

ABA Sets Plan To Air Stands On Nixon Case

By Jack Fuller

Special to The Washington Post

HONOLULU, Aug. 14—Leaders of the American Bar Association said today they have found a way for the association to decide whether to speak out on possible prosecution of Richard M. Nixon for his part in the Watergate coverup.

The issue nearly died Tuesday when the ABA's assembly—which includes all the approximately 5,000 lawyers attending the ABA annual meeting here—failed to have a 200-member quorum as two proposals on the Nixon matter were about to be debated.

The attendance embarrassed some ABA leaders because it looked like the group really didn't care about the final resolution of Watergate despite all the talk and dozens of formal discussions here about the moral crisis precipitated by the national scandal.

Calling the lack of a quorum "regrettable," ABA President Chesterfield Smith said, "Some members were at other programs, some were swimming, some were sight-seeing. There are as many reasons why people weren't at the meeting as there are lawyers."

Smith and William Reece Smith, chairman of the resolutions committee hurried today to put together a parliamentary procedure by which the policy-making 300-member House of Delegates can debate the resolutions.

Ordinarily, resolutions by ordinary ABA members go first to the assembly, which votes which to send to the delegates. William Reece Smith said various rules will be waived to allow the resolution to come directly to the House floor Thursday or Friday.

The resolutions committee has approved a reworded version of one member's proposal on Mr. Nixon's legal future. "The American Bar Association continues its dedication to the fair, just and impartial application and enforcement of the law regardless of the position or status of any individual alleged to have violated the law."

The committee voted to oppose another, similar resolution that mentioned Mr. Nixon by name. Committee members said they were worried that it might prejudice any court case brought against Mr. Nixon.

Many of the lawyers who played a role in the events that eventually toppled Mr. Nixon are here at the convention, but they expressed cautious views on whether the former President should be brought to trial.

"My visceral reaction," said former Deputy Attorney General William D. Ruckelshaus, "is that the [former] President has been punished enough. But I hesitate on this complicated question—my feeling must be weighed against the perception of judicial fairness by the people."

Meanwhile, today's meeting was filled with discussions and speeches on what lawyers must do to put their ethical houses in order and help the nation recover its moral balance.

Former Watergate Special Prosecutor Archibald Cox argued that the movement of law away from courtroom matters—more lawyers giving counsel than going to trial, more making political statements than filing briefs—makes the attorney's judgment about what is proper more difficult and makes mistakes more dangerous.

"Outside the courtroom the

situation is quite different," Solicitor General Robert H. Cox said. "Only one protagonist is immediately present. There is no trained judge to rein in excesses and focus the issues impartially."

However, George Beall, the U.S. attorney for Maryland, who directed the federal investigation of former Vice President Spiro T. Agnew, said the performance of lawyer-congressmen on the House Judiciary Committee "has helped the legal profession to overcome the public resentment generated by the well-publicized actions of a few."

But Beall said the public wants more. "The public looks to us to accomplish . . . housecleaning. While they may quickly forget the specific excesses and wrongs of Agnew and Watergate, they are likely not to forget if the legal profession excuses these evils."

Alone among the major speakers at the meeting, U.S.

Solicitor General Robert H. Bork warned that the legal profession and the nation could go too far in trying to guard against the recurrence of abuses of power like Watergate.

Watergate, he said, "threatens us with a backlash of harmful reform." He argued against separating the Justice Department from the White House on the grounds that only the President and his staff can keep government policy coherent and uniform.

He said the creation of a permanent special prosecutor would dampen the courage of officials to make unpopular decisions, adding it would also "freeze in institutionalized form the message that the executive branch is never to be trusted. It would be little short of suicidal for representative democracy to teach its constituents that civics lesson."