

# Judge Denies Krogh Had Right to Lie, Sets Trial for Him

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U.S. District Court Judge Gerhard A. Gesell held yesterday that former presidential aide Egil (Bud) Krogh had no right to lie in the name of national security and ordered him to stand trial here on criminal charges.

The judge held that Krogh's false statements to government prosecutors last year must be presumed "to have substantially affected" the Watergate grand jury's fruitless attempts to investigate the work of the White House "plumbers."

Indicted for lying under oath, Krogh, 34, had asked for dismissal of the charges on the grounds that he had been ordered to preserve the secrecy of the plumbers' work even if he had to perjure himself.

Krogh's lawyers indicated Tuesday at a hearing before Gesell that the orders came from President Nixon himself. The onetime White House aide organized the secret plumbers' squad in 1971 at Mr. Nixon's direction to track down the sources of sensitive news leaks.

Gesell, however, flatly rejected the contention that "instructions given the defendant in the guise of national security can make an otherwise false statement under oath legal."

The judge also denied Krogh's bid for access to President Nixon's tapes and documents involving the plumbers on the grounds that they would be irrelevant even if they show he was ordered to lie.

The rulings represented a heavy blow for Krogh, who has pleaded not guilty. He

admitted in an affidavit last May 4 that he sent Watergate conspirators G. Gordon Liddy and E. Howard Hunt Jr. to the West Coast in 1971 to burglarize the offices of Daniel Ellsberg's psychiatrist.

Disclosure of the break-in, along with other "government misconduct," led to dismissal of the charges against Ellsberg and co-defendant Anthony J. Russo Jr. who were then on trial in Los Angeles for leaking the Pentagon Papers to the press.

Watergate special prosecutors reported Wednesday that the White House has assured them access to tapes of Mr. Nixon's conversations about the plumbers, as well as the White House file on the secret squad. But they said they would resist Krogh's attempts to secure them for his defense.

Gesell alluded to the arrangement in his three-page order yesterday, but said it was none of his concern at this point. He has indicated, however, that the President's tapes and White House files on the plumbers might be relevant to a plea for leniency if Krogh should be convicted.

Krogh faces a maximum penalty of five years in prison and a \$10,000 fine on each of the two counts of making false declarations under oath. His indictment stemmed from a deposition he gave to government prosecutors Aug. 28, 1972, when he denied knowing about Hunt's and Liddy's travels to the West Coast as members of the plumbers' squad.

Krogh has contended that his affidavit last May, in which he took blame for the burglary, constituted an attempt to recant his earlier testimony.

Striking down that defense, Gesell said the affidavit "did not admit the prior falsehood, but was merely in conflict" with what Krogh had said in his deposition. In any case, he said, the affidavit came too late, since the Watergate grand jurors—to whom the deposition had been read—had already indicted Hunt and Liddy for the Watergate break-in.

Krogh's "effort to recant," the judge added, was made only after the break-in at the offices of Ellsberg's psychiatrist had been reported to the trial judge in the Pentagon Papers case. As a result, it was already "manifest that the falsity of defendant's prior statement would be exposed."

Gesell said he would meet with opposing lawyers Nov. 26 to set a trial date. Krogh also faces trial in Los Angeles next month on state charges of burglary and conspiracy to commit burglary.