

Pair Cannot Collect From CIA Break-In

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A U.S. judge ruled in his closed chambers yesterday that the owners of a photo studio broken into by the Central Intelligence Agency and Fairfax City police cannot collect damages from the city for the 1971 break-in.

U.S. District Judge D. Dortch Warriner ruled no one can be held liable in the case because the photo studio owners had promised one defendant, a policeman, that he would not have to pay certain damages in return for his agreement to testify for them in yesterday's case, according to attorneys.

Warriner dismissed the \$24.2 million suit brought by Orlando Nunez and his wife, Deborah Jane Fitzgerald, following a five-hour pretrial conference in Alexandria with lawyers for both sides.

Nunez and Fitzgerald had charged that former Fairfax City Police Chief Murray Kutner, former chief of detectives Carl Buchholtz and Sgt. Robert L. Fleck helped CIA agents enter the studio without a search warrant to photograph some documents.

John Hale, a lawyer for Nunez and Fitzgerald, said attorneys for the couple decided to drop claims for damages against Fleck after the police officer agreed to testify against his codefendants at the trial. Hale said Fleck was only "partially released" from paying damages and that Judge Warriner's decision would be appealed in the Fourth Circuit Court of Appeals.

Nunez and Fitzgerald charged in the suit that the city had violated their constitutional rights in several ways, including illegal entry, libel,

electronic and photographic surveillance and illegal inspection of mail, bank accounts and tax records.

The judge's decision prevented attorneys for the couple from prosecuting the other defendants for any of the actions in which Fleck had been personally involved, according to Robert Ellis, a defense attorney.

Lawyers for Fleck and the couple agreed that Fleck could be prosecuted only for illegal entry and libel, (not the remaining charges such as electronic surveillance. The couple has charged that Fleck's statements in the press about his involvement in the break-in led to the publication of libelous statements about them.)

Hale said lawyers for the couple decided after the judge's decision not to press their claims against the other defendants since "it was not known at trial time (to what extent) the policeman had participated in the other activities."

Last January former CIA director Richard Helms acknowledged he had approved the break-in half a day before it took place at Roland Studios, 10419 Main St., Fairfax City. The Justice Department decided not to prosecute Helms and the other participants because it would have to be proved that they had "willfully deprived an individual of a specific and well defined constitutional right."

Although the break-in occurred in 1971, it did not come to light until June, 1975, when a presidential commission headed by Nelson A. Rockefeller published a report on CIA abuses.

It was learned from the report that the couple was the target of a CIA investigation because Nunez once held a position in the Castro government and Fitzgerald was a former part-time employee of the CIA's records division. The report said the CIA wanted to photograph in the studio papers that they suspected Fitzgerald had taken from the CIA.

The CIA did not turn up any evidence of a security violation in the investigation, according to officials.

Fleck, the first police official to admit his participation in the break-in, said he served as a lookout for the CIA agents who were inside the studio on orders from Kutner. He said Kutner removed the studio's door from its hinges so the agents could go inside.

Leonard Kline, who replaced Kutner as Fairfax City police chief, also was named as a defendant in the suit. Kline said he knew of the break-in but did not go into the building.

Fleck, Kline and Buchhold were present for yesterday's trial. Kutner, who resides in Florida, was not present. Nunez, now separated from his wife, operates Voice and Vision Inc., a film production company in Washington. Fitzgerald is director of communications and public relations for American Health Service Inc. in Washington.