

REJOINDER BY MR. HOOVER*

I APPRECIATED your courtesy in writing as you did on February 23, 1949, transmitting the answer of Messrs. Emerson and Helfeld to my letter of February 7, 1949, protesting the inaccuracies, distortions and misstatements appearing in their article, "Loyalty Among Government Employees," which appeared in the December issue of the Yale Law Journal.

Of course, the authors could be expected to defend their previous assertions but I did expect them to make a more logical attempt to prove the correctness of their position. Instead, they dismiss my assertions as "based upon a misapprehension of the issues or are unsupported by the facts." Further, in effect, they take the position that their statements are correct if they can cite a source. The mere fact that something has appeared in print does not necessarily make it true, nor do unfounded statements validate the authors' assertions. Space and time, however, do not permit the documentation item by item of those matters upon which the authors rest their case.

I see no need to explain or justify my indignation at the assertions and inferences that the FBI is moving in the direction of a secret police. It has not, is not, nor will it fall in this category so long as I have any responsibility for it to the American public. I charged in my letter of February 7, and I charge now, that the article in question and the answers to my letter contain "inaccuracies, distortions and misstatements."

Since the authors contend that my letter adds nothing new to previous statements except my references to wire tapping, I am content to use this one instance to establish my point. They label my statement on the policies followed by the FBI in connection with wire tapping as an admission, "never publicly conceded in recent years so far as we are aware," and as, "an astounding statement from a public official . . ."

I have never attempted to keep my views on this subject a secret, nor have I ever lacked the support of the highest levels of authority in the Executive Branch of the Government. The late President of the United States, Franklin D. Roosevelt, in a letter dated February 25, 1941, which was widely publicized, stated the policies followed by the Bureau when he said:

"I do not believe it should be used to prevent domestic crimes, with possibly one exception—kidnapping 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

* Communication to the YALE LAW JOURNAL dated February 25, 1949.

nation is arming for national defense. It is the duty of our people to take every single 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."

President Roosevelt had previously, on May 21, 1940, authorized the Attorney General to approve wire tapping when necessary involving the defense of the nation.

Moreover, the Honorable Francis Biddle, when Attorney General, after his first press conference on October 8, 1941, advised me by memorandum that he had told the press that:

" . . . the stand of the Department of Justice would be, as indeed it had been for some time, to authorize wire tapping in espionage, sabotage and kidnapping cases, where the circumstances warranted."

Former Attorney General Biddle's press conference was reported in the papers and the New York Times, for example, on October 9, 1941, stated:

"The Attorney General said he understood that former Attorney General Jackson had relaxed the general ban in the Department of Justice against tapping wires in order to deal effectively with espionage and that he thought this leeway might be extended to extortion cases."

On February 17, 1941, the statement setting forth my views on pending legislation was presented to a Congressional Committee. In this statement, I said:

"I have always been, and am now, opposed to uncontrolled and unrestrained wire tapping by law enforcement officers. Moreover, I have always been and am now opposed to the use of wire tapping as an investigative function except in connection with investigations of crimes of the most serious character, such, for example, as offenses endangering the safety of the nation or the lives of human beings. I also feel that world developments of the past year or more, and the changed conditions resulting therefrom, have increased the gravity from the standpoint of national safety of such offenses as espionage and sabotage.

"In other words, my view is that wire tapping should not be permitted except as to such crimes as I have described, and even then in such limited group of cases only under strict supervision of higher authority exercised separately in respect to each specific instance.

In the group of cases I have in mind, such as espionage, sabotage, kidnapping, and extortion, wire tapping as an investigative function is of considerable importance."

In a public address at a graduation exercise of the FBI National Academy on March 30, 1940, I said:

"During my entire tenure of office as Director of the FBI for nearly sixteen years, such activities have been frowned upon, and despite the fact that a wide latitude regarding wire tapping existed under the law, this Bureau continuously and consistently refused to permit anything but the most rigidly supervised surveillances and then only in cases of extreme emergency involving the protection of human life or the apprehension of the vilest of criminals."

The Honorable Robert H. Jackson in a letter to the Chairman of the House Judiciary Committee dated March 20, 1941, said in expressing his views on wire tapping:

". . . A short time ago a small child was kidnapped in California. There was reason to expect that demands would be made upon the parents by telephone. If the voice making such a call were recorded, preserving its accents, its peculiarities of speech, and its exact words, it would be a scientific means of identification not subject to the faults of hearing or of memory which so often make identification weak Of course, I directed Mr. Hoover to put a recording device on that line."

Hence, it will be seen that so far as Attorneys General are concerned there has been no concealment of the fact that wire tapping has been and is used in limited cases. Likewise, I have stated our position when the occasion necessitating it arose.

The authors then state that Attorneys General Jackson and Biddle and I repeatedly requested Congress to legalize wire tapping and that Attorney General Clark recently made a similar request, but the authors fail to point out that the purpose of the legislation requested was to make admissible in court evidence secured by wire tapping only in those cases of extreme importance to the security of the nation and in which the United States is a party in interest.

In fact, the authors themselves say, "mere interception is not unlawful," it is the admissibility of this type of evidence that is presently prohibited. The FBI does not attempt to introduce evidence secured from wire tapping. This completely contradicts their statement, "The tapping of telephones by Federal investigating agencies constitutes a violation of Federal law."

I see no point to be gained in making any further observation on the authors' attempt to answer my letter of February 8, 1949, except to note that in their conclusions the authors urge a Committee on Loyalty Practices to study the FBI's role in the Loyalty Program and discover the answer to such questions as, "How are FBI Agents selected? Who are they? What are their political preferences?"

The fact that the authors would urge an investigation to ascertain the political preferences of FBI Agents is an amazing contradiction of the stand taken in the article. Since 1924, when I became Director of the Federal Bureau of Investigation, the organization has been non-political in every respect. Frankly, I do not know the political affiliations of the various Special Agents and I am not in the least bit interested in their political affiliations. Do the authors desire to convert the FBI into a political football? If so, then they represent a view contrary to that entertained by the four Presidents and eight Attorneys General under whom I have served, to say nothing of the Congresses since 1924.

In their argument for a Committee on Loyalty Practices, do the authors refuse to recognize the role of the Civil Service Loyalty Review Board consisting of twenty-two loyal, patriotic citizens whose civic consciousness and scholarship so far as I know have never been questioned? This group of outstanding citizens knows the answers to the questions raised by the authors except their curiosity as to the "political preferences" of the Agents, and I am sure they would not take it upon themselves to make such an inquiry.

If the authors have knowledge of specific derelictions they should identify their cases so that we can look at the record and not continue to base their contentions upon "rumors and gossip." Only in this are we in thorough agreement, excepting that Professor Emerson did write me on December 2, 1947, requesting data on the Loyalty Program. That which was available for distribution was given him. At no other time did he come to me for specific answers to specific questions; at no time did he call to my attention specific derelictions; and at no time did I have the opportunity, until after his article appeared in print, to answer his charges. Even the Loyalty Program about which he complains gives this right and courtesy to those involved.

From piecemeal and at times inaccurate quotations, from inaccurate writing of the uninformed, from published and undocumented stories and rumors, and from biased conclusions they have made their charges. When challenged, they state they used such information as was available. It is unfortunate that they seek to draw conclusions from inadequate information and then conclude by asking that someone get the facts.