

# Justice Consulted Hill on Helms Decision

By Allan Frank

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The Justice Department consulted with congressional committees investigating intelligence agencies before electing not to prosecute former CIA Director Richard Helms and others involved in a 1971 break-in at a Fairfax City photo studio, Asst. Atty. Gen. J. Stanley Pottinger said yesterday.

Pottinger, head of the civil rights division, said Justice lawyers talked with a "large variety" of people, including the Watergate special prosecutor, before deciding against bringing criminal charges against those involved in the break-in.

He said those consulted doubted that any prosecution for violation of the civil rights of the photo studio owners by CIA officials and Fairfax City police would be successful.

THE STUDIO was owned by a former CIA file clerk who was suspected of passing information from CIA records to the Cuban co-owner of the studio.

The admission that lawyers outside the Justice Department had been consulted was not the only unusual aspect of yesterday's announcement by the Justice Department. Normally, the department makes no com-

ment when it decides not to prosecute, but in this case, extensive press coverage of the investigation of Helms apparently forced the statement. The five-year statute of limitations on the Feb. 19, 1971, break-in expired yesterday.

Pottinger blamed the failure to prosecute on a "lack of clarity" in the laws governing a break-in to investigate possible penetration of the CIA by a foreign power.

Aided by Fairfax City police, CIA security officers broke into the studio to seek evidence that might indicate whether the agency had been "penetrated" by foreign intelligence. Pottinger said no such evidence was found.

Seeking damages on a number of points, the owners of the photo studio, a Cuban named Orlando Nunez del Toro, and Deborah Fitzgerald, the former CIA file clerk, have filed multi-million dollar civil suits against the CIA and Fairfax City police in federal courts in Virginia and the District.

POTTINGER said the "informal views" obtained from lawyers outside the Justice Department were not "the controlling factor (in the decision not to prosecute) but they were a supporting factor."

Although the Justice Department dropped possible criminal prosecution of Helms and others involved in the break-in, Pottinger said, continued civil litigation is likely.

"Despite a long investigation and interrogation of the witnesses, we were unable to make a criminal case under the government statute," Pottinger said. "We attempted to do so long and hard. . . . It is possible that civil rights were violated, but in this particular case we're talking about whether one of them constituted a criminal act."

Richard Ober, a CIA official now working for the National Security Council who was reported to have been involved in the 1971 break-in, said yesterday he had "no comment" on the Justice Department action.