

NYTimes JAN 28 1974

# Crime And Punishment

By Anthony Lewis

BOSTON, Jan. 27—In a few days Egil Krogh Jr. will surrender to Federal marshals and begin serving a six-month sentence for his part in the burglary of Daniel Ellsberg's psychiatrist's office. He will be the first Nixon White House aide imprisoned since the original Watergate break-in led to the disclosure of higher crimes.

When Mr. Krogh was sentenced, the public perception was distorted by a sudden and rather mysterious buildup of expectations that he would implicate the President. No one familiar with the case, or with the extent of Mr. Krogh's role in the White House, ever thought he would explode such a bomb.

The sentencing of Egil Krogh was significant for very different reasons. They touch on the nature and purpose of the criminal law, the problems of investigating a President and the meaning of "national security."

All along, in the uncovering of Watergate, there has been a certain impatience with the processes of the criminal law. When Archibald Cox asked for a delay in Senate hearings out of concern for the integrity of the Special Prosecutor's work, he was criticized by some eager to discover the extent of the President's involvement. Similarly now there are those who think Leon Jaworski is putting mere law enforcement ahead of the central question of impeachment.

But following the rules, whether convenient or inconvenient, is a price of civilization. Steady enforcement of the criminal law is designed to make clear to all that there is a civil order. That course is all the more essential

## ABROAD AT HOME

in a case involving violation of the law by those sworn to uphold it. If we do not vindicate the system of criminal justice in that case, we can hardly hope to discourage lawlessness in society.

Moreover, insistence on orderly prosecution of the criminal charges arising out of Watergate is not in conflict with the aim of fixing Mr. Nixon's responsibility.

In any investigation of large-scale conspiracy, evidence of culpability at the top is likely to come only from documents or from a decision by someone just below the top to talk. In Watergate the Special Prosecutor now must have all the relevant documents, or tapes, that have not been destroyed. The pregnant question is, as it has been, whether someone who was close to the President will cooperate.

The large and the immediate pur-

poses of the criminal law were both served in the sentencing of Egil Krogh. United States District Judge Gerhard A. Gesell framed the problem by quoting from the most eloquent American warning against the dangers of official illegality, by Mr. Justice Brandeis:

"In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy."

Judge Gesell found much good to say of the defendant before him. Mr. Krogh had been an "exceptionally competent" official apart from this crime. He had been assigned this illegal task "by higher authority," and got no money for it. He was not involved in other Watergate matters. He had not tried to blame others. He was leading a "respectable" life, and he needed "no rehabilitation."

But the judge then imposed a prison sentence of two to six years, suspending all but six months. He explained: "Because you are a lawyer, because you held high responsibility when this offense occurred, because you had many advantages, because you committed perjury, any punishment short of jail would be inadequate."

That was a severe sentence for a first offender, an underling, a man of better character than many, one who appeared to feel genuine remorse and had cooperated with the prosecution. The jail term and Judge Gesell's statement in imposing it will increase the pressure for candor on those who were closest to the President: H. R. Halde- man, John Ehrlichman, John Mitchell, Charles Colson.

One or more of those men might conceivably be affected, too, by what Egil Krogh said on being sentenced. In any event, his statement will be noted by history. It will tell strangers much about how a system conceived in liberty slipped toward Presidential autocracy in our day.

"I see now," Mr. Krogh said, "that the key is the effect that the term "national security" had on my judgment. The very words served to block critical analysis. . . ."

"The discrediting of Dr. Ellsberg, which today strikes me as repulsive and an inconceivable national security goal, at the time would have appeared . . . to diminish any influence he might have in mobilizing opposition to the course of ending the Vietnam war that had been set by the President. And that course was the very definition of national security."

"Freedom of the President to pursue his planned course was the ultimate national security objective."

Sentencing is often an unsatisfactory aspect of our criminal justice system. But in the case of Egil Krogh the values of law and liberty were vindicated.