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St. Clair and the President's Defense

In the process of puncturing the myth of absolute presidential "executive privilege," the Supreme Court also deflated the myth that James St. Clair, Mr. Nixon's Watergate counsel, is a master defense lawyer and a notable authority on the Constitution.

The press has always been partial to legal virtuosi; it has made celebrities of countless defense lawyers, ranging from Clarence Darrow to William Kunstler. St. Clair is not flamboyant, but he knows how to milk the media: It's almost impossible to turn on the tube without seeing him in the act of selling the President's innocence.

The media's awe of Mr. St. Clair's performance was well expressed by an often perceptive fellow columnist, William Buckley, who said, "He is the advocate par excellence. He has succeeded in dividing the Judiciary Committee of the House, and in getting courts and judges and defense attorneys working at feverish levels and for cross purposes. . . ."

That, of course, was before the court and the judges and the House committee unloaded on Mr. St. Clair's famous client. Yet Mr. Buckley was by no means alone in his reporting that the White House attorney's strategy, legal approach and exposition of the Constitution had divided and confused the opposition and was carrying the day in general.

In the light of what has been transpiring in recent days in both the Supreme Court and the Judiciary Committee, the assessment was, to say the least, wide of the mark. Not even the Nixon members on the high court were impressed by the St. Clair version of the Constitution and not even some of the most partisan Republicans on the impeachment committee bought his arguments either.

It is a failure of monumental proportions for a lawyer of St. Clair's standing, whose ability has been widely respected in his own profession. For what happened? It could be argued that he took on a thankless task. It is said that he was handicapped by the President calling all the shots behind the scenes. Also, it appears that Mr. St. Clair had access only to such tapes, documents and other evidence as the President saw fit to let him see.

In short, Mr. St. Clair is supposed to have found himself in the dubious position of the other lawyers Mr. Nixon has called in from time to time to help in his defense. With the exception of J. Fred Buzhardt, whose heart faltered under the strain, they have come and gone, usually with loss of face.

A notable example was Prof. Charles Alan Wright, the University of Texas legal scholar, who with great fanfare was called to the White House last fall at a time when the President was preparing to appeal to the Supreme Court an order by U.S. Dist. Judge John J Sirica to turn over a batch of White House tapes to the special prosecutor. Prof. Wright marshaled what he thought was an impressive argument and was all set for his greatest day in court when he learned indirectly through the press that his client had suddenly decided to drop the appeal. It was hardly a ringing testimonial to the case Wright had developed. The professor went back to Texas, a chastened but wiser man.

James St. Clair

Any American, humble or great, is of course entitled to counsel. Lawyers like Wright and St. Clair have every right to take on the defense of the President, but are they duty bound to continue as counsel if their client fails to level with them or insists on tactics, claims and arguments which are questionable and which could denigrate their professional reputations?

Since Mr. St. Clair has not chosen to withdraw counsel, he can hardly complain if some of the criticism of the President's defense falls on him. It was obvious, for instance, that Mr. St. Clair was embarrassed when, under presidential orders, he introduced at the end of the impeachment hearings a fragment of Nixon-serving dialogue from a tape which the Chief Executive had denied to the House Judiciary Committee. He was even more embarrassed when he could not explain how the President happened to be commenting on a development that did not occur until 24 hours after the tape was recorded.

There are other unanswered questions about St. Clair. Did he seriously believe the Supreme Court would rule that the President—any President—is above and beyond the law? Since Mr. Nixon said in this first test over tapes that he would obey a "definitive" decision by the Supreme Court, how could St. Clair insist a year later that it would be "inappropriate" for his client to state his position on compliance?

Finally, how could St. Clair at the impeachment hearings be foolish enough to concentrate his fire on John Dean, the former White House counsel, who, whatever his own derelictions, long ago proved that he is one of the most dangerous witnesses in the world to cross-examine. He toyed with St. Clair. When Mr. Nixon's lawyer first came to town, it was said he would make Washington forget its own famed trial lawyer, Edward Bennett Williams. Williams can relax.

Columnist Joseph Alsop is on vacation.