

Bar's Head Sees Risk by Nixon On Evidence in 'Plumbers' Trial

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By WARREN WEAVER Jr. MAY 24 1974

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WASHINGTON, May 23— President Nixon would risk committing an impeachable offense if he refused to obey or appeal a court order to provide relevant evidence for a criminal trial, the president of the American Bar Association declared today.

Chesterfield Smith told reporters that the President would be "flouting the law" if he declined to provide White House records for defendants in the plumbers' trial and refused at the same time to challenge in the courts an order requiring him to surrender such records.

Asked if he believed such behavior would constitute an impeachable offense, Mr. Smith replied: "Certainly, by anyone's standard."

The A.B.A. president said, however, that he thought Mr. Nixon was "entitled" to refuse to provide information to the House Judiciary Committee as "part of his legal strategy in the defense in this case."

"Insofar as impeachment is an adversary proceeding," Mr. Smith said at a breakfast meeting, "the President has to look out for what's in his own best interest."

Responding to reporters' questions over a wide range of legal issues, the bar president said he did not "see anything bad-wrong" about Chief Justice Warren E. Burger's proposing a candidate for special Watergate prosecutor to Richard G. Kleindienst, then Attorney General, in 1973.

In the edited transcripts of White House tapes made public by Mr. Nixon, Mr. Kleindienst told the President that the Chief justice had urged the

appointment of Barnabas Sears, a Chicago lawyer, to head the independent investigation.

"I guess if I were the Chief Justice, I wouldn't do that," Mr. Smith said, reflecting some question among lawyers whether Mr. Burger should have participated in any way in the choice of a government attorney who was highly likely to wind up arguing before the Supreme Court.

The A.B.A. president said he did not believe this episode should disqualify Chief Justice Burger from hearing any subsequent court cases, however

Cox, Then Jaworski

The appointment later went to Archibald Cox, who was subsequently dismissed following White House efforts to restrict his independence. He was succeeded by the present special prosecutor, Leon Jaworski.

Mr. Smith said he had "grave doubts" that any attempt would be made by the legal profession to suspend or disbar Mr. Kleindienst, despite the fact that he pleaded guilty last week to the misdemeanor of refusing to reply fully to questions at a Congressional hearing.

"In a general sort of way," the A.B.A. official said, "I thought he acted ethically and as a professional should about the Watergate matter."

Mr. Smith called for televising the House impeachment hearings, even if the evidence presented there might force the Government to drop charges against some Watergate defendants because of the impossibility of their having a fair trial.