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THE WHITE HOUSE
WASHINGTON

Done

Nota:

3-12-76

Send the attached
to Jack Marsh on
my buck slip FYI.
I'll sign a circular re
buck slip before it's
sent.

Chas.

Buchen also



Stenographic Transcript Of

HEARINGS

Before The

Subcommittee on
Government Information and Individual Rights

COMMITTEE
ON
GOVERNMENT OPERATIONS

HOUSE OF REPRESENTATIVES

HEARING ON THE INTERCEPTION OF NON-VERBAL COMMUNICATIONS
BY THE FBI AND THE NATIONAL SECURITY AGENCY

February 25, 1976

Washington, D. C.

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TABLE OF CONTENTS

House of Representatives

Subcommittee on Government Information
and Individual Rights of the Committee
on Government Operations

Washington, D. C.

February 25, 1976

STATEMENT OF:

Page

Joe R. Craig
Former FBI Special Agent

12

Walter C. Zink
FBI Special Agent, New York

20

David G. Jenkins
FBI Special Agent, New York

25

John P. Loomis
FBI Special Agent, Washington, D. C.

33

Joseph J. Tomba
National Security Agency Employee

44



1 HEARING ON THE INTERCEPTION OF NON-VERBAL COMMUNICATIONS
2 BY THE FBI AND THE NATIONAL SECURITY AGENCY

3 - - -
4 WEDNESDAY, FEBRUARY 25, 1976
5 - - -

6 House of Representatives

7 Subcommittee on Government
8 Information and Individual
9 Rights of the Committee on
10 Government Operations

11 Washington, D. C.


12 The Subcommittee met at 9:40 a.m., pursuant to notice, in
13 Room 2154, Rayburn House Office Building, Honorable Bella S.
14 Abzug (Chairwoman of the Subcommittee) presiding.

15 Present: Representatives Abzug, Moss, Maguire, Moffett,
16 Harrington, and McCloskey; and Brooks (ex-officio).

17 Also present: Eric L. Hirschhorn, Counsel; Timothy H.
18 Ingram, Staff Director; Robert S. Fink, Professional Staff
19 Member; Thomas Sullivan, Minority Counsel; and Anita Wiesman,
20 Clerk.

21 - - -
22 Mrs. Abzug. The hearing will come to order.

23 During the summer of 1975, articles in the New York
24 Daily News alleged that the FBI and the National Security
25 Agency had for years been intercepting international tele-
grams - cables - being transmitted to or from the United States
through various communications companies.



1 Shortly thereafter, the Subcommittee commenced an investi-
2 gation of these allegations.

3 Following interviews of cable company personnel and for-
4 mer FBI Agent, Joe R. Craig, by subcommittee investigator,
5 Robert Fink, a hearing on the interception of such communica-
6 tions was scheduled for October 23, 1975.

7 On October 22, I was approached first by Deputy Attorney
8 General Harold Tyler and later by a group consisting of Jona-
9 than March, Counsellor to the President, General Lew Allen,
10 head of the National Security Agency, and Dr. Albert Hall,
11 Assistant Secretary of Defense - Intelligence.

12 All of these people asked that the hearing not be held
13 for national security reasons, though none would specify what
14 these national security considerations were.

15 Mr. Tyler also said that the testimony of certain wit-
16 nesses might immunize them for subsequent prosecution, but he
17 too did not specify just how this might happen.

18 The next morning, just before the hearing was scheduled
19 to begin, Attorney General Levi approached me. He too asked
20 that we not go forward with the hearing on the ground of na-
21 tional security but declined to specify what were the exact
22 considerations underlying his request.

23 Not desiring to compromise the national defense in any
24 way, we took in open session only the testimony of telephone
25 company representatives. In essence, they stated that it was

3
1 their policy to permit national security taps to be made
2 through their equipment if they were given a letter from the
3 head of the FBI stating that a certain tap was necessary in
4 the interest of national security, and that they never went
5 behind such a request to ascertain whether there were in fact
6 any national security considerations present.

7 We did not call any representatives of the cable com-
8 panies on October 23. RCA Global and ITT Worldcom - the two
9 largest cable companies - requested at the last moment that
10 they be subpoenaed, though they had earlier indicated that
11 they would appear voluntarily.

12 As for the others, we felt it incumbent upon us to afford
13 General Allen a chance to appear before the Subcommittee to
14 explain the considerations that he believed required an execu-
15 tive session or outright cancellation of the hearing.

16 Such an invitation was extended to General Allen, and one
17 of a like nature was also extended to Attorney General Levi -
18 not once but several times.

19 Thus far, neither has been willing to appear to discuss
20 this issue.

21 As a partial result of this Subcommittee's October 23rd
22 hearing, the Senate Select Committee on Intelligence released
23 the Shamrock Report on November 6, 1975. That report stated
24 that Shamrock was a cover name for a message-collection pro-
25 gram that had been in operation since 1947, wherein the three

1 major international telegraph companies had turned over copies
2 of most of their international telegrams that were going
3 from or coming to or through the United States, to the National
4 Security Agency or its predecessor agencies, which "in recent
5 years selected about 150,000 messages a month" for its analysts
6 to review.

7 The analysis of some 1.8 million communications a year
8 by a Federal intelligence agency has to include the intercep-
9 tion of hundreds of thousands of messages that have nothing
10 whatever to do with foreign intelligence. Moreover, many of
11 these 1.8 million messages are subsequently distributed to
12 other agencies of government. Each and every aspect of Sham-
13 rock represents a scale of interception vastly greater than
14 any known FBI or CIA mail intercept program. The privacy of
15 virtually every person who has sent or received a cable in
16 the last twenty-eight years - tens of millions of Americans -
17 has been invaded.

18 Given the refusal of Messrs. Levi and Allen to explain
19 their positions, we decided to go forward with our inquiry and
20 obtained appropriate subpoenas from the full committee on
21 January 22, 1976.

22 Subpoenas duces tecum to three cable companies - ITT
23 World Communications, RCA Global Communications, and Western
24 Union International - one NSA employee - Joseph Tomba - three
25 FBI agents - Walter Zink, John Loomis, and David Jenkins -

1 and one former FBI agent - Joe Craig - were duly issued,
2 returnable on February 18, 1976.

3 Two of the cable companies - RCA Global and ITT Worldcom -
4 have replied to the subpoena, essentially saying they have no
5 documents, while supplying some recent correspondence. Western
6 Union International has responded by saying that it has been
7 ordered by the President not to comply, and enclosing a letter
8 addressed to their counsel from the Attorney General, in which
9 he requests that the company not comply.

10 So far as I know, this is the first instance in which an
11 effort asserting a Constitutional privilege for a private
12 corporation has ever been asserted.

13 The four witnesses currently employed by the Executive
14 Branch and the one formerly employed by the Executive Branch
15 have refused to comply, citing a memorandum from President
16 Ford instructing the Secretary of Defense and the Attorney
17 General "to decline to comply with the subpoenas."

18 Today, we are scheduled to hear the testimony, under
19 subpoena, of three present FBI agents: Messrs. Zink, Jenkins,
20 and Loomis, one former FBI agent, Mr. Craig, and one employee
21 of the National Security Agency.

22 I don't know what's happening today, but yesterday I was
23 informed by letters from Mr. Levi, Mr. Clements, and Mr. Craig's
24 attorney that none of these five witnesses would appear.

25 I ask at this time to include in the record the following
documents:

1 1) the subpoenas duces tecum and the subpoenas ad testi-
2 ficandum issued with regard to this investigation;

3 2) the President's memorandum of February 17, 1976,
4 addressed to Secretary Rumsfeld and Attorney General Levi,
5 which instructs them to decline to comply with the subpoenas;
6 and

7 3) the correspondence among Attorney General Levi,
8 Deputy Defense Secretary Clements, Chairman Brooks of the full
9 Government Operations Committee, Mr. Craig's attorney, and
10 the witnesses themselves relative to the refusals to respond
11 to the subpoenas duces tecum and the tentative refusals of
12 today's witnesses to respond to the testimonial subpoenas and
13 all other relevant documents.

14 (Material to be supplied follows:)

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1 I note that although the President's memorandum of
2 February 17 refers to "national security" and "the public
3 interest," it makes no mention of the so-called doctrine of
4 "executive privilege." The memorandum directs Messrs. Levi
5 and Rumsfeld not to comply with the subpoenas requesting docu-
6 ments.

7 Our investigation is concerned with the interception of
8 two distinct but related types of communications - cables and
9 telex messages. Cables are wire messages between the United
10 States and a foreign country sent through one of the cable
11 companies; that is, the message is carried or telephoned to
12 the cable company's office, from which it is sent to the cable
13 company's office in the recipient location. A "cable" is a
14 foreign version of what we call a "telegram" when it is sent
15 domestically.

16 A telex message, on the other hand, is similar to a tele-
17 phone call, though in writing. The customer, who may be a pri-
18 vate business or even a private individual, has a telex machine
19 in his office.

20 By dialing the telex number of another telex machine in
21 another customer's office, the customer may transmit a written
22 message directly to the other machine, without the necessity
23 of having any employee of the cable company handle or re-
24 transmit the message.

25 Far more foreign messages are sent and received via telex

1 than by cable, especially when the senders are regularly
2 engaged in the overseas business.

3 Though the Church Committee investigated this area, its
4 Shamrock Report was addressed only to the interception of
5 cables. The report made absolutely no mention of telex in-
6 terceptions.

7 In our inquiry, we intend to go into the following issues

8 1) Telex Communications. Everything stated in the Sham-
9 rock Report concerning the interception of international cable
10 traffic applies equally to telex, the Subcommittee has been
11 told. Statistics supplied by the FCC indicate telex is a far
12 more important means of international communication than cable.

13 2) The legality of cable companies' delivering communica-
14 tions to Federal agencies. The companies will argue that they
15 have done nothing inconsistent with section 605 of the Communi-
16 cation Act, as they have responded to demands from a "lawful
17 authority." If such is the case, corrective legislation may be
18 called for.

19 3) Shamrock's Replacement. Operation Shamrock, according
20 to the Senate Select Committee report, was terminated on May
21 15, 1975 - which, perhaps coincidentally, coincides with the
22 Senate Select Committee's initial approach to the NSA. Cir-
23 cumstantial evidence suggests that Shamrock, under another
24 name, continues through the use of other technology which is
25 wholly within NSA's capability and which probably does not

1 require going through the facilities of the cable companies.

2 4) The FCC's responsibility in monitoring the communica-
3 tions carriers activities vis-a-vis their supply communications
4 to Federal intelligence agencies.

5 5) Executive Order 11905. The effect and intent of Presi-
6 dent Ford's Executive Order 11905, issued February 18, which
7 appears to expressly authorize the National Security Agency to
8 collect information on the domestic activities of Americans
9 through its international communications intercepts. The
10 relevant portion of the Executive Order states:

11 "Section 5(b) Restrictions on Collection. Foreign
12 intelligence agencies shall not engage in any of
13 the following activities:

14 (2) Electronic surveillance to intercept a
15 communication which is made from, or is in-
16 tended by the sender to be received in, the
17 United States, or directed against United
18 States persons abroad, except lawful elec-
19 tronic surveillance under procedures approved
20 by the Attorney General; provided, that the
Central Intelligence Agency shall not per-
form electronic surveillance within the
United States, except for the purpose of
testing equipment under procedures approved
by the Attorney General consistent with law."

21 6) To what extent have the companies been acting illegally?

22 7) By what criterion are messages selected for analysis?

23 8) Who determines the "watch lists" used to select
24 messages for analysis?

25 9) Who selects the "trigger words" that select messages

1 for analysis?

2 10) To what extent, if any, are wholly domestic communica-
3 tions intercepted?

4 Is Mr. Joe Craig, former special agent for the FBI,
5 present here today?

6 Mr. Fogt. He is, Madame Chairwoman.

7 Mrs. Abzug. May I ask who those people are at the table?

8 Mr. Goldbloom. I am Irwin Goldbloom, Deputy Assistant
9 Attorney General.

10 I am here representing the United States and all of the
11 witnesses who have been subpoenaed before the Subcommittee
12 this morning.

13 Mr. Moss. Madame Chairwoman, at this point the gentleman
14 is not here representing anyone but himself until we have
15 called him or called someone he desires to step forward to
16 speak for.

17 So I would suggest that they clear the witness table
18 until the Subcommittee, at its pleasure, requests their
19 appearance.

20 We called Mr. Craig.

21 Mr. Goldbloom. I am here also representing Mr. Craig.

22 Mr. Moss. He has not so informed the Subcommittee.

23 Mr. Fogt. Mr. Craig will authorize Mr. Goldbloom --

24 Mr. Moss. Is Mr. Craig a former employee of the Govern-
25 ment of the United States?

1 Mrs. Abzug. That is our understanding.

2 Mr. Fogt. Yes.

3 Mr. Moss. Since when does the Department of Justice take
4 the role of representing a former employee of the Government
5 of the United States?

6 Mr. Goldbloom. We do represent Mr. Craig.

7 Mr. Moss. I said "since when." And under what authority?

8 Mr. Goldbloom. Under the authority of the Deputy Attorney
9 General.

10 Mr. Moss. Under the authority of what statute?

11 I don't give a damn about the Deputy Attorney General.
12 He has only the authority conferred by law.

13 Give us the statutory citation.

14 Mr. Goldbloom. 28 USC, Sections 516 and others.

15 Mr. Moss. Has counsel checked the relevant citation?

16 Mrs. Abzug. Will you repeat your citation?

17 Mr. Goldbloom. 28 USC, Section 516, 517, 518.

18 Mr. Moss. Madame Chairwoman, may I also point out that
19 the rules of the House of Representatives specifically pro-
20 vide that the witness is entitled to counsel only for the
21 purpose of advising them on their Constitutional rights - and
22 for no other purpose.

23 I make a point of order, therefore, that the appearance
24 of counsel for any other reason is counter to the rules of
25 the House of Representatives.

1 Mrs. Abzug. Would you be good enough, Mr. Goldbloom,
2 to let us swear in our witness?

3 Who are the other gentlemen with you at the table?

4 Mr. Goldbloom. On my right is Mr. Thomas Martin who is
5 a Special Assistant to the Assistant Attorney General. On
6 my left is John Mintz who is General Counsel for the Federal
7 Bureau of Investigation.

8 Mr. Moss. Madame Chairwoman, I have made a point of
9 order.

10 The point of order is that at this moment we have called
11 Mr. Craig.

12 Mrs. Abzug. That is correct.

13 I have so ruled, Mr. Moss.

14 Mr. Moss. I ask that the witness table be cleared and
15 that Mr. Craig take the witness stand.

16 Mrs. Abzug. Would you please clear the table?

17 (Whereupon, the witness, Joe Craig, was duly sworn by
18 the Chairwoman of the Subcommittee.)

19 Would you please identify yourself for the record?

20 Mr. Craig. I beg your pardon.

21 Mrs. Abzug. Would you please identify yourself?

22 Mr. Craig. Joe - J, O, E - middle initial, R, Craig -
23 C, R, A, I, G.

24 Mrs. Abzug. If you are accompanied by counsel, as is
25 your right, please have him state his name and address for

1 the record.

2 Mr. Fogt. My name is Howard W. Fogt, Jr.

3 I am a member of the firm Foley, Lardner, Hollabaugh, and
4 Jacobs; 815 Connecticut Avenue, Northwest, Washington, D. C.

5 Mrs. Abzug. I note that you have been provided with a
6 copy of the rules of the Subcommittee and of clause two of
7 House Rule XI.

8 You have previously been served with a subpoena duces
9 tecum requiring you to produce certain documents necessary to
10 our investigation on or before February 18, 1976.

11 Have you any documents with you?

12 Mr. Craig. I do not.

13 Mrs. Abzug. Do you intend to supply any documents to the
14 Subcommittee? That is, as requested in the subpoena duces
15 tecum.

16 Mr. Fogt. Madame Chairwoman, I believe the counsel for
17 the Subcommittee has already been advised that the witness
18 does not have documents responsive to the subpoena.

19 Mrs. Abzug. Well, then you have failed to comply with
20 that subpoena and, in the opinion of the Subcommittee, have
21 advanced no proper reason for your failure.

22 Mr. McCloskey. I respectfully dissent from the fact that
23 the Subcommittee has rendered its judgment on that point.

24 I think that it is appropriate for the Chair to comment
25 on the position of the Chair but not on that of the Subcommittee

1 at this point.

2 Mrs. Abzug. Well, there is a simple subpoena duces
3 tecum, Mr. McCloskey, and the witness has failed to produce
4 in response to the subpoena.

5 Do you have any documents that you will produce to this
6 Subcommittee?

7 Mr. Fogt. Madame Chairwoman, at this time I would like
8 to exercise our rights under Rule 3 to request that all
9 lights and cameras be turned off for the benefit of the witness.

10 Mr. Moss. That, I think, is a right that they may
11 invoke.

12 Mr. Fogt. Madame Chairwoman, did I understand your
13 question to be: "Do we have a copy of the subpoena duces
14 tecum?"

15 Mrs. Abzug. And do you have any documents.

16 I did not understand the answer to your question. I
17 was questioning whether or not you did have documents or
18 whether you refuse to supply them.

19 Mr. Fogt. Madame Chairwoman, counsel for the Subcommittee
20 has already been advised that the witness does not have any
21 documents responsive to the subpoena duces tecum.

22 Mrs. Abzug. Very well.

23 Do you have an opening statement?

24 Mr. Fogt. Mr. Craig has a short statement that he would
25 like to read at this time.

1 Mrs. Abzug. Excuse me - let me say for the record that
2 at this point in our proceedings there is a quorum present.

3 Mr. Craig. I appear here today in response to a subpoena
4 served on February 6, 1976.

5 By letter dated February 23, 1976 the Attorney General
6 of the United States has instructed me not to testify --

7 Mrs. Abzug. Will you excuse me for just one moment,
8 please?

9 Will you turn the lights off, please?

10 At the request of the witness, he does not wish to be
11 subjected to radio, television, still photography coverage;
12 and all lenses shall be covered and microphones used for
13 coverage shall be turned off.

14 Would you please be good enough to do that during the
15 testimony of this witness?

16 (Whereupon, lights and cameras were turned off.)

17 Would you continue? I am sorry.

18 Mr. Craig. Do you want me to start from the beginning?

19 Mrs. Abzug. Yes, if you don't mind.

20 Mr. Craig. I appear here today in response to a subpoena
21 served on February 6, 1976.

22 By letter dated February 23, 1976 the Attorney General
23 of the United States has instructed me not to testify in res-
24 ponse to the subpoena.

25 Accordingly, I must respectfully decline to testify

1 before your Subcommittee at this time.

2 Mrs. Abzug. Mr. Moss?

3 Mr. Moss. I ask that the witness be directed by the
4 Chair at this point to give the testimony required by this
5 Subcommittee.

6 I ask the Chair to relate the reasons why that testimony
7 is relevant to the inquiry of this Subcommittee and also to
8 observe that the Attorney General of the United States is
9 without any authority to issue the kind of order that the
10 Subcommittee does not recognize; and that it is not in any
11 sense a valid order.

12 It is at the most, the most outrageous assumption and
13 most arrogant display by an Attorney General that I have seen.

14 This, after all, is the people's house of the Congress of
15 the United States.

16 Some damn two-bit appointee of the President is not the
17 law-making body of this nation.

18 Again I ask that the witness be instructed - and told
19 the consequences of his failure - to respond to this Sub-
20 committee.

21 Mrs. Abzug. Mr. Craig, your objection is not well
22 founded.

23 You are directed to answer the questions that will be
24 put to you.

25 Mr. Craig, you came to our attention because you have

1 been identified by employees of RCA Global, ITT Worldcom, and
2 Western Union as a contact man.

3 You also had discussions with an investigator of this
4 staff in which you acknowledged that you were the FBI liaison
5 man with the telephone company in the Washington area; and
6 that one of your activities for the last nine or ten years
7 has been to pick up national security messages.

8 Now, your continuing refusal to answer questions of the
9 Subcommittee will place you in contempt of Congress and in
10 violation of section 192 of title 2 of the United States Code;
11 and will render you liable to fine and imprisonment.

12 I agree with Mr. Moss that there is no valid, legal
13 objection asserted for which you can, at present, refuse to
14 comply with the subpoena which has been issued to you.

15 I will therefore proceed to question you and give you
16 the opportunity to answer questions of this Subcommittee.

17 My first question is: What were the dates of your FBI
18 employment?

19 Mr. Craig. I appear here today in response to a subpoena
20 served on February 6, 1976.

21 By letter dated February 23, 1976 the Attorney General --

22 Mr. Moss. Madame Chairwoman, the gentleman wanted to
23 invoke, that is, if the gentleman wanted to invoke a Constitu-
24 tional right, then I could understand this charade of repeating
25 a statement which is meaningless.

1 But he is not asserting any Constitutional right.

2 And the letter from the Attorney General does not con-
3 stitute a basis.

4 I think that the witness should be fully aware of the
5 fact.

6 The Attorney General may advise him. The decision is
7 yours. The liability is yours.

8 It is not the Attorney's General liability - it is your
9 personal liability. You are the one who is incurring the
10 risk involved here, again, not the Attorney General.

11 I don't know how thoroughly you have been advised by
12 counsel, but if that is the response to this subpoena, the
13 counsel has done a highly incompetent job of advising you in
14 order to protect you as an individual.

15 Mrs. Abzug. Will you answer the question, Mr. Craig,
16 put to you by the Chair?

17 Mr. Craig. I appear here today in response to a subpoena --

18 Mr. Moss. Yes or no.

19 Mrs. Abzug. Your objection is not well founded.

20 I must direct you to answer the question. I direct you
21 to answer the question which has been propounded to you.

22 Mr. Fogt. Madame Chairwoman, in fairness to the witness
23 I think - as I am sure you are aware --

24 Mrs. Abzug. Mr. Fogt, the Chair has just directed the
25 witness to answer the question.

1 Do you intend to answer that question, Mr. Craig - yes
2 or no?

3 Mr. Craig. No.

4 Mrs. Abzug. You refuse to answer the question?

5 Mr. Craig. Yes.

6 Mrs. Abzug. I am advising the witness that he is in
7 contempt, and I want the witness to stand down for the pre-
8 sent but to remain available at the call of the Chair.

9 Mr. Craig. Thank you, Madame Chairwoman.

10 Mrs. Abzug. I call Walter Zink to the stand.

11 (Short pause while the cameras and lights are activated.)

12 Will you please stand and be sworn?

13 (The witness was duly sworn by the Chairwoman of the
14 Subcommittee.)

15 Would you please identify yourself for the Subcommittee?
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STATEMENT OF WALTER C. ZINK, FBI AGENT

C/bbl. 1 I am Walter C. Zink.

2 Mrs. Abzug. Are you accompanied by counsel?

3 Mr. Zink. I am.

4 Mrs. Abzug. Will you please state your name and address
5 for the record?
6

7 Mr. Zink. Walter C. Zink, 201 East 69th Street, New
8 York, New York.

9 Mrs. Abzug. And who is the counsel accompanying you?

10 Mr. Goldbloom. I am Irwin Goldbloom, Deputy Assistant
11 Attorney General of the Civil Division of the Department of
12 Justice, Washington, D.C.

13 Mrs. Abzug. There has been some question raised as to
14 your status here. I have looked at Section 516 and 517 of
15 the United States Code which you have mentioned. I am not
16 sure that you are an interested party, but we can determine
17 that question at another time if that is alright with you,
18 Mr. Moss.

19 Mr. Moss. Yes.

20 Mrs. Abzug. You have been provided with a copy of the
21 Rules of the Subcommittee of House Rule 11.

22 You have previously been served with a subpoena duces
23 tecum to require you to produce certain documents necessary
24 to our investigation of this Subcommittee on or before
25 February 18, 1976.

1 Do you have those documents with you?

2 Mr. Zink. No.

3 Mrs. Abzug. Do you intend to comply with that subpoena
4 and to provide us with those documents?

5 Mr. Zink. The Attorney General has advised me in
6 writing that I am not to produce such documents, and I
7 respectfully decline to do so.

8 Mrs. Abzug. You have failed to comply with that
9 subpoena and, in the opinion of the chair, you have advanced
10 no proper reason for your failure.

11 I, therefore, direct you to comply with this subpoena
12 and to produce the documents sought therein now.

13 Mr. Zink. I have been directed in writing by the
14 Attorney General not to produce any documents, and I respect-
15 fully decline to do so.

16 Mrs. Abzug. I wish to advise you that your refusal to
17 comply will place you in contempt of Congress and in violation
18 of Section 192 of Title 2 of the United States Code and will
19 render you liable to fine and imprisonment.

20 Do you wish to make an opening statement?

21 Mr. Zink. No.

22 Mrs. Abzug. Are you presently employed?

23 I will now proceed to question the witness.

24 Are you presently employed?

25 Mr. Zink. By letter dated February 23, 1976, the

1 Attorney General has instructed me not to testify, and I
2 respectfully decline to do so.

3 Mrs. Abzug. Your objection is not well-founded. You
4 are directed to answer the question that is put to you.

5 Are you presently employed?

6 Mr. Zink. By letter dated February 23, 1976, the
7 Attorney General has instructed me not to testify, and I
8 respectfully decline to do so.

9 Mrs. Abzug. Your continuing refusal will place you in
10 contempt of Congress and in violation of Section 192 of Title
11 2 of the United States Code and will render you liable to
12 fine and imprisonment.

13 Would you answer the question as put to you by the
14 chair? Are you presently employed?

15 Mr. Zink. By letter dated February 23, 1976, the
16 Attorney General has instructed me not to testify, and I
17 respectfully decline to do so.

18 Mrs. Abzug. I would just like to suggest---

19 Mr. Moss. Madam Chairwoman.

20 Mrs. Abzug. Just a moment.

21 That is not a Constitutional assertion.

22 Mr. Moss. Will you permit a question.

23 Mrs. Abzug. Yes.

24 Mr. Moss. Mr. Zink, you are here in response to a
25 Subpoena Duces Tecum. Is that correct?

1 Mr. Zink. Yes.

2 Mr. Moss. And you have asserted that you have received
3 . from the Attorney General a letter directing you not to
4 respond to questions of this Subcommittee. Is that correct?

5 Mr. Zink. By letter dated --

6 Mr. Moss. Is that correct?

7 Mr. Zink. The Attorney General has instructed me not
8 to testify, and I respectfully decline to do so.

9 Mr. Moss. You've just answered the question, Mr. Zink.

10 You said that you have a letter.

11 What is the relationship? Is the Attorney General your
12 employer or is he your counsel?

13 Mr. Zink. By letter dated --

14 Mr. Moss. I don't give a damn about the letter of --

15 Mr. Zink. The Attorney General has instructed me not
16 to testify.

17 Mr. Moss. Madam Chairwoman, I want you to instruct
18 the witness to answer that question.

19 Mrs. Abzug. Once again, the witness is directed to
20 answer the question put to him.

21 Mr. Moss. And answer it yes or no.

22 Mr. Zink. By letter dated February 23, 1976, the
23 Attorney General has instructed me not to testify, and I
24 respectfully decline to do so.

25 Mr. Moss. Sir, let me tell you something.

1 I happen to Chair a committee of this House, and I have
2 jurisdiction over international commerce and communications.

3 I am going to give you a very careful, brief experience
4 before this year is much further on.

5 Make no mistake about it.

6 You are going to answer my questions when I am in the
7 Chair and when I am directing them to you.

8 And so is the Attorney General.

9 Mrs. Abzug. I would like to advise the witness that he
10 is in contempt, and I will also advise the witness to stand
11 down for the present but he is to remain available at the
12 call of the Chair.

13 I also note the presence of a quorum here today.
14 (Members present: Abzug, Moss, Harrington, Maguire, Moffett, and
I call to the witness stand David Jenkins. McCloskey.)

15 Mr. Jenkins will you please stand?

16 (The witness was duly sworn.)

17 Please be seated.

18 You are accompanied by counsel as is your right. Please
19 have him state his name and address for the record.

20 Mr. Goldbloom. I am Irwin Goldbloom, Deputy Assistant
21 Attorney General, Civil Division, Department of Justice,
22 Washington, D.C.

23 Mrs. Abzug. Will the witness identify himself for the
24 record?

1 STATEMENT OF DAVID G. JENKINS, FBI SPECIAL AGENT

2 Mr. Jenkins. David G. Jenkins, Special Agent, Federal
3 Bureau of Investigation, 201 East 69th Street, New York, New
4 York.

5 Mrs. Abzug. I note that you have been provided with a
6 copy of the Rules of the Subcommittee and of Clause 2 of
7 House Rule XI.

8 You have previously been served with a Subpoena Duces
9 Tecum requiring you to produce certain documents necessary to
10 our investigation of this Subcommittee on or before February
11 18, 1976.

12 Do you have documents with you?

13 Mr. Jenkins. By instruction of the Attorney General,
14 I have no documents.

15 Mrs. Abzug. Is it your intention to supply this Sub-
16 committee with documents and to comply with the Subpoena?

17 Mr. Jenkins. No, pursuant to the instructions of the
18 Attorney General.

19 Mrs. Abzug. What are the instructions of the Attorney
20 General?

21 Mr. Goldbloom. Madam Chairwoman, I believe those instruc-
22 tions have been placed into the record.

23 Mrs. Abzug. I am asking this witness what those
24 instructions are.

25 Mr. Jenkins. By letter from the Attorney General to me

1 not to comply with the instructions to commit documents.

2 Mrs. Abzug. You have failed then to comply with that
3 Subpoena, and in the opinion of the Chair, you have advanced
4 no proper reason for your failure. I, therefore, direct you
5 to comply with this Subpoena now and to produce the documents
6 sought therein.

7 Your refusal to comply --

8 Mr. Jenkins. I decline to comply upon instructions from
9 the Attorney General in writing.

10 Mrs. Abzug. Your refusal to comply will place you in
11 contempt of Congress and in violation of Section 192 of Title
12 2 of the United States Code and will render you liable to
13 fine and imprisonment.

14 For what agencies of the United States have you worked
15 and during what periods of time?

16 Mr. Jenkins. By letter dated February 23, 1976, the
17 Attorney General of the United States has instructed me not
18 to testify.

19 Mr. Moss. Madam Chairwoman, would you yield for a
20 question.

21 Mrs. Abzug. Yes.

22 Mr. Moss. Have you been afforded the advice of private,
23 independent counsel? That is, other than the Department of
24 Justice?

25 The counsel at this point is in violation of the Rules

1 of the House. He is there only for the purpose of advising
2 this witness as to his Constitutional rights.

3 You have read the Rules of this House, and I am stating
4 them quite accurately. You are not there to coach him or to
5 do anything but to advise him when he seeks your advice on a
6 Constitutional question.

7 If you persist, then I will insist that you step down.

8 Mr. McCloskey. Madam Chairwoman, a point of order.

9 Mrs. Abzug. Yes.

10 Mr. McCloskey. With all due respect to my colleague
11 from California, it seems to me that anytime the witness is
12 asked a question of this House he has the right to consult
13 counsel before answering.

14 Mr. Moss. With all due respect to my colleague from
15 California, and I had the floor, there is no point of order
16 because the Rules of the House on this point are not ambigu-
17 ous; they are very clear.

18 I have enforced them a number of times.

19 Witnesses are confined - that is counsel is confined -
20 to that role and that sole role.

21 Mr. McCloskey. Madam Chairwoman, may I be recognized.

22 Mrs. Abzug. Yes.

23 Mr. McCloskey. The point I wanted to make on the point
24 of order is that my distinguished colleague from California
25 interrupted the witness as he was turning to his counsel,

1 and his counsel was discussing with the witness something of
2 which this committee knows nothing. What was said between
3 counsel and the witness is not something we should intrude
4 on. It is not something that we should infer that counsel is
5 coaching the witness.

6 I think the one thing that we offer in this House is the
7 right to any witness before us to consult with counsel and
8 not to draw inferences as to what is said, either by witness
9 or counsel, in front of us.

10 Mr. Moss. Madam Chairwoman, I have chaired committees
11 of this House for 22 years. I don't believe that I have been
12 charged with being unfair or unmindful of the rights of
13 witnesses, but I am also mindful of the rights of this House
14 and the rights of the people represented by the collective
15 membership of this House.

16 Those rights are being very seriously challenged today
17 in the most arrogant fashion that I have witnessed in my 22
18 years.

19 Whether it be in the hearings where we had to go through
20 the Sherman Adams-Bernard Goldfine era and where we had to
21 have counsel stand down because he insisted on going beyond
22 the Rules of the House - and whatever the gentleman from
23 California might think, the Rules are clear.

24 The witness may seek advice only on a Constitutional
25 question and for no other purpose.

1 Mr. McCloskey. I do not question that.

2 Mr. Moss. You have questioned that, Mr. McCloskey, and
3 that is why I am taking the time to address myself to it.

4 Mr. McCloskey. May I be recognized Madam Chairwoman?

5 Mrs. Abzug. Yes, Mr. McCloskey.

6 Mr. McCloskey. My only point, Madam Chairwoman, is that
7 when the witness turns to counsel and they confer, it is not
8 appropriate for this committee to draw inferences that the
9 witness and counsel are not discussing a Constitutional
10 question. We don't know what they are saying.

11 We don't know that their conversation is improper.

12 What I object to is the inference that their conversa-
13 tion is somehow improper. My distinguished colleague from
14 California contended that.

15 I think we owe them the obligation to assume that what
16 they're saying privately to one another is private.

17 Mrs. Abzug. The Chair will rule.

18 Mr. Moss. Let me go a little further because I did
19 watch with great care, and the initiative was not with the
20 witness. The initiative was with counsel.

21 Had I not observed that fact, I would not have raised
22 the objection, but I did observe that fact. I might add
23 that this counsel is here under a set of instructions that
24 apply to every witness who has been subpoenaed by this
25 Subcommittee. He is here for the purpose of interfering with

the work of Congress and of delaying endlessly, and it is not a unique instance of the Department of Justice acting in this fashion.

As I stated, I have studied with great care for 22 years the information problems of our country, but they have never become as aggravated as they are today under this first non-elected Administration in this nation's history.

There has never been the arrogance demonstrated by the Department of Justice as has been demonstrated under Gerald Ford - not even Richard Nixon carried it to the extreme of this Administration.

And I think if the gentleman from California who has objected has any sense of his obligation, assumed by the oath he has taken, then by God he will insist that this executive do what the Constitution says it shall do. That is, to take care that the laws of this nation be faithfully executed and not openly flaunted as is being urged by the Department of Justice at this moment.

Mrs. Abzug. Thank you, Mr. Moss.

Mr. McCloskey, I share the concern of the gentleman from California, Mr. Moss, about the unprecedented interference here with the normal processes of Congressional committee work.

My concern is - this is the concern of Congress - and we are concerned about the issues in this hearing, but I

1 will rule that witnesses may consult with counsel.

2 I realize that the rules provide that the witness may
3 consult with counsel on a Constitutional question. There is
4 also a Constitutional protection for the right of a witness
5 to consult counsel.

6 I will rule that the witness has the right to consult
7 counsel, and I hope it will be done in the proper manner.

8 Mr. Moss. Madam Chairwoman, with utmost reluctance I
9 want to have this record show that I strongly dissent from
10 the ruling of the Chair because it does not comport with the
11 rules of the House. The rules do provide that a witness is
12 entitled to counsel but within very narrow limitations.

13 We are not in a court of law. We are not operating
14 under the rules that govern a court of law. This is a
15 committee of the Congress, and the Justice Department seems
16 unmindful of it and I hope my colleagues are not unmindful
17 of it.

18 Mrs. Abzug. I will repeat the question for the witness.

19 For what agencies of the government have you worked and
20 during what periods of time?

21 You are directed to answer this question.

22 Mr. Jenkins. By letter of February 23, 1976, the
23 Attorney General has advised me not to testify, and I respect-
24 fully decline.

25 Mrs. Abzug. Your continuing refusal will place you in

1 contempt of Congress and in violation of Section 192 of Title
2 of the United States Code and will render you liable to
3 fine and imprisonment.

4 Do you still refuse to answer the question?

5 Mr. Jenkins. Yes, pursuant to the instructions of the
6 Attorney General of February 23, 1976.

7 Mrs. Abzug. Well, I must inform you that you're in
8 contempt and that you are to stand down for the present and
9 to remain available at the call of the Chair.

10 I wish to also note that there is a presence of a
11 quorum.

12 The quorum consists of the Chair, Mr. Moss, Mr. Harring-
13 ton, Mr. Maguire, Mr. Moffett, Mr. McCloskey.

14 I call Mr. John Loomis.

15 (Whereupon the witness was duly sworn by the Chair-
16 woman of the Subcommittee.)

17 Will you please state your name and address for the
18 record?

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1 STATEMENT OF JOHN P. LOOMIS, FBI SPECIAL AGENT

2 Mr. Loomis. John Loomis, Special Agent for the FBI,
3 Washington Field Office, Washington, D.C.

4 Mrs. Abzug. If you are accompanied by counsel, please
5 have him state his name and address for the record.

6 Mr. Goldbloom. Irwin Goldbloom, Deputy Assistant
7 Attorney General, Civil Division, Department of Justice,
8 Washington, D.C.

9 Mrs. Abzug. Are you accompanied by private counsel?

10 Are you accompanied by private counsel?

11 Mr. Loomis. He is my counsel.

12 Mrs. Abzug. Are you accompanied by private counsel,
13 answer yes or no.

14 Mr. Loomis. No.

15 Mrs. Abzug. Have you consulted private counsel?

16 Mr. Moss. Madam Chairwoman, may I make a point of
17 order?

18 The United States Attorney General's representative
19 continues to consistently violate the rules of this Sub-
20 committee. He did not seek your advice then.

21 I think that these men ought to realize that they
22 should really have a private counsel who are interested in
23 their welfare and not in being thrown as sacrificial lambs
24 by the Department of Justice.

25 That is what you're doing.

1 I think they should have had the opportunity to seek out
2 and talk with private counsel, and I do not think that they
3 have had that opportunity.

4 Mr. Goldbloom. Mr. Congressman, I respectfully --

5 Mr. Moss. I do not want your respect nor your inter-
6 ruptions.

7 Mrs. Abzug. I think Mr. Moss is quite right in trying
8 to point out that the witness refuses to testify or to
9 comply with this Subpoena Duces Tecum. He is placing himself
10 in a position which may render him liable to fine and
11 imprisonment.

12 I now address myself to the witness.

13 We have concern this is clearly understood by the
14 witness who is before us. If the witness comes before this
15 Subcommittee, then he has a right to be accompanied by
16 counsel.

17 The questions that the Chair has put, and that Mr.
18 Moss, a member of this Subcommittee, has put, are in order
19 to make sure that the witness understands that he has a
20 right to counsel.

21 I'm sure the witness understands that he has the right
22 to counsel does he not?

23 I am addressing myself to the witness.

24 Mr. Loomis. I do.

25 Mrs. Abzug. Then you do understand that. You feel you

1 have provided yourself with counsel - is that correct?

2 Mr. Loomis. I do.

3 Mrs. Abzug. I note that you have been provided with a
4 copy of the Rules of the Subcommittee and of Clause 2 of
5 House Rule XI.

6 You have previously been served with a Subpoena Duces
7 Tecum requiring you to produce certain documents necessary to
8 our investigation of the Subcommittee on or before February
9 18, 1976. You have thus far failed to comply with that
10 Subpoena.

11 Do you have the documents with you today?

12 Mr. Loomis. By instruction of the Attorney General,
13 I have been told that I will not comply with that, and I
14 respectfully decline to do so.

15 Mrs. Abzug. Do you have any documents today?

16 Mr. Loomis. No, I do not.

17 Mrs. Abzug. Do you intend to supply the committee with
18 documents requested under Subpoena?

19 Mr. Loomis. No, pursuant to instructions of the Attorney
20 General of the United States.

21 Mrs. Abzug. You have failed to comply with the Subpoena
22 Duces Tecum and, in the opinion of the Chair, you have
23 advanced no proper reason for your failure. I, therefore,
24 direct you to comply with this Subpoena now and to produce
25 the documents sought therein.

1 Mr. Loomis. I respectfully decline.

2 Mr. Moss. Madam Chairwoman, I would like to address a
3 question to the witness.

4 Are you lying at this point upon any Constitutional
5 provisions as the basis for denying the information sought
6 by this committee?

7 Mr. Loomis. I am relying upon the instructions of the
8 Attorney General.

9 Mr. Moss. I did not ask that question.

10 I am entitled to know whether you are relying upon any
11 provision of the Constitution of the United States. Do you
12 contend that it is a violation of your First Amendment rights
13 or are you faced with any Fifth Amendment problems?

14 You must have some idea of the Constitutional issues
15 here. You have had a long discussion with counsel, and if
16 it were only to advise you on Constitutional matters, then
17 obviously it has been discussed between you.

18 So would you tell us if you are relying upon any
19 Constitutional protection and invoking it against this
20 committee.

21 Mr. Loomis. I am relying upon my decision based upon
22 the orders of the Attorney General.

23 Mr. Moss. Solely upon that - is that correct?

24 Mr. Loomis. That is correct.

25 Mr. Moss. Fine. I'm glad to have that clarified.

1 Mrs. Abzug. Your refusal to comply with the Subpoena
2 Duces Tecum places you in contempt of Congress and in viola-
3 tion of Section 192 of Title 2 of the United States Code and
4 will render you liable to fine and imprisonment.

5 Do you want to make an opening statement?

6 Mr. Loomis. No, I do not.

7 Mrs. Abzug. For what agencies of the United States have
8 you worked and during what periods of time?

9 Mr. Loomis. By letter dated February 23, 1976, the
10 Attorney General of the United States instructed me not to
11 testify further in this matter and with all due respect to
12 the Subcommittee, I respectfully decline.

13 Mrs. Abzug. On what ground and for what reason does
14 the Attorney General direct you not to testify?

15 Mr. Loomis. Pursuant to his letter of February 23,
16 1976, I have been instructed not to testify.

17 Mrs. Abzug. Is that addressed to you? What does that
18 letter say?

19 Mr. Loomis. Would you like it in its entirety?

20 Mrs. Abzug. Yes. Read me the letter.

21 Mr. Loomis. It's addressed to Special Agent John Paul
22 Loomis, Federal Bureau of Investigation, Washington, D.C.
23 Dear Mr. Loomis: I attach a copy of a letter that has been
24 sent to Chairwoman Abzug of the Government Information and
25 Individual Rights Subcommittee of the Committee on Govern-

ment Operations.

In accordance with that letter you are hereby instructed not to appear and testify before the Subcommittee."

Mr. McCloskey. For the record, may we have the letter attached?

The letter that the witness refers to, refers to a second letter.

Do we have that?

Mrs. Abzug. I have already put those into the record, Mr. McCloskey, in the opening statement. I asked to have all those letters included in the record.

Mr. McCloskey. Thank you.

Mrs. Abzug. Mr. Loomis, your objection is not well-founded.

You are directed to answer the question that was put to you.

Mr. Loomis. By letter dated February 23, 1976, I have been instructed by the Attorney General of the United States not to discuss this matter further, and I respectfully decline.

Mr. Moss. That also is not based on the Constitutional grounds, is that correct?

(No response.)

Mr. Moss. I have a question which I have directed to the witness.

Mr. McCloskey. I object to the propriety of the question.

0
1 Mr. Moss. Fine, go ahead and object but I still state
2 the question.

3 Mrs. Abzug. A question has been put to the witness.

4 Mr. McCloskey. I respectfully --

5 Mr. Moss. Madam Chairwoman, I respectfully report to
6 my colleague that he has no authority to determine the nature
7 of questions that I put to the witness. That is not his
8 purpose.

9 He may disagree with them, but he may not right them for
10 me nor may he edit them for me.

11 Mr. McCloskey. May I be recognized?

12 Mr. Moss. Madam Chairwoman, I have a question before
13 this witness, and I do not yield to the gentleman from
14 California.

15 Mr. McCloskey. Madam Chairwoman, if I may cite from
16 Section 343 --

17 Mr. Moss. I do not yield to the gentleman from
18 California.

19 Mr. McCloskey. Any member wishing --

20 Mrs. Abzug. Order please.

21 Mr. Moss. I do not yield to the gentleman from
22 California.

23 Mrs. Abzug. If you will both cease and desist for a
24 moment.

25 Mr. Moss. I want my question answered, or I want a

1 refusal on this record.

2 Are you relying upon any Constitutional basis for your
3 failure to respond to the question just put to you by the
4 Chairwoman?

5 Mr. Loomis. I am relying upon instructions of the
6 Attorney General.

7 Mr. Moss. Solely, is that correct?

8 Mr. Loomis. That is correct.

9 Mr. Moss. Fine.

10 Mr. McCloskey. I want to make a formal objection to
11 the propriety of the question and cite to the Chair Section
12 343 of Jefferson's Manual, stating: "But if the propriety
13 of the question be objected to, the speaker directs the
14 witness, counsel and parties to withdraw for no question
15 can be moved or put or debated while they are there." Under
16 that Section, I am objecting to the question put to the
17 witness as to whether or not he is relying on Constitutional
18 grounds.

19 Mr. Moss. The poor distinguished lawyer from California
20 ought to check that the question is used in context with the
21 putting of the question for the purpose of a vote.

22 Mrs. Abzug. That is correct, Mr. Moss.

23 I will now repeat a question which is pending: For
24 what agencies of the United States have you worked and during
25 what periods of time?

1 Mr. Loomis. By letter dated February 23, 1976, the
2 Attorney General has instructed me not to testify further in
3 this matter and with due respect to the committee, I respect-
4 fully decline.

5 Mrs. Abzug. I note that a quorum is present.

6 The quorum consists of the Chair, Mr. Moss, Mr. Harring-
7 ton, Mr. Maguire, Mr. Moffett, Mr. McCloskey.

8 I address the question again.

9 Mr. Loomis. I respectfully decline.

10 Mrs. Abzug. Your continuing refusal will place you in
11 contempt of Congress and in violation of Section 192 of Title
12 2 of United States Code and will render you liable for fine
13 and imprisonment.

14 Do you still refuse to answer this question?

15 Mr. Loomis. Pursuant to my instructions dated
16 February 23, 1976, yes.

17 Mrs. Abzug. Did you act in a liaison capacity for the
18 FBI with communications, common carriers, or in the capacity
19 of an FBI Special Agent to collect, read, analyze or
20 disseminate FBI private communications, Assembly communica-
21 tions, common carriers without a court order?

22 Mr. Loomis. By letter dated February 23, 1976, I have
23 been instructed by the Attorney General not to testify
24 further in this matter, and I respectfully decline to do so.

25 Mrs. Abzug. I direct you to answer this question.

1 Mr. Loomis. I respectfully decline.

2 Mrs. Abzug. Your continuing refusal places you in
3 contempt of Congress and in violation of Section 192 of Title
4 2 of the United States Code and will render you liable to
5 fine and imprisonment.

6 Your objection is not well-founded. You are in contempt
7 of Congress. You are directed to stand down for the present
8 but to remain available at the call of the Chair.

9 Mr. McCloskey. Madam Chairwoman, may I be recognized?

10 Mrs. Abzug. Yes, Mr. McCloskey.

11 Mr. McCloskey. I want to cite to the Chair, in view
12 of the Chair's ruling about the propriety of questions, this.
13 Section 13 of Jefferson's Manual, Section 341 and 342, and
14 343 refers to the examination of witnesses.

15 These are not motions put to the House for debate.

16 My colleague from California urged this earlier.

17 Section 342 states that witnesses are not to be produced
18 but where the House has previously instituted an inquiry. It
19 states: "When any person is examined before a committee or
20 at the bar of the House, any member wishing to ask the person
21 a question must address the Speaker or Chairman who will
22 repeat the question to the person or says to him - you
23 heard the question, answer it. But if the propriety of the
24 question be objected to, the Speaker directs the witness,
25 counsel and parties to withdraw for no question can be moved

1 or put or debated while they are there."

2 Mrs. Abzug. Mr. McCloskey, all questions put to
3 witnesses before the committee pursuant to Rule 15 of our
4 committee rules shall be relevant to the subject matter before
5 the committee for consideration and the Chairman shall rule
6 on the relevance of any questions put to the witness.

7 I made my ruling pursuant to that which I believe is
8 relevant here.

9 I considered the question raised by Mr. McCloskey and
10 Mr. Moss.

11 I believe that this is where the ruling stands now.

12 I would like to call the next witness if I may.

13 I call Mr. Tomba.

14 (The witness was duly sworn by the Chairwoman.)

15 Mrs. Abzug. Please be seated and state your name and
16 address for the record.

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Mr. Tomba. Joseph J. Tomba, 6118 Sebring Drive,
Columbia, Maryland.

Mrs. Abzug. Are you accompanied by counsel?

Mr. Tomba. Yes.

Mrs. Abzug. Would you have him state his name and
address for the record?

Mr. Goldbloom. Irwin Goldbloom, Deputy Assistant
Attorney General, Civil Division, Department of Justice,
Washington, D.C.

Mrs. Abzug. I note that you have been provided with
a copy of the Rules of this Subcommittee and of Clause 2
of House Rule XI.

You have previously been served with a Subpoena Duces
Tecum requiring you to produce certain documents necessary
to our investigation of this Subcommittee on or before
February 18, 1976. You have thus far failed to comply with
that Subpoena. Do you have the documents with you today?

Mr. Tomba. I have no documents.

Mrs. Abzug. Why have you not brought those documents
pursuant to the Subpoena.

Mr. Tomba. Because I have no documents.

Mrs. Abzug. You have no documents?

You have read the Subpoena Duces Tecum?

Mr. Tomba. Yes.

1 Mrs. Abzug. Is it your testimony that you have no
2 documents of any kind which we request in that Subpoena?

3 Mr. Tomba. That is true.

4 Mrs. Abzug. You were asked by the Subpoena Duces Tecum
5 to produce any and all records - and the term records includes,
6 but is not limited to, writings, documents, contracts, agree-
7 ments, memorandums, reports, correspondence, lists, tables,
8 minutes of electronic records, or recordings in his possession,
9 under his dominion or control, or within his means to produce,
10 concerning or relating to the interception by, examination by,
11 request by or from, or delivery to or for any employee or
12 agent of any department, agency, bureau, or other entity of
13 the United States since January, 1947, of: (1) Information
14 as to the existence, contents, substance, effect, meaning,
15 sender or recipient of any interstate or foreign communication
16 by wire, cable, radio, carrier frequency, or other means; and
17 (2) information as to the users or customers of Western Union
18 International, including, but not limited to, information as
19 to the identity of such users or customers and communications,
20 lines, channel numbers, of such users or customers."

21 Now, I left something out. It was not only users and
22 customers of Western Union International, but it was RCA
23 Global and ITT World Intercom.

24 Now, I ask you this question again.

25 I read the Subpoena to you.

1 Is it your testimony that you have no documents of any
2 kind?

3 Mr. Tomba. I have no documents.

4 Mrs. Abzug. Or no means to produce them?

5 Mr. Tomba. No means to produce them.

6 Mrs. Abzug. You have failed to comply with the Subpoena.
7 You have absolutely no documents nor means to produce them?

8 Mr. Tomba. I have no documents under my control and in
9 my dominion which I can produce.

10 Mrs. Abzug. And none within your means to produce?

11 Mr. Tomba. I do not have any means to produce them, no.

12 Mrs. Abzug. Do you wish to make an opening statement?

13 Mr. Tomba. Yes.

14 Mrs. Abzug. Proceed.

15 Mr. Tomba. I have been directed, and let me finish,
16 Mr. Moss, if you don't mind.

17 I have been directed not to appear and testify before
18 this Subcommittee by the Deputy Secretary of Defense.

19 Mr. Moss. I object to the comment by the witness and
20 the gratuities by the witness.


21 Mr. Tomba. I apologize.

22 Mr. Moss. You should.

23 Mr. Tomba. I did.

24 Mrs. Abzug. Do you?

25 Mr. Tomba. Yes, sincerely.



1 Mrs. Abzug. Now, do you wish to make an opening state-
2 ment?

3 Mr. Tomba. Yes.

4 Mrs. Abzug. Will you please proceed.

5 Mr. Tomba. Although I have been directed not to appear
6 and testify before the Subcommittee by the Deputy Secretary
7 of Defense, I would like to point out a paragraph in the
8 letter to your committee on February 23, 1976. It is the
9 fourth paragraph, and I would like to read it.

10 It is signed by the Deputy Secretary of Defense, Mr.
11 Clements.

12 "We would be pleased, however, to discuss with you at
13 your convenience whether there may be some letters which
14 might appropriately be the subject of testimony under care-
15 fully controlled conditions under which such testimony might
16 be given."

17 In addition to this, General Allen has asked me to
18 convey to you his willingness to attempt to meet the require-
19 ments of your Subcommittee along with the necessary safe-
20 guards applicable to any classified information. To this end,
21 his staff is available to work with your people to define
22 more precisely your exact information requirements.

23 Mrs. Abzug. I certainly appreciate getting this message
24 through you, Mr. Tomba.

25 The fact is that General Allen has been invited here to

1 meet with this committee, as I said in my opening statement.
2 I said it not once, but several times.

3 This committee is always open to members of Government
4 for the purpose of discussing any problems.

5 As a matter of fact, we have tried and tried to find out
6 what are the concerns specifically that General Allen and
7 others of the Government purport to have.

8 This has been to no avail.

9 This, however, welcome as your statement is on behalf
10 of General Allen - and I assume it's on his behalf - that is,
11 do you have a letter from him or did he authorize you to
12 make this statement?

13 Mr. Tomba. I do not have a letter from him.

14 We talked with him this morning.

15 Mrs. Abzug. I certainly appreciate your bringing that
16 message to us, particularly since it is quite obvious that
17 there is no telephone communication which can be made
18 apparently without interception.

19 So I certainly appreciate the fact that you have come
20 here personally to tell me this, even though General Allen
21 has not seen fit to pick up the telephone and suggest
22 directly that he would like to appear before this committee.

23 Now, however, this Subcommittee has issued some process
24 and it's a very serious matter. We have started these
25 hearings quite some time ago.

1 As I explained in my opening statement, we have sought
2 to conduct the business of this Subcommittee and the business
3 of the House without any real cooperation.

4 People, I believe, must cooperate with the committees
5 of Congress and especially one that's doing its work. And
6 so we have to get down to the business of what you are here
7 for today.

8 That is a response to a Subpoena and a response to a
9 Subpoena Duces Tecum which you have already responded to.

10 Now, you are here in response to a Subpoena as a witness

11 Do you wish to make any further opening statement?

12 Mr. Tomba. No.

13 Mr. Moffett. May I be recognized?

14 Mrs. Abzug. Yes.

15 Mr. Moffett. To my satisfaction, we have not establish-
16 ed whether the witness does or does not possess - is that
17 established to the Chair's satisfaction? If it is, perhaps
18 the Chair could explain it to me - what the interpretation
19 is.

20 I thought it was a little confusing in regard to the
21 question of whether we had the means to produce.

22 Might we find out that? Might we find out what
23 obstacles there are that the witness has?

24 Mrs. Abzug. We have testimony on this, but if Mr.
25 Moffett would like to question the witness further on that,

1 go ahead.

2 Mr. Moffett. Sir, when you responded that you did not
3 have the means to produce, were you suggesting that you do
4 not have the authority to produce them but otherwise you
5 might be able to?

6 Mr. Tomba. Based on my instructions from the Deputy
7 Secretary of Defense, dated 23 February, I respectfully
8 decline to answer that question.

9 Mr. Moffett. That seems to me to be the answer, Madam
10 Chairwoman.

11 It is confused as to what he does and does not have.

12 I would urge the Chair and the Subcommittee to contact
13 General Allen and determine if he is, in fact, willing to
14 talk. I know that we have sought to speak to him before.
15 I wonder if that might be done again because I sense an
16 implication here that they might --

17 Mrs. Abzug. Yes.

18 The last question was definitely from your previous
19 testimony, so I will ask you under those conditions whether
20 you intend to produce documents necessary to our investigation
21 as requested in the Subpoena Duces Tecum.

22 Mr. Tomba. As far as I'm concerned, I have no means of
23 producing any documents for this committee. In fact, if I
24 did, I have been directed by the Deputy Secretary of Defense
25 Clements by letter of February 18, 1976, not to produce any

documents to this committee.

Mr. Moss. Madam Chairwoman, may I be recognized.

Mrs. Abzug. Yes.

Mr. Moss. If I heard correctly, and I believe the reporter could go back and tell us, the response to the question of whether you were here with documents required by Subpoena and you stated that you had no documents.

Am I correct?

Mr. Tomba. Yes.

Mr. Moss. Either you have or you have not documents.

Now you are inferring that you do have documents available under certain conditions.

Now, do you have documents?

That means within the custody or control, because you stated that you had none.

I think the record should not remain ambiguous.

Mr. Tomba. I have no records in my custody or under my control.

Mr. Moss. In other words, you are not in a position to produce the material requested, not because of an order of the Attorney General or any personal reluctance, but it is just that you don't have them. Is that a fact?

Mr. Tomba. That is true.

Mr. Moss. I think that makes it quite clear, Madam Chairwoman, that the witness now states, without equivocation,

1 that he has no means because he has no documents.

2 Mrs. Abzug. What did you mean when you answered twice.
3 Once you answered and said you had no documents and now you
4 answered Mr. Moss and said that you asserted the Attorney
5 General's letter.

6 You must have gathered by now this is not regarded by
7 this committee as reason to refuse to comply with the Subpoena
8 Duces Tecum?

9 You cannot have it both ways.

10 Mr. Tomba. All I can do is to state again my position
11 that I have no documents under my custody or control. I
12 don't know how else to tell you.

13 Mrs. Abzug. Do you have the physical means of produc-
14 ing them assuming you had the authority?

15 Mr. Tomba. I do not have the authority to produce any
16 documents.

17 Mrs. Abzug. I recognize Mr. Harrington.

18 Mr. Harrington. I don't want to belabor this, but let
19 me just understand.

20 You indicated to Mr. Moss that you had no capacity to
21 produce documents but even if you had, the letter from your
22 superior or from Deputy Secretary of Defense, Mr. Clements,
23 directed you not to comply with the request of the committee
24 to produce documents.

25 If your first statement was true as to your capacity,

1 why would that letter have been needed?

2 Do you understand my question?

3 Mr. Tomba. Yes.

4 Having not discussed this matter with the Deputy
5 Secretary of Defense directly, I presume that he may have
6 assumed that I might have had some documents because I had
7 been subpoenaed and might have wanted to make sure of that.
8 In fact, to protect such documents, he sent to me a letter
9 instructing me not to produce them, not knowing whether I
10 had any or not.

11 That is the way I view it.

12 Mrs. Abzug. Do you have an additional opening state-
13 ment?

14 Mr. Tomba. No.

15 Mrs. Abzug. Would you answer the question of the
16 Chair?

17 For what agencies of the United States have you worked
18 and during what periods of time?

19 Mr. Tomba. I have been directed by the Deputy Secretary
20 of Defense by letter not to testify. I respectfully decline.

21 Mrs. Abzug. Your objection is not well-founded.

22 You are directed to answer the question.

23 For what agencies of the United States have you worked
24 and during what periods of times?

25 Mr. Tomba. I must respectfully decline to answer that

1 question.

2 Mrs. Abzug. Your continuing refusal places you in
3 contempt of Congress and in violation of Section 192 of
4 Title 2 of the United States Code and will render you liable
5 to fine and imprisonment.

6 I direct you to answer the question.

7 Mr. Tomba. I must respectfully decline to answer.

8 Mrs. Abzug. I inform you that you are in contempt and
9 that there is a quorum present here consisting of the Chair,
10 Mr. Moss, Mr. Harrington, Mr. Maguire, Mr. Moffett, and Mr.
11 McCloskey, and I direct you to stand down for the present
12 but to remain available at the call of the Chair.

13 Mr. Moffett. Before the witness steps down, may we
14 also ask that the question of Mr. Moss - that is, is he
15 invoking any Constitutional issue here. May we have the
16 answer to that? That is, a yes or no answer.

17 I would urge the witness to give us a yes or no answer
18 and also urge that it's something I think you can answer
19 without counsel's help: Are you or are you not invoking
20 any Constitutional basis here?

21 Mr. Tomba. Would you like me to read the letter that
22 was sent to me by Mr. Clements?

23 Mr. Moffett. I would like you to answer the question
24 yes or no. It's a very simple question it seems to me.

25 We know about the letter. We know about the letter from

1 Mr. Clement. But I think we have a right to know if you are
2 invoking any Constitutional basis.

3 Mr. Tomba. I would like you to hear the letter that was
4 sent to me. I'd like to read it into the record.

5 I am here. I am answering the way I am because of the
6 directions I have been given by the Deputy Secretary of
7 Defense.

8 Mr. Moffett. I understand that. I think it is sorrow-
9 ful that this Administration, like the past one, uses people
10 like you as fodder.

11 We can read the letter. I'm not interested in it now.

12 Could you give us a yes or no answer about the Constitu-
13 tional basis for your refusal?

14 Is there one or is there not?

15 Are you relying upon a Constitutional right - that is,
16 your personal right? I am asking the question of the witness
17 (Witness and counsel confer.)

18 Mr. Tomba. I am relying on instructions in the letter
19 and I would like to read it into the record.

20 Mr. Moss. Would the gentleman yield.

21 Mr. Moffett. Yes.

22 Mr. Moss. Are you relying solely upon the letter?

23 Mr. Tomba. I am relying on the letter.

24 Mr. Moss. Are you relying solely on the letter?

25 Mr. Tomba. I am relying solely on the directions in

1 this letter, yes.

2 Mr. Moss. I think he has answered the question.

3 Mr. Moffett. I think he has too.

4 Mrs. Abzug. I think prior to the last question the
5 witness was informed that he is contempt and I repeat it.
6 He's in contempt, and I ask him to stand down for the present
7 and to remain available at the order of the Chair.

8 This hearing is adjourned and the meeting of the Sub-
9 committee is called.

10 I recognize Mr. Harrington.

11 Mr. Harrington. I move that we are convening the Sub-
12 committee, and I recommend that the full committee of
13 Government Operations, because of their failure to give
14 testimony and to produce documents, the following individuals
15 be cited in contempt of Congress: Joe R. Craig, Walter C.
16 Zink, David G. Jenkins, John P. Loomis, and Joseph J. Tomba.

17 Mrs. Abzug. Is there any discussion?

18 Mr. Moss. Madam Chairwoman, I believe that that
19 requires that we act separately on each witness.

20 I think we would have to have a roll-call vote.

21 Mrs. Abzug. Mr. Harrington, Would you move that each
22 recommendation be separate?

23 Mr. Harrington. I so move that we take each of the
24 individuals severally and that in each instance we do so by
25 a record vote of the Subcommittee.

1 Mrs. Abzug. The Motion is that the Subcommittee
2 recommend to the full committee on Government Operations
3 that the failure to give testimony and/or failure to produce
4 documents - that Joe R. Craig be cited for contempt of
5 Congress.

6 Will the clerk call the roll?

7 The Clerk. Congresswoman Abzug?

8 Mrs. Abzug. Aye.

9 The Clerk. Congressman Ryan?

10 (No response.)

11 The Clerk. Congressman Conyers?

12 Mrs. Abzug. Aye by proxy.

13 The Clerk. Congressman Moss?

14 Mr. Moss. Aye.

15 The Clerk. Congressman Harrington?

16 Mr. Harrington. Aye.

17 The Clerk. Congressman Maguire.

18 Mr. Maguire. Aye.

19 The Clerk. Congressman Moffett.

20 Mr. Moffett. Aye.

21 The Clerk. Congressman Steiger.

22 (No response.)

23 The Clerk. Congressman Brown.

24 (No response.)

25 The Clerk. Congressman McCloskey.

1 Mr. McCloskey. No.

2 Mrs. Abzug. The Motion is adopted.

3 By a vote of 6 to 1 with 6 members present, it is
4 recommended to the full committee on Government Operations
5 that for his failure to give testimony and/or to produce
6 documents, Joe R. Craig be cited for contempt of Congress.

7 Mr. Harrington now moves that the Subcommittee recommend
8 to the full committee on Government Operations that for his
9 failure to give testimony and/or to produce documents, that
10 Walter C. Zink be cited for contempt of Congress. Do you so
11 move?

12 Mr. Harrington. I so move.

13 Mrs. Abzug. Will the Clerk please call the roll?

14 The Clerk. Congresswoman Abzug?

15 Mrs. Abzug. Aye

16 The Clerk. Congressman Ryan?

17 (No response.)

18 The Clerk. Congressman Conyers?

19 Mrs. Abzug. Aye by proxy.

20 The Clerk. Congressman McDonald?

21 (No response.)

22 The Clerk. Congressman Moss?

23 Mr. Moss. Aye.

24 The Clerk. Congressman Harrington?

25 Mr. Harrington. Aye.

1 The Clerk. Congressman Maguire?

2 Mr. Maguire. Aye.

3 The Clerk. Congressman Moffett?

4 Mr. Moffett. Aye.

5 The Clerk. Congressman Steiger?

6 (No response.)

7 The Clerk. Congressman Brown?

8 (No response.)

9 The Clerk. Congressman McCloskey?

10 Mr. McCloskey. No.

11 The Clerk. There are 6 ayes.

12 Mrs. Abzug. By a vote of 6 ayes and 1 no, with 6
13 members of Congress present, the Subcommittee has recommended
14 to the full committee on Government Operations that for his
15 failure to give testimony and/or to produce documents, that
16 Walter Zink be cited for contempt of Congress.

17 Mr. Harrington. Madam Chairwoman, I move with respect
18 to David Jenkins, because of his failure to give testimony,
19 that he be cited for contempt of Congress.

20 Mrs. Abzug. Will the Clerk please call the roll?

21 The Clerk. Congresswoman Abzug?

22 Mrs. Abzug. Aye.

23 The Clerk. Congressman Ryan?

24 (No response.)

25 The Clerk. Congressman Conyers?

Mrs. Abzug. Aye by proxy.

1 The Clerk. Congressman McDonald?

2 (No response.)

3 The Clerk. Congressman Moss?

4 Mr. Moss. Aye.

5 The Clerk. Congressman Harrington?

6 Mr. Harrington. Aye.

7 The Clerk. Congressman Maguire?

8 Mr. Maguire. Aye.

9 The Clerk. Congressman Moffett?

10 Mr. Moffett. Aye.

11 The Clerk. Congressman Steiger?

12 (No response.)

13 The Clerk. Congressman Brown?

14 (No response.)

15 The Clerk. Congressman McCloskey?

16 Mr. McCloskey. No.

17 The Clerk. 6 ayes and 1 no.

18 Mrs. Abzug. Let the record show that with six members
19 present, by a vote of 6 to 1, David Jenkins is recommended by
20 the Subcommittee to the full committee on Government Opera-
21 tions to be cited for contempt of Congress for his failure to
22 give testimony and/or to produce documents.

23 Mr. Harrington. Madam Chairwoman, with respect to
24 John Loomis, I move that with his failure to answer our
25 questions, that he be cited for contempt of Congress.

42
1 Mrs. Abzug. Will the Clerk please call the roll? 61

2 The Clerk. Congresswoman Abzug?

3 Mrs. Abzug. Aye.

4 The Clerk. Congressman Ryan?

5 (No response.)

6 The Clerk. Congressman Conyers?

7 Mrs. Abzug. Aye by proxy.

8 The Clerk. Congressman McDonald?

9 (No response.)

10 The Clerk. Congressman Moss?

11 Mr. Moss. Aye.

12 The Clerk. Congressman Harrington?

13 Mr. Harrington. Aye.

14 The Clerk. Congressman Maguire?

15 Mr. Maguire. Aye.

16 The Clerk. Congressman Moffett?

17 Mr. Moffett. Aye.

18 The Clerk. Congressman Steiger?

19 (No response.)

20 The Clerk. Congressman Brown?

21 (No response.)

22 The Clerk. Congressman McCloskey?

23 Mr. McCloskey. No.

24 The Clerk. 6 ayes and 1 no.

25 Mrs. Abzug. With six members present, and by a vote of

6 to 1, the Subcommittee recommends to the full committee on Government Operations that for his failure to give testimony and/or produce documents, John Loomis be cited for contempt of Congress.

Mr. Harrington. Madam Chairwoman, I move because of the ambiguity involved in the question of whether or not he is able to produce documents, that Joseph Tomba be cited for contempt of Congress because of his failure to give testimony to this Subcommittee this morning.

Mrs. Abzug. Will the Clerk please call the roll?

The Clerk. Congresswoman Abzug?

Mrs. Abzug. Aye.

The Clerk. Congressman Ryan?

(No response.)

The Clerk. Congressman Conyers?

Mrs. Abzug. Aye by proxy.

The Clerk. Congressman McDonald?

(No response.)

The Clerk. Congressman Moss?

Mr. Moss. Aye.

The Clerk. Congressman Harrington?

Mr. Harrington. Aye.

The Clerk. Congressman Maguire?

Mr. Maguire. Aye.

The Clerk. Congressman Moffett?

1 Mr. Moffett. Aye.

2 The Clerk. Congressman Steiger?

3 (No response.)

4 The Clerk. Congressman Brown?

5 (No response.)

6 The Clerk. Congressman McCloskey?

7 Mr. McCloskey. No.

8 The Clerk. 6 ayes and 1 no.

9 Mrs. Abzug. The vote was 6 to 1, with six members
10 present.

11 Mr. Harrington. Let me understand this last thing.
12 The vote we have taken with respect to the failure to give
13 testimony only.

14 There was the question of whether or not Mr. Tomba could
15 or would supply documents - we are not citing him conjunctive-
16 ly this morning for that reason.

17 Mrs. Abzug. This is correct. This was a vote to
18 recommend that the Subcommittee recommend to the full
19 committee on Government Operations that for his failure to
20 give testimony, Joseph Tomba would be cited for contempt of
21 Congress, and this was done by a vote of 6 to 1, with 6
22 members of the Subcommittee being present.

23 Mr. Moss. May I make an observation?

24 Mrs. Abzug. Yes.

25 Mr. Moss. While we have just voted to cite to the

1 full committee with the recommendation that the matter be
2 carried to the House and these five persons be found in
3 contempt of Congress, that the real contempt here has been
4 committed by the Attorney General of the United States and
5 by the President of the United States.

6 They have acted arrogantly and contemptuously of the
7 peoples' elected representatives in a most outrageous and
8 unprecedented fashion.

9 Mrs. Abzug. I must concur with Mr. Moss that the
10 procedure here used by the Executive Branch of Government
11 is highly questionable.

12 We will be continuing these hearings next week.

13 As I stated in my opening statement, I have never, and
14 I know of no instance, in which, Executive privilege or a
15 Constitutional privilege has been asserted by private corpora-
16 tions.

17 This is also on our agenda for our hearing next week
18 that the continuation of these hearings we have subpoenaed
19 here Western Union International, who has asserted that they
20 have received an Attorney General's letter in which the
21 Attorney General advises them that they should not appear by
22 reason of the fact that the President has claimed Executive
23 privilege.

24 I know of no instance, though we may quarrel on the
25 subject of Executive privilege, and I believe that that went

1 out with the American Revolution, but that was a privilege
2 of monarchs and not presidents.

3 There is no Constitutional privilege of the President
4 which has ever been claimed by a corporation.

5 I think this is a very serious question.

6 Those of us who have lived through the Watergate era
7 with the Nixon impeachment, find this a most horrible
8 extension and expansion - and in his wildest moments Richard
9 Nixon never claimed that a Constitutional privilege of the
10 President could be claimed by a corporation.

11 In addition to which, I wish to state and agree with
12 what has been so ably stated by Mr. Moss at these hearings,
13 that what the Government has done today has really been
14 tantamount to interference with witnesses.

15 I must say that there is no valid claim that I can see
16 which has been claimed for such an interference.

17 These hearings are now adjourned until next week when
18 we shall continue to attempt to carry out the functions of
19 this Subcommittee and the functions of this Congress which
20 are our responsibilities under the law.

21 I hope that the Government will not continue to inter-
22 fere at these very important functions of the separate and
23 independent branch of Government.

24 The meeting is adjourned.

25 (Whereupon at 11:25 a.m., the Subcommittee adjourned.)