

Jaworski Ex-Aide Fears Hung Jury

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A former top member of the Watergate special prosecution force said yesterday he fears that the pardon of Richard M. Nixon may produce a hung jury at the current cover-up trial.

Philip A. Lacovara, who quit in protest the day after the Sept. 8 pardon granted by President Ford, said he thinks "there's a chance, a much greater chance than before the pardon, of a hung jury, since it only takes one juror who might be reluctant."

Lacovara, who served as legal counsel to Special Prosecutor Leon Jaworski, said there were "lots of clues during the jury selection that it was a substantial problem whether all of the jurors will be willing to convict these people, even if the evidence shows them to be guilty, since they know that the President has been let off."

Jaworski, who left office yesterday, has refused to discuss the possible impact of the pardon on the trial. He also has said it was not his function to give President Ford "unsolicited advice" about the impact of the pardon — a matter of Mr. Ford's constitutional power.

Lacovara said his greatest worry is that a hung jury might further "muddy the historical record" and give rise to "revisionist" historians' claims that Mr. Nixon was driven unfairly from office.

Although Jaworski has said the trial will demonstrate Mr. Nixon's guilt, Lacovara said the pardon might also have an impact on how much of the former President's personal involvement would be presented as evidence against the five defendants.

"The government strategy might not be to emphasize Mr. Nixon's criminal guilt," Lacovara said, because that would only "highlight the emotional disparity of having him free and clear in San Clemente

while these defendants are in the dock."

Meanwhile, he added, the defendants' strategy will be to portray themselves "as the victims of Richard Nixon, who has been relieved of responsibility."

Lacovara said he saw an early pardon coming but stunned when it came before the Watergate jury was chosen and sequestered.

He said Mr. Ford's remarks at his Aug. 28 press conference convinced him that the President would not wait for Mr. Nixon to be tried and convicted before issuing the pardon and that in all likelihood he would not wait long enough for a criminal charge to be lodged against his predecessor. Lacovara did not say whether such a charge would have been filed.

Even the White House inquiries as to the pending investigations involving Mr. Nixon and the length of time prosecution would take did not prepare him for the sudden reprieve, Lacovara said.

Asked whether some caution sign should have been flashed toward the White House, Lacovara replied, "I didn't think to suggest it, so I can't fault anybody else for not doing it."

In any event, he said, such a warning should not have been necessary. "I would have assumed it would have been obvious to everybody that extending a pardon on the eve of the trial would greatly complicate the selection of the jury," he said. "I just couldn't bring myself to believe it was really going to happen."

Lacovara, now a Washington partner in a New York-based law firm, repeatedly empha-

sized that his anger was at President Ford's action, not at anything done by Jaworski. He did indicate some disagreement with his former boss, but quickly added that he never considered Jaworski's actions or opinions unreasonable.

The quick pardon, Lacovara said, may have been within Mr. Ford's power but it was "an abuse" of that power, "an historical affront that undermined what the Watergate special prosecution force was all about."

Lacovara, who impressed observers with his oral argument in the Supreme Court tapes case, said that case established "that the law does apply to a President while in office. Certainly they said he was subject to the processes of the courts, not above the law."

Mr. Ford's accompanying the pardon with an agreement to surrender custody of tapes and records to Mr. Nixon also "resurrected a double standard" of justice, Lacovara said.

Lacovara indicated that on balance he would probably not have challenged the pardon in court if he had been the special prosecutor. But he said he disagreed with Jaworski's view that such a challenge would have been "intellectually dishonest."

A respectable argument could be made, Lacovara said, that while the President had the power to pardon, its exercise violated his predecessor's 1973 pledge not to use his "constitutional powers" in a way that would interfere with Jaworski's independence in deciding whether to prosecute Mr. Nixon.

Lacovara said he did not reach this view of the Jaworski charter until after the pardon. "That's perhaps one of the areas in which I was delinquent," he said.

Lacovara, sharply criticized President Ford for not obtaining a Nixon acknowledgment of guilt, and disputed Mr. Ford's statements that the acceptance of the pardon was itself a confession that made a formal admission unnecessary.

"Not every pardon presupposes guilt," Lacovara said, noting that some pardons are granted to individuals who have been unjustly convicted. He said the Nixon pardon was accompanied by a Ford declaration that "Mr. Nixon had to be presumed innocent, and he used the language of the subjunctive in talking about what he was pardoning Mr. Nixon for — any crimes he committed or may have committed."