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Inquiry Is Said to Oppose Prosecuting C.I.A. Aides

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By JOHN M. CREWDSON
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WASHINGTON, July 26— Justice Department lawyers investigating the Central Intelligence Agency's 20-year program of opening mail between the United States and Communist countries have recommended against the criminal prosecution of agency officials involved in the project, a Government official familiar with the investigation said today.

The official said that the lawyers' recommendation, which has been forwarded to Attorney General Edward H. Levi for a final decision, was based on the conclusion that "a continuum of Presidential authority" had rendered the mail openings legal, despite Federal statutes that prohibit tampering with first-class mail inside the United States.

The Justice Department, the official said, has in its year-long examination "found evidence of Presidential knowledge" of the C.I.A. operation, code-named HT Lingual, which between 1953 and 1973 resulted in the opening of nearly 250,000 letters passing through postal facilities in New York City, San Francisco and elsewhere.

The Senate Select Committee on Intelligence, which issued a long report on domestic mail openings in April, said that it had found no documentary evidence that any President in the two decades in question had ever authorized the C.I.A. to open letters and photograph their contents.

The only President who might conceivably have been informed of such an effort, the committee said, is Lyndon B. Johnson, but it added that it had been unable to find any conclusive record that he had ever been advised of the project.

Richard M. Nixon, the only former President now living, told the Senate committee in

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written response to questions that he did not recall ever having received information while President that the C.I.A. or any other Government agency was engaged in opening mail without the authority of a judicial warrant.

Asked how the Justice Department lawyers had squared their conclusion about the existence of continuing Presidential authority with Mr. Nixon's denial of any such knowledge, the official replied that the department had "looked at more than that [the denial] in "drafting its recommendation.

He declined, however, to characterize the additional evidence examined by the lawyers.

Mr. Nixon's purported ignorance of the C.I.A. mail-intercept program was a main point at the Senate committee's hearings, and the committee staff rebuked some of Mr. Nixon's aides for having advised him in 1970 that such coverage had been discontinued when it had not.

Although Mr. Levi has not yet decided whether to accept the recommendation of his criminal division lawyers not to prosecute those who took part in or had knowledge of the mail openings, the recommendation was believed to increase the likelihood that no C.I.A. employees will face criminal charges as a result of the various investigations of the agency's activities.

The criminal division, headed by Assistant Attorney General Richard L. Thornburgh, has been sifting evidence of C.I.A. wrongdoing assembled by President Ford's commission set up last year to look into the agency's domestic operations and material assembled by the Senate intelligence committee on some of its foreign activities.

Mr. Thornburgh has previously recommended to Mr. Levi that no indictments be sought in the C.I.A.'s various plots in the early 1960's against the life of Prime Minister Fidel Castro of Cuba and of the late Congolese leader, Patrice Lumumba.

A third major aspect of the Justice Department's investigation has been the 1973 Senate testimony of Richard Helms, the former Director of Central Intelligence, that his agency had not tried to pass money secretly to opponents of Salvador Allende Gossens, the late Chilean President, and had not been involved in tracking domestic opponents of the Vietnam War.

Later Inquiries Cited

Subsequent investigations of the C.I.A. established, however, that the agency had financed some of Mr. Allende's Chilean opponents before his death in 1973, and that the agency's Operation Chaos had led to its compilation of 10,000 files relating to antiwar protesters in this country.

But the Government official said that the Justice Department lawyers had encountered difficulty in establishing that Mr. Helms, in testifying before the Senate Foreign Relations Committee on his appointment as Ambassador to Iran, a post he still holds, had knowingly perjured himself.

Mr. Helms had told the committee, and other Congressional panels, different things at different times, the official said, adding that the odds that Mr. Helms would ever be confronted with a perjury charge were now "sixty-forty against."

The Justice Department is also investigating the C.I.A.'s involvement in some scattered instances of electronic eavesdropping in antiwar demonstrations here in May 1971.

But the official described the C.I.A.'s role in those surveillances, indicating that the agency had done no more than to supply eavesdropping equipment to various law-enforcement agencies. He added that it was not yet clear that the surveillances were illegal and suggested that the probability of any indictments arising from them were dim.