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'Bell Opinion' Let President Withhold Reports on CIA

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WASHINGTON—A previously undisclosed "opinion" attributed to former Atty. Gen. Griffin B. Bell freed President Carter and the Central Intelligence Agency from complying fully with a promise to give Congress prior notification of covert CIA actions abroad.

The "Bell opinion," The Times learned Monday, held that the complex language of Executive Order 12036, issued Jan. 24, 1978, meant not "prior" notice as was generally assumed, but "timely" notice—which could come after the fact.

That opinion, which appears to have been drawn for Bell by the Justice Department's Office of Legal Counsel, was a "critical" factor in getting intelligence agencies and the White House to support the executive

order, according to one source. Without it, another source said, CIA Director Stansfield Turner had been refusing to endorse the order, under which the CIA was to operate.

Congress has been unaware of the opinion, however, according to a spokesman for the Senate Intelligence Committee. He said the order had been accepted at face value by the committee to mean prior notification, since it uses the same language as that of Senate Resolution 400, which set up the Senate Intelligence Committee.

The President, the resolution states, shall keep the House and Senate committees "fully and currently informed concerning intelligence activities, including any significant anticipated activities."

The "Bell opinion" may explain the surprise of the Senate group Feb. 21 when Turner testified that it had not been getting all the information it believed it was getting.

Turner strongly objected to language in the new intelligence charter, proposed by the committee after years of negotiating with the Administration, because it would require notice in advance of covert CIA actions. That was "unnecessary" improper and unwise," he said.

Yet the charter language is again precisely the same as in the Senate resolution and the executive order under which the CIA has been operating.

A puzzled Sen. Walter D. Huddleston, (D-Ky.), chairman of the subcommittee that drafted the charter, complained that he and the full Intelligence Committee had believed they were receiving and had, except in one case, received prior notice of actions undertaken by the CIA.

"That is not correct," Turner said. He did not then or later explain further, and the "one exception" was not detailed.

It is understood, however, that President Carter did not notify the committee in advance of operations involving the secret return of six Americans who had been hiding in the Canadian Embassy in Tehran. The Canadian government said, according to sources, that it would not help in the escape if members of Congress were notified, since any leaks of such information would jeopardize Canadian diplomats in Iran as well as the six Americans.

The story broke after the Canadians withdrew all their personnel from Tehran.

Whether this was the single exception is not known, but Administration sources said it illustrates the need for any President to retain power to withhold sensitive information in advance of a highly risky operation.