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# Evidence of Criminality

As these words are written, it is uncertain whether President Nixon will, or will not drive the House Judiciary Committee to subpoena White House tapes and other records.

Even on the knife-edge, however, it is worth asking just why this is a knife-edge. The vote of the House of Representatives, for or against a bill to impeach the President, may perhaps depend upon the outcome. But the reasons for this are all but universally misunderstood, if one can accept the judgment of the wisest, most experienced Democratic leaders of the House and Senate.

First of all, certain facts are needed to put what has happened in rational proportion. Quite a long time ago, to begin with, the President's lawyer, James D. St. Clair, asked the special counsel of the Judiciary Committee, John Doar, to narrow the scatter-shot approach of the committee's original request for no less than 42 complete tapes of presidential conversations.

Presumably, Lawyer St. Clair quite rightly pointed out that the committee had no more right to know about the President's opinions of the policies of the late President Pompidou, than you or I have to know about the private conversations of our neighbors. Personally because of the peculiar composition of the committee's Democratic membership, Counsel Doar had trouble replying to the demand that he ask only for what was truly relevant.

Two weeks therefore passed before a reply to the White House was drafted and approved by the Judiciary Committee chairman, Rep. Peter Rodino. It was only when this letter was presented to the Judiciary Committee, that Representative Rodino made his threat

to use the subpoena power in case of White House obstruction. In sum, the long prior delay was primarily the work of the committee, and not of the President.

These outwardly trivial facts have a lot of meaning, in turn, because of the misunderstood character of the present knife-edge. We have heard a great deal about the evil effects on the President's case—and they have been evil—of the appearance of White House resistance to full disclosure to the Judiciary Committee.

Meanwhile, we have heard nothing about the real reason for 80 to 90 per

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cent of these evil effects. Instead, we have heard much about what Vice President Gerald Ford said, concerning his drive to impeach Justice William Douglas. We have heard long, pompous, constitutional arguments about the right grounds for impeachment. From all sorts of persons, high and low, and wise and silly. But we have heard literally *nothing* about the only practical question.

The only practical question is just what will persuade a majority of the House of Representatives to vote for a bill of impeachment. The apparent—or real?—impasse between the White House and the Judiciary Committee further-

more bears most importantly upon this highly practical question.

Seeming-concealment by the White House will in fact persuade a majority of the House of Representatives that the President has something criminal to conceal. There is the heart of the matter. But please note that word, "criminal." It is the crucial word, amounting to the heart of the heart of the matter, as one may say.

You can in truth ignore whatever has been said about the proper grounds for impeachment by counsel Doar, or lawyer St. Clair, or Vice President Ford, or the usual vocal advice-givers from the grisly groves of academe. In the long run, in the opinion of the few House leaders who have always correctly judged the House of Representatives, a bill of impeachment will not be voted unless a majority of members feel the President has been guilty of an indictable crime.

By the same token, nothing can prevent the House from voting a bill of impeachment if the President's guilt of an indictable crime is believed by a majority. The same rules apply, one must add, to the Senate—but they apply to the Senate with extra force, because two thirds of the senators need to be convinced of the President's criminality. All the same, what will produce an impeachment vote in the House will pretty surely break the line of the President's irreducible "one third plus one," and thus cause a Senate vote to convict.

The reasons for all this, finally, are political rather than noble. Most House and Senate members simply do not think it is safe to drive the President from the White House, except on evidence of criminality. But that does not mean this is wrong.