

By Anthony Lewis

WASHINGTON, Feb. 20—The downfall of Senator Joseph McCarthy can be traced to one dramatic moment at the Army-McCarthy hearings. It was on June 9, 1954, when the Army's lawyer, Joseph N. Welch, asked him, "Have you no sense of decency, sir, at long last? Have you left no sense of decency?"

Mr. Welch referred in that emotional speech to his young assistant: "Jim St. Clair, who sits on my right." Some people who lived through those days are bewildered at the role Mr. St. Clair is playing now, as President Nixon's lawyer. They wonder how a lawyer who helped repair the American conscience at another bad time can lend his skills to the defense of a man whom they see as today's symbol of political lawlessness.

The bewilderment is understandable, but the morals of the case are really not so simple. The identification of lawyers with their clients is a dangerous business. And in this case especially there is a public interest in looking at the substance of the legal issues rather than at the lawyer's tactics.

In Boston, where he has practiced, Mr. St. Clair is regarded as an old-fashioned barrister: That is, an advocate in the English sense, unattached to any cause, ready to take on any client. He himself plainly thinks that is the right path for the profession.

"Lawyers don't have the luxury of picking and choosing cases in which they believe," he says. "You should not identify personal ideologies with the lawyer. Then you would only have a regurgitation of ideologies rather than, hopefully, an objective analysis of the issues. At least I try to keep it"—ideology or personal sentiment—"to a minimum."

Does a lawyer have a duty to appraise the facts of a case, independent of his client's views? Mr. St. Clair indicates yes. He is an officer of the court, and for example he can never properly use false evidence. But Mr. St. Clair adds, "If you mean his becoming judge and jury himself, obviously no."

These are not just philosophical abstractions. Mr. St. Clair's view of the lawyer's role is highly relevant in the world of Watergate today because he intends to defend Richard Nixon, even in the cockpit of impeachment, by traditional lawyer's means.

"A lawyer functions in an adversary system of justice," he says, "on the theory that we're probably going to have the best results if each side presents its own case." That is, if neither restrains its own all-out effort in the interest of some perceived neutral idea of justice.

"This case is a piece of litigation. It is also a highly-charged political matter—but not one that replaces nor-

mal legal procedures. So I hope to keep as close to normal procedures as possible. I happen to think that's the best politics, too, though I am not a politician.

In other words, Mr. St. Clair is not going to deal with the impeachment proceeding as if it were a search for the higher political truth. He will represent Mr. Nixon as he would a defendant in the Massachusetts courts. He will insist on having the particulars of charges; he will demand all the protections of the criminal law. That is not a surprise; it must be the reason he was hired.

Is the St. Clair code for lawyers enough? I wonder. Would he feel an obligation to represent a defendant who played tricks with the legal system? Was there not some passion in Joe Welch beyond that of the lawyer's art, some genuine revulsion at Senator McCarthy's demagoguery?

But the real problem here lies not with James St. Clair but with his client. If President Nixon had simply stood on a defendant's rights, that would be one thing. But he has not. From the beginning of Watergate he has deliberately confused his interest with the country's. He has told us again and again that he has to resist the process of investigation—refuse evidence, fire Archibald Cox or what—for the good of the country.

Looking at the problem that way makes clear what is the most urgent task of the impeachment inquiry. That is to get the evidence.

From June 17, 1972, President Nixon has resisted by every means available the demand for the facts of misconduct in his Administration. He resisted letting anyone in the White House testify until the political backwash of Watergate swept away his exaggerated claims of executive privilege. He resisted the appointment and the functioning of a special prosecutor. He resisted requests for tapes and White House papers. He has produced virtually no evidence of real value except under the immense pressure of public reaction to the dismissal of Mr. Cox and in the period following.

The explanation of all that resistance has been that Presidential secrecy is in the public interest. Whatever weight that claim had has surely now vanished as a matter of national politics. The interest of the United States, of the Republican party, of the Presidency lies in letting all the facts come out.

But if there is no true political reason for suppressing the evidence, then the fight must be in terms of law. Let Mr. St. Clair wage it—but as a lawyer, without his client's political smokescreen. It is in those terms that the House Judiciary Committee, and the courts, must approach the great question of evidence for impeachment.