

Kerner, Agnew seek relief in court on like grounds

By PAMELA REEVES

CHICAGO (UPI) — Judge Otto Kerner is in sympathy with Vice President Spiro T. Agnew these days.

They're both looking for relief in a legal can of worms that hasn't been explored before. If one succeeds, the other may well benefit.

Kerner, 64, is the first federal appeals court judge ever indicted and tried while still on the bench. Last February, he was convicted of bribery, conspiracy, mail fraud and perjury in a race track stock case going back to his days as Democratic governor of Illinois. He faces three years in jail unless his appeal is successful.

One of Kerner's appeal arguments is the same one Agnew is using in an attempt to head off a grand jury investigation of his activities. Both

men say a federal official who is subject to impeachment may not be indicted unless he is first impeached.

In other words, both contend the House of Representatives must remove them from office before any court can act against them. Kerner is saying his trial was illegal, and Agnew is saying it would be illegal if he were tried while still in office.

Lawyers believe a decision in one case could sway the other because there are no legal precedents on the question of whether impeachment must precede indictment.

This legal fuzziness has opened an intriguing array of speculation, with Kerner taking the most definite position.

"It is my contention impeachment must precede indictment," he says. "If there is no successful impeachment,

there can be no indictment, and that applies to federal judges as well as to the vice president.

"I'm in sympathy with him on several things."

Constitutional experts are not so sure Kerner's contention is right, but they agree that if a court accepts Kerner's position before Agnew's case is resolved, it could benefit the vice president.

Victor Stone, a University of Illinois law professor and an expert in the federal court system, believes the three appeals court judges who will consider Kerner's appeal this fall will keep Agnew in mind.

"I think each one of those judges is going to be terribly aware of the importance of what he is doing," Stone says. "If Kerner should be successful in upsetting his conviction on this ground, that benefits Agnew.

"If the court of appeals should reject the argument, it isn't binding on other courts, but it certainly would influence those judges hearing Agnew's plea."

The chances of Agnew's case influencing Kerner's are more of a longshot.

"If the court says the vice president is like the President and must be impeached before he can be brought to trial, that would not help Kerner,"

says Philip Kurland, a constitutional expert from the University of Chicago, "because it doesn't necessarily follow that judges are like vice presidents."

The odds, experts say, are that both cases could wind up in the Supreme Court. Since Agnew just filed his suit at the district court level, and Kerner's is expected to take three to six months at the appeals court level, no immediate resolution is likely.