

# Krogh Attorney Attacks Nixon Stand

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LOS ANGELES, Nov. 14—A defense attorney in the Ellsberg break-in case declared today that the President has "no right to order criminal activity." The comment was made by Norbert Schlei, an attorney for Egil Krogh Jr., the former White House aide who has been indicted for conspiracy and burglary here in connection with the break-in at the office of Dr. Daniel Ellsberg's psychiatrist in September, 1971.

Mr. Schlei's remark would seem to contradict a key argument advanced by John D. Ehrlichman, another defendant in the break-in case, and President Nixon himself. This argument holds that the President has some "inherent power" to order in the name of national security actions that might otherwise be illegal.

That "national security" argument was strongly disputed earlier this week by Leon Jaworski, the new special Watergate prosecutor, in a brief filed in Washington in another case involving Mr. Krogh.

In that case, Mr. Krogh has been indicted for perjury, and Mr. Jaworski said that the former White House assistant seemed to be defending his action on the basis of national security.

"While the claim of national security gives these claims of legalized burglary and perjury a deceptively compelling ring,"

asserted Mr. Jaworski, "ultimately they rest on a wholesale rejection of the rule of law and espouse a doctrine that government officials may ignore the requirements of positive criminal statutes when they feel the circumstances dictate."

Mr. Schlei's comments came in an interview as Superior Court Judge Gordon Ringer heard arguments on defense motions to "discover" the incriminating evidence gathered thus far by the prosecution. Mr. Schlei has asked for the power to subpoena President Nixon to appear here, bringing with him tapes and documents that might clarify exactly what orders were given to Mr. Krogh, who headed a White House unit called the "plumbers" because it tried to plug leaks of information.

## Contentions of Defense

As disclosed previously in briefs and interviews, the defense by Mr. Krogh, Mr. Ehrlichman, and two former White House colleagues, David R. Young and G. Gordon Liddy, is contending that the perpetrators of the break-in were acting in their capacity as Federal officers, and thus cannot be prosecuted by state authorities for their actions.

The defense also contends that whatever actions the men took, they were justified by the inherent powers of the President. It is this argument, however, that Mr. Schlei seem-

ed to be backing away from a bit today.

In arguments before Judge Ringer today, defense attorneys advanced the theory that the district attorney enjoyed contacts through an "old boy network" of prosecutors, as one put it, that would give them access to information not available to the defense.

The prosecutors retorted, however, that they did not have any information in the case that had not, or would not, be made available to the defense.