

Dangerous Arrogance

By Anthony Lewis

BOSTON, March 17—When James St. Clair said that he represented "the Office of the Presidency," not Richard Nixon, he evoked a noble vision. One saw a lawyer thumbing through the Federalist Papers or communing with the shades of Madison and Hamilton in order to define the constitutional interests of the American Presidency.

The reality is less lofty. Throughout his legal career Mr. St. Clair has operated on the principle that he merely advises the clients: they make the decisions. In this case he has repeatedly and properly made clear that the decisions are being made by a living client: Mr. Nixon. Thus we are back in the familiar circular argument. The national interest is in an abstraction called "the Presidency," but the interest is to be defined by Richard Nixon.

It would be easy to smile the St. Clair statement away as a transparent piece of lawyer's tactics, a disingenuous attempt to add tone to his case. But it was not really a funny remark, or trivial. On closer analysis it suggests troubling questions about the way Mr. St. Clair and his client are fighting impeachment.

The tactics are those of an aggressive and increasingly desperate defense in a criminal courtroom. These are some of the familiar devices:

1. *Try to narrow the law.* Mr. St. Clair put forward the historically absurd proposition that a President can only be impeached for a serious crime committed in his official capacity. With the same straight face, he argued that Mr. Nixon did his duty to the law after

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hearing about "hush money" last March 21, because there were indictments—a year later, after Mr. Nixon resisted the grand jury and dismissed the prosecutor!

2. *Limit the evidence.* While pledging to "cooperate" with the House Judiciary Committee, the White House is frantically struggling against any further disclosure. It has gone so far as to label a "fishing expedition" the request for tapes surrounding the crucial March 21 episode.

3. *Soft-soap the jury.* The Senate and the country are the jurors in this case. Without waiting for the legal process, Mr. St. Clair has gone public to try to explain away the incriminating facts. The President is working to please 34 Senators—enough to save him—by right-wing postures on land use, transit and energy, and jingoism toward Europe.

4. *Attack the prosecutors.* The White House has orchestrated an at-

tack on the House committee members as irresponsible children. Vice President Ford, in a statement that removed his halo of decency and independence, said the committee was being misled by its staff.

Mr. Nixon is quite entitled to have able counsel for his defense. He is facing serious criminal charges, and not only metaphorically. He would plainly have been indicted for conspiracy to obstruct justice if he were not President, and he must reckon on the possibility of charges whenever he leaves office. But it is surely wrong for Mr. St. Clair to masquerade as anything but Mr. Nixon's lawyer.

A genuine counsel to the Presidency might have been useful. He would have considered it his duty to help find the facts rather than impugn the evidence—to help rescue the Presidency from wrongdoing. It would have been a little like the role of "lawyer to the situation" that Louis Brandeis sometimes played before he became a Supreme Court Justice, advising his clients in terms of a broader public interest.

For Mr. St. Clair to pretend that he is playing that high a role is worse than misleading. It is a piece of dangerous arrogance. For it commits James St. Clair's reputation to the fallacious proposition that the interest of the Presidency and the interest of Richard Nixon are the same.

The potential danger is even greater. Any lawyer may challenge the jurisdiction of a court, its power to reach his client, but in the end he must not undermine the institution. Mr. St. Clair has pressed his challenge to the impeachment process very far—almost to the point of claiming that the President, not Congress, sets its limits. That would be a last fatal step in the Nixon doctrine of the President accountable to no one.

A lawyer's concern for history and institutions ought if anything to be more acute when he is representing the President of the United States. But even in the ordinary case there are ethical limits on what he is supposed to do for the client.

Some think James St. Clair has crossed the line. He is criticized for helping to maintain a pretense of "cooperation" when in fact the White House has withheld critical evidence from both the Special Prosecutor and the House. Some old friends think Mr. St. Clair has let himself be misled, or accepted statements without adequate personal checking, and then acted as a political mouthpiece for his client. They fear that, like so many others before him, he has been blighted by the touch of Richard Nixon.

Carl Sandburg in his biography of Lincoln, tells of a case when the prairie lawyer represented a man who claimed he hadn't been paid some money owed him. At the trial the other side produced a receipt showing that the debt had been paid. Lincoln was back in his hotel when word came that the judge wanted him in court. He said: "Tell the judge that I can't come: I have to wash my hands."