

# Prosecution Of Helms Ruled Out

By Bob Woodward

Washington Post Staff Writer

The Justice Department announced yesterday that former Central Intelligence Agency Director Richard M. Helms and others will not be prosecuted for their roles in a 1971 break-in at a Fairfax photo studio.

Helms' attorney, Edward Bennett Williams, said afterward that the Justice Department decision means the current CIA director, George Bush, has the right to approve break-ins if he deems them necessary to protect national security.

Williams applauded the move not to prosecute Helms as "an unusually smart decision" and noted that the 1947 National Security Act imposed an obligation on the CIA director to protect security.

"If the government has a right to conduct electronic surveillance," Williams said, "then it has a right to make surreptitious entry."

He said that Helms believes the law should be changed so that the CIA director does not have such power.

Informed sources in the Justice Department reported last month that they expected Helms to be prosecuted on a misdemeanor charge after he acknowledged that he personally approved the break-in to gather information about a former CIA employee suspected of a security violation.

The Justice Department investigation involved the Feb. 19, 1971, break-in at the now-defunct Roland Studio on the second floor of 10419 Main St. in Fairfax City. Three Fairfax City policemen apparently cooperated by ensuring that no one interrupted the CIA break-in team.

The Justice Department was prepared to take the matter to the grand jury for prosecution last month be-

## HELMS, From A1

fore department attorneys began a series of three meetings with Williams, according to government sources.

In an unusual press release—the Justice Department rarely announces a decision not to prosecute—Attorney General Edward H. Levi said the department concluded that the case did not meet a Supreme Court standard set in a 1945 decision.

The standard, according to the press release, would require the Justice Department to show that Helms "willfully" deprived an individual of a specific and well-defined constitutional right" by approving the break-in.

Justice Department sources said that Helms clearly thought he had the authority to approve a break-in and did so to complete a security investigation of Deborah Fitzgerald, who ran the photo studio.

"It was impossible to prove he (Helms) had intent to violate anyone's civil rights," one Justice Department source said yesterday. "It is regrettable that this puts him out of reach of the law and many seem to be an endorsement of breaking and entering," the source added.

The 1947 law setting up the CIA says, "The director of central intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure."

Under this law Justice Department attorneys said they felt Helms could rea-

sonably argue the protection required extraordinary means.

On the other hand, the attorneys said, there was evidence indicating the break-in was approved to close out the security violation investigation and the CIA had no evidence that the national security was in immediate danger.

The photo studio was run by Fitzgerald and Orlando Nunez, a former middle-level official in the Castro government in Cuban.

Sources said that both were under CIA surveillance after Fitzgerald, while working in the records division of the CIA, tried to

find out what CIA files existed on Nunez, Fitzgerald and Nunez have since married and separated.

Levi said that the decision not to prosecute Helms, now ambassador to Iran, was based on recommendations of Deputy Attorney General Harold R. Tyler Jr. and Assistant Attorney General J. Stanley Pottinger, head of the Civil Rights Division and in charge of the investigation.

The break-in, but not Helms' role in it, was first publicly revealed last year by a presidential commission headed by Vice President Rockefeller in a report on CIA abuses.

The Justice Department did not specify others who would not be prosecuted in the Fairfax break-in, but reliable sources said that Richard Ober, a CIA official now assigned to the National Security Council, was one of those under investigation in the case.

A separate Justice Department investigation into possible perjury by Helms is continuing. This investigation focuses on Helms' sworn testimony denying a CIA role in domestic surveillance and in providing covert support to certain political factions in Chile.