

# Ex-Aide to Nixon Submits Affidavit in Ellsberg Case

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Special to The New York Times

5/16/77

LOS ANGELES, May 5—Egil Krogh Jr., a former White House aide, has sent directly to the judge in the Pentagon papers trial an affidavit in which he reportedly discusses the break-in at the office of Daniel Ellsberg's former psychiatrist.

The affidavit arrived in the office of United States District Judge William Matthew Byrne Jr. last night, and today defense attorneys asked that it be turned over to them Monday morning.

In Washington, the Associated Press reported that Mr. Krogh admitted in the affidavit that he had supervised from the White House the operation that led to the break-in on the evening of Sept. 3, 1971.

Mr. Krogh, who had been a White House aide in the first Nixon Administration, took a leave of absence last week from his current job as Under Secretary of Transportation.

There were the following other developments in the Pentagon papers case today:

¶ Citing President Nixon's last orders on executive privilege, Leonard B. Boudin, a defense attorney, said that he would move again Monday for immediate dismissal of this case—this time on the ground that it will now be impossible to get at the truth of the link between the Watergate scandal and the Pentagon papers trial.

¶ John W. Dean 3d, the President's former counsel, turned over to the Federal Bureau of Investigation a list of the effects taken from the White House office of E. Howard Hunt Jr., one of those guilty in the Watergate trial. Among other things, the material included a .25-caliber Colt revolver, several files marked "Pentagon Papers" and Ellsberg" and electronic equipment, according to the list, given to the F.B.I. on July 3, 1972. Judge Byrne gave it to the defendants and they made it public today.

Ever since the Watergate case was linked to the Pentagon papers trial, the defense has been asking for a dismissal of the case against Dr. Ellsberg and his co-defendant, Anthony J. Russo Jr. Judge Byrne has

been holding off his decision until an investigation can be completed. Former Nixon Administration officials may be called here to testify, the judge has said.

But Mr. Boudin now contends that in view of the President's latest orders, such an investigation and hearing will be impossible.

## 'New Dimension' Noted

The propriety of executive privilege to obstruct Congress is subject of vigorous criticism in the last months, "Mr. Boudin said. "It takes on a new and more ominous dimension when President Nixon interferes with the judicial process—as he did yesterday during the still pending motion to dismiss this case.

"The President's decision that ever former Presidential aides will not testify with respect to communications with him means that Mr. [John D.] Ehrlichman and Mr. Krogh and possibly Mr. [Robert] Mardian cannot tell the court the extent of the President's involvement in the prosecution."

Nor, he said, can they tell of the President's "knowledge of the alleged activities, such as an examination of a psychiatrist's confidential records."

"The President has taken the equivalent of the Fifth Amendment privilege against self-incrimination," Mr. Boudin said.

Mr. Mardian is a former Assistant Attorney General.

Mr. Boudin said, "It is inconceivable that President Nixon did not know of Mr. Ehrlichman's involvement in this case when he gave his television speech on Monday night in which he expressed great confidence in Mr. Ehrlichman. It is inconceivable that he did not know that Mr. Ehrlichman had on Friday talked to the F.B.I. about this case."

Dr. Ellsberg said the President has now extended that executive privilege to "include the taking himself of the Fifth Amendment for his former aides."

Mr. Boudin said that because the President was using executive privilege to "silence witnesses like Ehrlichman and

Krogh," there was no way to continue this trial.

Under executive privilege, the confidentiality of communications within in the executive branch is protected if disclosure would impair the orderly functioning of government.

Mr. Boudin also said that there was no way to continue this case when no one knew what was in the files that there were burned by L. Patrick Gray 3d, the former acting director of the F.B.I.

Judge Byrne has indicated that he will not dismiss this case unless it is shown that the evidence and testimony presented in court were "tainted." Mr. Boudin said that "with the destruction of evidence we may never know" whether the case was tainted, and "there can now be no hearing, everyone agrees, which would show taint."

The list of effects found in Hunt's office was given to the F.B.I. by Mr. Dean and his assistant, Fred Fielding. The effects included:

The Colt revolver, one clip for the revolver, one holster, three shoulder harnesses, three belt harnesses, four rechargeable Bell and Howell batteries, one tear gas canister, two microphones in simulated Chap-Stick containers. Three antenna leads, four antennas, six jack wires, one shoulder harness with white lead wire and phone jack, three operating instructions for a Bell and Howell portable transmitter.

There was also one copy of the book, "The Pentagon Papers"; six brown envelopes containing classified material relating to the Pentagon papers; one tan folder marked "Ellsberg"; one tan folder marked "Pentagon Papers"; one folder marked "John Paul Vann"; folders marked "Time and Pay Records," which contained verification of hours worked at the White House, and a folder marked "Press Contacts."

## Maps Also Found

There were also several maps. One of them, of Delaware, Maryland, Virginia and West Virginia, had a pencil circle around the Warrenton, Va., area and another around the Union Station area.

A second map was of the Baltimore-Washington area, with circles around the junction of Interstate Highways 695 and 195 and in the area of George Washington Memorial Parkway and Interstate 195. There was also a circle around 14th and N Streets, in Wash-

ington, with a pencil route traced from the House of Representatives Office Building to that location.

Hunt has admitted that he and G. Gordon Liddy conducted the break-in operation at the psychiatrist's office in Los Angeles.

Dr. Ellsberg and Mr. Russo are charged with six counts of espionage, six counts of theft and one count of conspiracy.

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