

## A Legal Scolding For Nixon Lawyer

Washington

Raoul Berger, the controversial legal scholar, has given James St. Clair, President Nixon's attorney, an academic scolding for basing his theories on impeachment on what Berger termed "instant history," "far-fetched theories" and "sheer effrontery."

In an article in the current Yale Law Journal, Berger accuses the White House counsel of drafting a legal memorandum on impeachment from "a pastiche of selected snippets and half-truths, exhibiting a resolute disregard of adverse facts."

"When Mr. St. Clair . . . wraps himself in the cloak of pseudo-history," the Harvard Law School Fellow declared, "he says himself open to the suspicion that he is not so much engaged in honest reconstruction of history as in propaganda whose sole purpose is to influence public opinion in favor of a client who is under grave suspicion."

The Berger article is based on a legal analysis made by St. Clair late last February and does not reflect any information obtained from release of edited transcripts of the White House tapes.

In the course of a 44-page article replete with footnotes, Berger argues that a President can be impeached for offenses that would not constitute an indictable crime and that "high crimes and misdemeanors" set by the Constitution as the basis for impeachment are historically "offenses against the state" rather than acts subject to criminal prosecution.

"What we are witnessing," the legal scholar declares, "is a presidential effort to abort the accountability to Congress that the founders designed in the impeachment process. This process does not endow Congress with unlimited power, for it must act within the confines of 'high crimes and misdemeanors.'"

"Mr. St. Clair, however, would confer illimitable power on the President by making him unaccountable in an impeachment proceeding except on terms that the President lays down. As well may a banker under suspicion dictate the terms of investigation to a bank examiner."

Berger, now the Charles Warren Fellow in American legal history at Harvard Law School, gained recent prominence with his book "Impeachment: The Consti-

tutional Problems," based on a 1970 Law Review article that anticipated without predicting the present crisis.

The constitutional scholar devoted a dozen pages to his theory that a sitting President can be indicted for alleged criminal activity by a grand jury, just as any other citizen.

St. Clair and a number of other legal authorities believe that, under the Constitution, impeachment is the only legal weapon available against a President, and that he can be indicted only after he has been removed from office.

Many lawyers also hold that there is no way to compel a President to obey a court order.

In the course of his article, Berger accuses the Nixon counsel, a Harvard Law School graduate himself, of the ultimate academic offense: selective and misleading quoting of Edmund Burke.

St. Clair, seeking to establish that impeachment must be based on a crime, quoted Burke at the trial of Warren Hastings, royal governor of India, as arguing that the key offense involved was the fact that "he was a giver and receiver of bribes."

But Burke also declared, Berger notes, that when the House of Lords tried an impeachment, "it is by 'his tribunal that statesmen who abuse their power . . . are tried . . . not upon the niceties of a narrow jurisdiction, but upon the enlarged and solid principles of morality.'"

"To ignore this statement while concentrating attention on 'bribery,'" Berger observed, "is to deal in half-truths and to stray from candor."

A telephone call to St. Clair, seeking a comment on the Berger article, was not returned by the White House.

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