

Burger's Advice On Watergate

Washington

Former Attorney General Richard Kleindienst indicated to President Nixon on April 15, 1973, that he had sought the opinion of Chief Justice Warren Burger about how the Watergate scandal should be investigated, according to the transcripts of White House conversations.

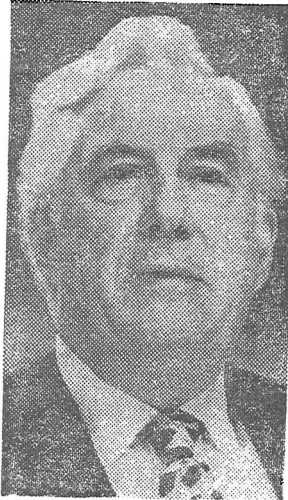
The edited transcripts indicate that Kleindienst said Burger suggested the appointment of a special prosecutor and even recommended a likely nominee for the post. A month later, the President followed the course Burger indicated, though he passed over the chief justice's choice for special prosecutor, as reported by Kleindienst.

The revelations of contact between Burger and a top administration official are sure to raise questions about what other Watergate-related matters, if any, they discussed.

Such contact might also create doubts about the chief justice's fitness to preside over any Senate impeachment trial of Mr. Nixon and to vote on any Watergate appeals that reach the Supreme Court.

In the meeting with the President, Kleindienst argued forcefully for the special prosecutor idea, according to the transcript. But it indicates that the President was initially dubious, worrying that turning over the investigation to an outsider would "be too much of a reflection on our system of justice" and give Justice Department officials then in charge of Watergate a black eye.

To buttress his argument, Kleindienst invoked Burger's name and mentioned



JUSTICE BURGER
He met Kleindienst

that the chief justice favored for special prosecutor a Chicago attorney, Barnabas Sears, who had prosecuted the murders of Black Panthers.

"Thinks we should have a special prosecutor?" Nixon asked, apparently in reference to Burger.

"Yes, he does," Kleindienst replied. "Yes."

Another prospect, Senior Judge J. Edward Lumbard of the U.S. Court of Appeals in New York City, had also been discussed with Burger, it appears.

Mr. Nixon suggested Lumbard, who is past retirement age but still hears cases, but Kleindienst responded, "well the chief justice doesn't like that unless he has completely retired from the judiciary."

Kleindienst, who assured the President that "the chief justice and I are very close friends," volunteered Burger's thoughts. But one contradictory passage raises questions about whether the attorney general actually conferred personally with

Burger about the special prosecutor.

"I want to get his (Burger's) feelings about the concept of it (the special prosecutor's job) and also who he would recommend," Kleindienst said. "The one person that everybody kind of comes together on is a guy by the name of Barnabas Sears in Chicago."

But later in the same session Kleindienst said, more flatly, "the chief justice thinks this fellow Sears — he's the one who recommended Sears." It was at that point that the President pinned Kleindienst down about Burger's view, and was told that the chief justice "thinks we should have a special prosecutor."

Kleindienst could not be reached for comment.

If the chief justice were involved, it would raise ethical questions. Since the time of Chief Justice John Jay, members of the Supreme Court have religiously avoided discussing with the President or his aides any matter that might come before them.

Even those justices friendly with presidents — former Justice Abe Fortas was on intimate terms with President Lyndon Johnson, for example — insisted that they limit their advice to nonjudicial matters. Fortas reportedly talked to Mr. Johnson about Vietnam.

"The problem with Burger's talking to Kleindienst about the special prosecutor is that you wonder what else they talked about," said one attorney familiar with judicial ethics.

"It's awful, their putting the chief justice in a spot like this. You'd think they'd know better."

Los Angeles Times