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A SECRET ACCORD

Justice Department Is Scored for Yielding Prosecution Power

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WASHINGTON, June 10—

The Rockefeller commission charged today that the Justice Department had "abdicated its statutory duties" for more than 20 years through a secret agreement in which it gave the Central Intelligence Agency the power to decide whether or not to prosecute criminal charges involving agency employes.

The commission charged as well that the agreement had "involved the agency directly in forbidden law enforcement activities," in violation of the law that created the agency and limited its powers.

The commission said that it had found "no evidence" that the C.I.A. "abused" the prosecutorial powers turned over by the Justice Department. It said, too, that the agreement was ended last January, when the department "directed that cases with a potential for criminal prosecution be referred to it for consideration."

New Guidelines Asked

But it called for new guidelines, in writing, requiring that both the criminal investigation and the decision on whether or not to prosecute be made by the Department of Justice.

A spokesman for the Justice Department confirmed the existence of the agreement tonight and said that he did not know whether it had been a mistake by department officials or "a tacit agreement."

The spokesman, Robert Havell, also said that it was his "understanding" that a whole series of Attorneys General during the 20-year life of the agreement had not been told of the agreement's existence.

Several previous Attorneys

General, including Herbert Brownell Jr., who was Attorney General at the time the agreement began, said in interviews earlier in the day that they had no recollection of any such agreement.

No Prosecutions Indicated

The spokesman said, too, that as far as the Justice Department knew, no agency employe had been prosecuted during the entire 20-year period—apparently because of the agreement.

The Rockefeller commission said that in 1954 the C.I.A. "pointed out" to the Justice Department that "in many cases involving C.I.A., prosecution would require public disclosure of sensitive agency operations and procedures." The Department of Justice "responded," the commission said, that the agency should itself investigate "allegations affect-

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ing its operations," and that if it then appeared that "prosecution would be precluded by the need to reveal sensitive information," the C.I.A. should "so indicate in its files and not refer the case to the Department of Justice."

Mr. Havell, the Justice Department spokesman, gave a somewhat different account.

It was, he agreed, not a complete account.

"We found out about the agreement in December of 1974," he said, when William E. Colby, the Director of Central Intelligence, "mentioned the agreement when he was over here conferring with people" in the wake of the exposures about the C.I.A. in The New York Times.

1954 Meeting Cited

"The best we can determine," he said, "was the C.I.A. Director or the general counsel [of the C.I.A.] in 1954 met with the Deputy Attorney General [William P. Rogers] and they discussed how to deal with that section of Title 18" that requires the agency's head to report crimes committed by its employes to the Attorney General.

"There was nothing decided at the meeting," he said. "But subsequently, the Director of the C.I.A. sent a letter to either the Attorney General or the Deputy Attorney General saying, 'This is how it will work

and we will do it this way—the investigation—unless we hear to the contrary."

"And so far as we can determine," he went on, "the letter went unanswered. So that procedure went on till January of this year."

He added: "So far as we know, no one was prosecuted during that time." Mr. Havell was asked whether the department viewed the agreement as any bar to prosecuting anyone now who might be found to have committed a crime during the time the agreement was in effect. "It is not a bar," he replied.

He also was asked about statements to a reporter today by various former Attorneys General to the effect that they knew or recalled nothing of the agreement. The former officials were Mr. Brownell, Mr. Rogers, who moved from Deputy Attorney General to Attorney General after Mr. Brownell, Nicholas deB. Katzenbach, who was Attorney General under President Kennedy, and Solicitor General Robert H. Bork, who was Acting Attorney General for a few months following the resignation of Elliot L. Richardson. Mr. Havell was asked if none of them were informed of the agreement.

'That Is My Understanding'

"That is my understanding," he said. "We haven't found the letter but so far as we can determine, it was never answered."

Was the 20-year secret agreement just a mistake then, he was asked? He replied: "It could be a slip, it could be a tacit agreement, I don't know."

The C.I.A. was created by the National Security Act of 1947. The act's statement of the C.I.A.'s powers and duties includes the following proviso after the list of powers: "Provided, that the agency shall have no police, subpoena, law enforcement powers or internal security functions."

This presumably is the language that led to the Rockefeller commission's conclusion that the secret agreement had "involved the agency directly in forbidden law enforcement activities."

As for the commission's contention that the Justice Department had "abdicated" its statutory duties, the commission report noted that the Department of Justice was "charged

by statute with the responsibility of investigating and prosecuting criminal cases on behalf of the United States."

"In so doing," the report said, "it exercises the President's constitutional responsibility to see that the laws are faithfully executed."

The report went on to say that "in most Federal agencies," reports of possible criminal conduct are investigated within the agency "on a preliminary basis" and that "if it appears to have some substance," an allegation is referred to the Justice Department.

Interviews with former Attorneys General, two former Assistant Attorneys General and the man who was general counsel of the C.I.A. for most of the period in question, Lawrence R. Huston, turned up a variety of views as to the advisability, significance and origin of the agreement. They also turned up general agreement that there was often close cooperation between C.I.A. and Justice Department officials.

They turned up, too, agreement by several persons that sometimes the Justice Department declined to prosecute cases because of the possibility that prosecution would uncover secret operations.

Mr. Huston, now retired, was the only one who said he knew of and remembered the agreement. He minimized it, saying that he could remember very few, if any, occasions on which it was applied.

'Participated in Agreement'

"I certainly participated in the agreement and had the approval of the Director [Allen W. Dulles]," he said. As for the exact details, though—such as who in the Justice Department he had made the agreement with—he said he was not quite sure. The late Mr. Dulles was C.I.A. Director during the Eisenhower Administration.

Mr. Huston said that he thought the agreement had been made because, despite the "close relationship" between the Justice Department and the C.I.A., there was at the time a difference of opinion within the Justice Department regarding the C.I.A.—perhaps related to the fact that in 1954, the Internal Security Division was being carved out of the Justice Department's Criminal Division.

He said that one case probably precipitated the agreement—a case in which the Justice Department and the Customs Bureau each had a secret agent whose identity might be disclosed by prosecution and whose life might be endangered as well.

He said, though, that for the most part an agreement had been unnecessary.

Warren Olney, an Assistant Attorney General in charge of the criminal division in 1954 who is now a lawyer in California, remembered Mr. Huston's visits to the Justice Department "He used to come over and put his feet on the desk and do business" but he did not recall "specifically" any formal agreement.

He said that sometimes the Justice Department would decide against prosecuting cases, on the basis of security interests.

William F. Thompkins, director of the Justice Department's Internal Security Division in 1954, who is now a lawyer in Newark, said that "offhand," he didn't remember any "formal agreement."

Mr. Katzenbach, now counsel to the International Business Machines Corporation, said that while he had never known of the secret agreement, that did not mean it did not exist. He had learned to his regret, he said, that "it is possible in the Department of Justice that you can have some of these arrangements and no one ever briefs you on it."