

The former White House loyalist, John D. Ehrlichman, has now forced the issue for his onetime chief. His subpoena of Richard M. Nixon as a defense witness makes it virtually inevitable that the former President will be summoned into court to give testimony under oath and submit to cross-examination about the Watergate conspiracy.

Two points now seem incontrovertible in the dilemma of resolving the full extent of Mr. Nixon's responsibilities before the laws of the land. The first is that public and political emotions must be allowed to cool before any responsible decisions can be made on whether or not to prosecute him as a co-conspirator in the same case. For psychological reasons as well as the technical problems of assimilating all the new evidence, it would seem entirely reasonable to delay the forthcoming Watergate trial, scheduled to open just three weeks from now—an opinion in which special Watergate prosecutor Leon Jaworski now concurs.

The second point, which the American Bar Association unanimously accepted at its convention in Honolulu, is simply that any citizen—whether he was once President of the United States or not—must be subject to the established system of justice. There can be no valid dissent to that proposition in the terms in which it was presented to the A.B.A. House of Delegates: a reaffirmation of the "principle of 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."

President Ford and Congress have properly resisted the temptation to inject considerations of political impact or public opinion in what must be a prosecutorial decision, if this is to be a nation of laws. Congressional leaders recognized that any attempt to legislate an immunity for the former President would work havoc with the system of criminal justice. For his part, the new President has wisely signaled a hands-off policy. His announcement yesterday that Mr. Nixon's Presidential documents and tape recordings would remain in White House custody does not alter the balance; it merely gives required assurance of no new cover-up.

There seems no way in which former President Nixon can—or should—avoid giving testimony, for the constitutional rights of many accused individuals are involved. The more difficult decision of whether Mr. Nixon should also be prosecuted must rest entirely within the system of justice, the grand jury and the prosecutor. The principle must remain that the law applies to everyone.