

Move to Drop Charges On 'Plumbers' Backed

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By Timothy S. Robinson

Washington Post Staff Writer

U.S. District Judge Gerhard A. Gesell yesterday approved a government request to drop charges against Eugenio R. Martinez and Bernard L. Barker in connection with the break-in at the office of former Pentagon Papers codefendant Daniel Ellsberg's psychiatrist, Dr. Lewis Fielding.

Martinez and Barker were convicted of conspiring to violate the civil rights of the doctor, during the 1971 Los Angeles break-in. Each was sentenced to a term of probation for one year.

Their convictions were overturned by the U.S. Court of Appeals, which said the men should receive a new trial in which the jury should be told the defendants could raise the defense that they had committed the break-in only because their superiors told them it was legal.

In asking Judge Gesell to dismiss the case, Watergate special prosecutor Charles Ruff said there were two reasons that he was not seeking a new trial for the two defendants.

"First, (Appeals) Judge (Harold) Leventhal accurately noted that the opinions of Judge (Malcolm) Wilkey and Judge (Robert) Merhige left in a state of uncertainty the manner in which the theory of the defense should be put to the jury; and second, because the defendants have already served sentences for similar activity arising out of their convictions in the Watergate break-in case," Ruff said.

Barker and Martinez each served one year in prison after their convictions in the Watergate break-in. Those convictions were affirmed by the appeals court.

In the Ellsberg break-in case, the appeals court upheld the convictions of former White House aides John Ehrlichman and G. Gordon Liddy. Both currently are serving prison terms.