REVIEW & OUTLOOK

The Central Issue

We offer nearby the essence of what we've been able to learn over the last week about the possibility of President Nixon being criminally involved in the Watergate cover-up. The issue is a clouded one, and seems likely to bring the Rodino committee face to face with a couple of fundamental decisions about its role in the impeachment process.

At least on the basis of the public record, it seems apparent that the most serious criminal accusation against the President rests in his March 21 conversation with John Dean. The argument runs: That in that conversation he approved buying silence from Howard Hunt. That these orders were passed along as the accompanying grand jury indictment suggests. That they led to the payment of $75,000 to Mr. Hunt's attorney that evening. That thus the President is guilty of conspiring to obstruct justice.

This line of reasoning rests first on conclusions about what the President authorized during that March 21 meeting, which is a point about which even like-minded men can disagree. Our own opinion is that the transcript carries a strong inference that he authorized a temporizing payment to Hunt. Vermont Royster, with whom we disagree on few things, thinks there was no authorization: "He didn't say anything except, 'I wish someone would rid me of this meddlesome priest.'" The other day The Washington Post interviewed 12 constitutional authorities on this point. Six said the transcript showed the President ordered the payments; six said the transcript was inconclusive.

Among legal observers who think the payments were authorized, we take it the consensus is that the transcripts plus an allegedly subsequent payment of $75,000 to Hunt would sustain an indictment but not a conviction. This much evidence would provide probable cause that the President was involved in a crime, but proof beyond a reasonable doubt would require quite a bit more.

The documents on this page give a hint of the legal barriers to climb in proving that conspiracy. Was indeed the payment made on March 21? Was it intended to obstruct justice, or for presumably legitimate attorneys' fees or family support? How firm is the chain that connects the presidential conversation with the actual payment?

We have no way to know what further evidence committee counsel John Doar or Special Prosecutor Leon Jaworski may have assembled on these points. We would give a lot to hear a tape of the alleged conversation between Mr. Haldeman and Mr. Mitchell. But the chain of proof is a long one, and must ultimately be established to the satisfaction of two-thirds of the U.S. Senate.

All of this raises two fundamental questions, the first of which is whether criminal liability is necessary to an impeachable offense. Our own previously expressed answer is, in principle no, but in this case yes. Impeachment is for high political offenses, but if there was no criminal obstruction of justice what was the high political offense? This is worth pondering again now that so many specifics are on the table. But a month ago, almost no one would have expected an impeachable offense if the evidence suggested the President did not know of the cover-up before March and had done nothing criminal since. And we very much doubt that taking an amoral approach to public affairs is a high crime or misdemeanor.

The second question is to what extent is the House analogous to a grand jury? Should the House vote to impeach the President, and send him to trial in the Senate, if the evidence is merely enough to indict? Should the House merely record what is to us obvious, that the evidence is sufficient that a thorough adversary hearing should be held to sort it out? Or should the House committee itself hold the adversary hearings, and vote a bill of impeachment only on evidence with a substantial probability of persuading two-thirds of the Senate?

This is not an easy question, but our own inclination is toward the last alternative. Even in day-to-day law enforcement, prosecutors do not press every indictable case. A full Senate trial would be more disruptive to the nation than anything we have seen so far, and should not be undertaken lightly. If the need is to argue out March 21 first and then come back to other potential impeachable offenses such as the milk fund and ITT issues, that could be done more easily in the House committee. The committee itself seems to be leaning toward its own mini-trial in granting a role to President Counsel James St. Clair, though the dimensions of that role remain foggy.

If the essential hearings are to be held in the House, Mr. St. Clair's role should be a full one, allowing a full defense of the President. By the same token, the White House should be more forthcoming on requests for additional evidence. Perhaps some compromise is possible despite the new stiff-backed White House position on evidence. Alternatively, the House may decide that impeachment has no more meaning than an ordinary indictment, and let Mr. Doar and Mr. St. Clair present their cases to the Senate. But if this is to be the approach, it seems to us the House should act forthwith, or nearly so.

We would not want to totally dismiss other possible grounds for impeachment, but it does seem to us we have reached the point where the truly central issue is apparent. The need of the moment is for some form of adversary proceeding to argue out the meaning of high crimes and misdemeanors, and the meaning of the evidence on what transpired March 21.