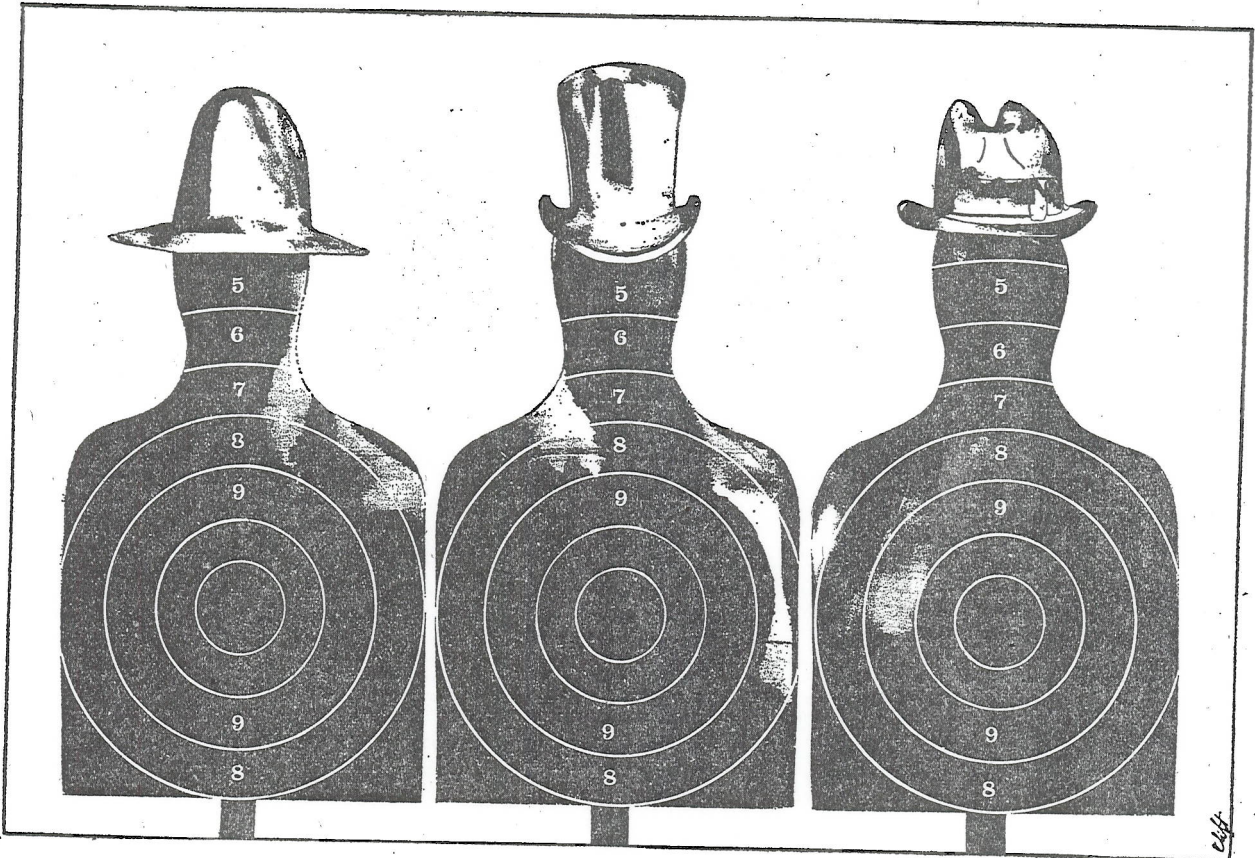


"There can be no menace more lethal to our liberties and fatal to our influence than this flouting of laws . . ."



The Constitutional Crisis

By Chesterfield H. Smith

CHICAGO—As the president of the American Bar Association, I urge in the strongest terms that appropriate action be taken promptly by the courts, and if necessary by Congress, to repel the attacks which are presently being made on the justice system and the rule of law as we have known it in this country.

The American Bar Association last spring called for the appointment of an independent prosecutor with responsibility for the investigation and prosecution of the Watergate affair. The A.B.A. position was based upon its Standards for Criminal Justice, which provide that a prosecuting officer should have no conflict of interest or the appearance of a conflict of interest. Thus, under the standards, it would be improper for an investigation of the President himself, of the office of the President, or of the executive branch of the Federal Government to be conducted by a prosecutor subject to the direction and control of the President.

Based upon assurances made publicly by high officers of the Administration, the A.B.A. was most hopeful that Archibald Cox would be allowed to pursue justice in all aspects of his investigation without control by those whom he was charged with investigating.

Now, the President, by declaring an

intention, and by taking overt action, to abort the established processes of justice, has instituted an intolerable assault upon the courts, our first line of defense against tyranny and arbitrary power. The abandonment, by Presidential fiat, of the time-tested procedures to insure the equitable distribution of justice constitutes a clear and present danger of compelling significance.

The substitution, again by Presidential fiat, of a makeshift device—unilaterally improved and conferring upon one individual functioning in secret the power to test evidence—may well be acceptable for a Congressional investigation, but to also insist that it be utilized by the courts in criminal proceedings is an assault of wholly unprecedented dimension on the very heart of the administration of justice. The absolute gravity of the situation demands the most resolute course on the part of the courts and, if necessary, Congress.

There can be no menace to our security from within and none from without more lethal to our liberties at home and fatal to our influence abroad than this defiant flouting of laws and courts. I express my hope and confidence that the judicial and legislative forces of this nation will act swiftly and decisively to repeal and correct this damaging incursion by the President upon the system of justice, and therefore upon our basic liberties:

I hope also that the President will

change his course and cease what I believe to be an unprecedented flouting of the rule of law. I also believe that the Congress should, as its first priority, re-establish the office of the Special Prosecutor and make it independent.

The people of this country will never believe that justice has been done until such time as the independent prosecutor is permitted to go into all aspects of Watergate without limitations or control imposed on him by those whom he has reason to believe are possible participants. At the same time, it is clearly proper that those who are being investigated by the Special Prosecutor present their objections to his conduct to the courts for a determination as to whether such conduct is legally permissible.

I pledge to see that the A.B.A. assist the United States District Court for the District of Columbia and any other Federal court in the discharge of its duties and responsibilities in this constitutional crisis.

I applaud the action of three great lawyers, Elliot Richardson, William Ruckelshaus and Archibald Cox, who have emphasized to the nation that they are lawyers who honor the tradition of the legal profession and that they are lawyers who properly and without hesitation put ethics and professional honor above public office.

Chesterfield H. Smith of Lakeland, Fla., has been president of the American Bar Association since early August.