

What Does It Take to Impeach

THE 38 LAWYERS on the Judiciary Committee who will make the first decision as to whether or not Richard M. Nixon is to be impeached by the House of Representatives got their hearings under way yesterday with reasonable order and responsibility. On the one question which came to a vote, that of immediately opening the proceedings to the public, Chairman Peter Rodino showed his disciplined control: the committee was 31 to 6 for closed sessions so that evidence may be received which has not been made public before, for example, the federal grand jury report and its briefcase full of supporting evidence.

The fundamental issue which will preoccupy the hearings: what does it take to impeach a President? was framed by the senior Republican, Edward Hutchinson. He said the standard required was "criminal culpability" on the part of the President himself, and he quoted from a London law dictionary in 1776, presumably influential with the Founding Fathers, which says the same evidence is required to establish a crime for impeachment in Parliament as to establish it in the courts of justice.

ALTHOUGH VICE PRESIDENT FORD is on record as having said an impeachable offense is "whatever a majority of the House of Representatives considers it to be at a given moment in history" and an Attorney General of the United States, Richard Kleindienst, once testified before the Senate to the same effect, it is held by some scholars that the acid test is criminality. Again and again the Constitution refers to impeachment in terms of criminal law, writes historian Irving Brant, and not once in terms of civil law.

"Treason, bribery, and other high crimes and high misdemeanors," he continues, "are the only constitutional grounds of impeachment, and this includes violation of the oath of office. Such violation, by criminal acts of commission or omission, is the noly nonindictable offense for which the President . . . can be impeached.

THE PRESIDENT, his lawyers and his other defenders presumably would want the Judiciary Committee to be bound by this requirement for finding criminality before recommending impeachment. We suggest that the committee's attitude toward that issue will be the thing to look for as the proceedings open up later on to the public view.