

Jaworski Won't Challenge Pardon, Spokesman Says

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By JOHN M. CREWDSON **SEP 9 1974**
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WASHINGTON, Sept. 8 — Leon Jaworski, the Watergate special prosecutor, apparently has no plans to challenge the validity of the unconditional pardon that President Ford bestowed today on Richard M. Nixon, according to a spokesman for Mr. Jaworski.

The special prosecutor "accepts the decision," said John Barker, the spokesman, in a telephone interview. "He thinks it's within the President's power to do it. His feeling is that the President is exercising his lawful power, and he accepts it."

Mr. Barker added that Mr. Jaworski had not been consulted in advance on the matter by either Mr. Ford or White House lawyers, and learned of the President's decision less than an hour before it was announced.

Some lawyers, including Senator Edmund S. Muskie, Democrat of Maine, questioned the legal and constitutional validity of a Presidential pardon conferred before an indictment had been brought or a conviction obtained.

"It could be challenged," declared Mr. Muskie, adding "there are those who say that it ought to be challenged, lest the precedent be established in an undesirable way."

But the remarks by Mr. Barker and by other lawyers familiar with the Watergate prosecutions indicated strongly that Mr. Jaworski was little inclined to test the pardon by seeking to indict Mr. Nixon, which one authority described as "the way to do it."

The "full, free and absolute"

Continued on Page 25, Column 6

Continued From Page 1, Col. 5

pardon signed by Mr. Ford today applies, without specifying them, to "all offenses against the United States" which Mr. Nixon "has committed or may have committed" during his nearly five years and seven months in the White House.

In the absence of a challenge, legal authorities said today, Mr. Nixon cannot now be convicted for any violation of Federal law in connection with the Watergate cover-up, the alleged misuse of Government agencies under his control, possible income-tax violations, or any of the areas in which he is believed to have had a potential criminal liability.

Mr. Jaworski's office is known to have been complying for several months evidence damaging to Mr. Nixon in these areas and others, including the possible expenditure of campaign contributions for his personal use.

None of the Jaworski aides working on these cases would give permission for themselves to be quoted by name on the move by Mr. Ford, but their reactions ranged from anger to disbelief to resignation.

"That's really bad news," said one. "It's totally ridiculous. It seems to me that this was just the wrong way to do it, politically."

"Nobody's surprised at anything any more," another said. But he added, "I don't like to read into Ford anything devious."

The evidence against the former President is generally believed strongest in connection with his role in the cover-up of responsibility for the bugging and break-in at Democratic headquarters in the Watergate complex. Transcripts of recorded White House conversations released three days before Mr. Nixon announced his resignation from the Presidency on Aug. 8 made clear that he approved attempts to limit the Federal investigation of the bugging in June, 1972, for fear it would damage his chances for re-election that November.

Lawyers in Mr. Jaworski's office have repeatedly declined to speculate on whether Mr. Nixon would be indicted, but Mr. Ford, in today's pardon proclamation, suggested that such an indictment may have been imminent.

Mr. Ford noted that "as a result of certain acts or omissions occurring before his resignation," Mr. Nixon "has become liable to possible indictment and trial for offenses against the United States."

The powers granted to Mr. Ford in Article II of the Constitution, however, do not empower him to extend to Mr. Nixon protection from prosecution by a state, or from civil actions that may be brought against him.

May Affect Trial

Six of Mr. Nixon's former White House and campaign aides are to go on trial Sept. 30 for their alleged roles in the Watergate cover-up. Apart from the validity of the pardon, speculation centered today on how Mr. Ford's action might affect the outcome of that proceeding.

There was general agreement among those interviewed, however, that the pardon amounted to a de facto grant of immunity for Mr. Nixon, and would thus militate against his invoking the Fifth Amendment privilege against self-incrimination if he appears as a witness at the trial.

According to lawyers inside and outside of government, Mr. Nixon will probably also be unsuccessful in invoking the Fifth Amendment as a defense against subpoenas for White House tape recordings and Presidential documents, which were placed today under the joint control of Mr. Nixon and the General Services Administration.

However, it is considered possible that Mr. Nixon, following a precedent set by President Truman after leaving the White House, could assert claims of executive privilege in response to demands for the materials.

The precedent set by Mr. Truman involved his refusal to testify before Congress in 1953 on "matters which occurred during my tenure" in the White House, on the ground that the doctrine of separation of powers "would be shattered" if a President could be examined about the actions of his Administration after leaving office.

It is conceivable, though not considered likely, that Mr. Nixon might raise a variant of the Truman argument in declining to testify at the cover-up trial.

John D. Ehrlichman, who was Mr. Nixon's top domestic adviser, has subpoenaed Mr. Nixon to testify in behalf of the defense, and the former President's lawyers have made no move to quash the subpoena.

There was some speculation today that Mr. Nixon, who now has no reason to fear prosecution in the cover-up case, might willingly take the stand in behalf of Mr. Ehrlichman and some or all of the other defendants and give testimony favorable to their case.

The former President's principal criminal lawyer, Herbert J. Miller, could not be reached

for comment on the speculation. Mr. Miller was said by an associate to be out of Washington, although "not in San Clemente," where Mr. Nixon is residing at his oceanfront estate.

One Government lawyer close to the case contended that, while Mr. Nixon would not have made a credible prosecution witness, "he'd be dynamite to cross-examine." It was also unclear whether the Government's case against the six would be hindered by the pardoning of Mr. Nixon.

James F. Neal, the chief prosecutor, said that, as far as he knew, the coverup trial would begin as scheduled.

But lawyers familiar with the Government's case, expressed concern that President Ford's assertion today that "many months and perhaps more years will have to pass before Richard Nixon could hope to obtain a fair trial" would provide unwarranted support for claims by some of the six defendants that the massive Watergate publicity had prejudiced their cases.

The Ford statement "makes it a lot harder for the prosecution to rebut assertions, one government lawyer said.

'Not Unfamiliar'

But another lawyer maintains that the questions raised for the prosecution by the Nixon pardon were "not familiar" ones and would not cause undue damage to his case.

The lawyer suggested that a "comparable example," fairly common in criminal prosecutions, is the technique of granting immunity to one participant in a conspiracy and then compelling his testimony against the other co-conspirators.

The Nixon pardon "can't but help us," predicted William Hundley, chief counsel for John N. Mitchell, the former Attorney General and Nixon campaign director who is one of the cover-up defendants.

"If he [Mr. Ford] has seen fit to pardon the guy who was on top, this ought to create an atmosphere of leniency toward those who worked for the [former] President," Mr. Hundley said. "You can't give the top guy a pardon and bury the rest of them."

He added that, while Mr. Mitchell had no current intention of subpoenaing Mr. Nixon as a witness in his behalf, "everybody has to do some re-thinking."

Several other lawyers interviewed today pointed out that, while the legal benefit that the defense might reap from the Nixon pardon remained unclear, it could serve as a strong "rhetorical" argument for mercy from the jury or leniency from the court in sentencing.

One Jaworski aide predicted a strong reaction from liberals, in the Congress and elsewhere against the prosecution of Mr. Ehrlichman and the others, on the grounds that they, too, must now be spared. But no such reaction emerged today.

The aide speculated that Mr. Jaworski might for the same reason be moved to offer pleas of guilty on one count to some or all of the cover-up defendants.

'Beating Our Brains Out'

Asked whether Mr. Ehrlichman or H. R. Haldeman, the former White House chief of

staff, might be disposed to accept such offers in view of their repeated protestations of innocence, the aide replied, "There's a point at which circumstances just become overwhelming."

Mr. Mitchell's lawyer, Mr. Hundley, said he believed that Mr. Ford's remarks about Mr. Nixon's inability to receive a fair trial might be turned to the advantage of the defendants, some of whom have already pressed such assertions.

"Here we've been beating our brains out on that same issue," said Mr. Hundley, "and what have we gotten—a three-week extension."

The extension, from Sept. 9 to Sept. 30, was granted by Judge John J. Sirica last month upon the recommendation of the United States Court of Appeals here.

The constitutional power invoked by Mr. Ford today in absolving Mr. Nixon from Federal prosecution is considered to be almost without limitation, one of the strongest and clearest assertions of executive authority contained in the Constitution.

The breadth of the power, in the opinion of legal scholars who favor this view, is based in large part on an 1866 decision by the Supreme Court, which held that the power "extends to every offense known to the law," and "may be exercised at any time" after the commission of a criminal offense.

Some constitutional authorities, such as Philip Kurland of the University of Chicago, expressed doubt today, however, about the constitutional "sufficiency" of a pardon conferred in advance of conviction or even indictment.

The language in the 1866 case, *ex parte Garland*, Mr. Kurland noted, was "dicta"—opinions expressed by judges on points—not crucial to the issue at hand, and thus opinions that do not have the binding force of a formal adjudication. The case concerned a general amnesty declared by President Lincoln after the Civil War.