

The original documents are located in Box 1, folder “American Telephone and Telegraph Subpoena, 6/76 (2)” of the Loen and Leppert Files at the Gerald R. Ford Presidential Library.

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THE WHITE HOUSE

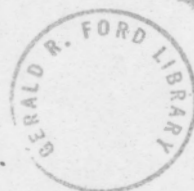
WASHINGTON

July 22, 1976

Dear Mr. Chairman:

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At the same time I am transmitting a letter to The Honorable John E. Moss, Chairman of your Committee's Subcommittee on Oversight and Investigations to which the subpoenaed documents were to be furnished. A copy of such letter is enclosed. I trust that such letter will result in a withdrawal of the subpoena in question, because the proposal made by me will enable the Subcommittee to obtain the information desired for its purposes without the adverse consequences which compliance with the subpoena would have.

Sincerely,

Gerald R. Ford

The Honorable Harley C. Staggers ✓
Chairman, Committee on Interstate
and Foreign Commerce
U.S. House of Representatives
Washington, D. C. 20515

cc: The Honorable Samuel L. Devine
The Honorable John E. Moss
The Honorable James M. Collins



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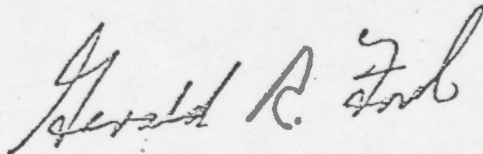
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House Interstate and Foreign
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Washington, D. C. 20515

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THE WHITE HOUSE

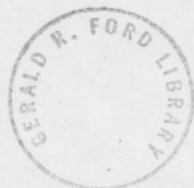
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House Interstate and Foreign
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U. S. House of Representatives
Washington, D. C. 20515

cc: The Honorable Harley O. Staggers
The Honorable Samuel L. Devine
The Honorable James M. Collins



THE WHITE HOUSE

WASHINGTON

File

July 23, 1976

MEMORANDUM FOR:

JACK MARSH
MAX FRIEDERSDORF

FROM:

PHILIP W. BUCHEN

SUBJECT:

Litigation to Restrain American
Telephone and Telegraph Company
from Complying with Subpoena
from the Moss Subcommittee

BACKGROUND FACTS

On June 22, 1976, a subpoena was issued from the House Committee on Interstate and Foreign Commerce requesting delivery of certain documents by AT&T to the Subcommittee on Oversight and Investigations. Included in the subpoenaed documents were full and complete copies of FBI national security request letters to AT&T and its twenty-four operating companies for access to telephone lines handling communications. The letters requested would, if disclosed, reveal the location and therefore the identity of the objects of FBI foreign intelligence and counterintelligence surveillances.

Intensive discussions were carried on by the Department of Justice with Chairman Moss and the staff of the Oversight and Investigations Subcommittee to propose the manner in which the Subcommittee could obtain the information it needed without risk of disclosing the sensitive information contained in the national security request letters to AT&T.

From these discussions it appeared that no proposal acceptable to the Subcommittee would safeguard the information from disclosure, particularly because not only would the staff members of the Subcommittee obtain this information, but also because of House Rule XI, it would be available to every one of the 435 Members of the House.



The President then sent forth his position in letters to Chairman Staggers and Chairman Moss, copies of which are attached.

CURRENT LITIGATION

When Chairman Moss in response to the President's letter declined to accept any procedures which would not give the Subcommittee some access to the identities of the persons subject to foreign intelligence surveillances, the President authorized the Department of Justice to begin suit and seek a restraining order against AT&T from furnishing the documents pursuant to the subpoena. A copy of the Moss letter to the President is attached. The petition for a temporary restraining order was heard by U. S. District Court Judge Oliver Gasch on July 22 starting at 5:00 p.m. After the hearing, at which time an attorney for Congressman Moss opposed the issuance of the Order, the Judge did issue a temporary restraining Order, a copy of which is attached.

Attachments





THE WHITE HOUSE

WASHINGTON

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Moss



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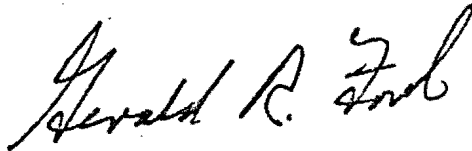
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I have made are necessary and desirable in the public interest and that they are in the best interests of both the Executive and the Congress. Therefore, I look forward to your favorable response.

Sincerely,

A handwritten signature in cursive script, reading "Gerald R. Ford". The signature is written in dark ink and is positioned below the word "Sincerely,".

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House Interstate and Foreign
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U. S. House of Representatives
Washington, D. C. 20515

cc: The Honorable Harley O. Staggers
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Moss
(incoming)



JOHN E. MOSS, CALIF., CHAIRMAN

RICHARD L. OTTINGER, N.Y.
ROBERT (BOB) KRUEGER, TEX.
ANTHONY TOSY MOFFETT, CONN.
JIM SANTINI, NEV.
W. S. (BILL) STUCKEY, GA.
JAMES W. SCHEUER, N.Y.
HENRY A. WAXMAN, CALIF.
PHILIP R. SHAPP, IND.
ANDREW MAGUIRE, N.J.
HARLEY O. STAGGERS, W. VA.
(EX OFFICIO)JAMES M. COLLINS, TEX.
NORMAN F. LENT, N.Y.
MATTHEW J. RINALDO, N.J.
W. HENSON MOORE, LA.
SAMUEL L. DEVINE, OHIO
(EX OFFICIO)

CONGRESS OF THE UNITED STATES

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
WASHINGTON, D.C. 20515MICHAEL R. LEMOV
CHIEF COUNSEL
J. THOMAS GREENE
COUNSEL TO THE CHAIRMAN

July 22, 1976

The President
The White House
Washington, D. C.

Dear Mr. President:

I have carefully considered your proposal for Subcommittee review of certain Department of Justice memoranda authorizing telephone surveillances, in lieu of the Subcommittee's enforcement of its currently outstanding subpoena to the American Telephone and Telegraph Company. I, too, am sensitive to national security concerns and have therefore negotiated over the past month with your designated representative from the Department of Justice, in hopes for reaching an agreement which would meet the concerns of both the Legislative and the Executive Branch.

Regretfully, I cannot accept the proposal which you have transmitted today. It is, in several respects, a significant retrenchment from the terms of the agreement upon which the Department of Justice and I had concurred two days ago. The most critical area, as you are no doubt aware, is that of verification of the expurgated memoranda in order to assure that the surveillances for which no court order has been sought do in fact fall within the foreign intelligence sphere and are not wiretaps of American citizens concerning domestic matters. It seems to me totally inappropriate, as Congress seeks to carry out its Constitutional oversight responsibilities, that it should have to appeal to the Attorney General, in a time-consuming procedure, to obtain access to needed information.



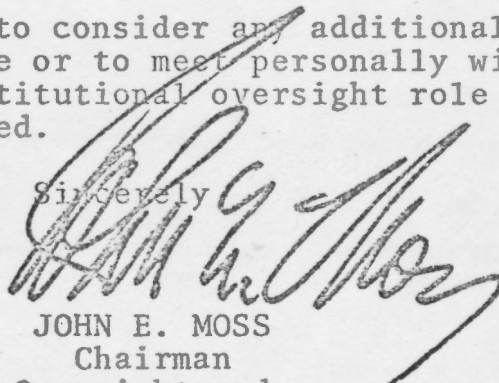
The President
Page Two

Further, you comment at some length on American Telephone and Telegraph Company's role as an "agent" of the Executive Branch. AT&T's legal relationship to the Department of Justice is, to my mind, a totally neutral fact. Whatever it is, it cannot override the commands of Federal statutes or Article I of the United States Constitution.

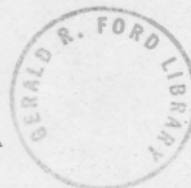
I still believe that an agreement, retaining the fundamental principles of that which I negotiated with the Department of Justice, could work to the benefit of the Legislative and the Executive Branches and of the American people. However, if our starting point is to be significantly different, as your proposal today is, I believe it would serve no useful purpose for us to meet and would only be wasteful of our time.

I stand ready to consider any additional suggestions you may have or to meet personally with you, providing the Constitutional oversight role of the Congress is preserved.

Sincerely,



JOHN E. MOSS
Chairman
Oversight and
Investigations Subcommittee



Restraining Order



Jul 2 1975

JAMES F. DAVEY, CLERK

and Investigations of the Committee on Interstate and Foreign Commerce, United States House of Representatives, or any other person, group, or entity, any documents or materials which are or may be determined to come within the scope of the Subpoena issued to the defendants on June 22, 1976. The reason for the issuance of this Order is the protection of these materials pending a determination of the Motion for Preliminary Injunction. The Court finds that the disclosure of the material which defendants threaten to supply would be seriously detrimental to the national security and foreign relations of the United States. Such disclosure would reveal intelligence sources and methods, thereby foreclosing important avenues of vital foreign intelligence and would cause serious diplomatic embarrassment to the United States with a consequent impairment of its foreign relations interests. Such injuries are not compensable by any legal proceedings after such disclosure would take place.

IT IS FURTHER ORDERED

That plaintiff's Motion for Preliminary Injunction shall be brought for hearing before this Court at 28th day of July, 1976, at 10 am or at such other time or place as may be set by the Court.

Walter G. Gandy

UNITED STATES DISTRICT JUDGE

Issued at 6 p.m., July 22nd, 1976.

United States District Court
for the District of Columbia
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CONGRESS OF THE UNITED STATES

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

WASHINGTON, D.C. 20515

MICHAEL R. LEMOV
CHIEF COUNSEL

J. THOMAS GREENE
COUNSEL TO THE CHAIRMAN

July 23, 1976

STATEMENT OF REPRESENTATIVE JOHN E. MOSS
CHAIRMAN, SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
REGARDING
WHITE HOUSE EFFORTS TO BLOCK WIRETAPPING INVESTIGATION

Representative John E. Moss, Chairman of the Subcommittee On Oversight and Investigations, House Committee on Interstate and Foreign Commerce, said today that President Ford's effort to claim Executive Privilege to block a Congressional Investigation of unlawful wiretapping and his attempt to extend Executive Privilege to information in the hands of a private party represented a pernicious grab for power and an effort at unprecedented expansion of Executive power. Moss said, "The President is charged with seeing that the laws are faithfully executed. Rather than carrying out his responsibility, he is interfering with the legislative powers of the Congress, enumerated in Article I of the Constitution.

Moss said that the Administration obtained from the United States District Court for the District of Columbia a temporary restraining order directing AT&T not to comply with the Subcommittee's subpoena. The order is applicable until a Court hearing on July 28 regarding the Justice Department's application for a permanent injunction. Moss said, "The Subcommittee opposed the unwarranted judicial interference with a lawful Congressional investigation and would resist any attempt to have a temporary order made permanent on July 28."



The Court's gratuitous raising, in connection with the matter heard yesterday, of the matter now under investigation by the House Ethics Committee of the leak which was published in the Village Voice is inexcusable on the part of any court which approaches its solemn duties with any sense of appropriateness. At this moment, the Court does not know whether the material was leaked by a member of the staff of a Congressional Committee, a Member of the Congress, or deliberately and willfully by spokesmen for the Executive Branch in an effort to defame the Congress.

For the Court to raise the issue, lacking that knowledge, is inexcusably shocking, particularly in view of the fact that this committee, the Subcommittee on Oversight and Investigations, has in its custody over a half of million documents obtained by subpoena. No one has successfully secured or made available surreptitiously or otherwise to unauthorized persons, either the documents or the contents therein. The Court's statement raises the gravest questions of judicial arrogance and excess in hearing this matter and disposing of it, without regard to the needs of the Congress that should have been shown.



The order of the Court includes the paragraph herein read.

"The Court finds that the disclosure of the material which defendants threaten to supply would be seriously detrimental to the national security and foreign relations of the United States. Such disclosure would reveal intelligence sources and methods, thereby foreclosing important avenues of vital foreign intelligence and would cause serious diplomatic embarrassment to the United States with a consequent impairment of its foreign relations interests. Such injuries are not compensable by any legal proceedings after such disclosure would take place."

The Court obviously could have made no such finding. The statement can at best be described as a cavalier statement illustrating the complete inability on the part of the courts in assessing the needs of the Congress, the only representative body in our government, the only body in our Government today with a single elected representative chosen by the American people.

That the Court should so quickly adopt the language of the Executive almost amounts to judicial bias in favor of the Executive. It raises the gravest questions of the ability of the courts to act as referees in matters involving the privileges of the people and their elected representatives as contrasted to the excessive claims, the ever-expanding claims of "executive privilege", particularly as that doctrine has expanded under Presidents Nixon and Ford.



The Subcommittee's statutory authority is based on its oversight responsibility over the Federal Communications Commission and the administration of the Federal Communications Act. The Act prohibits interception of telephone communications without lawful authority. The Supreme Court held in 1972 that the Fourth Amendment requires a warrant in all domestic surveillances. The District of Columbia Court of Appeals extended that decision in 1975 by requiring a warrant for surveillance of any domestic organization unless it is an agent of or collaborating with a foreign government.

"The spectre of Executive Branch wiretaps, unsanctioned by any court and unscrutinized by the Congress, casts a frightening shadow indeed. Congressional oversight in this area is essential," said Chairman Moss. "Claims of national security have been unjustly used to cloak all manner of government inefficiency and, more recently, criminal conduct at the highest levels. Claims of 'national security' cannot serve to preclude responsible Congressional review."

A summary of facts is as follows:

-- On June 22, 1976, the Subcommittee authorized issuance of a subpoena, which was served on AT&T the same day. It required production of FBI national security request letters which requested access to phone lines handling either verbal or non-verbal communications, and other material.

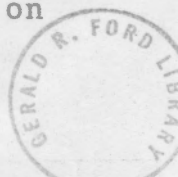


-- On June 28, while AT&T was in the process of compiling the subpoenaed documents, White House counsel Philip Buchen and John Marsh met with Mr. Moss at their request to discuss the subpoena. Also present were Assistant Attorney General Rex Lee, Civil Division, and Subcommittee staff. White House counsel suggested a compromise which would give the Subcommittee the necessary information it sought in lieu of subpoena enforcement to protect claimed sensitive national security data.

-- White House counsel suggested that prior to enforcing the subpoena, the Subcommittee review the FBI memoranda to the Attorney General requesting authorization for the wiretaps, containing the justification for same, and upon which the Attorney General based his approval with sensitive material deleted. Chairman Moss expressed concern for the valid national security claims and requested suggestions from White House counsel for an agreement whereby identification of names, addresses, telephone numbers, or other sensitive data might be deleted from the FBI memoranda to limit the possibility of public disclosure. The Subcommittee position was and is that a sampling procedure is necessary to validate such memoranda based on unexpurgated documents.

-- A second subpoena was served on AT&T on June 30, calling for warrantless wiretap requests from Federal agencies other than the FBI, plus state and local authorities.

-- Justice Department officials, including the FBI, and Subcommittee staff, held lengthy negotiations over a period of three weeks. An agreement in substance was apparently reached on July 19. Both parties anticipated formal acceptance of this agreement on July 20.



-- On July 20, CIA Director George Bush requested a meeting. Chairman Moss met with Assistant Attorney General Rex Lee and Mr. Bush on July 21. He informed Chairman Moss that the proposed agreement between the Justice Department and the Subcommittee had been rejected by the President at a National Security Council meeting on Wednesday.

-- On July 21, Mr. Buchen invited Chairman Moss to meet with the President in an attempt to develop mutually acceptable procedures. The meeting was scheduled for July 22.

-- On July 22, the President wrote to Chairman Moss proposing an alternative procedure. The Subcommittee would see no unedited memoranda. If it questioned any of the deletions, as making adequate review of a memorandum impossible, the Subcommittee could appeal to the Attorney General and, if still dissatisfied, to the President. Chairman Moss wrote back the same day advising the President that that proposal was unacceptable because it would override the "Constitutional oversight role of the Congress."

The Subcommittee had designated three individuals to review the unexpurgated documents at the FBI: one is a lawyer with the highest security clearance and the other two are former FBI and CIA employees who possess over twenty years' experience in the



intelligence field. "Under our system of checks and balances, the Congress has the Constitutional mandate to oversee the activities of the Executive. To imply that Congress cannot be entrusted with security data is absurd and denies this fundamental role," said Chairman Moss. He further noted, in this regard, that at least 14 FBI and Justice Department employees have routine access to these documents.

"The Subcommittee's investigation enjoys bipartisan support. The Subcommittee, on behalf of the House of Representatives and the public, will proceed with its investigation," Moss said.

#



MEMORANDUM OF UNDERSTANDING

The purpose of this memorandum is to set forth the procedures and understandings reached between the Subcommittee on Oversight and Investigations of the House Committee on Interstate and Foreign Commerce and the Executive Branch acting through the Department of Justice for the furnishing of information and documents to the Subcommittee in connection with its current investigation of electronic surveillance without warrant or court order in or affecting interstate commerce. These understandings relate to the outstanding subpoena of the Subcommittee dated June 22, 1976, issued to AT&T for documents concerning electronic surveillances requested by the FBI and the representations of the Department of Justice that these surveillances may involve foreign as well as domestic security.

(1) AT&T has been requested to prepare and provide to the Subcommittee an inventory of the documents which emanated from the FBI requests for interception of the communications, listing only the dates. The Department of Justice will be furnished a copy of the inventory by the Subcommittee. The FBI will divide the inventoried items into two groups--domestic surveillances and foreign intelligence surveillances--using the following definition for the purpose of this agreement only:

U.S. FORD

Foreign intelligence surveillances are surveillances of the communications of foreign governments, established or generally recognized political parties or significant factions, military forces presumed to pose a threat to the security of the United States, agencies or enterprises controlled by such entities or organizations composed of such entities whether or not recognized by the United States, or foreign-based terrorist groups or persons knowingly collaborating with any of the foregoing; domestic surveillances include all other surveillances.

(2) The Subcommittee, at the request of the Department of Justice, has selected two years, 1972 and 1975, to be examined for initial research and the gathering of information. The Subcommittee reserves the right to examine documents from the remaining years covered by the subpoena in the same manner as will be accomplished for the years 1972 and 1975.


(3) As to any surveillances which are designated by the FBI as domestic as distinguished from foreign, the Subcommittee will be furnished with the memoranda upon which the Attorney General based authorization for the surveillance, including any renewal thereof, which were prepared by the FBI or other federal agencies explaining the basis upon which the surveillances were sought. The Subcommittee may require, in selected instances, the initiation and termination dates of designated surveillances. These memoranda will be furnished to the Subcommittee without any changes, deletions or additions other than certain mutually agreed upon minor deletions.¹ The

¹It is understood by the parties that "minor deletions" refers only to those deletions made necessary because of an ongoing investigation of particular sensitivity.



Subcommittee agrees to maintain security arrangements over the material so furnished and handle it in accordance with Rule XI of the House of Representatives. The documents will be returned to the FBI upon completion of the Subcommittee's investigation and issuance of a report by the Subcommittee. This procedure, however, will in no way restrict the privileges of the House of Representatives or the Members thereof under Rule XI.


(4) The Subcommittee will select sample items from those identified by the FBI as relating to foreign intelligence surveillances. Representatives of the Subcommittee will be given access at the FBI to copies of the memoranda upon which the Attorney General based authorization for the surveillance, including any renewal thereof, which were prepared by the FBI or other federal agencies and which explain the basis upon which the foreign surveillance was sought. This material will be edited only by deleting names, addresses, and telephone numbers of individuals who were targets and sources of information or deleting information which would disclose such targets or sources. Where such editing occurs, generic identification with a reasonable degree of specificity will be provided, including indication of whether the individual was a United States citizen. The Subcommittee may require, in selected instances, the initiation and termination dates of designated surveillances.



(5) From this sample group of memoranda relating to foreign intelligence surveillances, the Subcommittee will select a reasonable number as a sub-sample for verification purposes.

(6) The Subcommittee designates Stephen Sims, J. Thomas Greene, and Benjamin Smethurst to conduct the verification procedure referred to in paragraph (5). They will examine a reasonable number of unexpurgated memoranda to determine the authenticity of the sample and appropriate classification as foreign or domestic. They will report their findings to the Subcommittee Chairman. Subcommittee staff so designated agree not to disclose the names of targets or sources of foreign intelligence surveillance falling within the definition specified in paragraph (1) of this memorandum to any person other than the Subcommittee Chairman.

(7) Subcommittee staff participating in the verification procedure specified in paragraph (6) and in the sample procedure specified in paragraphs (4) and (5) may take and retain notes during such procedures. The FBI may confer with Subcommittee staff on those notes and may give appropriate advice to the Subcommittee Chairman concerning the sensitivity of information contained in those notes.



(8) The Subcommittee will give the Department of Justice advance notice as to the name of the person or persons who are to be given access to the documents at the FBI described in paragraphs (4) and (5), and appropriate access authorization will be issued by the Department of Justice, based on the designation of the Subcommittee Chairman. It is the contemplation of the parties that any background checks on the person or persons named will not delay the Subcommittee's investigation and will not in any case lengthen the time periods specified. The complete background investigation will be made available to the Subcommittee Chairman.

(9) The search, gathering, and preparation for access to the necessary materials will commence immediately, based upon FBI records and supplemented by the AT&T inventory. The Subcommittee will be furnished the memoranda pertaining to the domestic surveillances, and given access to the foreign memoranda on a month-by-month basis as they are collected, but commencing no later than July 22, 1976, and concluding on or before August 3, 1976.

(10) During the process of furnishing information to the Subcommittee, the return date on the outstanding subpoena will be extended to August 4, 1976, with respect to the FBI request letters and the subpoena remains in full force and effect.



(11) Notwithstanding any of the foregoing, the Department of Justice agrees to immediately furnish to the Subcommittee, regardless of any designation as foreign or domestic surveillance, all memoranda, without deletion, pertaining to any individual with respect to whom a surveillance was authorized--

- (a) within the time period covered by the subpoena,
- (b) for which no warrant or other court order was issued, and
- (c) who was, at the time the surveillance was authorized, either a candidate or nominee for elective office, or an elected official, of the United States or a political subdivision thereof,

except that if the memoranda submitted to the Attorney General upon which the authorization was based contain no indication that the individual was seeking or held elected office and such information is not known by persons at the FBI having custody of the documents or ascertainable by reasonable inquiry, such surveillance is not subject to this paragraph.

(12) The Subcommittee Chairman and the Ranking Minority Member of the Subcommittee shall have access to all information made available to the Subcommittee at the FBI premises. Information in the possession of the Subcommittee will be subject to Rule XI of the Rules of the House of Representatives.

(13) All information acquired by the Subcommittee pursuant to this memorandum will be received in Executive Session and subject to Rule XI of the Rules of the House of Representatives. All interpretations of this agreement shall be consistent with such Rule and with the statutes and Constitution of the United States.

This Agreement is without prejudice to the rights of the Subcommittee to enforce the subpoena through appropriate means or of the Executive Branch to protect its interests in connection with the outstanding subpoena.

DEPARTMENT OF JUSTICE

CHAIRMAN,
SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS

DATE: July 20, 1976

JOHN E. MOSS, CALIF., CHAIRMAN

RICHARD L. OTTINGER, N.Y.
ROBERT (BOB) KRUEGER, TEX.
ANTHONY TOSY MOFFETT, CONN.
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CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
WASHINGTON, D.C. - 20515

Room 2323
RAYBURN HOUSE OFFICE BUILDING
PHONE (202) 223-4441

MICHAEL R. LENOW
CHIEF COUNSEL
J. THOMAS GREENE
COUNSEL TO THE CHAIRMAN

July 22, 1976

The President
The White House
Washington, D. C.

Dear Mr. President:

I have carefully considered your proposal for Subcommittee review of certain Department of Justice memoranda authorizing telephone surveillances, in lieu of the Subcommittee's enforcement of its currently outstanding subpoena to the American Telephone and Telegraph Company. I, too, am sensitive to national security concerns and have therefore negotiated over the past month with your designated representative from the Department of Justice, in hopes for reaching an agreement which would meet the concerns of both the Legislative and the Executive Branch.

Regretfully, I cannot accept the proposal which you have transmitted today. It is, in several respects, a significant retrenchment from the terms of the agreement upon which the Department of Justice and I had concurred two days ago. The most critical area, as you are no doubt aware, is that of verification of the expurgated memoranda in order to assure that the surveillances for which no court order has been sought do in fact fall within the foreign intelligence sphere and are not wiretaps of American citizens concerning domestic matters. It seems to me totally inappropriate, as Congress seeks to carry out its Constitutional oversight responsibilities, that it should have to appeal to the Attorney General, in a time-consuming procedure, to obtain access to needed information.



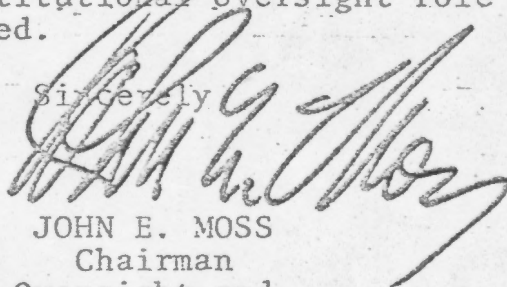
The President
Page Two

Further, you comment at some length on American Telephone and Telegraph Company's role as an "agent" of the Executive Branch. AT&T's legal relationship to the Department of Justice is, to my mind, a totally neutral fact. Whatever it is, it cannot override the commands of Federal statutes or Article I of the United States Constitution.

I still believe that an agreement, retaining the fundamental principles of that which I negotiated with the Department of Justice, could work to the benefit of the Legislative and the Executive Branches and of the American people. However, if our starting point is to be significantly different, as your proposal today is, I believe it would serve no useful purpose for us to meet and would only be wasteful of our time.

I stand ready to consider any additional suggestions you may have or to meet personally with you, providing the Constitutional oversight role of the Congress is preserved.

Sincerely,

A large, stylized handwritten signature in dark ink, appearing to read "John E. Moss".

JOHN E. MOSS
Chairman
Oversight and
Investigations Subcommittee



THE WHITE HOUSE

WASHINGTON

July 22, 1976

RECEIVED

1976 JUL 22 PM 12:34

JOHN E. MOSS
MEMBER OF CONGRESS

Dear Mr. Chairman:

Enclosed is a copy of the letter I am sending at this time to Chairman Staggers of the Committee on Interstate and Foreign Commerce. It deals with the subpoena of June 22, 1976, which was issued over his signature to the President of American Telephone and Telegraph Company (AT&T) and which calls for delivery of documents to your Subcommittee. I fully understand your desire for some procedure by which you can obtain information relevant to your inquiry. In accordance with the last paragraph of my letter to Chairman Staggers, I am here proposing to you a means for your Subcommittee to receive the information needed for your purposes without risking disclosure of extremely sensitive foreign intelligence and counterintelligence information that would be damaging to the national security.

You and members of your staff have had intensive discussions with representatives of the Department of Justice in an effort to determine the manner in which the Federal Bureau of Investigation could satisfy the needs of your Subcommittee without your having to acquire documents covered by the subpoena to AT&T. In the course of those discussions you have distinguished between "foreign intelligence surveillance," for which a definition has been agreed upon, and "domestic surveillance." An inventory will be furnished to you and the FBI of the respective dates of subpoenaed documents held by AT&T which emanated from FBI requests for interception of communications. The FBI will identify from this inventory those items by dates which were "foreign intelligence surveillances" and those which were "domestic surveillances."

In regard to these past "domestic surveillances" on which you requested information, the FBI will furnish your Subcommittee with the memoranda on which the Attorney General had based authorization for such surveillances, including any renewal thereof. No changes or deletions will be made from the memoranda furnished you other than possibly minor ones made necessary because of an ongoing investigation of particular sensitivity.



From the inventoried items which have been designated as "foreign intelligence surveillances," your Subcommittee may select sample items for any two calendar years of your choice. In regard to the items so selected, representatives of your Subcommittee will be given access at the FBI to copies of memoranda on which the Attorney General has based his authorization for the surveillances, including any renewal thereof. Those copies will be edited only by deleting names, addresses, line or telephone numbers and other information which would disclose targets of the surveillances, sources of information about the targets, and methods of surveillance; but to the extent that none of the foregoing would be compromised, generic identifications will be substituted for the respective deletions, including an indication of whether an individual targeted for foreign intelligence or counterintelligence purposes was a United States citizen.

On the basis of the foregoing information, I believe your Subcommittee will have no difficulty in concluding that the FBI has properly divided the inventoried items into "domestic surveillances" which are your concern and "foreign intelligence surveillances" which you have indicated to the Department of Justice are not your concern. However, if representatives of your Subcommittee who have been given access to the edited memoranda should have a question as to whether unedited portions conform to the original document, as to whether generic identification of deleted contents is reasonable and accurate, or as to whether the surveillance involved is a "foreign intelligence surveillance," then your Subcommittee may raise such question with the Attorney General. He, in turn, will personally review both the edited memoranda on which you have raised a question and the original documents. Then he shall certify to your Subcommittee in writing whether or not each of your questions is well-founded, and to the extent he finds any is well-founded, he will include in his certification information sufficient to resolve your question.

If for some reason any aspect of the certification made by the Attorney General is in the judgment of your Subcommittee insufficient for its purposes, then the matter may be brought to me so that I can discuss it with you and make a decision.

The designation and qualifications of the representatives of your Subcommittee who shall have access to edited memoranda at the FBI and the schedule for accomplishing

the foregoing steps shall be substantially in accord with the understandings you have already reached with the Department of Justice. Of course, you as Chairman and the ranking Minority Member of the Subcommittee shall likewise have access to information made available at the FBI.

By following these procedures, your Subcommittee will obtain access just to material relevant to its investigation, and it will be able to determine from examples selected by it the basis on which AT&T has been requested to provide the FBI with access to telephone lines handling communications. Thus your Subcommittee may promptly accomplish its task while duly avoiding risks to extremely sensitive foreign intelligence and counter-intelligence information, the disclosure of which would be detrimental to the national defense and foreign policy of the United States.

Upon the withdrawal of the subpoena which has been issued, the Attorney General and the FBI will implement the proposals made by me in this letter, and I have issued instructions accordingly. I am advised that you have most recently extended the return date for the subpoena until Friday, July 23, 1976. If your Subcommittee will concur in my proposal today, or prior to such later return date as you may set for the subpoena, then my proposal will be implemented immediately, and it will be unnecessary for me to take any further steps in regard to the determinations and instructions which are reported in my letter to Chairman Staggers.

My letter to Chairman Staggers and this letter to you have been written after full and careful consideration on my part of the problems raised by the subpoena and by the effects of disclosing the sensitive foreign intelligence information involved. Also, these letters are based on advice and recommendations to me from the National Security Council, from members of the President's Foreign Intelligence Advisory Board, and from the Attorney General. I believe that the position taken by me and the proposals

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I have made are necessary and desirable in the public interest and that they are in the best interests of both the Executive and the Congress. Therefore, I look forward to your favorable response.

Sincerely,

A handwritten signature in dark ink, reading "Gerald R. Ford". The signature is written in a cursive style, with the first name "Gerald" and last name "Ford" clearly legible, and "R." in the middle.

The Honorable
John E. Moss
Chairman, Subcommittee on Oversight
and Investigations
House Interstate and Foreign
Commerce Committee
U. S. House of Representatives
Washington, D. C. 20515

cc: The Honorable Harley O. Staggers
The Honorable Samuel L. Devine
The Honorable James M. Collins



THE WHITE HOUSE

WASHINGTON

July 22, 1976

Dear Mr. Chairman:

Your Committee's subpoena of June 22, 1976, addressed to the President of the American Telephone and Telegraph Company, requests the production of documents concerning activities which that Company undertook, under contract with the Executive Branch of the United States Government, in the interest of the national security. Acting upon request of the Executive Branch, under the authority of the President of the United States, the American Telephone and Telegraph Company, contracted to provide services essential to securing information vital to the protection of the national security and foreign policy of the United States. Due to the unique position of that Company with respect to telephone and other communications lines in the United States, it has been necessary for the Executive Branch to rely on its services to assist in acquiring certain information necessary to the national defense and foreign policy of the United States. To secure these services, the Executive Branch has supplied to the American Telephone and Telegraph Company sensitive national security information with the understanding that such information would not be disclosed except to the extent necessary to provide the required services.

In receiving, acting upon and retaining this information, the American Telephone and Telegraph Company was and is an agent of the United States acting under contract with the Executive Branch. The Committee's subpoena to the Company is therefore directed in substance and effect, to agents acting on my behalf. I have determined that compliance with the subpoena would involve unacceptable risks of disclosure of extremely sensitive foreign intelligence and counterintelligence information and would be detrimental to the national defense



and foreign policy of the United States and damaging to the national security. Compliance with the Committee's subpoena would, therefore, be contrary to the public interest. Accordingly, I have instructed the American Telephone and Telegraph Company, as an agent of the United States, to respectfully decline to comply with the Committee's subpoena.

At the same time I am transmitting a letter to The Honorable John E. Moss, Chairman of your Committee's Subcommittee on Oversight and Investigations to which the subpoenaed documents were to be furnished. A copy of such letter is enclosed. I trust that such letter will result in a withdrawal of the subpoena in question, because the proposal made by me will enable the Subcommittee to obtain the information desired for its purposes without the adverse consequences which compliance with the subpoena would have.

Sincerely,

Gerald R. Ford

The Honorable Harley O. Staggers
Chairman, Committee on Interstate
and Foreign Commerce
U.S. House of Representatives
Washington, D. C. 20515

cc: The Honorable Samuel L. Devine
The Honorable John E. Moss ✓
The Honorable James M. Collins



JOHN E. MOSS, CALIF., CHAIRMAN

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MICHAEL R. LEMOV
CHIEF COUNSEL

J. THOMAS GREENE
COUNSEL TO THE CHAIRMAN

July 20, 1976

Assistant Attorney General Rex E. Lee
Civil Division
Department of Justice
Washington, D. C. 20530

Dear Mr. Assistant Attorney General:

Pursuant to the previous discussions of the Subcommittee and the Department of Justice, I enclose two copies of the following proposed agreements:

- (1) Memorandum of Understanding dated July 20, 1976, regarding the Subcommittee's investigation of electronic surveillances without warrant or court order in or affecting interstate commerce.
- (2) Memorandum of Understanding dated July 20, 1976, regarding Procedures for Determining the Suitability for Access to Classified Memoranda Relevant to an Investigation by the Staff of the Subcommittee on Oversight and Investigations.

If the foregoing agreements are acceptable to the Department of Justice, please have them signed and return both copies of the agreements and we will return a fully executed original for your records.

Sincerely,

/s/ John E. Moss

JOHN E. MOSS
Chairman
Oversight and
Investigations Subcommittee

JEM:mlw

Enclosures

