James St. Clair, John Dean, Leonard Garment, J. Fred Buzhardt and Charles Wright.

Tom Braden

Mr. Nixon's Lawyers

There is a tendency in this city to be sympathetic to the President's newest lawyer, James St. Clair of Boston. Not only has St. Clair—like some knight-errant—left safety and security to seek the field of battle, but he appears under a banner with an almost sacred device.

Anyone who can claim to have served on the staff of Joseph Welch, the Boston lawyer who conducted the defense of the country's institutions against the onslaught of Joseph R. McCarthy, evokes the welcoming instincts of this city of government.

"Have you left, Sir, no sense of decency?" said Welch to McCarthy in a famous moment and thousands of governments servants who had been trembling for years under the apprehension of being called "pinko" or "left wing" or "security risk" breathed a silent and unanimous cheer.

The hope is that Mr. Nixon will be more decent to St. Clair than he has been to other people who have held the title, "Counsel to the President."

There was John Dean. Then there was Leonard Garment. Then there was J. Fred Buzhardt. Then there was Prof. Charles Alan Wright, who held the title, "special counsel." And there were six or seven assistants, all of them working from time to time on Watergate and, to use Garment's phrase, "related matters."

All have been embarrassed in varying degrees. Dean entered a plea of guilty. Wright prepared a constitutional defense of executive privilege and argued it to the appeals level only to find himself without a case when the President decided to surrender the tapes. Buzhardt and Garment had to appear in court to try to explain what they couldn't explain—that is, why two of the tapes were missing, and why another contained an 18-minute gap right where it counted.

By definition, learned counsel is one to whom another entrusts his case. There is a strong suspicion here that none of these men has been so trusted. Dean has testified that he was made into a criminal. The others were made to look foolish. It tests the bounds of reason to suppose that Wright would have argued the sanctity of the tapes if he had known the President might decide to surrender them. It is almost equally unreasonable to suppose that Garment and Buzhardt had foreknowledge of the fact that some of the tapes weren't there. Unless one supposes that the President didn't know it either, and that there is—in Alexander Haig's famous phrase—"some sinister force" in the White House, these men have been badly misused.

Now comes St. Clair, who must at least be given high marks for courage. Already, there are rumblings about still another counsel, hired at the ex-

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pense of the public to defend the President against charges that he misused the public's trust. Two recent Supreme Court cases, one involving a labor union, the other involving a corporation, have held that officers charged with criminal conduct have no right to use union or corporate funds in their defenses.

Thus for example, James Hoffa was denied the counsel of lawyers employed by the Teamsters. "The treasury of a union is not at the disposal of its officers to defend themselves against charges of fraudulently depriving the members of their rights as members," said the court in 1962.

But the point is, as lawyers say, "de minimus." Of greater importance is the question of whether St. Clair, unlike his predecessors, will be taken into the confidence and trust of his client.

If so, Mr. Nixon may yet present a solid defense. The embarrassment of a lawyer who finds in the middle of a case that his client has not told him the whole story can be exceeded only by the embarrassment of the client.