

Law Professor Proposes Jaworski Contest Pardon

Kurland Calls Ford Action Invalid With No Conviction—Walsh Would Keep Presidential Powers Broad

By ANTHONY RIPLEY

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WASHINGTON, Sept. 15—Two nationally prominent lawyers disagreed today on the validity of the pardon granted to former President Richard M. Nixon a week ago by President Ford, with one lawyer saying that the Watergate special prosecutor, Leon Jaworski, should challenge the pardon in court.

Prof. Philip B. Kurland of the University of Chicago Law School said that he thought the pardon was invalid because there had been no conviction.

New Bar Head Disagrees

"I think there is only one person really in a position to make a challenge, one person together with a grand jury, and that is Mr. Jaworski," Mr. Kurland, an authority on the Constitution, stated.

However, Lawrence E. Walsh, president-elect of the American Bar Association, said it was in the national interest to keep a President's pardoning powers broad.

"It is a matter which he should use with greatest discretion and with greatest reservation, but there are times—

and this may be one—in which his unfettered pardon power is important to the welfare of the country," Mr. Walsh said. Both appeared on the American Broadcasting Companies' television program, "Issues and Answers."

Professor Kurland argued that if a grand jury indicted Mr. Nixon and Mr. Jaworski signed the indictment, Mr. Nixon would be compelled to raise the question of his pardon in defending himself, thus presenting the courts with the legal issue of the pardon's validity.

By Amendment

If that action is not taken, then the whole matter of whether a pardon can be issued before a conviction can be settled by a constitutional amendment, Professor Kurland said.

He added, however, "I do not believe that President Nixon will ever or should ever be subjected to the penalties of law—that is, imprisonment or fine."

Mr. Walsh questioned the manner and timing of the par-

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don—its haste and almost secret nature—and said he thought it might have been better if clemency hearings had been held where "arguments in favor or against could have been fully developed" before a decision was made.

"I would hope," he said, "that one of the very early things that would happen would be that the White House would issue a white paper in which all of the facts and procedures and negotiations leading up to this pardon are disclosed to the American public."

However, any judgment about a pardon's merits should be made in the light of the need for a smooth transition of Presidential power, he said.

Meanwhile, the magazine reported that just before two White House aides resigned on Aug. 29, 1973, President Nixon promised them pardons—which never came through—even though both men pressed Mr. Nixon again on the subject just before he resigned the Presidency.

The aides were H. R. Halde- man, Mr. Nixon's chief of staff, and John D. Ehrlichman, his adviser on domestic affairs.

Newsweek magazine, citing new evidence from White House tape recordings, said the Watergate special prosecutor's office now had evidence that Mr. Nixon knew in advance of the activities of the undercover team that later broke into Democratic party headquarters at the Watergate complex in June, 1972. They quoted a source close to the special prosecutor.

A spokesman for Mr. Jaworski said he knew nothing of either magazine's report and could not comment.

On the CBS television program, "Face the Nation," Clay T. Whitehead, former director of the White House office of telecommunications policy, said he thought the timing of Mr. Nixon's pardon was a mistake.

Bringing Charges First

"In my view," Mr. Whitehead said, "it would have been much better for the public to have a chance to see the charges against Mr. Nixon—if Mr. Jaworski was going to bring an indictment, to have that indictment out, available for study, and then for Mr. Ford to say, 'Based on this, I have concluded that, even if convicted, I would pardon Mr. Nixon.'"

"But, of course, there may be some things that Mr. Ford knows that I don't know."

Mr. Whitehead, who was part of the transition team between the Nixon and Ford Administrations, said the team worried about a concentration of military officers in the White House and about Gen. Alexander M. Haig Jr.'s role as

chief of staff.

Asked if General Haig served "in effect" as a "surrogate President" during Mr. Nixon's last days, Mr. Whitehead replied:

"I think that's too much to say, but he certainly had much more power concentrated in any one man, short of the President, than we've ever seen before and far more than would be healthy in normal circumstances."

Not Right Away

He said the team felt that it would be "irresponsible" to remove General Haig immediately as a symbol of the change at the White House because he was "too important operationally to the President."

Mr. Whitehead said he had asked himself whether he should leave the White House because of things happening that "left a bad taste." He said he did not quit because he felt a sense of duty "to Congress and the people" and you can't have a government just quit.

In an interview by U.S. News & World Report with three of President Ford's top aides—Philip W. Buchen, Robert T. Hartman and John O. Marsh Jr.—Mr. Buchen was asked if the extent of Mr. Nixon's suffering had been the main consideration in the granting of the pardon.

"Not so much the Nixon suffering but what the country would go through as they may have had to watch this man go step by step toward the brink," Mr. Buchen said.

The aides said there was some "exasperation" among the new Ford staff men with the failure of some Nixon holdovers to "adapt" to the ways of the new President but that no widescale cleanout of Nixon aides was planned.