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In Defense of St. Clair's Role as

By Edward Bennett Williams

WASHINGTON—As a lawyer, I have been at once saddened and dismayed to read and hear the criticisms that are being heaped upon James D. St. Clair for his defense of President Nixon. It is especially disturbing when these assaults on the constitutionally guaranteed right to counsel come from members of the liberal community.

The President faces the strong possibility of being an "accused," in the formal sense of the term. If the House votes impeachment he will be in every sense an accused defendant and as such entitled to all the rights and safeguards forged for accused defendants through almost two centuries of constitutional history.

One of the cardinal rights guaranteed him, under such conditions, is the right to counsel. Because he has the right to counsel there is a correlative duty on the members of the bar not to eschew the case because of what they may think of the accused, because he may be the object of popular obloquy, because the evidence being marshaled against him seems mountainous, or because in short it is an unpopular case for the unpopular defendant.

In order to understand why such an assault on the right to counsel is so unjustifiable, it is essential to understand something of the history behind the Sixth Amendment.

Early English common law subscribes to the theory that a man should be denied counsel if he was too "guilty." In misdemeanor cases the accused was entitled to the full assistance of counsel, but in treason and felony cases the accused was expected to conduct his own defense save as to questions of law. Trials for capital offenses were frequently nothing better than judicial murder.

It was not until 1836 that Parliament finally allowed the full right of counsel in all criminal cases. The American Colonies rejected from the beginning the barbarous rule of the mother country. By the time of the American Revolution no less than twelve of the thirteen colonies guaranteed the right to counsel in virtually all criminal prosecutions.

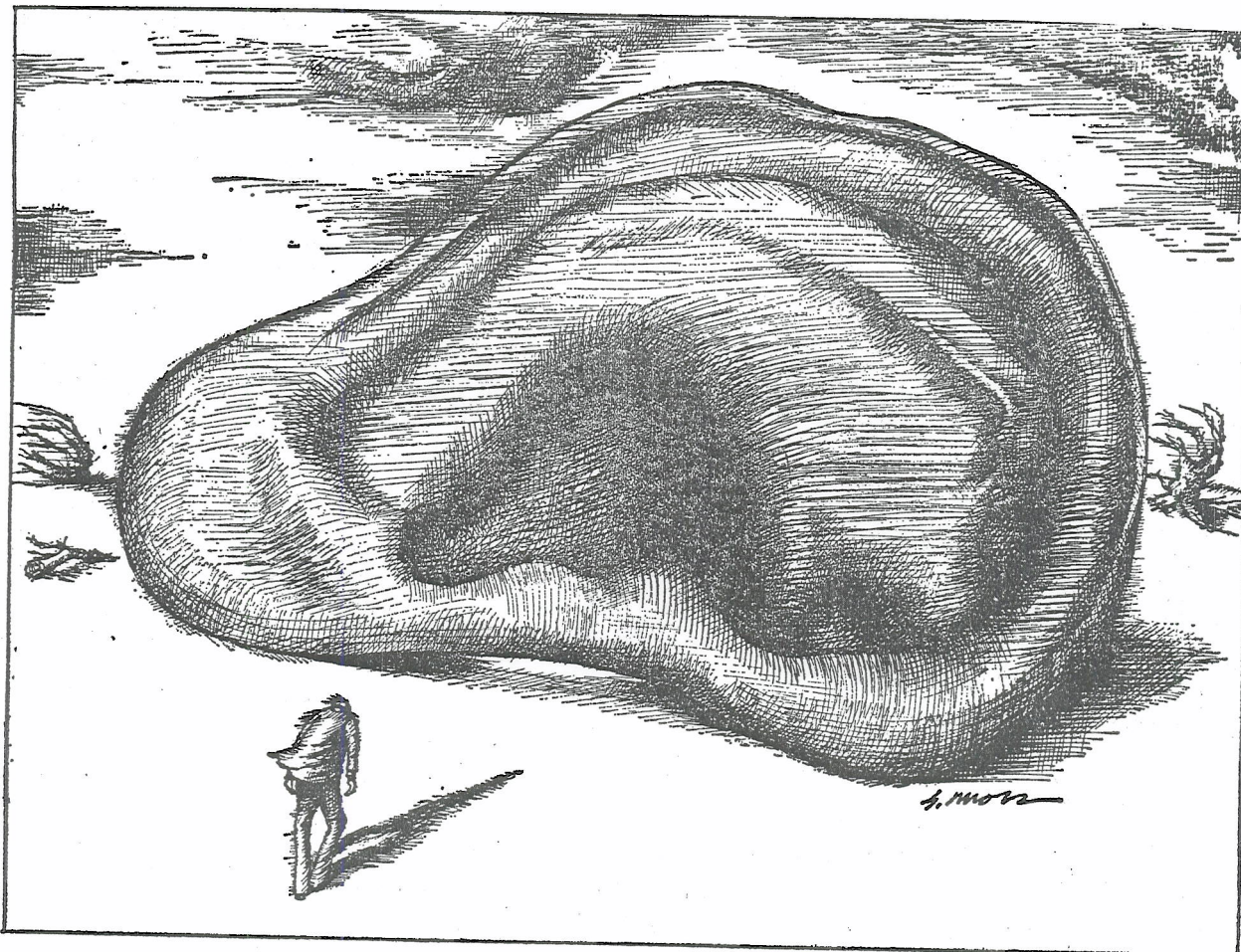
It was not surprising, therefore, that the Sixth Amendment gave every accused the right to have the assistance of counsel for his defense. The framers of the Constitution did not say every accused except gamblers, thieves and robbers. They did not say every accused except Communists, labor racketeers and narcotics offenders. Nor did they exclude unpopular Presidents.

The right to counsel is thus an absolute right that extends to every person charged with crime, no matter how socially or politically obnoxious

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he may be, no matter how unorthodox his thinking or his conduct, how unpopular his cause or how strongly the finger of guilt may point at him. Of course, this right would be a sham if the members of the bar did not have a corresponding duty to defend all those who seek representation within the limits of honesty and integrity. To this extent, the Bill of Rights is a bill of obligations for lawyers.

Mr. St. Clair's critics have the same kind of misinformation and misunderstanding that many other articulate Americans have about the administration of criminal justice. They do not understand the right to counsel guaranteed by the Constitution and the role of the advocate in Anglo-Saxon jurisprudence. They do not understand that for the trial lawyer the unpopular cause is often a post of honor.

During World War II, Harold R. Medina defended Anthony Cramer, who was charged with treason on account of certain dealings with saboteurs who had come to the United States from Germany by submarine.

Judge Medina later wrote: "I can honestly say that I worked harder on that case than I did on any other in my whole professional experience. One reason for this perhaps was that after I had undertaken Cramer's defense I

noticed that people generally and my friends in particular, especially the wives, began to treat me with a certain coolness. . . . The general public which thronged the courtroom every day of the trial indicated to us very plainly that they thought perhaps we were in some way involved. . . . After a recess one day I was walking up the aisle of the courtroom to the counsel table when a spectator stood up and spat in my face. I think this is the worst thing that ever happened to me in my whole life."

Judge Medina did a very courageous thing when the trial judge praised him in front of the jury for defending Mr. Cramer as assigned counsel without compensation. He did not want the jury to think that perhaps he believed Mr. Cramer was guilty and was defending the case only because he had been assigned by the court to do it. And so, instead of thanking the judge for his praise, Mr. Medina objected to it.

Finally Mr. Medina's courage and hard work won a reversal of Mr. Cramer's conviction by the Supreme Court. The majority concluded that the Government had not produced sufficient evidence to support a conviction of treason.

When Mr. St. Clair says that he

took on the President's defense "because that is the appropriate thing for a lawyer to do" and that "it is a lawyer's business," he speaks his words against the majestic background and in the hallowed tradition of the Bill of Rights.

No physician worthy of the name turns away a patient because he suffers from a loathsome disease or is incurable. No clergyman worthy of the name turns away a suppliant sinner because his sins are too heinous or his soul is too black. Only the lawyer appears to be expected to turn away a client because society considers the client socially, morally or politically obnoxious. Only the lawyer seems expected to withhold his help from those who need it most.

Perhaps the explanation is that the physician and the clergyman extend their help in the privacy of office, hospital or confessional, whereas the lawyer—or at least the trial lawyer—must act in the public arena. Whatever the reason, this thinking is at war with the basic tenets of democratic justice.

Edward Bennett Williams has been defense counsel in a number of court cases that have drawn national attention.