

The President as Witness

The White House has reacted strongly to a report in The Washington Post that the Watergate prosecutors have told the Justice Department that there is justification for calling President Nixon to answer questions before the District of Columbia grand jury which is investigating the case. Mr. Nixon, according to his press spokesman, would not consider appearing before the grand jury under any circumstances and would not even answer written questions.

The Constitution and traditional practice make it clear that a President may not be subpoenaed to testify before a grand jury or in a trial because of obvious potentialities for politically motivated abuse. The prosecutors in the Watergate case have, after a somewhat shaky start, conducted this long and amazingly complicated investigation in a careful, conscientious manner; but prosecutors at other times and in other jurisdictions have been known to act irresponsibly. If a President could be compelled to appear before any grand jury or in any court case, the constitutional separation of powers between the executive and the judiciary would be quickly impaired.

In the present context of Watergate, if President Nixon's appearance before the grand jury were looked on as a possible first step down the road to impeachment, it would clearly be unwise for him to appear. The Constitution sets forth plainly the procedure to be followed in an impeachment, and it would set a possibly dangerous precedent to depart from that procedure. Since the House of Representatives has the sole authority to initiate impeachment, the House should instruct the Judiciary Committee or designate a special committee of inquiry if a majority thinks such action is warranted. As of now, a majority of the House clearly does not believe that the evidence warrants an impeachment. In any event, nothing would be gained by intruding the normal grand jury procedures into the impeachment issue.

It also has to be said, however, that an invitation to the President to appear voluntarily before the grand jury in the Watergate case would be a defensible course. Since the prosecutors are investigating the possible complicity of several of the President's aides in serious crimes and since they are granting whole or partial immunity to one or more of those aides, they are unavoidably bringing the name of the President and his actions directly into the center of the proceeding.

Under these circumstances, it would clear up many issues and explain questions that only he can explain if Mr. Nixon were to testify voluntarily. His appearance would be pointless if he were to plead executive privilege. But on the assumption that he is wholly innocent of any violation of law and that he wishes to bring about the most thorough investigation of all the facts, Mr. Nixon could be helpful to the inquiry if he testified of his own free will.

Certainly consideration of an invitation to the President to appear does not warrant the excessive language in the White House statement—"a shocking and irresponsible abuse of authority on the part of the Federal prosecutors." Rather than intervening with Attorney General Richardson and Special Prosecutor Cox to get an investigation of the source of this news report—one would have thought Mr. Nixon by now had suffered quite enough from plumbers looking for news "leaks"—it would have been more to the point for the President to reiterate that he stands ready to answer questions from any responsible source.