Defending Nixon: The Problems of St. Clair

By LESLEY OELSNER
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WASHINGTON, April 19—How do you defend the President? James Draper St. Clair, who was hired by Richard Nixon to do just that, raised the question himself not long ago, noting—without answering the question—that "they don't give courses in law school" on how to do it. Now, watching Mr. St. Clair, a number of other lawyers and many nonlawyers are also asking the question. They are finding, as the dean of one law school said, that "we just never had much occasion to question the White House lawyer's role," and that, as a result, there are no precise rules to cover all the situations in which Mr. St. Clair finds himself.

News Analysis

It is generally agreed that the President's lawyer is bound like any other lawyer by the profession's canons of ethics; it is also agreed that the canons are neither comprehensive nor detailed enough to answer definitely all the questions being asked.

The broader question that has been raised is whether the lawyer for the President of the United States should proceed with the same single-minded zeal as the lawyer for a defendant charged with a common crime, the goal of "getting the client off" however he can.

Quote by Lawyer

Lately, in the wake of newspaper reports suggesting that Mr. St. Clair does not have complete control of the case and that he is being denied access to some of the information he needs, more precise and technical questions have come up. Among them: How much information should a lawyer get from a client? And what should he do with it, if it is incriminating once he gets it?

A lawyer who worked briefly on the White House legal team has been quoted as saying that Mr. St. Clair did not have full access to the tape recordings being sought by the impeachment inquiry and by the Watergate prosecution.

John Doar, chief counsel for the House Judiciary Committee, also has said that he does not think Mr. St. Clair has heard the tapes.

It seems improbable to some lawyers that an attorney of Mr. St. Clair's competence would let himself be in a position, for very long, of being denied information that he considered necessary to the preparation of his case. Mr. St. Clair has declined to discuss the extent of his access to information, and the White House has rejected the broader contention that Mr. St. Clair is being denied adequate control of his case.

Yet the view that Mr. St. Clair has been given an incomplete account of the Watergate affair has gained credence here; it has been bolstered by previous disclosures about the lack of knowledge of other White House lawyers.

Charles Alan Wright, the President's chief counsel in the litigation last fall over the prosecution subpoena for tapes of nine conversations, was not told until minutes before the public announcement that there were no tapes of two of the conversations. The President had been advised of that possibility more than a month earlier.

Another White House lawyer, John Chester, appeared before the United States Court of Appeals for the District of Columbia Circuit a few weeks ago to present the White House position regarding five tapes sought by the Senate Watergate Committee. He contended that the release of the tapes would have a grave impact on public opinion, but when he was asked about the tapes' contents, he conceded that he had not heard them.

'You Just Can't Barge In'

During the hearing last fall into the 18½-minute gap on a key White House tape, another Presidential lawyer, Samuel Powers, acknowledged that he had not discussed the gap with the President. Mr. Powers, who left the White House shortly thereafter, gave this explanation: "If you're representing General Motors you just can't barge in every day and talk to the president of G.M."

The questions about getting information from clients are, to many lawyers, easier to discuss than the broader and more philosophical question of whether the President's lawyer has some higher obligation to the public than the ordinary defense attorney.

The lawyers say that the answers can be found in day-to-day legal practice as much as in the canons of ethics. The general rule, they say, is that the lawyer wants to know everything the client knows.

"It's almost a prerequisite to effective representation," one highly regarded Washington lawyer said. "It's hard to make legal arguments in a vacuum or respond to them if you don't have the facts."

The canons of ethics, now included in a revised "Code of Professional Responsibility" drafted by the American Bar Association and adopted by some states to varying degrees, provide little guidance and, essentially, set only the outer limits.

As John F. Sutton of the University of Texas Law School, the chief draftsman of the code, expressed it, the lawyer is obligated to "adequately prepare" his or her case and to "represent the client strongly."

The canons embody "lawyer-client privilege" the rule that a lawyer not reveal confidences of his client, and they do so, according to Mr. Sutton and others, to encourage a client to tell his lawyer all the facts relevant to the case.

The code provides limited exceptions. The lawyer may reveal the intention of his client to commit a future crime, and if the lawyer learns that the client has "perpetrated a fraud" on a tribunal and cannot persuade the client to "rectify" it, the lawyer must disclose the fraud to the tribunal.

Protection for Client

There has been speculation that if tapes of Presidential conversation have been purposefully erased, or if Mr. Nixon is involved in a continuing obstruction of justice, Mr. St. Clair would therefore have to be kept in the dark for Mr. Nixon to be protected.

Yet, as James Kirby, dean of the Ohio University Law School and an authority on legal ethics, notes, the second exception is not widely ahered to. Indeed, it was not even adopted by the District of Columbia. Mr. Sutton notes that it is unclear whether a continuing crime is included in the rule that a lawyer may report future crimes.