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The White House and the Courts

The end-result of Vice President Agnew's troubles is the sole subject of political talk, hereabouts. But since none but fools now pretend to foresee this end-result, maybe the best course is to suggest another problem for the politicians and analysts.

Beginning with the Agnew matter, it is a clear gain for the President to get his vice president's troubles out of the rumor factory and into the plain light of day. The former situation was close to intolerable. Even if the vice president's troubles turn out to be very nasty indeed, they have already done the President as much harm as they can do.

This then leaves President Nixon with only "one more river to cross," in the words of the old hymn. The river Nixon must cross, of course, is the question of those tape-recordings which he so strangely chose to have made in his office.

If the Supreme Court orders the President to hand over the tapes, and if the President further refuses to obey the court, it is likely the President will be impeached. And he ought to be, because presidents ought to be subject to the law like the rest of us.

There are two "ifs" in the foregoing formula. From the President's viewpoint, rather obviously, the biggest "if" rather plainly concerns the Supreme Court. He will finally be in the clear, after all, if the Supreme Court says he is quite justified in hanging on to the tapes, or even if the court merely refuses to interfere, on the ground that the matter is within the President's competence—just as the President has contended.

This kind of action by the Supreme Court is a perfectly possible end of the story of the tapes, although almost no

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one seems to have considered it for an instant. It is hard to see just why this should be so. To begin with, the fairly gingerly approach of the lower courts ought to suggest to anyone that the Supreme Court may easily make the kind of decision that is now so universally unexpected.

In the first instance, Judge John J. Sirica rather conspicuously refused to grant the pleas of Special Prosecutor Archibald Cox. To be sure, he simultaneously rejected the arguments of the White House lawyers. But it means a lot that instead of an order to hand over the tapes to Cox, Judge Sirica issued the much less bold order to let him see the tapes himself—so that he could judge whether there was anything in them that Cox really ought to know about.

The Court of Appeals headed by Judge David Bazelon is one of the most liberal such courts in the nation. But when the appeal from Judge Sirica reached Judge Bazelon, he and his colleagues on the bench again showed that they were by no means bloody, bold and resolute. They urged Cox and the White House lawyers to get together, and work out the matter of the tapes between them.

It is therefore logical to predict that the Court of Appeals' final decision will be far from extreme, although it is also likely to require still another White House appeal. This time, of course, the appeal will be to the Su-

preme Court itself. So we come to the central mystery, which is just why almost everyone regards the present Supreme Court as all but identical with a caucus of the Senate's most liberal Democrats.

To begin with, Chief Justice Warren E. Burger was appointed by President Nixon, and so were three other justices, Blackmun, Powell and Rehnquist. By general consent, they are all men who will not bend their views about the law to please the President who named them. But it is still a fact that their views about the law do not resemble the opinions of Justice William O. Douglas.

In addition, one other justice, Potter Stewart, is a Republican, and still another, Byron White, has a quite visible antipathy for the postures and opinions of the more left-wing anti-Nixon ultras. Always providing the law permits, therefore, a majority of the court will not much care if the decision about the tapes enrages all the Nixon-haters.

Finally, there are also excellent reasons to suppose that many members of the Supreme Court are already appalled by the plight of the U.S. government—by the loss of national authority resulting from the Watergate horror; by the failure to deal with other matters perhaps more nationally important than Watergate, and so on and on. This undoubted information further suggests these same justices will be most unwilling to add to the existing Watergate horror a major constitutional crisis.

To this, some would further add that for 40 years, the White House and the court have usually found ways of knowing where each was going, whenever the going itself got really rough.