

WXPost

Krogh Secrecy Ordered, Attorney Says

NOV 14 1973

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Former presidential aide Egil Krogh was ordered to maintain the secrecy of the work of the White House "plumbers" even if he had to lie under oath, his attorney said yesterday.

The lawyer, Stephen N. Shulman, indicated in federal court here that the orders came from President Nixon himself. Shulman said that "there are all kinds of secrets" that officials in Washington preserve by lying.

"Under oath?" U.S. District Court Judge Gerhard A. Gesell demanded.

"Yes," Shulman replied.

Krogh, 34, was the head of the White House "plumbers" unit organized at Mr. Nixon's direction. He was indicted last month for lying during the Watergate grand jury's fruitless investigation last year of its activities. He was charged on two counts of making false statements under oath involving the White House-sponsored burglary at the offices of Daniel Ellsberg's California psychiatrist.

Yesterday's hearing was called to consider pretrial motions, including a bid by Krogh's lawyers to dismiss the case. They are also seeking a series of tapes of President Nixon's conversations involving the work of the plumbers' squad, which was known at the White House as the Special Investigations Unit.

Gesell withheld any rulings, but he showed little patience with what he called Krogh's "Nuremberg defense." At war crime trials held at Nuremberg, Germany, after World War II,

high-ranking Nazi officials defended themselves on grounds that they were following orders.

At one point, Shulman maintained that in some cases, release of highly classified information could be "worse than murder."

Gesell sternly rejected the claim.

"I don't think that's an argument I can entertain, Mr. Shulman," the judge said. "We would have no society. I simply will not accept that argument."

Already indicted for the burglary by a Los Angeles County grand jury, Krogh admitted in an affidavit last May that he sent Watergate conspirators E. Howard Hunt and G. Gordon Liddy to carry out the break-in in an effort to secure Ellsberg's psychiatric records over the 1971 Labor Day weekend.

Krogh's indictment here stemmed from a deposition he gave on Aug. 28, 1972, at the Justice Department, where he was questioned about Hunt and Liddy's travels by government pro-

secutor Donald E. Campbell. Krogh then denied knowing of any travel Hunt made in connection with the declassification of the Pentagon Papers, which Ellsberg had leaked to the press. Krogh was also charged with lying in saying that he knew of no travels by Liddy "for the White House or anyone else" aside from a trip to California on a customs and narcotics matter.

When he resigned in May from his last government post as under secretary of transportation, Krogh wrote the President that he ordered the burglary "in excess of instructions and without the knowledge or permission of any superior."

However, he has since asked that Mr. Nixon be subpoenaed to testify at his burglary trial in Los Angeles, where his lawyers have argued that "any action which may have been taken by Krogh was pursuant to a directive of President Nixon" and that "such actions were reasonably believed by Krogh to be lawful

and essential to the security of the United States."

The recordings Krogh's lawyers are seeking here include a meeting between the President, former White House adviser John D. Ehrlichman and Krogh on July 24, 1971, at which, Krogh's lawyers say, "the work of the Special Investigations Unit was discussed and instructions were given to the defendant."

Judge Gesell suggested that Krogh could simply have refused to answer the questions put to him at the Justice Department, invoked executive privilege or simply not have shown up, since he was not under subpoena.

Shulman said Krogh had not expected the questions put to him about Hunt and Liddy's travels. The attorney said that Krogh had been firmly "instructed...to maintain secrecy" about the work of the plumbers.

"You mean to lie?" the judge asked.

"To maintain secrecy," Shulman said. "Up to and including to lie if it's necessary to maintain secrecy."