Oral History of Philip Lacovara, Esq.

This interview is being conducted on behalf of the Oral History Project of The Historical Society of the District of Columbia Circuit. The interviewer is Carrie Johnson, and the interviewee is Philip Lacovara. The interview took place via Zoom on Tuesday, August 27, 2024. This is the fifth interview.

MS. JOHNSON: Good afternoon. Thank you so much for rejoining me.

MR. LACOVARA: Nice to be with you again.

MS. JOHNSON: When we left off, you were talking about special prosecutor Leon Jaworski and how he came into the Watergate office at a challenging time and that he managed to overcome in some ways some skepticism from some of the people who remained in the office after Archie Cox left. I want to pick up with a couple of questions about other people you interacted with during that period and then move into the Supreme Court activity. You mentioned Henry Petersen, who at the time was head of the Criminal Division of the Justice Department. His role in the last fifty years has come under additional scrutiny, in part because some people suggest that Petersen may have been sharing information with Nixon's lawyers or people inside the Nixon White House. Did you have any question about that at the time? Any question about your interactions with Petersen and their professionalism at the time? What were they like?

MR. LACOVARA: I had known Petersen before Watergate because he was the head of the Criminal Division, as you mentioned, and before becoming Cox's special counsel. I was the deputy solicitor general for criminal matters, so I had a fair number of dealings with the Criminal Division, and a couple of them involved Petersen. Most of them never rose to the level of requirement.

My impression of him at the time was he was professional Justice Department and a straight shooter. We had dealings during Watergate only very briefly because once Cox was fired, what Bob Bork as acting attorney general did was to put the Watergate special prosecution force under Petersen's supervision since it was a criminal investigation. Within a day or two of that assignment being made, Henry Ruth and I went over to the Justice Department to meet with Petersen, and it was an extremely unpleasant experience. It suggests that there may be some credibility to the subsequent speculation that Petersen may have been providing information to the extent he was able to get it to Nixon's lawyers.

The experience was essentially the following. Ruth and I explained why it was important that there be a special counsel or a special prosecutor separate from the regular career Justice Department personnel, including him. One of the things that I mentioned to him about the sensitivity of the pending investigations is that one of the task forces, not the Watergate break-in but the matter that involved the settlement of a major antitrust case, could involve not only the former deputy general Kleindeinst, but also my recent boss, Dean Griswold, the Solicitor General. When Petersen heard that, he exploded and made some highly personal comments directed at me, vulgarities and the kind of condescending expletives that I would even suggest that there was a basis for any investigation along those lines. I told him that I was explaining to him what was part of the charter of the Special Prosecutor's Office as the former attorney general Elliot

Richardson had crafted it and that the whole point of this was not to assume that anyone was either guilty or innocent but to make sure that there was a fair and accurate and reliable and credible inquiry.

Ruth and I then left understanding that this was going to be at best a very ticklish relationship if it proceeded. History shows that the firestorm that the Saturday Night Massacre provoked forced President Nixon to appoint a new special prosecutor, Leon Jaworski. So, we rather quickly, and I think fortunately, were removed out from under Henry Petersen and reinstated as an autonomous unit of the Justice Department.

MS. JOHNSON: Thank you so much for that explanation. It sounds like your direct dealings with Petersen were largely limited to that particularly unpleasant meeting.

MR. LACOVARA: Limited, and happily so, because it was so unpleasant. I would say that I can't think of anyone in my life who treated me the way Henry Petersen did that morning.

MS. JOHNSON: It's been a long life.

MR. LACOVARA: It's been a long life, and fortunately that was exceptional. Fortunately for me.

MS. JOHNSON: Thank you for sharing that. Jaworski comes on board, as you mentioned. He's treated with some skepticism, some informality, as you mentioned in our last session by other staffers on the Watergate team, and yet the cases, the investigations, proceed. You wind up with an oral argument date before the Supreme Court in early July of 1974. If you remember, how did

you decide to prepare for that, and how did you decide who was going to speak at that argument?

MR. LACOVARA: Let's go back a little bit before the oral argument date was set. There was a real strategy at play in handling the case up to the Supreme Court. Leon was largely out of the picture in terms of crafting the strategy. This was not anything that he felt comfortable doing. He did not view this as his strong suit. As I mentioned, I believe, in the earlier interview, his strength was in getting the investigations back on track and giving the staff enough leeway to pursue them. He was not directly involved in framing legal strategy, such as regarding the tapes subpoena that culminated in the Supreme Court decision.

Let's go back to the effort to enforce the subpoena. This was a trial subpoena issued in the Watergate coverup case for evidence that we thought would bear on culpability of the defendants in that case, Mitchell, Ehrlichman, Haldeman, Mardian, and Parkinson. Judge Sirica, not surprisingly, enforced the subpoena, and the President, as he had in the original grand jury subpoena context, applied to the D.C. Circuit for a writ of mandamus. That original mandamus had resulted in a case called *Nixon v. Sirica*. At that point, we did not want to have a long delay in the trial or the scheduling of the trial, so based on my experience as at least a short-term Supreme Court lawyer, I decided that what we should try to do is to get immediate Supreme Court review through a process known as petition for certiorari before judgment. At the time, that was an extraordinary

mechanism. I think there had been only one case perhaps in the prior twenty years in which the Supreme Court had exercised its statutory authority to review a case that's technically in the court of appeals but before the court of appeals has acted on it or decided it. Now with the current Roberts court, they're only too happy to reach down to invalidate something that the Biden administration has done or to sustain President Trump's various arguments or the arguments by Republican attorneys general around the states.

In any event, it seemed that it was a shot worth taking. It wouldn't cause much of a delay if it was unsuccessful. So, we petitioned for certiorari before judgment. One of the consequences of this, and it was part of the strategy, was to enable us at that time to frame the caption of the case so that the case was labeled by us in our petition. Now in history the case has been known as the case of the *United States of America v. Richard Nixon, President of the United States*. This was part of the larger strategy of trying to frame the essential proposition that was going to be at issue which was, is the president entitled to withhold evidence because of his role as president or is he simply for purposes of a legal proceeding simply like any other witness. Therefor it seemed to me important as part of the theatre of constitutional litigation to demonstrate that we represented the sovereign people of the United States, and Richard Nixon was simply a person who was the custodian of evidence that was material to a legal proceeding.

That was part of the strategy. The next part of the strategy was, who should argue the case. Leon's original view was I should argue it alone because I was a Supreme Court lawyer, as he saw it at least. I had argued a whole bunch of cases before that, and I knew the theories on which we were relying, and he did not view himself as comfortable with both, if you will, the substantive constitutional issues about executive privilege or even the technical issues about the standards for enforcing an evidentiary subpoena.

My response was, the country expects you to argue the case. You are the special prosecutor. I am just an anonymous staff person. His rejoinder to that was, well, let's compromise. I'll argue first, and then you can have the rebuttal. The way we divided it up, and this was partly his choice, and I think many commentators agree that it was fortuitous, was that he would have 45 minutes of the hour-and-a-half the Court had authorized for each side, and I would have 45 minutes. As you know, normally in any Supreme Court argument, if it's a half hour, perhaps three, four, or five minutes will be saved for rebuttal. It's never thought to be a rebuttal if half the time is reserved for it. So that was a recognition that he expected me to play a much larger role in the case than would otherwise have been the role of his sidekick, as the country would view it.

Another part of this story was that I said part of the strategy was demonstrating that we were the United States, and therefore there were some other things that we should be doing as part of what I called the

theater of this demonstration. One was I said we make sure that we sit where the solicitor general is accustomed to be sitting, a particular side of the lectern, and I said the other thing is that government counsel, and we are representing the government of the United States, wear formal dress, cutaways, morning suits. I said, so we need to be wearing our cutaways. He drew the line there. He said "under no circumstances. Just be happy I'm not going to wear my cowboy boots." I remember that exchange vividly. So that's how we both wound up wearing our dark blue go-to-court business suits, which had another humorous little side to it. When I was getting ready to go up the court in my dark blue go-to-court-other-than-Supreme-Court suit, my secretary tried to cut off a thread dangling from my suit coat. Her hand was trembling, and she accidentally sliced off a part of my suit coat.

MS. JOHNSON: Thank you for sharing that remembrance. Did you do a lot of moots? How did you prepare for what you knew was going to be an historic argument and maybe also a difficult one where how you looked and how you sounded really mattered?

MR. LACOVARA: As I mentioned in an earlier session, my style by that time was not to do formal moot court and not to use notes at the lectern. My preparation was re-reading the key authorities, going over the brief, preparing an outline. I'm sure I did an outline of the points that I wanted to make. Normally it's hard to prepare an outline for a rebuttal, and I had been involved in trying to brief the special prosecutor on the points that he was expected to make,

the main themes. It was not an easy process because he was clearly not comfortable. For a man who was really at the top of the litigation profession, and he had been president of the American Bar Association, he was surprisingly ill at ease about the responsibility for taking the lead argument in this case when the country was watching. Nevertheless, I prepared a full argument in case I had to give one as part of the rebuttal, which is really what turned out to be the case. The Court gave me ample opportunity to make some affirmative points as part of the rebuttal, and I was able to pretend, if you will, that these were really rebuttal points when what I was trying to do was to shore up our own main arguments. So, what I gave in my 45 minutes was essentially the same argument that I would have given if I'd opened as the lead for the United States in the case.

I remember there was just one experience as part of the preparation that was disquieting. I had not read all of the authorities that my staff members had pulled together in preparing the draft brief that we ultimately filed. One of the key issues before the Supreme Court was whether a subordinate official in the Department of Justice, such as the special prosecutor, could act independently of the president's own decision. That is, the president here had made clear he did not want this information released, and yet here was a subordinate in the Justice Department demanding that it be produced in contravention of the president's view about what reflected the best position and the best interest of the people of the United States. One of the authorities that we cited for the proposition

that the special prosecutor had the legal authority to do so as long as in office as special prosecutor was an opinion of the attorney general from, I think, 1841. Don't hold me to the precise date. It was *In the Matter of the Jewels of the Princess of Orange*. There was a quote in there that so long as the United States Attorney was in office, he had the authority to pursue the forfeiture of the jewels of the Princess of Orange, regardless of the president's view about the foreign policy implications. This is from 130 years earlier. It seemed like a great quote. Right on point. In preparing for the argument, I asked the young lawyer on my staff who had come up with this authority and quotation to get me the full opinion of the attorney general so that I could read it. It did contain that quote. Unfortunately, it was in the context of the attorney general saying yes, the United States Attorney has this technical legal authority, but it would be hard to imagine a more flagrant disregard for his duties of loyalty. And it went on and on and on to excoriate the United States Attorney for taking this independent position in defiance of the chief executive.

I was mildly embarrassed by the whole thing, hoping that none of the justices on the court or their clerks would come upon that opinion, even though technically it supported our view. Much of the law and much of precedent is about the gestalt, and so the gestalt of this opinion was basically that subordinates really need to pay attention to what the boss wants in determining what's in the national interest.

Anyway, it never came up. It was not cited in the Supreme Court opinion, and I don't know that anybody in the last fifty years has ever come upon an opinion of the attorney general in *In the Matter of the Jewels of the Princess of Orange*.

MS. JOHNSON: Still, sounds like that anecdote contains a lesson for future lawyers.

MR. LACOVARA: I have used that incident in training younger lawyers about the danger of relying on snippets without understanding the context, and as I say, the gestalt, or the tone, or the theme, or the melody of the case. So, you can find the lyrics, but what you really want to be sensitive to, if you're going to be an effective lawyer, is the melody.

MS. JOHNSON: Also, the idea that if you miss the broader context and a justice or a justice's clerk goes back and searches that authority and finds the broader context, you've just damaged your reputation potentially.

MR. LACOVARA: Your credibility. I gave an interview in one of the *Washington Lawyer* magazines where I used what would probably be today an offensive quotation, but I said if you lose your credibility, your whole case collapses like a wet taco.

MS. JOHNSON: You certainly did not want that to happen in the case that you worked so hard to style, the *United States v. Richard Milhous Nixon, President of the United States*.

MR. LACOVARA: Exactly.

MS. JOHNSON: I went back and listened to the argument a couple of weeks ago. There was a moment where Jaworski was struggling a little bit to answer

questions about Judge Sirica and his role in the case, and I think you wound up passing him a note to help clarify. Do you have a memory of sitting there and taking notes and passing them to Jaworski on this day in July 1974?

MR. LACOVARA: I actually don't. I would say that I don't remember that incident specifically. I would say that if I did it, it must have been because he was struggling too badly or had misstated something in the record, because one of the things that I observed from my time in court was that the worst thing that you can do to a lawyer who's arguing is distract him by passing him a note. It suggests that he is flailing, and the worst thing that you want your team to signify is that the person who's actually up there on his feet or her feet is doing such a bad job that a rescue effort like a life preserver in the form of a little note needs to be tossed.

MS. JOHNSON: What was your feeling, Philip? Do you remember what kind of feeling you had leaving the court that day?

MR. LACOVARA: There were two thoughts going through my mind. One was, well three, because there was a huge crowd outside, so it was kind of daunting to make our way through the crowd. Second thought, the substantive one, was I think it went pretty well. As I may have mentioned in an earlier session, if we went back seven or eight or nine months to when we first decided that we would go after the first round of tapes, we had done some vote counting, Cox, Peter Kreindler, just off the clerkship with Justice Douglas, and I, and we thought we could get a majority of the Court to

sustain our demand for the White House tapes over the President's objection. We never imagined that we would get a unanimous decision, although that became an extremely important goal in light of President Nixon's announcement that he reserved the right not to comply with the Supreme Court decision against him unless it was definitive. That statement led to about the only carefully rehearsed part of my oral argument that I did deliver, which was the closing comment urging the court to render a definitive decision. Everybody, including the justices, understood that this request was designed to have the court uphold the validity and enforceability of a decision against the president in a way that would not have given him room to defy the outcome if it went against him. So, the second thought was it had gone well. I did not at that point forecast the unanimous decision, although that's what I was arguing for.

The third thought that went through my mind was, I've got to get home because I've got to change. I've got to get from my blue suit into my shorts because we're late for our holiday. Months earlier, we had booked a one-week family holiday out at Rehoboth, I think it was Rehoboth, Delaware, or Ocean City, Maryland. We alternated. The family had not had much time together during the prior year thanks to the demands of the Watergate investigation, so we had a Saturday-to-Saturday rental. The Supreme Court argument was not anticipated when we booked and paid for this Saturday-to-Saturday rental, and we'd already missed Saturday and Sunday, and we were going to lose most of Monday.

My wife and children, who, as I've said repeatedly, were extremely understanding of my other commitments and were getting pretty darn impatient that here was Watergate impinging on their lives in a way that it didn't affect most Americans in the United States. So I raced home. I was home probably by 1:00. By about 1:30, we were in our big, old Dodge station wagon on our way to the Eastern Shore. It was only when I got there that I began hearing on the news what the spectators, particularly the correspondents from the major networks and *Time* magazine, etcetera, thought was their view of how the argument had gone. Their view was reassuring in that they thought, first of all, I had done a creditable job in handling my part of it and that the court seemed to be responsive to the arguments that our side had been making.

MS. JOHNSON: Did you have the kind of personality where you could listen to those news reports in the evening on television and the radio and then actually take a few days off with your family? Do you have the kind of mind that can kind of turn things on and off in that way?

MR. LACOVARA: I would say yes. It's a discipline that I developed early on. As I mentioned, I was married while still in college. We had one and a half children while I was still in college. I also mentioned that I frequently would have the television on in the background, either as white noise or otherwise, so I did develop a way of intellectually compartmentalizing things or filtering out the different elements of my life and lifestyle so that I could focus on one thing at a time.

After the Monday morning argument, I was no longer counsel to the Watergate special prosecutor. I was the husband and father who was taking his family to the beach for a somewhat abbreviated summer vacation of four or five days rather than seven days. I wouldn't pretend that I wasn't in touch with the office to get a sense of what else was happening and getting reactions. There were some calls I'm sure from press people for reactions at the time.

MS. JOHNSON: You get back to Washington, and it's a wait of a few weeks before the Supreme Court decision comes out. Do you remember what that wait felt like? Did you anticipate a decision sooner than that or not?

MR. LACOVARA: I think the decision came out about as soon as we could have hoped. We knew that there were a number of complicated issues that had to be resolved. Now from seeing what has been exposed in the papers of the justices and some of the memoirs and interviews that have come out since then, we know what the mechanisms were that Burger organized, with different justices drafting different pieces of the opinion on different issues. Lots of horse trading went on in that period. That was not known at the time, and so when the case came out with Burger appearing to write for a unanimous court, it made it seem a lot simpler and obvious an outcome than it was either when we were arguing the case, briefing and arguing the case, or when we were arguing it. We now know that it wasn't as obvious inside the court during the deliberations and that the ultimate unanimous opinion was the product of a good deal of

compromise so that in a constitutional sense, Richard Nixon lost the case, but the presidency won the case because the court established for the first time that there is such a thing as executive privilege, and more important, this is what the conservatives in the court demanded, it is based upon the separation of powers. So, it's a constitutionally based privilege not simply a judicially created common law type privilege. As we understood at the time, over the longer run, this was going to be an important weapon that future presidents would use to withhold information even though Richard Nixon, unfortunately for him, was going to have to turn over information that turned out to be the undoing of his presidency.

MS. JOHNSON: I'd love to talk later on in a few sessions from now about how that power the Supreme Court gave future presidents came to bear out for over many decades and presidents of both political parties to the present day, for sure.

MR. LACOVARA: Absolutely. I was on the phone this morning with a Senate staff person talking about this very issue, how presidents tend to aggrandize power, and no president cedes any power that a predecessor has wielded or usurped. It's a one-way ratchet, as they say, and that is certainly true with executive privilege and other kinds of executive assertions.

MS. JOHNSON: Thank you for that. To be continued. The decision comes down. Did the Office have a celebration? Did you have a personal celebration, or was this more of a sober moment for the Office and for you personally?

MR. LACOVARA: It was sober. I don't remember any sort of partying or cracking open a bottle of champagne. As you may know from photographs of the day, we

got a notice from the Clerk's office that a decision would be released that morning, the 24th of July 1974. I do remember that date. Leon and I went up to the court with our government-issued car, parked in the basement of the court as the Solicitor General and others were entitled to do at that time. I don't know whether that's still possible given security needs. So there we were. We waited. The court came in, and the chief announced the decision. I don't remember how long the announcement was, but what I do recall was that I was waiting to hear 'and Justice So-and-So has filed a dissenting opinion.' And after the chief announced the opinion and judgment of the court, he said the court is adjourned. I think it adjourned for the term. And that was it.

So that was the realization that this was a unanimous decision that the president was going to have to turn over the tapes that we were seeking. We made our way back out through another somewhat smaller crowd, went back to read the opinion, and it was then that we realized that the court had accepted some of what we'd argued on the key issues, that the president is not above the law. The president may be forced by courts to turn over information, but he nevertheless has a certain privilege, and it's absolute with regard to state secrets, and only conditional with regard to everything else, and that we had made the showing of the need for anything that was not a state secret to be produced.

I said afterwards to Peter Kreindler this case will probably be cited more in the future by presidents, and as a practical matter, its practical

impact will be most important for what it says about the standards under Rule 17 of the Federal Rules of Criminal Procedure for enforcing trial subpoenas. And it may well be that this issue may come up a hundred times a week in criminal cases where somebody is subpoenaing information for use in a criminal trial. But in the macro sense, the big issue was that Nixon had to turn over information. Presidents in the future going on in ad infinitum do have a constitutional privilege called executive privilege.

MS. JOHNSON: Did you have a doubt or any uncertainty in your mind even then on that day in late July 1974 that Nixon may not actually do what the Supreme Court told him to do even though it was a unanimous and fairly definitive decision?

MR. LACOVARA: I did have some doubt, but my doubts were diminished in light of the reaction to the Saturday Night Massacre. Keep in mind that the Saturday Night Massacre provoked an immediate congressional response. In fact, I don't know whether I had occasion to mention this, but that Saturday night, I was on the phone with the chief counsel of the House Judiciary Committee about what he thought was going to be now inevitably a formal impeachment inquiry, and that inquiry did in fact unfold, and lots of evidence had been taken, and articles of impeachment had been voted on. I think in the interim, between the argument of the Supreme Court case and the decision, it never got to the House floor because Nixon resigned, but it was pretty clear to me that the country would really not have tolerated a

defiance of the unanimous Supreme Court decision if the president thought that that was what he wanted to do.

This is another example of how 1974 was so dramatically different politically from 2018 or 2019 or 2021 regarding congressional willingness on a bipartisan basis to hold a president accountable. Even before the release of any of the tapes, some Republicans, both in the House and the Senate, were prepared to say Richard Nixon has to be held to account if he's done something wrongful or criminal. It would have been inevitable, as Senate and House leadership told Nixon, that he would have been impeached and convicted in light of the tapes, I think that same result would have obtained, and he would have been told that would have been the consequence if he had defied the Supreme Court in an effort to conceal the tapes. I knew that at the time. The game was up, and he really had no politically viable much less legally justifiable basis for refusing to turn over the tapes.

MS. JOHNSON: The game was up. It took another few days for Nixon to announce his resignation. How active, if you remember, were the investigations up until that point, and then I want to get up to the resignation itself and your response to that and the Office's response.

MR. LACOVARA: Everything was chugging along. Remember, the tapes case that went to the Supreme Court was an effort to obtain evidence for the criminal trials in which indictments had already been returned. So people were busy preparing for those criminal cases. We had said, and this was a genuine

attitude, that the reason we were subpoenaing this information for trial was that, while we were satisfied that there was sufficient evidence to indict these people, the evidence about who said what during these key concert conversations would be crucial in either demonstrating guilt or establishing innocence. We said that this is the responsibility of the Department of Justice. There's a famous old case called *Berger versus the United States* that made this point. The United States wins its case when justice is done in one of its courts. We said the country and the Watergate special prosecutor have as much interest in knowing whether these people are actually innocent as in knowing that they're guilty, and the tapes will show that. So the cases were being prepared for trial while awaiting the production of tapes which might show that they were entitled to exoneration or it would confirm the other available evidence tending to show that they were guilty. The key additional element, of course, was that it showed Nixon's active complicity at the earliest possible moment.

MS. JOHNSON: It's so interesting you say those things because these same things were an issue as part of the January 6 investigations and remain so. The Justice Department's job, its obligations, as its goal of seeking and pursuing justice for people. So August 7, August 8, roll around. Where were you when you heard that Nixon was going to resign or might resign?

MR. LACOVARA: I believe I was on my way to New York for my sister's wedding. One of the ways I can remember her wedding anniversary, and she just celebrated her 50th anniversary, is by relating it to Nixon's announcement of his

resignation. I was relieved but distracted because we were driving up to New York with the family. A couple of the children were in the wedding party. So a little bit like the aftermath of the tapes argument where immediately I had to shift gear into being father and husband, I was in the process of shifting gears to being brother, father, and husband at the same time as the announcement was being made that he was going to resign.

MS. JOHNSON: This is a man that you had supported politically early in your life, I think, and had come to take a different view of based on your interactions with him, his interactions with the Justice Department and Archie Cox and others. Did you have a personal set of feelings about this resignation?

MR. LACOVARA: Yes. I thought it was sad. The dominant emotion that I had was sadness because I had been, as you say, a supporter of Richard Nixon. I'd been a life-long Republican. I thought that he was a man of substance. In the convention the other night, Kamala Harris made the comment that Donald Trump is not a serious man. That concept of being a serious person or a serious man is one that I have used myself over time to distinguish people who are mere flashes in the pan or mere performers or mere politicians, as contrasted with people who are serious persons. I thought of Nixon as a serious person. He'd had a long career in Congress, as vice-president, as president. Extremely smart lawyer. He'd even been a Wall Street lawyer. He'd argued before the Supreme Court. So he was a serious man, and it seemed to me sad that it had all come crashing down.

There was also, of course, the relief that he was gone since he seemed to have been oppressing the progress of the country. We knew that, and I'm sure you've read about this subsequently, that there was concern even within his administration that he might do something reckless or dangerous. There's a famous comment by Schlesinger, Secretary of Defense, that as we were told, if the president picks up the red phone, nobody will answer it. We had been given assurances on the q.t. that the president was being effectively isolated from exercising some of the powers of the presidency because it was thought at the time that he was not stable and might do something desperate in order to cling to power. There was a sense of relief that that threat was now being eliminated by his resignation. So sadness and regret. I did not have any sense of triumph or victory or elation when Nixon decided to stand down.

MS. JOHNSON: Closing this chapter, did you have personal views or office-wide views on Nixon's need for and acceptance of a pardon when that came?

MR. LACOVARA: Yes. First of all, there was the immediate question what should the special prosecutor's office do about Nixon, and there was I would say unanimity, with one big exception, that he should promptly be added to the indictment of the other co-defendants because they were indicted for things that the smoking gun tape showed were done with the active connivance of President Nixon himself.

The exception to that was Leon Jaworski, and his vote counted a lot of course since he was the one who would have to sign an indictment.

Immediately after resignation, signals began to emerge from the Ford White House that a pardon was being considered, and those rumors continued to percolate during the ensuing month or so. Jaworski had regular contacts with the White House, with President Ford's counsel, a man named Philip Buchen, a very honest, distinguished, I would say non-partisan fellow, during the period. I don't know how to describe this. We jump ahead following the pardon. I may have mentioned this. Jaworski and I became estranged after the pardon was issued because he viewed me as having pushed him into getting President Ford to issue the pardon. In my view, that wasn't quite accurate, but I could see in retrospect how he could come to that conclusion and why he thought that my resignation as a protest upon the issuance of the pardon had embarrassed him and showed him up when he decided not to do anything about the pardon. The context for his comments was my assertion, and I think this is documented in some of the memos that may now be in the National Archives, was that it was not good for the pendency of the existing case for the jury pool to be wondering about where the key figure in the whole case, namely the president, was, and wondering if the case went to trial why wasn't the president there as a co-defendant. So, what I did say to Jaworksi was, you should urge the White House to act quickly. If he's going to pardon Nixon, it should be done sooner rather than later. It certainly should not be as one of the possibilities being mooted: It was we'll wait to see if he's indicted, then we will pardon him. Or if he's indicted and goes to trial and

convicted, then we'll pardon him. So my recommendation to Jaworski was let's get this cleared up now. If Ford is seriously interested in pardoning Nixon at some point, better now than later. And Ford apparently acted on that advice. I don't know that it was my view communicated to Jaworski and passed along to the White House that was decisive, but from Jaworski's viewpoint, he had made this representation to the White House at my urging. The president had acted, and then I made this grand stunt of resigning in protest against the pardon, and his view was they just did what you told me to tell them to do

MS. JOHNSON: Did you view it as a resignation in protest at the time?

MR. LACOVARA: Yes. It was announced as such. My explanation was that the pardon of Nixon had undercut the whole purpose of the special prosecutor's office. That is, when Richardson had announced this venture and Cox had taken the job and, as we argued to the Supreme Court, the underlying premise for creating a special prosecutor with authority among other things to investigate the president was to demonstrate that no man is above the law, including the president. And yet, the way I reasoned it, here the person who is the central figure in the conspiracy and the motive for the conspiracy is the one person who is walking free, and the others are on their way to trial and, as anticipated, ultimately on their way to prison. So it seemed to me that the pardon itself struck at the core of what we were trying to demonstrate, which is that no person is above the law. Fast forward fifty years and you have *Trump v. the United States*, and the

Supreme Court says, well, one person is above the law. But at that point, such a notion was not considered a serious one.

MS. JOHNSON: You've had a very long and productive and successful career. How do you situate your Watergate experience in that context? Was it the most important thing you've ever done in some ways, or is that too far?

MR. LACOVARA: In professional terms, I would have to say it's the most important thing I've done because it had consequences affecting the larger community. I was involved in an investigation that led to the departure of a president. I was involved in a case that has created ripples in time that are still reverberating today, the Nixon tapes case. I think that in terms of importance in a global sense, the Watergate experience would have to be the most prominent thing in my professional life. I've done other things of which I'm proud. I don't think I've done anything that ranks with Watergate in terms of impact.

I think I said earlier when we were talking about my experiences in the New York City Police Department that was a much more enjoyable, and in a sense intellectually fascinating professional experience, because of the range of issues that I was dealing with. But Watergate has to be a capstone.

Of course it's with some reluctance that I say that, because that was fifty years ago, and no person likes to think that the rest of his life has been downhill since then. I don't think of my life as that way because I've had, as one of my former partners used to say, the four great careers that a

lawyer can have. I've been a government lawyer, I've been a private practitioner. I've been a public interest lawyer, and I've been a law professor. I guess a fifth one is corporate counsel. So I've done a lot of interesting things in a lot of different contexts, but in terms of the larger impact, Watergate would have to be it.

MS. JOHNSON: Your resignation in 1974 brought to an end, at least for a while, a very intense period of public service for you and also one where you and your wife were raising a growing family on a government salary. You've alluded to this a few times, but that must have been an enormous personal challenge for you and for the family.

MR. LACOVARA: It was, and I didn't even notice it as much as I'm sure they did. My wife reminds the kids that, when we went to Red Barn, which was the equivalent of McDonald's at the time or Burger King now, several of the kids would have to share a bag of french fries. Money was tight. There's no doubt about it. When we first came back to Washington when I was clerking for Judge Leventhal, he appreciated that my law clerk salary was pretty tough to support a wife and three children, and he actually arranged with a friend of his who worked for, I think was the managing editor of the old Bureau of National Affairs, BNA, *US Law Week*. *US Law Week* is now owned by Bloomberg. But that was the kind of legal journal that almost all lawyers read weekly. They had two sections, the General Law section and the Supreme Court section, and they came in loose leaf pages. One of the things that the Supreme Court section did was digest summaries of the cert

petitions that had been filed recently so that lawyers could keep track of what issues were going up to the Supreme Court. What the judge arranged for me to do was to have a night-time side hustle preparing the summaries of Supreme Court cert petitions. This is long before I got to the Solicitor General's Office. I think I got paid a dollar a petition to summarize them in the standard format that *Law Week* published them. So I would get a foot-deep stack of cert petitions, and I'd crank them out at night while the kids were asleep.

And then Dean Griswold, who appreciated the same thing, when I was in the early stages of the SG's Office, he must have gotten a request from the US Ambassador to the Organization of American States, a man named Sol Linowitz, who had been the chairman of Xerox and left the corporate world to take on this public service assignment. He wanted kind of staffing assistance, especially in writing speeches on issues of social policy and the way governments throughout the Americas might be able to help the underprivileged. So the Dean put Linowitz in touch with me, and I did a number of gigs for him, and he paid me generously for my speeches. It was just an example of how the people that I was working with at the time were extremely helpful to me in helping to get some extra income to supplement my salary at the time.

MS. JOHNSON: How did you decide to return to law firm life and to return to I think the same firm that you had been at years earlier?

MR. LACOVARA: Yes. I had been at Hughes Hubbard and Reed twice. I had done my summer internship there while in law school, and then when I left the Solicitor General's Office the first time and went back to New York thinking I might want to be a Wall Street lawyer, I went there as a mid-level associate. So after leaving the special prosecutor's office, I had to find something else to do. One of my sons who was I think nine years old at the time said, daddy, do you have another job? He asked me after I announced that I had resigned from the special prosecutor's office, and I said no, but I have confidence I can get another job. I'm not sure he was as confident as I was, so there were some very intensive efforts to see what my opportunities might be in Washington. We wanted to stay in Washington. A couple of firms contacted me or I contacted them, and one of them of course was Hughes Hubbard. I'll explain why I went back there and under what circumstances.

One of the firms that I interviewed with was Williams and Connolly, a great firm even then. I knew a number of people from Williams and Connolly. At the time, Joe Califano who had been one of LBJ's chief assistants, later Secretary of Health, Education and Welfare, was a partner at the time. This was a funny episode. We agreed to have lunch at an Italian restaurant on Connecticut Avenue that I'm sure no longer exists, and I don't even remember its name, but it was down in the basement. It was very dark. It was a very chichi trendy restaurant at the time. I was trying to be extremely cool in this interview. Keep in mind I'm

still maybe 30 years old trying to make my way in a different world. I looked at a menu and it was written in small print. It was handwritten, and I just looked at things, and it was all in Italian, and I don't really speak Italian. The one word that I recognized was pollo, chicken, so I pointed to this thing on the menu. Califano and I kept up our banter, and then when my order finally came, it was chicken in a sense. It was an entire bowl that must have weighted two pounds of nothing but chicken livers. Joe must have known from the expression on my face that I was completely befuddled by what I was going to do about this, and he was watching to see whether I would eat any of these things or if so, how far I could go in trying to maintain some sense of aplomb while I was trying to project the degree of confidence and éclat.

We had wonderful lunch, and they did offer me a job, but since I had a total of about a year-and-a-half as a law firm associate and I was then just seven years out of law school, which was the minimum at that point for law firm partnerships, he said you'd have to come in as a senior associate for a year. I said, again being kind of smug and too big for my britches, I'm not going anywhere as an associate at this stage in my life. So I did not go to Williams and Connolly.

Hughes Hubbard offered me a partnership. In fact, basically to create and head the Washington office of the firm. I was told somewhat later by a friend, a kind of mentor at the firm who had been urging that the firm elect me a partner, what he had to tell them. This of course came

after I'd gone to Hughes Hubbard in 1969 and almost immediately done this special assignment on the death penalty case, which took several months out of my work for the firm, and then I left to go to work for the New York City Police Department. Bob's theme, as he said he had argued for my cause was, Phil Lacovara was a terrible associate, but he'll make a great partner. And apparently that swayed the day, and I spent the next fourteen years heading the Washington office of Hughes, Hubbard and Reed.

MS. JOHNSON: Spectacular. In our next session, I would like to get into that and your Wall Street lawyer days, but I have one more question for you before we stop today, and it's because you mentioned Arnold and Porter. I think you had recounted to me at one point that you had some experience with Abe Fortas, who of course came from the Arnold and Porter law firm, and now may be a good moment for you to discuss that interesting experience you had with Fortas.

MR. LACOVARA: I argued against Abe in the only case he argued after he left the Supreme Court, and this was part of my private practice experience. And indeed, I've just been asked by the Supreme Court Historical Society to do a little narrative which I think they're going to be publishing as part of their blurbs concerning Supreme Court justices as lawyers before the court. Almost all of them, maybe all of them, had that kind of experience before they went on the court rather than, as in Fortas's case, afterwards.

In any event, I had done some work for the Commonwealth of Puerto Rico doing work on their legal status for the so-called Commonwealth party. In Puerto Rico, as we have divergence between Democrats and Republicans, they have the Commonwealth party and the Statehood party. The Commonwealth party is the one that likes this loose affiliation with the United States, whereas the Statehood party wants Puerto Rico admitted to the union as a state. So early in my time at Hughes Hubbard, the head of the Federal Relations Office of the Commonwealth of Puerto Rico, a Commonwealth party representative, a man named Jose Cabranes, later general counsel at Yale, now judge of the United States Court of Appeals for the Second Circuit, asked me to do a constitutional analysis of Puerto Rico's capacity under the constitution to engage in autonomous foreign relations. Okay. I did that.

Two or three years later, I was approached by the Statehood party to represent them in a case that was working its way up to the Supreme Court. The case involved the question whether under the US Constitution it was permissible for a political party simply to appoint a member of the legislature when a vacancy occurred. So not an appointment by a government official but by a political party. The control of the Puerto Rico Senate turned on the answer to that question. The case ultimately went to the Supreme Court, and I was to argue for the Statehood party. The Commonwealth party hired Abe Fortas, who by that time had left the Supreme Court. He had had a relationship with Puerto Rico and

specifically with the Commonwealth party from the time that he was the Under Secretary of the Interior back in the FDR New Deal days. At that point in a kind of condescending way, US territories were under the control not of the State Department but of the Interior Department as if they were national parks. So Justice Fortas had had this longstanding relationship with Puerto Rico and the Puerto Rico government, which had been for decades and decades of generations under the control of the Commonwealth.

We were scheduled to argue the case. We did our respective briefs, and the case was set I think for February of some year. He called me up on the phone and said I've got a favor to ask for you. He said it's not in the nature of a professional conflict, but I wonder if you would agree to ask the court to move the argument date, to postpone it. I said what's the issue, and he said well, it's not a professional conflict. Every year for the last twenty years, my wife Caroline and I have used this two-week period to go to our condo in Colorado to ski. She's a busy lawyer. We made arrangements for doing this long before the court scheduled the argument. I said that's fine. I believe that personal conflicts are even more compelling than professional conflicts. You can represent that counsel for the Rodriguez parties consent to a delay, so the court clerk put the case off for two months. I never asked my client whether they had any objection, and probably that was not a wise thing to do, but in any event, we did argue the case two months later. He did a terrific job arguing. He was a

very accomplished lawyer. And then he happened to die, unfortunately, before the decision came out.

My takeaway from this was that I would have felt miserable had I deprived him and his wife of their last vacation together by saying no, this is the argument date, let's just stick to it, too bad for you and Caroline. He won by the way, unanimously. It was kind of an honor for me to go up against him because he had been one of the leading lawyers of the Washington bar. He was kind of the consummate Washington lawyer, although he had left the court under a bit of cloud and had not gone back Arnold and Porter. He was nevertheless a person of substance. He was a serious person, and it was in my view an honor first of all to be going up against him but also to have been asked to do him a favor on the personal level, and so I was in retrospect especially delighted that I had acquiesced in his request.

MS. JOHNSON: Absolutely. That would have felt awful had you not. I'm persuaded by your explanation. Let's leave it there for the day, and let's get into your life at Hughes Hubbard on behalf of clients and maybe your life then working for Wall Street banks next time around, if that works for you.

MR. LACOVARA: Yes. And don't forget Jack Welch and the General Electric Company at its heyday, before it imploded.

MS. JOHNSON: That will be a long session. And we have to get to Rudy Giuliani as well.

MR. LACOVARA: Yes. And in terms of public service, while I left Watergate, I did a couple of Congressional assignments after that which might be worth a couple of minutes.