

Nixon Lawyers Say Impeachment Requires an Indictable Crime

By Richard L. Lyons

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President Nixon's lawyers argued yesterday that he can be impeached only for indictable crimes. They said this was the clear lesson of "history, logic and experience."

The brief prepared by James D. St. Clair and five other lawyers was squarely at odds with the position taken by the impeachment staff of the House Judiciary Committee, which is investigating whether Mr. Nixon should be impeached and removed from office for Watergate or other matters.

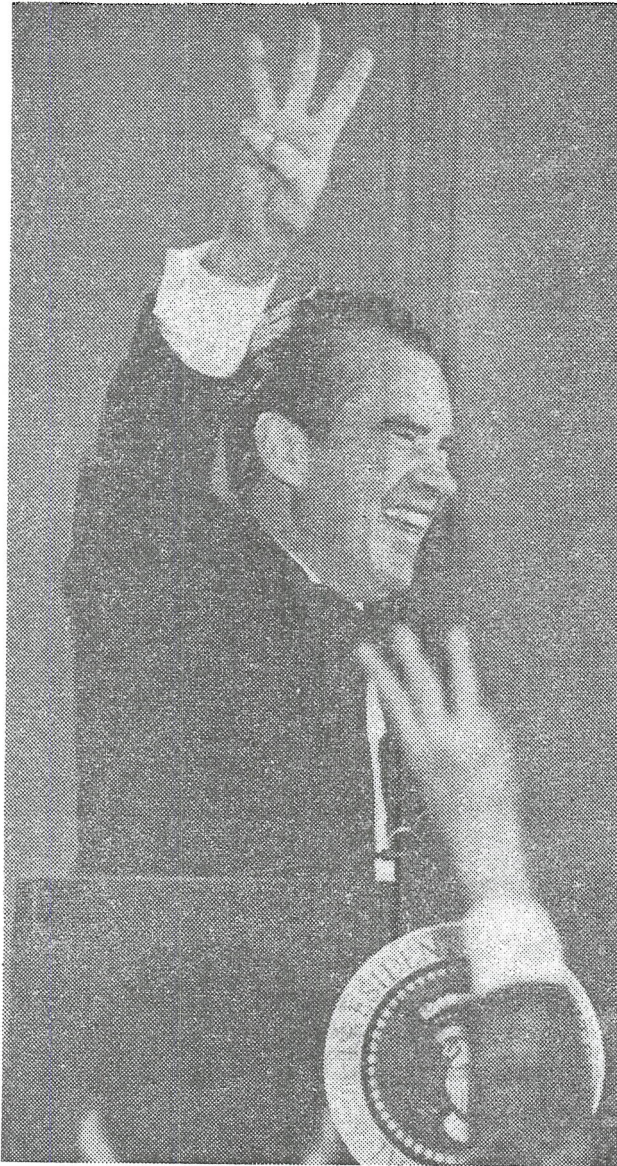
President Nixon said Monday at his nationally televised news conference that his lawyers held the view that a President could be impeached only for a crime.

The House committee staff said a President can be impeached for non-criminal acts that constitute a serious misuse of power which subverts the Constitution. A Justice Department brief drew no specific conclusions, but came closer to the House committee staff view.

St. Clair's conclusion is the one traditionally argued by targets of impeachment from President Andrew Johnson in 1868 to Supreme Court Justice William O. Douglas in 1970. It narrows the ground for impeachment, and properly so, its advocates contend, because the grounds for impeachment were not precisely made clear in advance a President could be thrown out for political reasons by a hostile Congress.

These briefs are a continuing search for the maning of

See **IMPEACH, A11, Col. 1**



Associated Press

THREE MORE YEARS—President Nixon flashes an augmented victory sign to Young Republicans. Story, A12.

IMPEACH, From A1

"high crimes and misdemeanors," which the Constitution lists along with treason and bribery as grounds for impeachment of the President, Vice President and all other civil officers of the United States.

Those holding the broader view like the House committee staff contend that this phrase was taken from English law where a misdemeanor was not originally a crime but a political offense against the state.

St. Clair contended, however, that while the founding fathers wrote the impeachment process into the Constitution, they intended to reject the political use to which it had been put by the British Parliament to make itself all-powerful.

The argue that a President can be impeached for "something less than a criminal offense, with all the safeguards that definition implies, would be a monumental step backwards into all those old English practices that our Constitution sought to eliminate," wrote St. Clair. He likened the English use of impeachment with such acts as Star Chamber proceedings and bills of attainder which the Constitution forbade.

St. Clair's brief made these points in arguing that "high crimes and misdemeanors" means indictable criminal acts:

Several acts of early Congresses when some framers of the Constitution were members used the term "high misdemeanors" to describe serious crimes punishable by up to several years in prison.

• Constitutional language on impeachment is replete with words connoting criminal acts. A person impeached by majority vote of the House shall be "tried" by the Senate and if "convicted" by a two-thirds vote be removed from office. "Trial of all crimes except . . . impeachment, shall be by jury."

The Constitutional Convention rejected "maladministration" as grounds for impeachment and substituted "high crimes and misdemeanors" that must have been intended as a more serious and precise meaning.

Advocates of the broader meaning of the phrase note that Congress has impeached and removed officials for non-criminal conduct.

St. Clair replied that the only officials removed from office by impeachment were four federal judges. He said the Constitution set a lower standard for their removal by providing that judges should serve during "good behavior." Since judges otherwise serve



JAMES D. ST. CLAIR
... cites "history, logic"

for life, while Presidents can be turned out after four years, there should be a different standard, he contended.

President Andrew Johnson was impeached by the Radical Republicans because of his lenient attitude toward the South after the Civil War. The Senate failed by a single vote to muster the two-thirds vote needed to convict and remove him from office.

St. Clair argued that Johnson's acquittal in the only presidential impeachment trial "strongly indicates that the Senate has refused to adopt" the broad view of what constitutes impeachable offenses.

The lesson of the Johnson trial, said St. Clair, "is that impeachment of a President should be resorted to only for cases of the gravest kind—the commission of a crime named in the Constitution or a criminal offense against the laws of the United States."

A majority of the House committee members appears to share the broader view of what constitutes impeachable offenses, though the senior Republican, Rep. Edward Hutchinson (Mich.), shafes St. Clair's view.

Rep. David Dennis (R-Ind.), a committee member, said he thought a good argument could be made on both sides, but that as a practical matter impeachment is so serious that Congress would consider it only for criminal acts.

Rep. Peter W. Rodino (D-N.J.), Judiciary Committee chairman who shares the broader view of impeachable offenses, said St. Clair's analysis had not been solicited and was accepted only at his request. The committee takes the view that it is not conducting an adversary proceeding, as in a court trial with lawyers filing briefs and responses, but a search for information under the constitutional provision giving the House sole jurisdiction over impeachments.