau hired close to 100 new agents during 1915, almost doubling its size, and its ranks soon dwarfed the Secret Service. Treasury also acquired more investigators, but did not grow at the same rate as the Bureau. Moreover, its historical claim to being more experienced in counterintelligence matters was weakening. The experience that the Bureau's agents had been acquiring in Neutrality Act cases since the Mexican Revolution of 1910 was comparable to the experience that the service was gaining in targeting German diplomats. In 1916 alone, the Bureau secured evidence leading to over 200 prosecutions for violations of the Neutrality Act and the laws forbidding restraint of trade. Neutrality Act provisions were even used with some effect against saboteurs, like Franz von Rintelen, although the attorney general consistently held that additional legislation was needed to adequately address the problem of German intrigues.[11]

State Enters the Fray

Despite the growing roles of the Bureau and the Secret Service in domestic counterintelligence, State was actually the lead agency on these and broader intelligence matters. It had assigned Counselor Frank L. Polk the task of coordinating intelligence matters as early as 1915, and in 1916 had established an office of Chief Special Agent, with offices in New York

and Washington, to oversee surveillance as the Secret Service had done. [12] In 1916, Congress authorized the Bureau to conduct investigations on behalf of the secretary of state, thus balancing President Wilson's 1915 directive conferring similar authority on the Secret Service. What these investigations were to encompass was left unsaid, but it was apparent that Congress intended counterintelligence-type investigations.



Secret Service head William J. Flynn, ca. 1910.

State, apparently, had no ambition to take control of counter-intelligence. Its office did not grow into a rival of the Bureau or the Secret Service because it failed to develop its own investigative force, relying instead on borrowing agents from the other two organizations as needed. Given the tension between the two agencies over these responsibilities, this arrangement proved inadequate at best. The State Department had little if any law enforcement power, and federal violations related to foreign matters were already the responsibility of the Justice Department; Congress's stipulation, therefore, clearly authorized investigations not intended to result in prosecutions.[13]

American Protective League

In February 1917, Justice greatly increased its ability to pursue such investigations. Three Chicago businessmen proposed to the department that they would create an organization for patriotic citizens who did not serve in the military. This American Protective League, they suggested, would provide Justice with hundreds of thousands of “eyes and ears” to identify draft dodgers, subversives, and foreign intrigue on the home front. Upon receiving the attorney general's enthusiastic approval, the league was created and quickly mobilized more than 250,000 members across the country.[14]

The league's large size, its lack of central control, and the assumption of unauthorized authority by some of its members led to significant problems. Many league members thought they had powers of arrest and acted as if they were deputized federal agents, in spite of the attorney general's explicit denial of such authority. This error became especially problematic when many of the abuses of the liberties of US citizens during various “slacker” raids were traced to overzealous league members.[15] Treasury Secretary McAdoo and Secret Service head William J. Flynn especially resented this new group because it further threatened the Secret Service's claim to primacy in counterintelligence matters.

President's Neglect Intensifies Infighting

As the United States was about to enter the war, the bureaucratic conflict threatened to break out in public. On 5 April 1917, the day before the United States declared war, the Senate Appropriations Committee asked Bureau Chief Bielaski whether his outfit provided the “secret-service work to protect the government against spies, or does the Treasury Department?”[16] Bielaski said that his group did. This public claim to preeminence appeared to receive executive confirmation when, following the declaration of war, President Wilson issued a proclamation assigning a number of war-related investigative matters, especially alien enemy control, to the Department of Justice. The Secret Service, though, continued to claim an equal role in these matters, based on the president's 1915 authorization, among other implied or assumed delegations of authority.

War alone was unlikely to bring these two sides together and Wilson's penchant for ignoring intelligence policy would only exacerbate the matter. According to historian Christopher Andrew, Secretary of State Robert Lansing immediately pressed President Wilson to effect better “coordination of the secret service work of this government” upon entry into the war. His concerns included both foreign and domestic intelligence issues, the latter complicated by the “extreme jealousy” between Justice and Treasury. Lansing told Wilson that Counselor Polk's coordinating efforts had been ineffectual in settling this rivalry and suggested that the president take a more active role in resolving the matter.[17] In response, however, President Wilson chose to ignore the growing interagency conflict. He even added to the confusion by acting in a manner that gave both the Bureau and the Secret Service reason to claim responsibility for domestic security.

Lansing was not the only one concerned about the bureaucratic turf battle. On 15 April, a week and a half after Bureau Chief Bielaski made his claim, Treasury Secretary McAdoo ordered the Secret Service to pursue investigations of alien enemies under Wilson's war proclamation, despite the fact that the order had specifically delegated this activity to the Justice Department.[18] The next day, McAdoo went even further, sending the president a proposal for the creation of a central bureau—to be called the Bureau of Intelligence—to coordinate all government intelligence activity. This agency, McAdoo suggested, could be in the State Department or the Treasury Department, although he thought that Counselor Polk was

too busy to continue to oversee coordination as he had before the United States declared war.[19] It is not known if Wilson spoke directly to McAdoo about his proposal, but later that day the president wrote to Secretary of War Newton Baker about his concern that the United States might be “in danger of creating too much machinery” in its rush to war.[20] Wilson took no action to reject or accept McAdoo's proposal; nor did he even seek cabinet discussion of its merits at the time.

Attorney General Gregory, on the other hand, vigorously responded to McAdoo's “Bureau of Intelligence.” He vehemently rejected the idea, arguing that Justice and military intelligence were already effectively coordinating their efforts under State auspices. The only problem that Justice was encountering, he said, was the constant overreaching of authority by Secret Service agents and their presumption of responsibility in matters already delegated to Justice.

In response, McAdoo denied that his service was encroaching on Justice's jurisdiction and demanded that Gregory supply specific instances where his agents had acted inappropriately. McAdoo also sharply criticized the American Protective League's activities. A June memorandum makes clear how incensed he was at Justice's “eyes and ears.” In the memo, he complained to Gregory that the arrangement with the league was fraught with the “gravest danger of misunderstanding, confusion, and even fraud . . . [and] in the public interest I am sending you my serious protest against the continuation under its present designation.” In arming a private organization with a “power the very existence of which in private hands is detrimental to the public interest . . . the government cannot escape responsibility for their activities whatever they may be.” McAdoo was especially concerned that league badges referred to the organization as a “secret service” and he argued that people would confuse the private organization with the Treasury Department's force.

A copy of McAdoo's complaint was sent to Wilson, and the charges impressed the president. Wilson told Gregory that he feared that the league might be a danger and asked if it should be stopped. The Attorney General strongly defended his group but agreed to press for a different badge to avoid confusion with the federal Secret Service.[21] Wilson appeared satisfied.

Meanwhile, Congress continued to balance the Secret Service against the Bureau. It authorized the president to use Treasury's unit for national security investigations upon declaration of a state of emergency. Then,

three days later, it passed the Espionage Act, which gave Justice the authority to prosecute persons for violations related to espionage, subversion, and other matters.[22] According to Congress, the Justice Department was to have primacy in investigating most war-related violations, including draft resistance, failure to register for the draft, threats to industrial plants, and food hoarding.

Tension with the Secret Service continued even in these areas. Service agents, acting on commands from Chief Flynn, assumed parallel authority under earlier executive authorizations.[23] The Secret Service also accepted requests from other agencies for additional investigators and proactively solicited investigative assignments, including from the Bureau of War Risks and the Food Administration.[24] Attorney General Gregory strongly denounced such encroachments, complaining that the Secret Service did not have legislative sanction to carry out these investigations and that its actions led to duplication of effort and investigative chaos that would result in important matters being overlooked. Treasury Secretary McAdoo countered that, given limited government resources, all available investigative help should be marshaled in the war effort. In the matter of food hoarding, at least, a compromise was reached. Justice ceded the field to the Secret Service before the end of 1917.

The debate over the espionage threat was not so easily settled. At a 6 July 1917 cabinet meeting, Treasury's McAdoo argued that there were legions of German spies and subversives hidden in the country and that the government needed to respond vigorously with all of its investigative resources.[25] He even urged the secretary of war to improve his intelligence apparatus and asked President Wilson to move quickly on the proposals to centralize intelligence and fully use the Secret Service. Attorney General Gregory strongly dissented. Such hyperbolic charges were baseless, he argued. The spy fear was overblown; no German spies had been found despite intensive efforts to do so.

For Gregory, the problem in US counterintelligence continued to be the encroachment of Secret Service agents upon Justice's authority. The only significant dangers that he saw were the subversive activities of radicals like the International Workers of the World. The Bureau and the league were capable of handling those threats, he argued, especially if additional legislation were to address subversion in more detail.[26] Gregory, we know, was correct in his analysis of the extent of German espionage; however, spy fear, as a public concern, remained high throughout the war, and McAdoo continued to claim that there was a large German intelligence

threat into the spring of 1918 to bolster his argument for a greater role for the Secret Service. Secretary of War Baker tended to support Gregory, but not without conflict from his own department. MID, for example, thought the spy threat was more pronounced than Gregory did.[27]

Presidential Efforts

As these debates continued to roil the cabinet, President Wilson at last stepped in. On 12 July, he suggested that Justice's Gregory meet with Treasury's McAdoo and State's Polk “[to work] out for me a plan for the cooperation of these services into which we can all enter with spirit and effect.”[28] No such meeting came to pass. Nonetheless, Wilson's message appeared to calm the debate for a time and tensions in the ill-formed intelligence community subsided until later that fall.

The conflict, though, had not been resolved and it broke out again in force at the 16 November cabinet meeting when Gregory complained about Secret Service encroachment on a number of Bureau responsibilities. Surprised that the matter was still festering, Wilson wrote to McAdoo that he

was a bit distressed by the discussion in Cabinet the other day. . . . It made me feel derelict in not having sought a remedy [to the problem of intelligence coordination] at the time you suggested . . . though I must say I am still in doubt as to what the best remedy is.[29]

McAdoo replied to Wilson that he did not think his service had exceeded its authority and offered to come up with a plan for the coordination of intelligence work. Gregory did not reply to either the president or McAdoo until after Thanksgiving. Excusing his tardiness by noting that “[my] absence from Washington has prevented me from sooner furnishing,” he reiterated his argument about Secret Service attempts to usurp Bureau authority and interference with Bureau investigations.[30] Wilson again did nothing.

In the new year, 1918, McAdoo and his team at Treasury broadened their offensive. In order to draw attention to their claim about the seriousness of the intelligence threat, Secret Service Chief Flynn very publicly resigned, complaining to the New York newspapers about the lack of cooperation

from the Department of Justice on counterintelligence matters.[31] McAdoo concurrently increased his denunciations of the American Protective League, arguing that it was dangerous to American liberty and ineffective in dealing with the spy threat, which Flynn had highlighted in his resignation.[32]

Justice responded by broadening its offensive in the face of Wilson's renewed silence on the bureaucratic standoff. Key to this was a strong relationship with the War Department, whose executives, at least, agreed with Justice's assessment of the German threat to the homeland. In January 1918, MID head Ralph Van Deman and Justice's War Emergency Division head John Lord O'Brian agreed that O'Brian would call for a meeting of representatives of each agency involved in intelligence matters.

At the first session, later that month, Secret Service representatives pressed for agreement on McAdoo's centralization proposal, but the opposition of Justice, ONI, and MID immediately doomed the proposal. Instead, the War Department representatives supported a call for weekly meetings to coordinate intelligence under Department of Justice auspices. These meetings were to begin immediately. Given the way responsibility was being divided up between the Army, the Navy, and the Bureau, the Secret Service thought it would have little to contribute to the group and so did not return to the inter-department intelligence conference for several weeks. When Treasury representatives did return in March to lobby again for McAdoo's plan, they found that they had been effectively cut out of counterintelligence investigations.[33] In the face of this fait accompli, McAdoo finally dropped his proposal.

Finally, Some Cooperation

The treasury secretary's capitulation did not entirely end competition over counterintelligence. Although cooperation between War and Justice deepened over the next months, some in MID, Congress, and even parts of Justice, supported a much greater role for military intelligence in homeland security. Early in 1918, Congress began debating a bill to declare large war zones around many war-related manufacturing plants and troop encampments in the United States. This would have greatly extended the reach of military authority over much of the country.

The proposal was supported by MID and Assistant Attorney General Warren, both using inflated numbers of German espionage agents to argue that the military would be better suited to deal with such a critical danger, which Justice had been unable to stop. Attorney General Gregory strongly fought the measure and contradicted Warren by denying that there were large numbers of such agents. His position was that when the home front was peaceful and the civil court system operated with full vigor, a drastic measure like military control of large parts of civil society was unnecessary and dangerous.[34]

Secretary Baker was out of the country, touring the war front, but he would have supported Gregory's position. The official stand of the War Department was to support tacitly, but not actively, the Justice Department's opposition to the bill. At congressional hearings, War Department leaders refused to criticize Justice's actions or those of the League, greatly weakening the argument that the Bureau and its "eyes and ears" had failed to deal with the German menace. MID, of course, could not logically advocate Justice's failure without implicating itself, as it had made use of League members, especially during the winter of 1917/18.

Assistant Attorney General Warren continued to work to support the bill and was a major force in keeping it alive for a time. When Warren refused to stop lobbying for the measure, Gregory dismissed him. The issue continued into the spring of 1918, but the lack of support from the top of the War Department, and the absence of counterintelligence failures to bolster the argument that Justice had failed, doomed the measure.[35]

By April 1918, Gregory felt largely vindicated, writing with levity to United States Attorney T. V. Taylor that

there is quite a deal of hysteria in the country about German spies. If you will kindly box up and send me from one to a dozen I will pay you very handsomely for your trouble. We are looking for them constantly, but it is a little difficult to shoot them until they have been found.[36]

As it became clear that the war would end in Allied victory, spy fears subsided and the call for an increased military role in civilian law enforcement lost its force. The Department of Justice's Bureau of Investigation remained the sole agency with a strong claim to authority over domestic security and counterintelligence.

Fast Forward

Because of Gregory's success, by the time the formal structure of the US Intelligence Community was created in 1947, responsibility for domestic counterintelligence had already been assigned and acted on by the Bureau for more than 25 years. It is not surprising that counter-intelligence authority remained with the FBI when the Intelligence Community was organized. Arguments for giving such authority to another organization—whether to Treasury, or, less likely, to the military or the State Department—had been decided two and a half decades earlier. In keeping with both the general practice of separating governmental responsibilities to prevent excessive concentration of power, and the American support for civil liberties and constitutional justice, the authority for dealing with hostile intelligence threats at home was lodged in that part of the executive branch most closely associated with enforcement of US laws.

[1]Under the various neutrality laws, American persons were forbidden to take certain actions that would support one side or the other in foreign conflicts. Although the laws changed from time to time depending on US policy, they usually included provisions regarding arms sales or procurement for foreign powers and forbade plotting revolutions against foreign governments from US soil.

[2]The Bureau of Investigation had a force of 122 agents at the end of FY 1914. The Secret Service at the time had about 50 agents. MID and ONI had less than a dozen agents. Other agencies had a handful of investigators at most.

[3]Joan Jensen, *The Price of Vigilance*, (New York: Rand McNally & Company, 1968), 13.

[4]Homer Cummings and Carl MacFarland, *Federal Justice* (New York: The Macmillan Co., 1937), 414–15.

[5]The best piece on the Service's history at this time is Norman Ansley's article, "The United States Secret Service: An Administrative History," *Journal of Criminal Law, Criminology and Police Science*, XLVII (May–June, 1956).

[6]Jensen, 12–13.

[7]Emphasis added. Walter Levin, “The Efficacy of Propaganda in Global Conflict During the Twentieth Century: When Is Propaganda Likely to Become Effective?” (unpublished dissertation, Fletcher School of Law and Diplomacy, 2000), 84 ff.

[8]Rhodri Jeffreys-Jones, *American Espionage* (New York: Free Press, 1977), 57–59.

[9]David J. Williams, “Without Understanding: The FBI Political Surveillance, 1908– 41” (unpublished dissertation, University of New Hampshire, 1981), 81.

[10]The term “secret service” at this time encompassed aspects of both intelligence and police work. There was such overlap between the two that distinctions were often not made between them.

[11]Williams, 81; and Cummings and MacFarland, 416.

[12]Levin, 84.

[13]The authorization followed in the tradition of previous congressional intelligence-related enactments that allowed the executive great latitude in providing for national security. See Stephen F. Knott, *Secret and Sanctioned: Covert Operations and the American Presidency* (New York: Oxford University Press, 1996), 87.

[14]Jensen, in *The Price of Vigilance*, provides an excellent study of the American Protective League, its role on the homefront, and the various debates over counterintelligence responsibility during this period.

[15]*Ibid.*, 50. Taking the League's experience as a lesson learned, J. Edgar Hoover ensured that the FBI did not repeat the problem of relying on a volunteer citizen group when World War II approached. Instead, he did three things: 1) hired large numbers of new agents and support personnel; 2) developed relationships with local and state law enforcement officials, especially through the FBI's professional police training program and close contact between FBI field offices and other law enforcement jurisdictions; and 3) withheld official authorization and established firm guidelines when the American Legion offered its services in a manner like that of the League. See Richard Gid Powers, *Secrecy and Power: The Life of J. Edgar Hoover* (New York: The Free Press, 1987), 256.

[16]Hearings, Senate Appropriations Committee, 5 April 1917, 37; Cummings, 418.

[17]Christopher Andrew, *For the President's Eyes Only* (New York: Harper Collins, 1995), 53.

[18]Jensen, 40.

[19]Letter, McAdoo to Gregory, 16 April 1917, with attached letter, McAdoo to Wilson, 16 April 1917, copy in the Whitehead Research Materials, FBI Office of Public Affairs.

[20]Letter, Wilson to Baker, 16 April 1917, in Ray Stannard Baker, *Woodrow Wilson, Life and Letters*, VII, 14.

[21]Jensen, 45.

[22]*Ibid.*, 54.

[23]Letter, Gregory to McAdoo, 28 November 1917, with Memorandum to the Attorney General, 28 November 1917, Whitehead Research Material, FBI Office of Public Affairs.

[24]Jensen, 91–92.

[25]As Christopher Andrew has noted in *On Her Majesty's Secret Service* (177–82), inordinate fear of foreign spies was prevalent in England, too.

[26]Jensen, 56, 64.

[27]*Ibid.*, 54–55.

[28]Baker, 159.

[29] *Quoted in Jensen, 92.*

[30]Letter, McAdoo to Gregory, 28 November 1917 with attached memo answering Gregory's charges.

[31]Jensen, 94–95. In the domestic unrest that followed the armistice in 1918, matters would change. Following a series of anarchist mail bombings and the attempted bombing of the attorney general's house, Flynn was appointed Director of the Bureau of Investigation in July 1919. He served as director of the agency with which he had battled through the final year

and a half of the Wilson administration. Why this turn of events happened is unclear, but, given the earlier rivalry, Flynn's appointment may have been an effort to prevent resurrection of the Secret Service/Bureau conflict that had been largely resolved in 1918. Stanley Coben, *A. Mitchell Palmer: Politician* (New York: Columbia University Press, 1963).

[32]Jensen, 95–96.

[33]Jensen, 100–103.

[34]*Ibid.*, 108, 115, 119.

[35]Some in MID supported the measure but did not fight for it in contravention of Department policy, in contrast to the position that Warren had taken against the Attorney General.

[36] *Quoted in Jensen, 115.*

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