

VIRGINIA TO LOOK INTO C.I.A. ACTION

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County Prosecutor Will See Data From Justice Agency on Break-in, Castro 'Plot'

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WASHINGTON, Feb. 25 — A Virginia prosecutor whose jurisdiction includes the headquarters of the Central Intelligence Agency has asked the Justice Department for evidence it has developed on a 1971 break-in ordered by Richard Helms, then the Director of Central Intelligence.

The department said last week that it would not bring Federal charges against Mr. Helms or other C.I.A. officials involved in carrying out the break-in occurred at a photographic studio in suburban Fairfax County, where the C.I.A. is also situated.

But Robert Horan, the county prosecutor, said in an interview that he wanted to see what was contained in the department's files on the matter before deciding whether to act in the case.

Mr. Horan also said that he was considering asking the department for its evidence on plots by C.I.A. officials against the life of prime minister Fidel Castro of Cuba on the ground that the Virginia conspiracy statutes might have been violated.

The break-in, which occurred Feb. 19, 1971, was carried out by C.I.A. officers, assisted by the Fairfax police, who were concerned that Deborah Fitzgerald, a former agency employee, had taken documents from C.I.A. files concerning Orlando Nunez, a friend, and left them at the studio, which was owned by Mr. Nunez.

Mr. Nunez, a former official of the Castro Government, has brought a civil suit against Mr. Helms asking for \$12 million in damages. The Justice Department may be required to defend Mr. Helms, now Ambassador to Iran, in that action.

Documents Photographed

Mr. Horan said that, based on his interviews with the Fairfax police officers involved, it appeared that the C.I.A. men had limited their activity after breaking into the studio to taking photographs "of certain documents."

If this proved to be the case, he said, he would be unable to bring charges in the matter, because the one-year statute of limitations had run out on a Virginia law that prohibits breaking and entering with an intent to deprive an individual of his civil rights.

But Mr. Horan said that if the Federal files showed any indication that the intruders had had any intention to commit larceny, the matter might fall under a more serious state statute with no time limitation on it.

The Fairfax break-in was first disclosed by the Rockefeller Commission in its report last June on C.I.A. domestic activities, though no mention of Mr. Helms's having approved the entry was made.

Mr. Horan said that following the release of the commission's report, he wrote to Vice President Rockefeller requesting the relevant evidence and was referred to the Justice Department, which replied that it was unable to discuss the matter until its own investigation had been completed.

A spokesman for the department's civil rights division, which has had jurisdiction over the case, said that if Mr. Horan renewed his request for the materials, it would receive consideration.

Classified Matter Barred

The spokesman said that some of the requested materials might be classified, and therefore unavailable to Mr. Horan, and that others might be withheld because of the pending civil lawsuit against Mr. Helms.

Mr. Horan said that he also had "particularly interested" in the plots by C.I.A. officials between 1960 and 1962 against the life of Mr. Castro.

Some of that activity took place in the District of Columbia, before the C.I.A. moved its headquarters to Virginia in 1961, and Justice Department sources have said that it did not plan to bring charges against those who might have conspired within the district.

But Mr. Horan said that he had been unaware of the department's decision not to prosecute, adding that he might well "request that information just to see" whether an illegal conspiracy to commit murder had taken place.

Under Virginia Law, conspiracy charges can be brought even if the specified crime is not committed, so long as at least one overt act involving a "primary step" toward its commission is carried out.

Such a step might be the formulation by C.I.A. chemists of the poison pellets that, according to a report of the Senate Intelligence Committee, were intended for insertion into Mr. Castro's food by a C.I.A. agent.