

Jaworski Disputes Defense

By John Saar

Washington Post Staff Writer

Watergate Special Prosecutor Leon Jaworski yesterday said a national security defense in the Ellsberg burglary is irrelevant because the six defendants have not claimed prior authorization for the break-in by President Nixon.

In papers filed with U.S. District Court Judge Gerhard A. Gesell yesterday, Jaworski stated, "Not one of the defendants has attempted to contradict the President's assertion that he had no prior knowledge of the break-in."

Judge Gesell suggested last week that if former White House aides John D. Ehrlichman and Charles W. Colson, Watergate conspirator G. Gordon Liddy and three Cuban-Americans who carried out the burglary could show they were acting on presidential directions, charges against them might have to be dropped.

The special prosecutor's rebuttal of the national security defense was contained in a sheaf of memorandums calling for the denial of various defense motions relating to the case.

The six men are charged with violating the civil rights of Daniel Ellsberg's psychiatrist, Dr. Lewis Fielding, by conspiring to break into his Los Angeles office in September, 1971.

The primary document filed was a 62-page argument opposing motions by defense lawyers that sought release of quantities of highly classified material, including CIA files, as "national security evidence." Jaworski opposed release of the documents as immaterial and irrelevant.

The defendants all directed or worked in a special White House investigation unit formed by President Nixon in 1971 to inves-

tigate the leakage of government information to the press. The burglary became public knowledge during the trial in Los Angeles last year of Ellsberg for alleged theft of the Pentagon Papers.

Jaworski argued that even if the defendants believed there was "probable cause" to conduct the burglary in the best interest of the country, their defense was "fatally flawed" by the failure to seek a search warrant.

The break-in was not an emergency response to a crisis but "a carefully measured escalation of government information gathering that began with an unsuccessful attempt to obtain the 'necessary' psychiatric data from Dr. Fielding through an FBI interview."

On May 22, 1973, Mr. Nixon said he had no prior knowledge of the break-in and did not feel it was justified. The Jaworski memorandum drew attention to "a significant conflict" between the President's statement and John Ehrlichman's version as indicated in an affidavit submitted to the court.

Ehrlichman quoted the President as saying in substance, "... I surely recognize the valid national security reasons why it was done."

Even if that statement could be construed as "after-the-fact-approval," Jaworski argued, it still would not justify a warrantless search in a clear violation of Fourth Amendment provisions against unreasonable search and seizure.

"It is hard to imagine," the memorandum continued, "a more patent and culpable violation of the Fourth Amendment than this carefully plotted secret nighttime break-in."

The Jaworski memorandum discounted the value to the defense of a letter in which President Nixon told Judge Gesell the defendants committed the burglary under a broad delegation of presidential authority.

Only Mr. Nixon's prior knowledge and specific approval could validate a national security defense, the special prosecutor argued.