

P R O C E E D I N G S

THE COURT: Good afternoon.

THE CLERK: Criminal 857-73, United States v. Egil Krogh. Mr. William Merrill, Mr. Charles Breyer, Mr. Philip Bakes for the Government. Mr. Stephen N. Shulman for the Defendant.

THE COURT: Mr. Shulman, will you come forward with Mr. Krogh, please, sir.

MR. SHULMAN: Yes, sir.

THE COURT: Is there anything, Mr. Shulman, you wish to say before sentence is imposed on Mr. Krogh?

MR. SHULMAN: Yes, there is, Your Honor. Mr. Krogh would also like to make a statement.

THE COURT: Yes, I would be asking him the same question.

MR. SHULMAN: Right.

Your Honor, Your Honor has received a large number of letters from people who have known Mr. Krogh in a variety of walks of life. They speak much more eloquently about Mr. Krogh and his character than I could; and I would let them speak for themselves.

They detail that his Government career included a number of contributions to the country and to his fellow-man and one conspicuous failure of analysis, for which he stands before Your Honor today.

I would like to say to Your Honor that I have worked with Mr. Krogh for some eight months as a result of that and we have explored that failure of analysis from every possible direction. I can assure Your Honor and wish to assure Your Honor that Mr. Krogh's reformation with respect to that is indeed complete.

I can also assure Your Honor that the period of time that has been involved in that process has been punishment and true suffering. I would like to say to Your Honor that it is my hope that you will find it possible to conclude that he has suffered enough punishment in that regard and does not require incarceration. If I may have your indulgence, I would like to say that I say that not only as his attorney but as an officer of the Court.

Thank you, Your Honor.

THE COURT: Mr. Krogh, is there anything you wish to say to me before sentence is imposed?

DEFENDANT KROGH: Yes, Your Honor, I do. First, I would like to thank you for permitting me to prepare a statement for the Court in which I was able to outline the offense, the reasons why it took place, as I saw it, the mistake as it surely was and my feelings about it today. I appreciate that and also that I can make that statement available.

I also would like to say how deeply sorrowful I am

over the suffering many many people have endured because of this offense.

The thinking that led to the break-in in 1971, in my judgment, spawned trouble, trouble that while I did not know what was to transpire later, nevertheless, led to other problems. The victims of this crime in California, Dr. Fielding and Dr. Ellsberg, both of them, were deprived of rights to which they were entitled. Dr. Fielding, in particular, from what I have read, is a man that has always cherished his privacy which, because of this act, he has lost.

The perpetrators of the crime, men that worked for me, have suffered enormously, as have their families and their children. More than that, the American people, many of them, have been confused; many have been disturbed by what took place in 1971; and it has raised many doubts, many questions about what the country represents and what it means. Those doubts and those questions probably never would have been raised but for this action in California, which I approved.

I also feel great sadness and sorrow as to what has happened to members of my profession which, in some people's minds, has been brought into disrepute because of this. I wanted you to know how sorrowful and sad I feel about this. I felt it personally for a long time.

I also would like to tell you how serious I feel the action which took place was. In contrast to Watergate and

other political activities, the actions of the Special Investigations Unit, the Plumbers, represented official Government action. As official Government action, as I have come to see it, it struck at the heart of what this Government was established to protect, which is the individual rights of each individual. It was never my intention, while serving in the White House or while serving as the Director of the Special Investigations Unit, for that to take place; but it did.

On a very personal level, the past eight months I have been under intense investigation, numerous indictments. Throughout this time, I have been represented by outstanding counsel who have undertaken a difficult task of protecting me and my rights before various bodies and also perhaps the more difficult task of protecting me against myself. At the same time, I have been prosecuted by a team of prosecutors who in every dealing that I have had with them were fair, objective, adhering to the highest standards of professionalism and objectivity.

The reporters that have covered this incident have covered it uniformly, I feel, with fairness and in many cases I think have been kinder than I deserved.

In addition to those rights which I have enjoyed which bear specifically on this case, I have been free to say what I want, where I want, when I want to. I have been free

to meet with my friends. I have been free to travel. Most importantly and most fundamentally I have been free to pray how, when and where I needed to.

The question then presented itself very clearly: How could I, as an American citizen, enjoying these rights, which have been fought for, built and expanded throughout the history of this country, continue to defend conduct which had stripped another American citizen of his rights, his specific Fourth Amendment right, which his Constitution guaranteed to him and which his Government, of which I was a part, was supposed to protect?

The answer to that question for me was that I could not continue to defend it any further. No assertion of national security, no matter how deeply held, could change that fundamental mistake. There was no way that any justification could make right that which was wrong.

Apart from the seriousness of this, I have had much to be grateful for. I can't think of a day that has gone by since this incident came to public recognition where I have not been given some measure of support, either by a letter, a telegram, a telephone call, conversation on the street with people that I knew and some I did not know. I am grateful for that help and that support and the prayers which have been said in my behalf.

I am also grateful for the sacrifice and the risks

which many people have taken in writing extensive letters on my behalf, which I have not read but which my attorney says there are quite a few that have been submitted to the Court. I want to express my thanks for that.

Also, Your Honor, these days have been agonizing in some respects for me and for my family. They have been days when I wondered whether we were ever going to see the light, as I felt it was there. But from these hearings, investigations, indictments, convictions, sentences, sentences to be served, I have great hope that what is actually being done is a wonderful healing process, whereby what this country represents and what it means is going to be more clearly understood.

There was a long time when I hoped and prayed that what had been done by me in 1971 would not be uncovered. I hoped and prayed that if uncovered it would be understood. It was not. I hoped and prayed I would not be investigated. I was. I wished more than ever that I would not have been indicted and convicted; but I was.

This led me to see that while it looked like it was great tribulation and turmoil, an inexorable process had been set in motion. When, I don't know, and where it is going to lead, I don't know; but I feel what that process is is a clearing away of much of the wrong thinking, the mistakes in judgment, the qualities of character which need to be cleared

away before we can stand again as a country which believes more than ever before in an individual's right to be free and to do as he wishes. I have this hope. It has helped to sustain me a great deal through this.

The time is here when you will have to pass sentence on me. For many months up until the end of November, I dreaded this moment. But after the entry of the plea of guilty on November 30, much of the dread and fear dropped away; and in its place I am grateful to say there was a sense of peace and a sense of calm.

As I said to you on November 30 of last year, the reason I pleaded guilty was that I no longer wanted to be associated with that basic violation of a principle of individual rights. In addition to that, I pled guilty because that conduct deserved to be convicted; it needed to be convicted.

Finally, Your Honor, I would like to assure the Court that whatever sentence you deem it appropriate for me to serve, that I will do my best to serve it as well and as effectively and as honorably as I can.

I thank you, Your Honor.

THE COURT: Mr. Krogh, I have listened carefully to your eloquent statement. You recognize, I am sure, that the Court has a duty now to perform.

DEFENDANT KROGH: I do.

THE COURT: I consider it appropriate to make a brief statement in explanation of the sentence that I am about to impose.

A very thorough presentence investigation has taken place in your case. As you say, Mr. Krogh, you have given the Court an account of your involvement and the Court has found it in all respects consistent with detailed information supplied the Court by the Special Prosecutor.

Many of your teachers, friends, former colleagues and members of your family have supplied very useful information about your life. As far as the Court can determine, apart from this offense you have lived a responsible public life; you have served your Government and this community in an exceptionally competent manner on many occasions.

Perhaps somewhat contrary to the public understanding, you were not involved in any other aspect of the various events being investigated by the Special Watergate Prosecutor. You received no money for your part in this affair. In acknowledging your guilt, you have made no effort, as you very well might have, to place the primary blame on others who initiated and who approved the undertaking. A wholly improper, illegal task was assigned to you by higher authority and you carried it out because of a combination of loyalty and I believe a degree of vanity, thereby compromising your obligations as a lawyer and as a public servant.

The Court must take these matters into account. I must also recognize that you are standing at the Bar and hence your ability later to earn a living has already been undoubtedly adversely affected.

As your statement illustrates, you need no rehabilitation. Yet there are other considerations. Justice Brandeis once said: If the Government becomes a lawbreaker, it breeds contempt for the law. It invites every man to become a law unto himself. It invites anarchy. I think this is true. Because you are a lawyer, because you held high responsibility when the offense occurred, because you have had many of the advantages which our society offers, because you committed perjury when properly questioned by law enforcement officials, and thus concealed your breach of the public's trust, any punishment short of jail would, in the Court's view, be inadequate.

Considering the many exemplary aspects of your life, and your eventual but genuine remorse, your incarceration will be short and your sentence will, accordingly, be partly suspended.

You are sentenced to a term of two-to-six years, of which you shall serve six months and remain on unsupervised probation thereafter for a period of two years.

I am going to give you ten days to straighten out your affairs and make your arrangements. The United States

Bureau of Prisons has not yet designated an institution. They will by that time. You should report to the United States Marshal in this Court House at 10:30 a.m. on Monday, February 4, 1974, unless other arrangements are made in this matter by your counsel with the probation officer who will be informed as to what institution you are designated to go to.

Mr. Krogh, I am going to send a copy of what I have just said to each of the people who have written me on your behalf, so they will know how at least the Court felt obliged to proceed in this matter.

DEFENDANT KROGH: Thank you, Your Honor.

THE COURT: You will remain on the same bond.

We have an indictment, do we not, to be dismissed in this case, the original indictment, Mr. Merrill?

MR. MERRILL: Yes, Your Honor.

THE COURT: The indictment will now be dismissed.

DEFENDANT KROGH: Thank you.

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CERTIFICATE OF COURT REPORTER

I, Ida Z. Watson, certify that I reported the proceedings in the above-entitled cause on January 24, 1974 and that the foregoing Pages 1 to 11, inclusive, constitute the official transcript.
