

# House Panel Calls for Five Contempt Citations in

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WASHINGTON, Feb. 25—A House subcommittee voted today to recommend contempt citations against three special agents of the Federal Bureau of Investigation, a former F.B.I. agent and an employee of the National Security Agency because they refused to provide information about the Government's interception of telegraph and Telex messages.

The Government Information and Individual Rights subcommittee recommended the citation, by a vote of six to one, after the witnesses had refused to provide information on the ground that they had been instructed by their superiors—Attorney General Edward H. Levi and Deputy Secretary of Defense William P. Clements Jr.—not to produce documents or testify.

Mr. Levi and Mr. Clements acted in response to a memo from President Ford in which, they said, the President invoked executive privilege.

Mr. Ford's memo explained that after reviewing subpoenas issued by the subcommittee, the President had "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 be disclosed to the committee."

### Plans for Legislation

Mr. Ford's memo came one day before he sent to Congress, last Wednesday, a message 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."

At today's hearing, four of the witnesses refused to produce documents that had been subpoenaed as well as to answer questions. One witness, Joseph J. Tomba of the National Security Agency—possibly the most secretive of the organizations that make up the nation's "intelligence community"—maintained that he had no documents "in my control, under my dominion to produce."

When pressed by Representative Toby Moffett, Democrat of Connecticut, as to whether he meant he did not have the authority to produce the documents but would otherwise be able to, Mr. Tomba said that he would not answer the question "based on instructions from the Deputy Secretary of Defense."

President Nixon invoked executive privilege on numerous occasions and thereby strained his relations with Congress. Some of Mr. Nixon's predecessors also invoked the privilege. The doctrine holds that Pres-



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Bella S. Abzug talking about executive privilege in Washington yesterday.

idential communications within the executive branch are protected if disclosure would hamper the orderly functioning of government.

The most notable instance in which President Nixon used the doctrine was in resisting a prosecution subpoena for tapes and records of 64 White House conversations. The Supreme Court rejected Mr. Nixon's contention that he had an absolute executive privilege but gave constitutional stature to executive privilege for confidential communications.

The Court said that claims of executive privilege should be given great weight—because of the importance of confidentiality to the proper functioning of the Presidency—but added that claims of privilege would sometime have to fall in the face of competing needs for the material being sought.

Representative John E. Moss, Democrat of California, warned one witness today that he would have to answer the questions he was putting or be summoned before the Subcommittee on Oversight and Investigation, which Mr. Moss heads.

Mr. Moss also said that "the real contempt here has been committed by the Attorney General of the United States and the President of the United States."

When Joe R. Craig, a former F.B.I. agent and the first witness said, "by letter dated Feb. 23, the Attorney general of the United States has instructed me not to testify in response to this subpoena," Mr. Moss declared loudly:

### Actions Laid to Two

"The Attorney General is without any authority. It is the most outrageous assumption, the most arrogant display even seen. Some damn two-bit appointee of the President is not the law-making body of this country."

The witnesses were pressed

as to whether they had a constitutional basis for refusing to produce the documents or answer the questions. They generally responded by saying they were relying solely on the instructions of the attorney General or the Deputy Secretary of Defense.

Mr. Moss told Mr. Craig that the Attorney General's letter to him did not constitute a basis for refusing to answer. He added "It's not the Attorney General's liability, it's your per-

sonal liability" for not answering.

All the witnesses except Mr. Craig had a Justice Department lawyer with them.

In light of the personal liability they might incur, Mr. Moss suggested that the witnesses should have "private counsel interested in their welfare, not in their being sacrificial lambs" for the Justice Department.

Representative Bella S. Abzug, the Manhattan Democrat who heads the subcommittee, said that in private meetings

## Inquiry on U.S.

Attorney General Levi had warned her that national security might be impaired by the testimony she sought but she said that he had refused to specify how.

She also said that she could not understand "the assertion of executive privilege by a private corporation," Western Union International. In a letter to her lawyers, the company cited "the order of the President, signed by Attorney General Levi, that Western Union International not produce any do-

uments responsive to such subpoena."

In addition to Mr. Craig and Mr. Tomba, the subcommittee recommended contempt citations against John P. Loomis, Walter C. Zink and David G. Jenkins, all F.B.I. agents.