

Where the Buck Shouldn't Stop

Washington's answer to the controversial question of whether Richard Nixon should somehow be saved from criminal prosecution is to "leave it to Leon." Congress, the Attorney General and the White House and others all seem eager to pass the buck to Special Prosecutor Leon Jaworski. But that's not where the buck should stop—or is it likely to stop.

If the buck is going to be dropped in Jaworski's lap, he should, and doubtless will, pass it on to the federal grand jury that has been investigating Watergate for so long and so effectively. Those who have been saying it is up to Jaworski personally to make the final decision seem to overlook that he is the servant, not the master, of the jury he has worked with since last year. In the final analysis then, it rests with the grand jury to decide Nixon's fate if it is going to be decided on a strictly legal basis.

To his credit, Jaworski has so far kept a discreet silence on the matter. But there is reason to believe that he himself well appreciates the jury's role and that he has no intention of making any arbitrary decisions on Nixon's case independent of the panel which earlier named the former President an unindicted co-conspirator when it charged a half dozen of his associates with conspiring to cover up Watergate.

The special prosecutor's role is not to act independently of the jury or to dictate to it, but to give it expert legal guidance, to counsel with it and present to it all the evidence accumulated by his staff of investigators. That is what he has been doing for months, and the results have been a triumph of criminal justice.

It is hard to recall a grand jury with a better record of public service. It has served conscientiously since 1972. It has been impeccably discreet; not a single leak from any member of the panel. It has acted so fairly and judiciously that, in all the cases so far settled, every defendant has either pleaded guilty or has been found guilty.

So, legally at least, Nixon has every right to assume he will get all the justice he is entitled to when the grand jury meets, as it surely will in



Leon Jaworski

the near future, to reconsider the evidence against the former President and to weigh the additional evidence recently disclosed.

Even so, this prospect must be unsettling for Nixon, considering that the jury would have indicted him outright last spring had he not then occupied the White House. It fell back on the co-conspirator charge only when advised by the special prosecutor that it was doubtful that an incumbent President could be prosecuted. Now, of course, Nixon has forfeited that protection.

If he hopes to escape punishment on humane or political grounds, he will have to look beyond the special prosecutor and the grand jury, for their writ runs only to criminal justice. Only one individual, President Ford, has the constitutional authority to grant blanket immunity at his own discretion, but he seems cool to that idea.

Jaworski has no mandate to usurp the President's role, and there is no sign that he intends to. He does have certain powers of arranging for a degree of immunity but usually, as in some of the other Watergate cases, only in return for cooperation and evidence that substantially advances the investigation. So far, however,

Nixon has shown no interest in the kind of plea bargaining that has earned other Watergate figures light or suspended sentences.

The power of grand juries was vividly demonstrated only a week or two ago when a Nevada federal grand jury made the Department of Justice back down in a stock-manipulation case involving Howard Hughes and several of his associates. The jury publicly balked when Justice officials in Washington sought the indictment of the associates but wanted to exclude Hughes himself. The department quickly gave in and permitted the indictment of Hughes.

That is what Jaworski might run into if he tried to drop all charges against Nixon without consulting the grand jury or presenting to it the new evidence he has recently acquired. The special prosecutor could, of course, refuse to sign an indictment that he felt was unjustified but on the basis of past performance it is highly improbable that this jury and Jaworski could ever be at such loggerheads.

In the Watergate cases they have handled up to this time, Jaworski and the grand jury have rightly applied to all the same standards of criminal justice. They cannot treat Nixon differently without raising serious questions about their impartiality. Perhaps they should also heed what Nixon himself said at the beginning of the Watergate investigation: "No individual . . . holding a position of power in the administration should be given immunity from prosecution."

One reason President Ford shrinks from pardoning Nixon is that he undoubtedly wonders how he can do that without also pardoning all the lesser Watergate figures who are in prison, or face prison, for carrying out what they thought was their leader's wishes. And after that would Mr. Ford be obliged to pardon every other public malefactor who gets caught?

If, finally, Nixon is indicted, tried and convicted, he can, like some of his guilty associates, seek clemency from the trial judge. That is the proper time and place for it. It is a fair conclusion that, with general approval, he would then be treated leniently.