

Indictment Unlikely In CIA Va. Break-in

By Jay Mathews
Washington Post Staff Writer

The Fairfax City manager said yesterday he plans to recommend no disciplinary action against city police officers involved in a 1971 break-in of a local photo studio if they cannot be prosecuted under state law.

City Manager George E. Hubler said if local prosecutors decide, as expected, that police officers had no criminal intent to murder, rape or steal in the break-in, he does not feel the city should take action against them.

Only one current city policeman, Cpl. Robert L. Fleck, has admitted to participating in the break-in. He said he served as a lookout on orders from then Police Chief Murray Kutner. Fleck says Kutner took the studio door off its hinges so CIA agents could enter and photograph papers.

The break-in at the studio managed by a former part-time CIA employee and a former official in the government of Fidel Castro in Cuba was described by the Rocke-

See **BREAK-IN, C4, Col. 1**



GEORGE E. HUBLER
... eyes double jeopardy

BREAK-IN, From C1

feller commission which investigated CIA activities, as the only "instance . . . discovered where local police actively participated in a CIA operation."

Leonard P. Kline, the current city police chief, said Saturday that had knowledge of the break-in as Kutner's second-in-command at the time it occurred, but "I didn't go in that building."

Hubler, who became Fairfax city manager in late 1974, said that if Virginia authorities did not prosecute Fairfax officers for the break-in, any action

the city might take against them "could be considered double jeopardy."

Fairfax Commonwealth's Attorney Robert F. Horan Jr. has said the break-in participants probably are not guilty of a felony if their only intent in entering the Roland Studio, at 10419 Main St., was to photograph papers. Horan said the only possible crime in this case would be trespassing, a misdemeanor with a one-year statute of limitation that would have expired in 1972.

Hubler, when asked what

he would recommend if Fairfax city officers were prosecuted under federal civil rights laws, said, "We'll just have to cross that bridge when we come to it."

The Fairfax City Council is expected to hear Hubler's recommendations on the incident at a closed, executive work session before tonight's regular meeting.

An attorney representing Fleck has asked the U.S. Justice Department to grant Fleck immunity from prosecution under the civil rights laws. The attorney, Gilbert

K. Davis, who is the Republican nominee for Horan's job as commonwealth's attorney in the Nov. 4 general election, said immunity had not yet been granted but that "it is clear from my discussion, with (federal officials) that they regard him (Fleck) as a defendant."

The Rockefeller commission said three Fairfax policemen were involved in the operation, but no third officer has been publicly identified. Horan has questioned the accuracy of that portion of the report.