

Data Show Colby Backed Study of Legality of Spying

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WASHINGTON, Feb. 12 — William E. Colby, while Director of Central Intelligence, approved a secret, comprehensive study of the legal basis for the foreign and domestic activities of the Federal intelligence agencies, according to a copy of a confidential memorandum obtained by The New York Times.

The study, undertaken last summer by the intelligence community staff with the assistance of Central Intelligence Agency lawyers, was intended to clarify the authority for future intelligence activities and to fortify agency officials in their dealings with Congressional investigators, the memorandum said.

One aspect of the study concluded that, until 1974, there had existed no legal or constitutional grounds for covert political or military operations conducted by the C.I.A. without the advance approval of Congress, a finding that directly contradicts the formal position taken publicly by the intelligence agency.

Conclusion Dismissed

The Times reported that aspect of the study's findings on Sunday, and quoted a senior intelligence official as dismissing the conclusion as the product of work by three law students who had no official status within the agency.

The memorandum obtained today makes clear, however, that Mr. Colby, who retired last month as head of the agency, gave his approval to the proposal "to explore and document all legal and related problems involved in the conduct of intelligence activities by U.S. intelligence departments and agencies."

Part of the study's aim, the memorandum said, was to identify "the weaknesses and inadequacies inherent under present law" governing the agency's activities.

Five "outstanding third-year law students," selected "for their special background and interests," were employed by the intelligence community staff to perform the research under the direction of a full-time lawyer.

The research unit, which operated for six months and officially disbanded last Jan. 16, also found that physical surveillance as employed by the C.I.A. in this country in the past was without legal justification.

The memorandum setting up the project, written to Mr. Colby by John M. Clarke, a member of the intelligence community staff, an umbrella group that works directly for the director and not the agency, noted

that the work would be conducted with the assistance of John Warner, the agency's general counsel, to assure that the "focus and results are helpful."

Individuals familiar with the study said today, however, that when Mr. Clarke resigned last July 31, Mr. Warner, who had opposed the project, attempted to end it before the researchers could complete their work.

Mr. Colby did not share Mr. Warner's view, one source said today, and permitted the effort to continue for the prescribed six months. Mr. Warner responded in a telephone interview that he had never attempted to halt the research project before the six-month period was up.

John B. Olverson, the Washington lawyer who directed the legal research for the intelligence community staff, said in a telephone interview today that despite the attitude taken toward the conclusions on covert action by some intelligence officials, the theories on which they rested were "checked out with law professors and other people, and as far as I can see they're pretty sound."

The C.I.A. has maintained publicly that the President's constitutional authority to conduct some aspects of foreign policy and military operations gives him the legal ability to order secret attempts by it or other agencies to influence the internal affairs of other nations.

Explicit Recognition

The Olverson study concluded, however, that until Congress explicitly recognized the C.I.A.'s conduct of covert operations in the 1974 Foreign Assistance Act, it had never acquiesced in the use of funds it appropriated to intelligence agencies for the financing of such activities directed at other nations.

The agency has also maintained that some of the generally worded phrases in the 1947 National Security Act, which set up the agency, permit it to undertake such efforts as the recently revealed secret funding of Italian politicians.

But one individual who had read the classified legislative hearings that preceded the enactment of that law said today that some of the senators had expressed the fear that "these things were going to be done," and had been assured by executive branch witnesses that the agency was intended "to do nothing but collect intelligence."

One intelligence official, himself a lawyer, conceded today that the 1947 act was "at best ambiguous and unclear" on the question of covert action.