

Jaworski's Toughest Test

Special prosecutor Leon Jaworski has thus far, by a rare mix of diligence and discretion, steered past all the shoals of Watergate that might have brought him down. Keeping out of the public eye as much as possible, he managed to bring one offender after another to book either by successful prosecution or by plea bargaining.

But now he faces a test tougher than any he has confronted to date. It is hard to see how he can come out with his reputation for disinterested pursuit of wrongdoing intact, in view of the strong feelings he is certain to arouse in threading his way through the maze just ahead.

While the trial of the principal Nixon lieutenants on the charge of obstruction of justice in the Watergate case has been postponed, it cannot be delayed indefinitely.

One of the defendants, John D. Ehrlichman, has subpoenaed the former President as a defense witness. How he responds will tell a lot about the probable outcome of the trial.

Quickie polls taken just after Nixon's resignation and the disclosure of his part in the cover-up show a majority opinion against his prosecution. He has suffered enough, the feeling is, and he should be allowed to retire in peace.

That is not the opinion of the American Bar Association which, without a dissenting vote, adopted a resolution in Honolulu calling for impartial enforcement of the law regardless of the "position or status" of any alleged offender.

For the special prosecutor this is not a question of theory or compassion or vengeance. If Nixon, found by a grand jury to be an unindicted coconspirator in the cover-up, gets immunity, prosecution of his lieutenants will be difficult, if not impossible. They will contend that they were simply carrying out orders of the President.

Ehrlichman, in a televised interview, made just this point. Nixon as a witness on the stand would be pressed to say whether it was under his orders that the manipulation of the FBI and the CIA was designed to conceal the involvement of men working for the re-election committee and in the White House with the Watergate break-in.

It is conceivable that Ehrlichman,



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H. R. Haldeman, John N. Mitchell and the other defendants could win acquittal or even that the charges against them could be dismissed on the ground that they were merely hired hands responding to the demand of authority.

Yet the fact cannot be ignored that 13 lesser Watergate figures are either in jail or on the way there. Should the top and the second level go free, this would confirm the cynical view that

there is one law for the powerful and another for the underlings.

That is Jaworski's dilemma. He knows that prosecuting the former President would bring a wave of resentment not only from Nixon loyalists but from many who would like to see the whole business swept under the rug and forgotten. But he also knows that equal justice under the law should not be just a phrase carved on a marble pediment.

Spiro Agnew was given a suspended sentence for tax evasion, even though the judge had before him a Department of Justice memorandum alleging 38 criminal offenses against the Vice President. That tap on the wrist was the cause of much cynical and bitter comment by those who saw a man shown to have been guilty of taking bribes after he had left his Maryland administrative post and while he was sitting in the Vice President's chair. This could hardly be interpreted as other than a blow to confidence in the integrity of the judicial process and equal justice under the law.

Jaworski came to Washington with the reputation of an establishment lawyer—a Texas establishment lawyer. His own firm, with its 185 lawyers, was deep into all of Houston's booming economy. He was elected president of the American Bar Association, a sign of his eminent respectability.

His conduct as prosecutor has been as undeviating as anyone might have wished. Now, whatever his decision in this toughest of all tests, he will run into rough water calling for all his remarkable skill.

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Columnist Joseph Kraft is on vacation.