

PRESIDENT BLOCKS SECURITY RECORDS SOUGHT IN HOUSE

FEB 25 1976

Invokes Executive Privilege
on F.B.I. and N.S.A. Data
in Surveillance Inquiry
NYTimes

By ROBERT M. SMITH
Special to The New York Times

WASHINGTON, Feb. 24— President Ford has invoked executive privilege to prevent the Federal Bureau of Investigation and the National Security Agency from furnishing information to a House subcommittee about the Government's interception of messages carried by telegraph companies.

The invocation of privilege came in the form of a memo to Secretary of Defense Donald H. Rumsfeld and Attorney General Edward H. Levi dated last Tuesday. That same day the President gave the outlines of a message he sent to Congress the next day, in which he said, "I will meet with appropriate leaders of Congress to try to develop sound legislation to deal with a critical problem involving personal privacy—electronic surveillance."

The subcommittee that has requested the information is the Government Information and Individual Rights Subcommittee, headed by Representative Bella S. Abzug, Democrat of Manhattan.

Ford Cover-Up Hinted

Asked why she thought the President had invoked executive privilege regarding this information, particularly in light of his pledge to cooperate with Congress on the general issue, Mrs. Abzug said he might be trying to "cover up" an ongoing interception program.

The Administration has said that it has stopped going to the cable companies and physically picking up messages sent by them, Mrs. Abzug explained. But, she continued, "there has been no development [by the Senate and House intelligence committees] of what they are doing with Telex. We suspect they are still hooking into these Telexes."

Telex is direct, instantaneous communication from one terminal to another, and both terminals may be leased by a private company or organization. The messages sent by Telex do not go through telegraph company operators, such as Western Union employees.

In his memo the President did not use the words "executive privilege." But those words were used by both the Attorney General and the Secretary of Defense to explain Mr. Ford's action.

Agency Aides Subpoenaed

The Government Operations Committee, the parent committee, has issued subpoenas calling for documents from and personal appearances by Joe R. Craig, a retired F.B.I. agent; Bucky Loomis, Walter Zink and David Jenkins, F.B.I. agents; Joseph J. Tomba, an employee of the National Security Agency; and executives of I.T.T. World Communications, RCA Global Communications and Western Union International.

"Upon review of the subpoenas" relating to the F.B.I. and N.S.A., Mr. Ford wrote, "I have concluded that the scope of the records sought is so extremely broad as to encompass records containing the most sensitive national security information, and the public interest requires that the records not

Continued on Page 11, Column 1

Continued From Page 1, Col. 4

be disclosed to the committee. "As president of the United States, I am therefore instructing you to decline to comply with the subpoenas."

A day later, Attorney General Levi wrote the F.B.I. agents and the former agent that "President Ford has asserted executive privileges with respect to the documents" and instructed them not to furnish the documents.

Mr. Tomba, the N.S.A. employee, wrote the subcommittee that Secretary Rumsfeld had also instructed him not to provide the documents. "Mr. Rumsfeld's instruction," he wrote, "is based upon an assertion of executive privilege by the President."

The Senate Select Committee on Intelligence disclosed last November that for almost three decades the three international telegraph companies had secretly supplied the Government with copies of most of the messages they carried. The program, called Operation Shamrock, had as its purpose the scanning of cable traffic for intelligence data.

Several members of the intelligence committee said they believed the operation had violated the Constitution and the Federation Communications Act.

In a move that particularly surprised subcommittee staff members, Attorney General Levi said that he had determined "it would be inappropriate for present and former F.B.I. agents to appear and testify." Mr. Levi's letter thus raised the possibility that the agents may not even appear before the subcommittee, rather than appearing and citing the privilege asserted by Mr. Ford.

In addition, Mr. Levi wrote to lawyers for Western Union, a private company, and asked that Western Union "honor this invocation of executive privilege" and not deliver any documents.