

The St. Clair Doctrine

James D. St. Clair has created an astonishing legal theory that would make the Chief Executive at once superior to, and immune from, any of the laws that govern the rest of the nation's citizens and institutions.

Mr. Nixon's principal defense lawyer holds that because "the President is the chief law enforcement officer in the country," it does not matter "as a legal question" whether Mr. Nixon violated the law when he failed to report to Federal prosecutors that he was aware of the payment of hush money to the Watergate burglars. As proof of his client's single-handed efficiency, Mr. St. Clair adduces the recent indictment of seven men—one year after Mr. Nixon, by his own account, first learned of the cover-up and the hush-money payments.

Even a cursory review of the rocky road to those indictments belies Mr. St. Clair's image of the role played by Mr. Nixon in the investigation and prosecution. Along that winding road a prosecutor was fired for carrying the investigation too close to the White House; an attorney general and his deputy resigned in protest over that firing; courts and Congressional committees had to fight for every inch of the evidence they sought; some tapes disappeared and some vital conversations recorded on others were either inaudible or mysteriously erased; witnesses friendly to the prosecution were maligned; Presidential statements were superseded and rendered "inoperative" by new and contradictory statements. As recently as yesterday, the White House balked at providing the House Judiciary Committee with all the tapes and documents it requested for the impeachment investigation.

On August 15 last year, nearly six months after Mr. Nixon now says he learned of the payment of hush-money, the President stated in a broadcast to the American people:

"... I neither took part in nor knew about any of the subsequent cover-up activities..." In the same message, Mr. Nixon referred to the March 21 meeting during which he, Messrs. Ehrlichman, Haldeman and others discussed "the options." He said: "... On that day, I launched an intensive effort of my own to get the facts out. Whatever the facts might be, I wanted the White House to be the first to make them public." No voluntary disclosures redeemed that promise.

In a supplementary statement, Mr. Nixon also disclosed that he had first learned of the burglary of the office of Daniel Ellsberg's psychiatrist four days prior to the March 21st meeting, adding: "I was told then that nothing by way of evidence had been obtained in the break-in." The raid's failure apparently voided all Presidential responsibility for voluntary disclosure of a crime.

The American people are now asked to accept this record on the basis of Mr. St. Clair's doctrine of the President's powers as chief law enforcement officer. Under that doctrine, the President alone determines when or whether he must share his knowledge of criminal activities with lesser authorities; the President alone decides whether an act committed by his aides constitutes a crime; the President alone establishes what evidence is needed to investigate and prosecute such crimes; the President alone finally defines what conduct is properly subject to an impeachment procedure by the Congress, and what evidence is appropriate to such an inquiry.

In a Constitutional democracy, such a definition of Presidential powers has the ring of clumsy parody. To accede to the St. Clair doctrine would be to allow the President to proclaim himself the law.