

**The original documents are located in Box 15, folder “Intelligence - Interception of Non-Verbal Communications by FBI and NSA: General (4)” of the Loen and Leppert Files at the Gerald R. Ford Presidential Library.**

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RED TAG

## THE WHITE HOUSE

WASHINGTON

February 27, 1976

MEMORANDUM FOR:

JACK MARSH

FROM:

CHARLES LEPPERT, JR. *CLJ.*

SUBJECT:

House Subcommittee on Government  
Information and Individual Rights

Mike Uhlmann at Justice called for guidance on setting up a meeting with Rep. Jack Brooks, Chairman of the House Government Operations Committee. The purpose of the meeting would be to ask Brooks to have Rep. Abzug and her subcommittee staff begin discussion on the information she has requested from the Administration, how it is to be handled, its classification and security, etc.

I suggested to Uhlmann that if such a meeting is to be set up it should only be done with your guidance and on your instructions as to how both Representative Brooks and Abzug are approached.

In the meantime Uhlmann is proceeding with trying to set up discussion meetings with the staff. As of tonight he has not been able to get staff to agree to such a meeting and is being told that Mrs. Abzug is preparing a reply to the letters from General Allen and the Attorney General.

I suspect that Mrs. Abzug and her staff will continue to brush aside attempts by the Administration to meet with her on providing information and its handling until after the Cable companies have testified on Wednesday, March 3. At that time, if the Cable companies do not produce the documents and testify pursuant to the subpoenas the Subcommittee will move to hold the corporate witnesses in contempt of Congress.

Uhlmann is interested in setting up the meeting with Chairman Brooks to try and delay the Wednesday, March 3 hearing. What is your guidance on the meeting with Brooks?

cc: Max L. Friedersdorf  
Vern Loen



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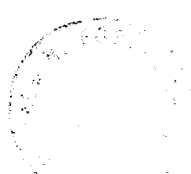
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[March 1976]

DRAFT LETTER

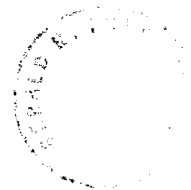
File

Honorable Jack Brooks  
Chairman, Committee on  
Governmental Operations  
U. S. House of Representatives  
Washington, D. C. 20515

Dear Mr. Chairman:

For some time we have been attempting to work out procedures with the Subcommittee on Government Information and Individual Rights, of your Committee on Governmental Operations, which procedures would enable NSA and the FBI to provide testimony and documents that would be helpful to the Subcommittee without intruding into areas of [serious] national security concern. The most recent effort in this regard is contained in the letter dated March 3, 1976, from Mr. Richard Wiley, General Counsel of the Department of Defense, to Chairwoman Abzug. That letter, a copy of which is attached, set forth in some detail the information which both NSA and the FBI could supply in open and closed session, and invited further discussion concerning matters appropriate for, and the procedures applicable to, testimony during open and executive session.

Chairwoman Abzug has stated publicly that the area of the Subcommittee's concern relates to the activities of the



government involving United States citizens and resident aliens. As the March 3 letter notes, we advised the Subcommittee staff orally, and then in writing through that letter, that this is an area in which helpful documents and testimony can be provided.

There is substantial risk that absent an agreement on procedures, generalized inquiry could inadvertently lead to unintended disclosures having serious national security consequences, particularly in the area of targeting of foreign governmental organizations.

The request for agreement on procedures set forth in Mr. Wiley's letter is necessary both to facilitate the Subcommittee's work and also to provide the appropriate national security protections. To date, however, the Subcommittee has not responded to this request. We are aware of your concern that national security matters not be jeopardized. It is for this reason that we are writing to ask your assistance in working out procedures differentiating between the area of Subcommittee interest (interception of private citizen <sup>COMMUNICATIONS</sup> (cables)) and the area of national



security concern (the targeting of foreign governmental organizations) and minimizing the possibility that unintended foreign governmental disclosures might result from inquiry into the interception of private citizen cables.

We would be happy to meet with you or anyone whom you designate for this purpose.

Sincerely,

Attachment - Wiley letter of March 3, 1976



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

WASHINGTON, D. C. 20301

March 3, 1976

Honorable Bella S. Abzug, Chairwoman  
Government Information and Individual  
Rights Subcommittee  
Committee on Government Operations  
Rayburn House Office Building, Room B-349-B-C  
Washington, D. C. 20515

Dear Chairwoman Abzug:

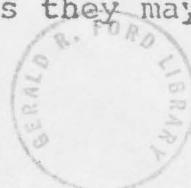
This letter is intended to supplement two earlier letters from Deputy Secretary Clements to you dated 18 February 1976 and 23 February 1976 respectively.

We wish by this letter to reconfirm to you and to the members of your Committee the willingness of the officials of this Department and of the National Security Agency to cooperate in every appropriate way to satisfy your Committee's requirements for documents and testimony as they affect the activities of United States citizens.

As you know, during the past two days representatives of this Department, the National Security Agency, the Department of Justice and the Federal Bureau of Investigation met with several of your Committee's staff on two separate occasions to discuss in detail the list of topics and information which could appropriately be furnished the Committee. In addition, we addressed the national security concerns relating to testimony and documents sought by your Committee.

At these meetings, we offered to conduct agency briefings, and provide background informational documents to the Committee. Our offer included a specific and detailed list of those topics on which we believed that open session testimony would be appropriate. In addition, we specified those topics which, for those reasons previously stated to your Committee, were only appropriate for discussion in executive session.

For the record, the following is a summary of the proposals which we made during these recent discussions. In open session, NSA is prepared to testify on certain aspects of its international commercial traffic operations insofar as they may



affect the communications of United States citizens. NSA is prepared to state that in these operations the communications of United States citizens are sometimes inadvertently acquired and to testify as to current directives which pertain to the processing of and handling of this type of traffic when it is acquired. Additionally, NSA is prepared to testify on one method of collecting international commercial traffic which was discontinued in May 1975, the so-called operation "Shamrock."

NSA is also prepared to testify on the so-called watch lists which were in effect between 1967 and 1973 and which did contain names of United States citizens. NSA will discuss from whom the names were received, the number of names involved and NSA's dissemination of information pertaining to these names. NSA will also give a generic description of the categories of names.

It is understood in the foregoing that NSA will not discuss sophisticated collection or processing techniques associated with these operations. In closed session NSA is prepared to elaborate in more detail on the above and to discuss the procedures involved when a United States citizen or entity is discussed in foreign governmental traffic.

At the same meetings representatives of the Federal Bureau of Investigation also outlined areas which might also be the appropriate subject of both open and executive session testimony. The Federal Bureau of Investigation offered to furnish testimony in open session as to the procedures, policy and utilization of international "drop copy cable traffic." The Bureau also offered to testify concerning the "watch lists" and to provide a generic breakdown of the categories of individuals or entities which appeared on those lists. Testimony would also be provided concerning the dissemination policies with respect to any information obtained by FBI communications intelligence activities. Additionally, in executive session the Bureau is willing to testify generally concerning the intercept of international cable traffic and in greater detail about the watch lists and the "drop copy cable traffic" operation.

National security concerns would, of course, in any event preclude identification of foreign countries which may have been the object of communications intelligence activities.

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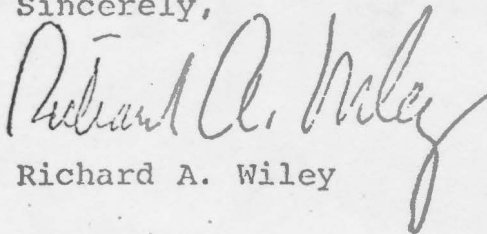
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As was clearly stated by us at the recent meetings with your staff, we are quite sympathetic with the objectives of your Committee. We are concerned, as we are assured you are, that in connection with your inquiries all appropriate steps be taken to insure that the Committee's investigation does not impinge upon important national security interests.

We will be pleased at your convenience to engage in further discussions looking toward agreement between the Committee and ourselves regarding the matters appropriate for, and the procedures applicable to, testimony during open and executive sessions.

We have been authorized by the Department of Justice to state that that Department joins in the statements made in this letter.

Sincerely,



Richard A. Wiley



March 4, 1976

MEMORANDUM FOR:

JACK MARSH

THRU:

MAX L. FRIEDERSDORF  
VERN LOEN

FROM:

CHARLES LEPPERT, JR.

SUBJECT:

Subcommittee on Government Operations  
and Individual Rights

Attached for your information is a copy of the witness list, the Chairwoman's opening statement and a copy of the letter from DOD that Rep. Pete McCloskey partially read into the Subcommittee record at the conclusion of the hearings in the afternoon.

Attachment



SUBCOMMITTEE ON GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS

Hearing on the Interception of Non-Verbal Communications

By the FBI and NSA

Wednesday, March 3, 1975

Room 2154 -- 10:00 a.m.

WITNESS LIST

Federal Communications Commission

Earl Barbely and W. Randolph Young

Western Union International

Thomas S. Greenish, Executive Vice President  
George Callahan, Technical Operations Supervisor,  
New York Office

ARMAND HAMMER, COUNSEL  
(HAMMOND)

RCA Global Communications, Inc.

Howard R. Hawkins, Chairman of the Board and Chief  
Executive Officer  
Thomas Algie, Operations Manager, Washington, D.C. Office  
Edward Grunberg, Supervisor, Washington, D.C. Office



STATEMENT OF CHAIRWOMAN BELLA S. ABZUG FOR HEARING ON THE  
INTERCEPTION OF NON-VERBAL COMMUNICATIONS BY THE FBI AND  
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March 3, 1976

Today we resume our inquiry into the interception of certain communica-  
tions by and for Federal agencies. This investigation began late last summer  
and has continued since then. We have previously held hearings on  
October 23, 1975 and last Wednesday, February 25.

This investigation comes under several of the areas of our subcommittee's  
jurisdiction: government policies as to the gathering and use of information;  
individual rights, including the right to privacy; the Department of Justice,  
including the Federal Bureau of Investigation; and the Federal Communications  
Commission, which is responsible for the administration of the Communications  
Act of 1934.

Under the Rules of the House, our committee -- the Committee on Government  
Operations -- is directed to study Government activities generally and to  
conduct investigations into any and all matters coming within the legisla-  
tive jurisdiction of the House under article I of the Constitution.

In the present investigation, we are considering allegations that the  
FBI, the National Security, and perhaps other Federal agencies or their  
agents have for many years intercepted some or all of the wire and radio  
traffic being transmitted to or from this country by various communications  
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representatives of the White House, the Department of Defense, and the  
Department of Justice asked that we postpone or cancel our October 23 hearing.



On that day, we heard only from the C&P Telephone Company and its parent, AT&T, who admitted that it was their policy to permit "national security" taps to be made through their equipment if they received a letter from the FBI Director stating that a certain tap was required in the interest of "national security." They also stated that they never went behind such a request to ascertain whether there were in fact any national security considerations present.

While our investigation was in progress, the Senate Select Committee on Intelligence released its report on Operation Shamrock on November 6, 1975. That report confirmed some of the allegations that had been made about message interception, including that the three major international communications common carriers had turned over copies of most of the international telegrams with a United States terminal to the NSA, which in turn "selected about 150,000 messages a month" for analysis and review.

When we resumed our hearings last Wednesday, all five of the witnesses whom we had subpoenaed -- four FBI agents, one NSA employee, and one former FBI agent -- refused to testify on the ground of "executive privilege." Acting at a meeting immediately following that hearing, the subcommittee voted to recommend to the full committee that these five individuals be cited for contempt of Congress.

We have also had one private corporation, Western Union International, refuse to respond to our subpoena duces tecum, also -- incredibly -- on the ground that the President had ordered the refusal as a matter of "executive privilege." There are also questions as to the compliance of the other companies. Further, Attorney General Levi has written to each of the two



companies whose officials are scheduled to testify this morning to ask that they defy our subpoenas; this action, too, is under a claim of "executive privilege."

We will begin today with a brief presentation by two technical experts from the Federal Communications Commission, Earl Barbely and W. Randolph Young. These gentlemen will explain how telegrams and telex messages are transmitted and how they can be intercepted.

We are then scheduled to receive the testimony of two witnesses from Western Union International -- Mr. Thomas Greenish and Mr. George Callahan -- and three witnesses from RCA Global Communications -- Mr. Howard Hawkins, Mr. Edward Grunberg, and Mr. Thomas Algie.

We will hear from the third company, ITT World Communications, next week.

I now call our first witnesses, Mr. Earl Barbely and Mr. W. Randolph Young of the Federal Communications Commission.





File

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE  
WASHINGTON, D. C. 20301

March 3, 1976

Honorable Bella S. Abzug, Chairwoman  
Government Information and Individual  
Rights Subcommittee  
Committee on Government Operations  
Rayburn House Office Building, Room B-349-B-C  
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Dear Chairwoman Abzug:

This letter is intended to supplement two earlier letters from Deputy Secretary Clements to you dated 18 February 1976 and 23 February 1976 respectively.

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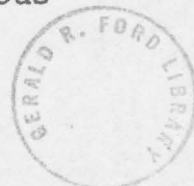
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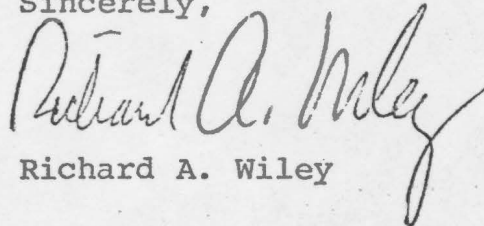
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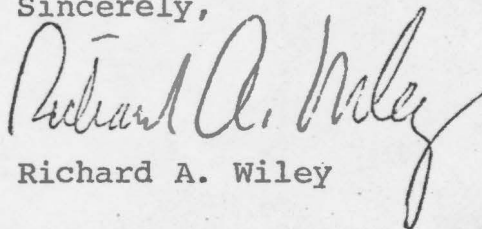
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Sincerely,



Richard A. Wiley



[ca. 3/18/76]

CHRONOLOGY OF REQUESTS BY ABZUG  
SUBCOMMITTEE TO NSA

<u>Date of Request</u>	<u>Description</u>
March 9, 1976	Letter asking NSA's interpretation of several statutes: 18 U.S.C. 798, 50 U.S.C. 403, PL 86-36.
March 7, 1976	Abzug staffer requests names of all U.S. citizens on the Watch List. (Request made orally at meeting of Abzug's staff and representatives from DoD, Justice, and FBI.)
February 24, 1976	Letter requests continuation of moratorium on record destruction.
February 20, 1976	Letter request for NSA regulations governing classification and declassification.
February 9, 1976	Letter requesting answers to 21 questions, in the following two categories: (a) Classification policies, especially relating to COMINT material. (b) Interception of communications handled by commercial common carriers and relations of NSA to these companies.
February 4, 1976	Subpoena <u>duces tecum</u> to Joseph J. Tomba, NSA employee to deliver all records available to him relating to interception of interstate or foreign communication.
February 3, 1976	Telephone request to NSA aide by Abzug staffer for NSA regulations governing classification and declassification.



<u>Date of Request</u>	<u>Description</u>
January 30, 1976	Letter request for report of House Select Committee, citing FOIA.
November 14, 1975	Oral request of Abzug staffer to NSA for a detailed explanation of what information about cable interception must remain classified and the reasons for this requirement.
November 6, 1975	Letter request to Gen. Allen to appear before subcommittee to discuss guidelines as to what portions of the inquiry into cable and telex interception should take place in closed session. (Repeat of letter requests made on October 30 and October 24, 1975.)



THE WHITE HOUSE  
WASHINGTON

March 18, 1976

TO: CHARLIE LEPPERT

FROM: MIKE DUVAL

For your information           XX          

Comments:

THE WHITE HOUSE  
WASHINGTON

March 15, 1976

TO: CHARLIE LEPPERT

FROM: MIKE DUVAL

For your information \_\_\_\_\_

**Comments:**

Here is the list of requests from the Abzug Subcommittee to FBI and NSA. I understand that Pete McCloskey wanted this.



Done  
3/16/76

THE WHITE HOUSE  
WASHINGTON

3-16-76

Nota:

Pls make a copy  
of the attached for  
our files before I  
take it to McCloskey.

Clear.



THE WHITE HOUSE

WASHINGTON

March 18, 1976

MEMORANDUM FOR

MIKE DUVAL

FROM:

MASON CARGILL MC

SUBJECT: Meeting with Lawyers for Cable Companies

I attended a meeting this morning in Dick Wiley's office which was attended by lawyers for the cable companies which have been dealing with the Abzug Subcommittee. Present also were representatives from NSA and Justice. According to the company lawyers, there are no outstanding document requests to the companies from the subcommittee nor any company witnesses scheduled to testify. However, the subcommittee has indicated that past company witnesses are still subject to recall. The lawyer for ITT indicated that he had supplied the subcommittee with the following types of documents: official tariffs, internal instructions to employees, contingency plans for the institution of wartime censorship, and internal memos about customer inquiries as to whether their cables were intercepted.

Most of the meeting was devoted to a lawsuit which has been filed jointly against NSA and the cable companies by Morton Halperin and others alleging illegal interceptions. An immediate problem has arisen out of interrogatories addressed to the companies, the answers to which might contain classified COMINT material. It was decided that DoD will send a letter to the companies requesting that it be allowed to review the answers before they are filed in court to determine whether they contain classified information. If they do, the companies and DoD will seek to withhold the answers on this basis. It was agreed that the company lawyers should receive clearances from NSA to facilitate their work.

After the departure of the company lawyers, Dave Lowman of NSA announced that he had just been called by Congressman McCloskey who had some new information on subcommittee activities. McCloskey said that Abzug had asked him to drop the complaint he was planning to file against her with the Ethics Committee, apologizing for her

DO  
FILE  
INTELLIGENCE  
w/ cc so  
Charlie Leppard  
F45  
D

intemperate statements to him. She said she hadn't been feeling well recently. McCloskey indicated that he desired a letter from NSA or DoD offering to brief the subcommittee on the watch list and current procedures designed to minimize interception of U.S. citizens. He feels that this briefing and perhaps a copy of the watch list will completely satisfy Ms. Abzug. NSA indicated that the watch list should not be supplied and will prepare a paper explaining why.





FILE

THE WHITE HOUSE

WASHINGTON

March 25, 1976

MEMORANDUM FOR: JACK MARSH  
FROM: MIKE DUVAL *MD*  
SUBJECT: ABZUG HEARINGS

Jack, I got a call from Bob Andrews yesterday concerning the meeting they had with McCloskey on the Abzug hearings.

Defense had gotten clearances from all the agencies to show the Abzug Committee members a copy of the "watch list". This is pursuant to Pete's idea that with such an offer the Committee members would be willing to drop the NSA issue.

However, McCloskey has since changed his mind and now believes that our best strategy is to simply let the Abzug matter drop for the time being. Pete points out that the Brooks Committee has only one hearing scheduled between now and the time that Bella Abzug files for the Senate race in New York, and that the NSA/FBI issue is not on the agenda. Accordingly, he feels that there's no sense in making any offers at this time and we should just sit tight. Defense and Justice are apparently going to follow this advice.

See also a memo from Tim Hardy on the issue of ACDA briefings.

cc: Charlie Leppert ✓

THE WHITE HOUSE

WASHINGTON

March 25, 1976

MEMORANDUM FOR JACK MARSH  
THROUGH: MIKE DUVAL  
FROM: TIM HARDY TH  
SUBJECT: ACDA Offer to Brief House Government Operations  
Committee

BACKGROUND

As you know, Mr. Ikle and Mr. Lehman of the Arms Control and Disarmament Agency have offered to brief the House Government Operations Committee (including Ms. Abzug) on their Agency's need for intelligence.

I have talked to Mr. Lehman about the content of such a briefing. It would focus on the nuclear proliferation problem. ACDA, if adequately forewarned, may be able to prevent countries beginning to develop nuclear arms capabilities from getting started. The briefing would note that one major source of information is communications between American companies, whose hardware and expertise is necessary to development of nuclear programs, and foreign governments. Such information may be obtained through NSA interceptions.

I have talked to Bob Andrews at Defense about the current status of the Abzug hearings. They seem becalmed. The subcommittee staff is not presently pressing for any information. No hearings are yet scheduled. The full committee has not yet placed the contempt motions on its agenda. Rep. McCloskey has received assurances from the staff that he will be informed of any hearings at least a week in advance and of any information requests.



## ANALYSIS

An ACDA briefing may be helpful at some point because the Agency's bureaucratic roles as the proponent of arms control might appeal to some Congressmen who are not generally sympathetic to the needs for intelligence. On the other hand, any briefing like this may serve to spark Ms. Abzug's interest rather than moderate it. Two possibilities indicate the risks that might be involved:

(1) The Subcommittee could become interested in the extent to which communications of American companies are intercepted, how it is done, where, etc.

(2) Although beyond the scope of its jurisdiction, the subcommittee might want to press ACDA to find out what it knows about nuclear development in various countries and the extent of American corporate cooperation.

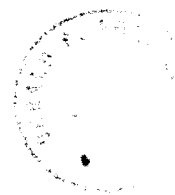
## RECOMMENDATION

It seems an inappropriate time in the continuing negotiations with the Government Operations Committee to make use of the ACDA briefing. The pace of the investigation may be slowing down. Extra information given to the Committee now might spark more, rather than less, scrutiny.

The ACDA offer should be held in abeyance. It might be quite useful in the future. Rep. McCloskey should be made aware of the possibility of such a briefing being given.

/ CONCUR

D



PAUL N. McCLOSKEY, JR.  
12TH DISTRICT, CALIFORNIA

COMMITTEE ON  
GOVERNMENT OPERATIONS  
AND  
COMMITTEE ON  
MERCHANT MARINE  
AND FISHERIES

**Congress of the United States**  
**House of Representatives**  
Washington, D.C. 20515

April 5, 1976

*FILE  
INTELLIGENCE*

205 CANNON BUILDING  
WASHINGTON, D.C. 20515  
(202) 225-5411

DISTRICT OFFICE:  
305 GRANT AVENUE  
PALO ALTO, CALIFORNIA 94306  
(415) 326-7383

APR 6 1976

Mr. Thomas S. Martin, Special Assistant  
Civil Division  
Department of Justice  
Constitution Avenue and 9th Street  
Washington, D.C.

Dear Mr. Martin:

It appears thus far that the tactics we worked out in our meeting on March 23rd are working. Mrs. Abzug has scheduled no further subcommittee meetings until April 13th, at which time we are going into the COINTELPRO program rather than the cable interception problem. This would seem to indicate that no cable interception hearings can be set until the week of April 19th, at the very earliest. Also, Mrs. Abzug has sent me the enclosed letter, indicating agreement, at least in principle, of a week's notice.

I would like to use this grace period to prepare a concise description (and criticism) of the NSA/FBI cable interception program as described in the Project Shamrock report and the events thus far presented to our subcommittee.

More importantly, I would like to recommend specific and effective legislation to:

- (1) clarify the FCC's jurisdiction and responsibility
- (2) define "lawful authority" and the warrant requirements which should apply to any future cable interception traffic and
- (3) define with precision the Commander-in-Chief's power with respect to protecting the national security, yet preserving a balance with the rights of privacy of individual citizens.

In this connection, I have found most helpful the enclosed memoranda of legal authority which I believe was prepared by someone at DOD.

I would welcome any additional thoughts you may have on legislative principles which might be considered with respect to the three points above. If I can come up with a tentative framework for responsible legislative changes, I would think we might be able to spend the balance of the year in consideration of such legislation, rather than in the less-productive type of fishing expedition the subcommittee embarked upon in late February and March.



-2-

Thank you for your continuing cooperation and assistance.

Best regards,

Paul N. McCloskey, Jr.

PNMcC:dd  
Enclosure

cc: Mr. Richard A. Wiley, General Counsel  
Department of Defense

Mr. Dave Lowman  
National Security Agency

Mr. Jack Marsh  
The White House

Mr. Charles Leppert  
The White House



BELLA S. ABZUG, N.Y., CHAIRWOMAN  
LEO J. RYAN, CALIF.  
JOHN CONYERS, JR., MICH.  
TORBERT H. MACDONALD, MASS.  
JOHN E. MOSS, CALIF.  
MICHAEL HARRINGTON, MASS.  
ANDREW MAGUIRE, N.J.  
ANTHONY MOFFETT, CONN.

SAM STEIGER, ARIZ.  
CLARENCE J. BROWN, OHIO  
PAUL N. MCCLOSKEY, JR., CALIF.  
225-3741

APR 2 1976

NINETY-FOURTH CONGRESS

Congress of the United States  
House of Representatives

GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS  
SUBCOMMITTEE  
OF THE

COMMITTEE ON GOVERNMENT OPERATIONS

RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-B-C  
WASHINGTON, D.C. 20515

April 1, 1976

Honorable Paul N. McCloskey, Jr.  
U.S. House of Representatives  
Washington, D.C.

Dear Pete:

This is in response to your letter of March 23 regarding your attendance at the Law of the Sea negotiations between now and May 7 and also our investigation into the interception of communications by Federal agencies.

We will of course make every effort to give you as much advance notice of hearings as possible. I note in this connection that Gordon Earle of your office has already been informed of a hearing on H.R. 12039 and H.R. 169 which is tentatively scheduled for Tuesday, April 13.

As for the investigation, we fully expect to receive all necessary and relevant material from the NSA, the FBI, and any other appropriate agencies. As I have stated on numerous occasions, we will receive all such material subject to the Rules of the House.

With warm regards, I am

Sincerely

*Bella Abzug*

BELLA S. ABZUG  
Chairwoman



STATUS OF LAWS AFFECTING PROVISION BY INTERNATIONAL COMMUNICATIONS  
CARRIERS OF COMMUNICATIONS TO U. S. GOVERNMENT

The question here is whether there is any statute which explicitly authorizes or precludes the provision by the international common carriers of certain international communications to a government agency which is authorized by the President to conduct communications intelligence activities for the U. S. Government.

As far back as the Spanish American War, 1898, messages were provided by international common carriers to government agencies for intelligence purposes. The next most significant activity involved the famous "Zimmerman" Telegram in 1917. After the end of World War I, the activity continued and was reported on by Herbert O. Yardley, who ran the program for the Department of State. However, the operation was closed down by Secretary of State Stimpson not on the basis of law but on the basis that "gentlemen do not read other gentlemen's mail."

In 1933 and 1934 two acts were passed by the Congress which bear on the question. The first was a law which is now codified as Title 18 U.S.C. 952. This law provides a \$10,000 fine or imprisonment for not more than ten years for any federal employee who publishes or furnishes to another "any code or matter, or any matter which was obtained while in the process of transmission between any foreign government and its diplomatic mission in the United States." The specific intent of this legislation was to prevent Herbert O. Yardley from publishing a second book disclosing much information gleaned from his organization's processing of messages obtained from international commercial carriers. The Congress did not act to outlaw the activity - rather the clear implication is that the activity was considered legitimate since a rather strong criminal sanction was placed on disclosure of intelligence derived from this source. There was no criticism of the activity during debate on the bill - only concern that it might apply to others such as newsmen - once that problem was resolved the bill was passed by a voice vote.

The other early law which bears on this question is the Communications Act of 1934, and specifically what is now codified as Section 605 of Title 47 of the U.S. Code. The intent of this part of the Act was to protect communications handled by common carriers from private abuse. The provision prohibits an employee from divulging or publishing the contents of any interstate or foreign communication except to certain persons including a category "on demand of other lawful authority." There is no



provision in the Communications Act of 1934 or in its legislative history to indicate that the Congress intended the prohibitions of this law to apply to the communications intelligence activities which the Congress had protected by the law (now 18 U.S.C. 952) which it had passed a year before in 1933. While there is no case law precisely on the question of the international common carriers providing copies of messages to a government agency, there are a number of cases which have held that wiretaps by the government for foreign intelligence purposes are not prohibited by Section 605. As will be discussed later, this section was amended in 1968 in conjunction with passage of Public Law 90-351 to limit its application to radio communications vice telephone communications and to explicitly incorporate the national security exception contained in Public Law 90-351 (18 U.S.C. 2511(3)).

Although some individuals were concerned with the ambiguities now presented by Section 605, messages were again obtained by military signals intelligence activities in the late 1930's from cooperating cable companies. One of the more famous cables obtained directly from a company was the message sent by the Japanese from Hawaii over commercial facilities reporting destruction of their codes. With the outbreak of war the concerns related to Section 605 disappeared as government censorship authority was implemented.

Subsequent to the end of World War II, arrangements with international commercial carriers were continued. Concern with respect to Section 605 was again raised by some. Consideration was given to seeking an amendment to 605. [On the other hand a study of 605 was conducted by competent counsel which concluded that 605 did not apply to signals intelligence activities.] Indeed, in debate on the floor of the Senate over a law concerning wiretaps, those opposing a positive grant of authority won the day on the basis of an argument that the executive branch had an adequate basis to conclude that Section 605 did not apply to signals intelligence activities or in the alternative that if it did, the provision of 605 related to demand of other lawful authority was an adequate basis for continuing the activity. Indeed documentation exists that the Attorney General and the President of the United States personally approved the original peacetime request to the carriers to provide messages to the agents of the President. Since Section 605 already dealt with provision of messages to a court, it is clear that this additional provision must relate to Presidential constitutional authority.

The next law which has an important bearing on the question is what is now codified as 18 U.S.C. 798. This law, passed in 1950, explicitly recognizes that the United States government conducts communications intelligence activities, that these





[REDACTED]

activities involve the interception of communications and the obtaining of information from such communications by other than the intended recipients, and protects all classified information concerning such activities with strong criminal sanction. Thus, the Congress acted to protect the results of activities directed at acquiring communications and obtaining from the communications of information by parties other than the intended recipients of the communications. To be sure the communications are those of any foreign government. However, the statute defines foreign governments broadly, and many entities falling within the categories included in that definition use the facilities of international commercial carriers to send communications of foreign intelligence interest.

Finally, in 1968, the Omnibus Crime Control and Safe Streets Act was passed. This Act included a series of provisions now codified as Sections 2510 to 2520 of Title 18. These sections apply to oral and wire communications and have been construed by the courts to apply to telephone communications and oral conversations where eavesdropping devices are used. The primary thrust of the sections is to require a judicial warrant before any telephone tap or eavesdropping device is installed. An important caveat to these sections is subsection 2511(3) which states that "nothing contained in this chapter or in section 605 of the Communications Act of 1934 shall limit the constitutional power of the President to take such measures as he deems necessary to protect the Nation against actual or potential attack or other hostile acts of a foreign power, to obtain foreign intelligence information deemed essential to the security of the United States, or to protect national security information against foreign intelligence activities." Not only does 2511(3) provide that neither sections 2510-2520 of Title 18 nor section 605 of Title 47 shall limit the President's constitutional power, but it also provides that "the contents of any wire or oral communication intercepted by authority of the President in the exercise of the foregoing powers may be received in evidence" but only if such interception is reasonable; otherwise such contents shall not be used or disclosed except as necessary to implement the Presidential power.

There has been some case law developed since the passage of the Safe Streets Act. In the case of United States v. United States District Court, the so-called Keith case, the Supreme Court held that Section 2511(3) was not an affirmative grant of authority but a neutral provision which did not limit the President's constitutional powers. The Court went on to find that the President lacked constitutional power to install a wiretap in a domestic case, but reserved the question with respect to national security and foreign intelligence. Two Circuit Court cases, United States v. Brown, 484 F.2d 418, and United States v. Butenko, 318 F. Supp. 66, dealt with subsection 2511(3) and national security telephone wiretap situations and found that the President did have constitutional authority to act without a judicial warrant. The



most recent court decision was in a different circuit and while dicta in the case dealt with national security cases the decision in the case was that the facts reflected a domestic activity not a national security case and thus fell within the Keith holding.

Thus, a review of the applicable statutes and legislative history reflect the following:

(a) no intent by the legislative branch to apply the Communications Act of 1934 (Title 47) to foreign intelligence activities,

(b) a prior intent by the legislature to protect information gained through such activities through criminal sanctions (18 U.S.C. 952) and no repeal of that provision by Title 47,

(c) considerable case law which has held that 47 U.S.C. 605 was not applicable to foreign intelligence activities involving communications,

(d) no intent by the legislative branch to limit the President's constitutional power to protect the nation against hostile acts of foreign powers, collect foreign intelligence, and protect national security information against foreign intelligence activities (18 U.S.C. 2511(3)), and

(e) case law which, although limiting the President's power to act in domestic cases, has preserved those portions of 2511(3) related to foreign intelligence and hostile acts of foreign powers (the Zweibon case notwithstanding).

The confusion, if there exists any, is in the selective reading by some of case law relating to domestic activities coupled with a selective reading of the 4th Amendment to the Constitution. That provision related to unreasonable searches and seizures and levies a requirement of probable cause. In the sphere of domestic activities the courts have found a warrant required. However, in the foreign relations and national defense areas the courts in a majority of the cases have concluded that a warrant is not required and that the President has constitutional powers to act without a warrant.



THE WHITE HOUSE

WASHINGTON

April 14, 1976

MEMORANDUM FOR: CHARLIE LEPPERT  
FROM: MIKE DUVAL  
SUBJECT: ABZUG HEARINGS

The Arms Control and Disarmament Agency people went up and talked to Congressman Moss to make the point that the Abzug hearings could jeopardize some of the intelligence that they are getting designed to prevent nuclear proliferation.

Moss essentially restated the familiar Abzug litany that the Subcommittee is not attempting to get into any classified areas, but only into matters concerning the private carriers. In short, apparently the visit was not very helpful.

cc: Jack Marsh  
Tom Latimer  
Rex Lee

THE WHITE HOUSE

WASHINGTON

June 1, 1976

MEMORANDUM FOR: JACK MARSH

THRU: MAX L. FRIEDERSDORF

FROM: CHARLES LEPPERT, JR. *CLJ.*

SUBJECT: House Committee on  
Government Operations

This is in response to your memo of May 26 concerning pending contempt citations before the House Committee on Government Operations.

On Thursday, May 27, I discussed this matter with Bill Jones, General Counsel to the Committee. Jones advised me that the full Committee has nothing scheduled and no requests have been made from the Abzug subcommittee to schedule any contempt resolutions for action by the full Committee. Jones further indicated that he did not anticipate anything on this in the near future.

cc: Tom Loeffler  
Pat Rowland



THE WHITE HOUSE

WASHINGTON

MAY 26 1976

May 26, 1976

MEMORANDUM FOR: CHARLIE LEPPERT

FROM: JACK MARSH 

Can you find out if the contempt actions in the Government Operations Committee against witnesses who failed to respond to the questions of the Abzug Subcommittee are on the agenda for May?

It is my understanding this was slated to come up on the full Committee agenda in March but was never called up and the next time it would come up would be during the month of May. Apparently it has not come up as of yet and if we can get through this week, it will be further delayed.

In making any such inquiry I suggest great caution in order not to activate this matter in the event it is dormant.