

Reader's Digest

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A noted liberal examines the record of the FBI and finds "a fervid insistence on protecting the rights of individuals"

Why I No Longer Fear the FBI

By Morris L. Ernst

Counsel for the American Civil Liberties Union;
author of "The First Freedom," "America's Primer," etc.

S STILL remember my start of surprise when I read in the paper one morning in 1939 that J. Edgar Hoover, director of the Federal Bureau of Investigation, had asked the U. S. Attorney General *not* to endorse a law that would legalize a free use of wire-tapping. Why was Mr. Hoover opposing a law which would make his own work much easier? His own words, published soon afterward, gave me the answer: "I do not wish to be the head of an organization of potential blackmailers."

I had been hearing criticisms that the FBI was made up of "witch-hunters" hounding loyal citizens out of their jobs on the flimsiest sort of rumor; that they tapped telephone wires indiscriminately, learning everybody's private business.

Ever since I read that newspaper item I have been studying the FBI.

I would like to record here what I have learned.

As a liberal with a long record of aggressive fighting for the preservation of personal liberties, I am inclined to view all law-enforcement officers with a wary eye. And not without reason: too many times they break the law in the performance of their duties.

I grew up in New York where there was often a wanton disregard for the rights and dignity of human beings. Large numbers of newcomers to American freedom let the cops bulldoze them. In their native lands they had been used to police brutalities, and in their new home they did not know that the laws protected them.

Such disregard of individual rights, expanded on a national scale, seemed to me a positive danger, for national police have almost invariably abused

their power. It was therefore utterly confounding to me to discover that our federal police agency was doing its work with a fervid insistence on respecting the rights and privileges of individuals.

When a skeptical person like myself reads that of all the trials in which the FBI was involved last year 97 percent ended in conviction, he is likely to have cynical reservations. And when he learns that 94 percent of the convictions were based on pleas of guilty, he is bound to ask: "How were these confessions obtained?"

Nazi and Communist courts have taught us that a plea of guilty may prove nothing more than that a man's will can be broken. One rarely hears such charges against the FBI. In our courts of appeal — where accusations are heard of unfair treatment and violations of Constitutional rights — the charge is almost never raised against the FBI.

However, I did not rely on this indication alone, nor even on my study of case reports. I wrote articles in which I asked readers to send me any evidence they might have that the FBI had violated a person's Constitutional rights. My scoreboard shows a remarkable absence of such accusations. On the contrary, all the evidence indicates that the FBI as a matter of unvarying policy has played fair with criminals and suspects.

This record is of profound importance because events in recent years have brought the FBI into quasi-

political problems. Here the danger to personal liberties could easily become acute. The necessity for inquiring into political activities and associations is a new thing in our country. We began this nation with a great gamble in our hearts — the conviction that, if all opposing viewpoints were allowed free expression, truth in the end would win out.

The progress of our country has so far justified our forefathers' faith in the potency of truth. But in the last 20 years a new enemy — and a complex problem — has arisen to confuse us. New political movements, by underhanded methods, seek to by-pass the honest competition of ideas. We face an invisible underground where Fascists and Communists work furtively and zealously against our freedom and our ideas of decency.

Something *had* to be done about that, and the FBI had to do it. What was its task? To bring the facts up from underground so that all the people can know what is being plotted.

It is natural that loyalty investigations should give us qualms. We shudder to authorize wire-tapping and other forms of spying. But they seem necessary if we are to preserve our freedom. They have been forced upon us by the underground.

I am unwilling to ignore the danger of the Communist movement in the United States just because the Reds seem few in number. I saw my friend Jan Masaryk, Czechoslovakia's democratic Foreign Minister,

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in Prague not long before he came to his end. I know intimately the story of Quisling. I know how helpless democratic forces can be, if they do not protect their people against the secret discipline, the abominably careful scheming of totalitarian minorities.

The Communists could never win an election in the United States. They do not expect to do so. The Communist program, like the Ku Klux Klan, can grow only by stealth in dark cellars. J. Edgar Hoover was right when he stood firmly against a plan to outlaw the Communist Party when the first public outcry was made against the Communists. Why drive more of them underground? All that such an act could ever outlaw would be a name. The next day the same revolutionists would turn up under a new title.

Until Congress is wise enough to pass laws which force open operation of all mass movements, we shall have to protect ourselves against secretly organized attack. We can bring all subversive outfits into the open by requiring all mass movements to report to the Government the essential facts about themselves — the names of all their officials, the money they take in and from whom it comes, and how it is spent.

I suggest that the McCarran bill recently passed by Congress will not work because the Communists will either put their organizations underground or abandon them to start other organizations for the same purposes under other names.

The requirement to disclose essential facts is no invasion of privacy. The President's Committee on Civil Rights unanimously recommended that such laws be passed; represented on the committee are members of the AFL, the CIO and various minority groups. No decent organization hesitates to identify itself; why should any other kind of organization be protected?

Even without such laws, the FBI has handled delicate problems well. On Pearl Harbor Day the bureau was able to advise the Attorney General of the basis for authorizing the arrest of some 16,000 persons. A few of the 16,000 became my clients. I defended them before hearing boards and was able to help free some of them. In every case there were fair hearings, with every consideration being shown to the defense.

And although I was the lawyer for certain acquitted suspects, I must admit that Mr. Hoover had a justification in picking up my clients; there was cause for suspicion, and no injustice was done.

One Jewish refugee was picked up because she had entertained one of Hitler's most potent underground spies. But it was easy for me to produce conclusive evidence that my client did not know her guest was a Nazi. She was set free — but the authorities had been right to bring her in for questioning.

Largely as a result of the trials of Judith Coplon and Valentin Gubitchev, there has been publicity

and much argument about "listening in," but both sides seem to overlook the real purpose of FBI wire-tapping and its actual extent.

One of the greatest liberals said in 1941: "I do not believe it [wire-tapping] should be used to prevent domestic crimes, with possibly one exception — kidnaping and extortion in the Federal sense. There is, however, one field in which, given the conditions in the world today, wire-tapping is very much in the public interest. This nation is arming for national defense. It is the duty of our people to take every step to protect themselves. I have no compunction in saying that wire-tapping should be used against those persons, not citizens of the United States, and those few citizens who are traitors to their country, who today are engaged in espionage or sabotage against the United States."

This statement was made by President Franklin D. Roosevelt. In fact he established the policy which has since been adhered to by the Attorneys General. Note, however, that FBI agents never undertake wire-tapping on their own authority; permission must first be obtained from the Attorney General. Furthermore, wire-tapping evidence cannot be used in federal courts. Its only value to the FBI is in opening up leads for inquiry.

The loyalty-investigation program has created a misconception about the FBI's function. Every American should understand that the FBI does not *try* Government employees. It

merely serves various Government bodies as a reporting agency. When a reporting agency has the power to edit, it can make anyone appear a devil or a hero. But the FBI does not edit. It gathers the facts about a federal employe and turns over its findings to the head of the department. And that is all it does, or can do, except that it frequently is able to save a suspect in his job when rumor is doing its best to get him fired. J. Edgar Hoover cannot fire a single person. His reports do not even contain recommendations. The FBI turns in all the evidence it finds — including unverified tips, rumors, gossip — everything. It adds comments and evaluation of their accuracy, and there its responsibility ends. It is up to the heads of administrative agencies to act.

It would be folly to ignore rumors, or even anonymous messages; an unsigned note was instrumental in sending the notorious General Meyers* to prison. Ditto for thousands of less spectacular examples. To abandon that policy would be to assign to Hoover's assistants the duty, and the power, to screen the reports. I should be very much disturbed if police agents were permitted to withhold evidence on their judgment of its value. Far better the present system: the complete reports go to the responsible official; every-

* Major General Bennett E. Meyers, former Air Force purchasing officer, convicted of inducing a former business associate to lie under oath about irregular war contracts in which Meyers was involved.

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thing is in the dossier, with a careful comment on each item, whether it is a fact, probability or rumor.

In my study of the FBI it soon became clear that lies were being spread against it. For example, it has been said and printed repeatedly that agents in loyalty investigations demand to know whether a suspect reads certain magazines of leftist tinge. This charge is a lie. Whenever he hears of the statement being made, Hoover calls for the facts — and invariably everybody backs down. They “heard it somewhere,” they “can’t remember where.” Directives to FBI agents specifically forbid such questions, unless the reading matter is published by the Communist Party.

Of course, some agents may blunder or offend. When that happens, write J. Edgar Hoover. He will see your complaint and it will be gone into thoroughly. I have personally checked about 100 such complaints and I have yet to find one piece of evidence of improper questioning by agents.

The real difficulty in loyalty investigations is that there is almost no way of proving that a person is a Communist. The suspect, if a Party member, would deny it. Communist doctrine holds that it is right and proper to lie and cheat. This fact makes new techniques necessary.

Yet in spite of alarms and outcries, nothing oppressive has been done.

It surprised me to learn that, of 2,873,180 employes whose records were examined by the FBI, all but 12,825 were promptly cleared. This minority being further investigated, only 230 employes were finally dismissed. In 163 cases the employes appealed and were given their jobs back. One significant factor must be noted — 1474 resigned before their cases came up. Actually the FBI is now being criticized for not having found as many subversives as it should have!

A real “smear” campaign has been carried on against Hoover’s work. Those who feared the bureau — as I once did — will be glad to know the facts. The FBI is unique in the history of national police. It has a magnificent record of respect for individual freedom. It invites documented complaints against its agents. It has zealously tried to prevent itself from violating the democratic process.

Among liberals I am by no means alone in this opinion. A while ago Roger Baldwin, formerly director of the American Civil Liberties Union, wrote to J. Edgar Hoover:

“It seems to me that your bureau has accomplished an exceedingly difficult task with rare judicial sense.”

For me, that sums up the record.