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National Security Secrets Hamper U.S. Prosecutors

By Charles R. Babcock
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A decision on whether to prosecute Lockheed Aircraft Corp. and one of its former top executives is being delayed to check eleventh-hour claims by defense attorneys that national secrets might be disclosed at a trial.

Sources familiar with the investigation of Lockheed's payments to foreign officials said the Central Intelligence Agency has been asked to check the validity of the claims — which came after the Justice Department's criminal division recommended prosecution in April.

The Lockheed case is the latest in a series of sensitive investigations in which national security considerations have collided with — and threaten to derail — prosecutions.

On Friday, for instance, there were reports about two criminal cases that have been complicated by national security.

In one, the government announced it would drop three of six felony charges against a senior executive of International Telephone and Telegraph Corp. because it would have had to disclose classified documents at the trial.

A similar concern was a factor in the Justice Department's decision last fall to let former CIA director Richard M. Helms plead "no contest" to a misdemeanor charge from the same investigation of ITT-CIA collusion in Chile.

In the other case, a former CIA employee, William P. Kampiles, was arrested on charges that he sold top secret information to the Russians, but his prosecution may be difficult. The Los Angeles Times quoted a U.S. intelligence source as saying of that case: "One of the problems is that in order to prosecute we might have to release classified information and we just can't do that."

Deputy Attorney General Benjamin R. Civiletti said in a recent interview that weighing the effect of national security on potential prosecutions is

about the toughest issue his prosecutors face.

"If that issue raises its head we try to pursue the investigation hard. We may be able to make a case without entering the field. So I don't ignore it. But I don't throw up my hands either when the issue come up. We try to work around it. And in 9 out of 10 cases we can," Civiletti said.

Critics of decisions like the government's disposition of the Helms case say "national security" has become such a fuzzy area that defendants can make frivolous claims in efforts to prevent prosecution.

FBI officials accused of participating in illegal break-ins in the early 1970s, for example, claimed the so-called "black bag jobs" were necessary because the Weather Underground fugitives they were pursuing had ties to foreign powers. The Justice Department rejected such claims.

U.S. District Court Judge Gerhard A. Gesell rejected a national security defense when former Nixon White House aide John Ehrlichman was convicted of authorizing a break-in at the office of Daniel Ellsberg's psychiatrist in 1971.

Details of Lockheed's claims could not be learned. But the matter is not yet considered serious enough to involve Civiletti, Attorney General Griffin B. Bell or CIA Director Stanfield Turner, officials said.

Mitchell Rogovin, who represents former Lockheed president A. C. Kotchian, has talked to criminal division head Philip B. Heyman about the case. Rogovin himself has close ties to the CIA, having served as its liaison with the Internal Revenue Service and as its lawyer during recent congressional investigations.

The Wall Street Journal reported last year that government investigators had found indications that the CIA knew about and probably encouraged bribes from American corpora-

tions to foreign government officials.

Lockheed, for instance, paid several million dollars in "agent's fees" to Yoshio Kodama, who had ties with the CIA and was a major fundraiser for Japan's ruling party.

But it is not believed that Rogovin's national security claims went as far as alleging that such potentially explosive ties between U.S. intelligence and multinational corporations would be exposed at trial.

In the Lockheed, ITT-Chile and CIA espionage cases prosecutors have had a chance to balance the need to protect national secrets with the equally legitimate duty to uphold the law.

A more troublesome example of the conflict between intelligence secrets and law enforcement was seen in the recent investigations of South Korean influence-buying in Congress.

A Senate Intelligence Committee study showed that the CIA at times refused to pass along early evidence of the scandal to the FBI or Justice

Department for fear of compromising sacrosanct "sources and methods."

On one occasion CIA headquarters officials wouldn't even allow the station chief in Seoul to brief the U.S. ambassador about alleged bribery of members of Congress by South Korean agents.

Indications of illegal South Korean lobbying were largely ignored for more than five years. Not until late 1975 did the evidence — some of it apparently obtained by supersecret National Security Agency intercepts of Korean diplomatic traffic — lead to a full scale Justice Department investigation.

Even then the most sensitive material could be used only for investigative leads. It could not be used at a trial without exposing the secret methods of obtaining it.

Corroborating evidence about suspected payments from Korean officials, such as former ambassador Kim Dong Jo, could not be found. So some

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