

# Mr. St. Clair's Twists and Turns

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MR. JAMES ST. CLAIR'S argument before the Supreme Court on President Nixon's behalf on Monday may have represented, as some would have it, an historical and therefore special moment in constitutional affairs. But, in another sense, it represented something very familiar and predictable. Mr. St. Clair was explaining to the justices the legal reasons that his client should not be compelled to produce taped evidence requested by the Special Prosecutor and subpoenaed by the federal district court for use in the Watergate cover-up trial. What was familiar and predictable about this argument was that like all Mr. St. Clair's other arguments it led the listener into a maze of illogic and a thicket of non sequiturs—unless one shared the same objective he and the President do. That objective can be generally stated as keeping Mr. Nixon unaccountable and out of harm's way, and in particular as protecting him against the reach of the impeachment process now under way in Congress.

It is in terms of this larger objective—rather than the constitutional aspects of the contest over tapes between the Special Prosecutor and the President—that we would like to examine Mr. St. Clair's arguments. For the common denominator of all of them seemed to be the same heads-I-win-tails-you-lose reasoning that has characterized the President's defense against impeachment all along the line. Consider the answers that have been given to those charged with rendering justice in the Watergate affair, with particular respect to Mr. Nixon's own conduct of office:

The President, we are told, is beyond the reach of the federal courts. He is vulnerable only to the impeachment proceedings of Congress. However, it just so happens, in his view, that the Congress can only impeach the President for an indictable criminal offense, of the kind ordinarily passed upon by the federal courts. How then, is anyone to judge whether he has committed an indictable offense? When a grand jury, mindful of the claims that he could not be reached by its indictment processes, named him an unindicted co-conspirator, Mr.

Nixon's response via Mr. St. Clair was that the grand jurors were not entitled even to do that. Well then, who was? Mr. Nixon's answer is: the House Judiciary Committee. But when that committee subpoenaed evidence from him that it regarded as material to its inquiry, the President declined to produce it. Instead of delivering the requested tape recordings, he published heavily edited transcripts, generally regarded to be inadmissible as evidence in any court of law. Confronted with further request for other tapes, he simply said, No.

The next turn in this argument is interesting in light of Mr. Nixon's refusal to cooperate with the House investigators: Mr. St. Clair, before the Supreme Court, argued that (1) the Special Prosecutor and the federal judiciary in general were not the instruments of government entitled to make these requests of Mr. Nixon since he was reachable under law only by Congress, and that (2) Mr. Jaworski also should not get the tapes he sought because he might, upon getting them, somehow pass them along to the appropriate authorities on the Hill, to whom Mr. Nixon had, incidentally, already denied some of the same material. If you can follow the logic of that, you are ready for what comes next. It is Mr. St. Clair's proposition that those seeking tapes from the President should not be allowed to have them unless and until they can demonstrate with the utmost precision that the material is required for their investigatory pursuits. Under questioning from the bench, he did not explain exactly how you can be precise about the contents of a tape that you have not been allowed to hear.

We are not suggesting that there is no legal or constitutional validity to Mr. St. Clair's presentation to the court. And still less would we deny a certain brilliance in his strategy. By the very illogic of his argument—by its dazzling twists and turns—it admirably fits the all too familiar pattern of delay and denial which has for so long constituted the President's best hope and main defense against the impeachment proceedings in the House.