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**Jaworski Assails 'Plumbers' Defense**

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WASHINGTON, May 16 —

Leon Jaworski, the special Watergate prosecutor, urged a Federal judge today to reject the contention that "national security" was involved in the burglary of the office of Dr. Daniel Ellsberg's psychiatrist in 1971.

In a brief filed in United States District Court, Mr. Jaworski also repeatedly challenged one of the main arguments put forward by the six defendants — that, as Presidential agents, they had perhaps the inherent power to invade the privacy of Dr. Ellsberg's former psychiatrist because of overriding national security considerations.

Mr. Jaworski's brief noted further that "not one of the defendants has attempted to contradict the President's assertion that he had no prior knowledge of the break-in (and hence could not possibly have authorized it)."

"Thus," the brief added, "neither they nor any other defendants point to my specific authority given by the President to conduct a warrantless search of a doctor's office, or any searches of any private facilities."

Although he did not specifically say so, Mr. Jaworski's assertions indicate that the special prosecutor's office had not found any evidence linking President Nixon either to authorization of the break-in or advance knowledge of it. The President has said that he did not learn of the burglary until March 17, 1973.

#### Nixon Letter to Court

The New York Times reported Tuesday that the President, in a private letter sent to the court, declared that he had given the defendants a general delegation of his Presidential authority before the break-in, a fact some attorneys believe may buttress the defendants' national security contentions.

The Beverly Hills, Calif., office of the psychiatrist, Dr. Lewis Fielding, was burglarized on Sept. 8, 1971, by a five-man team authorized by the White House "plumbers" unit, a group set up two months earlier by President Nixon and ordered to stop newspaper "leaks."

Last March, a Federal grand jury indicted the six, among them John D. Ehrlichman and Charles W. Colson, former high-ranking White House aides, for their role in the break-in. Judge Gerhard A. Gesell of the district court here has set June 17 as the trial date for the defendants, and has been seeking to resolve some of the national security questions in the case before then.

Attorneys for the six defendants have argued that their

intent in breaking and entering Dr. Fielding's office was not to violate his constitutional and civil rights, but merely to follow the dictates of a general Presidential order urging them to stop newspaper leaks.

#### Pentagon Papers

Dr. Ellsberg, a former Defense Department official, has said that he was responsible for providing The New York Times with a copy of the Pentagon papers — top-secret documents on the Vietnam war that The New York Times began publishing on June 13, 1971.

In an attempt to show the necessity for the Fielding break-in—in the eyes of those

involved, at least—defense attorneys have urged Judge Gesell to order the Government to turn over a large number of top-secret documents and other national security material.

Mr. Jaworski attacked the essential point of the defendants' arguments by saying that "viewed in the best possible light, the Fielding break-in was no emergency response to a 'national security' or other law-enforcement crisis."

"Rather," Mr. Jaworski added, "it was a carefully measured escalation of Government information-gathering that began with an unsuccessful effort to obtain the 'necessary' psychiatric data from Dr. Fielding through an F.B.I. interview. When Dr. Fielding refused to conspirators . . . decided for themselves that their investigative needs outweighed Dr. Fielding's interests."

#### Warrant Procedure

Mr. Jaworski, in his brief, conceded that a judge or magistrate might have agreed with the plumbers if they had sought a warrant in mid-1971 to search Dr. Fielding's office, a procedure that requires a demonstration of "probable cause" for the search.

Even if the White House's fears about Dr. Ellsberg were justified, Mr. Jaworski noted, those fears were "fatally flawed by the implicit assumption that they [the plumbers] were free to decide for themselves whether a search . . . was justifiable. It is hard to imagine a more patent and culpable violation of the Fourth Amendment than this carefully plotted secret night-time break-in."

The Fourth Amendment protects American citizens against unreasonable searches and seizures. In his brief, Mr. Jaworski cited what he termed a "classic statement" on the Fourth Amendment by Justice Robert Jackson in 1948:

"When the right of privacy must reasonably yield to the right of search is, as rule, to be decided by a judicial officer, not by a policeman or Government-enforcement agent."

Elsewhere, Mr. Jaworski disputed another of the main

theses of the defense—that, under the criminal statute involved, the Government must prove beyond a reasonable doubt that the defendants had a "specific intent" to interfere with a citizen's Federal rights.

Challenging the defendants' interpretation that, under the civil rights statute, the "predominant purpose" had to be the interference with someone's rights, Mr. Jaworski noted, "What official really wants to 'violate the Constitution' for its own sake?"

"Rarely, if ever," the brief said, "could the Government prove that the defendants consciously focused on the Constitution in planning their activity, and it is ludicrous to believe that Congress erected such a requirement in the civil rights statutes."