

Vice President's Battle to Stay Out of Court

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WASHINGTON, Sept. 26—The decision by Carl Albert, Speaker of the House, to take no action for now on Vice President Agnew's request for a Congressional inquiry into his case is widely believed here to have significantly worsened Mr. Agnew's chances of heading off an investigation by a Federal grand jury. The grand jury is scheduled to begin tomorrow to receive evidence of his alleged role in a bribery and extortion scandal in Maryland.

Mr. Agnew's lawyers had been expected to file motions today in Baltimore, where the grand jury is sitting, arguing that the only constitutionally permissible forum for an investigation of an incumbent Vice President is the House of Representatives. Mr. Agnew himself expressed this view in his letter to Mr. Albert yesterday when he asserted that "the Constitution bars a criminal proceeding of any kind" against a Vice President while in office.

Some Republican Representatives have said that they will try to reverse the Speaker's decision, but it is not likely they will succeed in providing what would be Mr. Agnew's chief support in his fight to get his case out of the courts.

Unless the Vice President's attorneys are able to obtain a court order restraining the grand jury before tomorrow morning, George Beall, the United States Attorney in Maryland, is expected to carry out his instructions from Attor-

ney General Elliot L. Richardson to present the evidence against Mr. Agnew.

Judah Best, Mr. Agnew's counsel of records, was silent today on whether a temporary restraining order against Mr. Beall would be sought tomorrow or at all. He has declined to characterize the possible arguments he might use to back up such a request.

But it is evident that it will now be more difficult to argue that under the Constitution the grand jury's inquiry must be taken over by the House, when that body itself has declined, for the present, to take up the matter.

The Agnew lawyers might well choose another tack. For example, they are said to be considering that the Vice President's chance of obtaining a fair trial has been irreparably prejudiced by the leaks of information about his case from Government officials and others.

View Attributed to Judges

But one able criminal lawyer, who is not connected with the Agnew matter, asserted today that most judges would consider "pretty far-fetched" any attempt to stop a grand jury investigation until it had run its course.

"You can't stop the Government from investigating," the lawyer said. "The time to challenge them is when they do something to you, like an indictment."

If Mr. Agnew was eventually indicted, he could bring a separate challenge based on the constitutionality of charging a sitting Vice President with a crime. But there has never been an affair quite like this one. His attorneys may well believe that their client's salvation lies in opposing his involvement in the criminal process from the beginning.

Could Agree to Delay

If Mr. Agnew's attorneys should succeed, on whatever grounds, in obtaining a restraining order against the grand jury, an appeal by the Justice Department would be likely to follow. If the court denies the restraining order, no appeal is possible, but the Vice President could ask for a permanent injunction to keep evidence and witnesses relating to Mr. Agnew from going before the grand jury.

There is a possibility that Mr. Beall might be willing to delay his presentation while the courts decide the historic question of whether impeachment must precede investigation and indictment.

But the wait involved would

probably not be too long, considering that, even if appeals are entered at each step along the way, some legal experts expect the issue could reach the Supreme Court by November.

There has been little speculation on what may happen if the Supreme Court eventually hears the dispute, but the feeling among some close observers is that, even if the House had agreed to an inquiry, Mr. Agnew's attorneys would have been on thin ice in trying to turn off the Government's investigation.

For one thing, they have nothing in the way of judicial precedents to depend on in asserting that their client is immune from the criminal process until he leaves office. The case of Vice President John C. Calhoun, which Mr. Agnew cited in his letter to Mr. Albert, did not involve criminal charges or a grand jury investigation, but simply charges of profiteering at a time that Calhoun served as Secretary of War.

Calhoun Precedent Doubted

Peter W. Rodino, the chairman of the House Judiciary Committee, today called the Calhoun precedent "not foursquare with the present situation," and he added that Mr. Agnew's claim of immunity from prosecution appeared to be "almost without foundation."

It was precisely this issue, which Mr. Richardson has termed "of potentially serious

consequence to the nation," that the Justice Department attempted to avoid in its failed negotiations with Mr. Agnew's attorneys.

Impasse in Negotiations

There have been reports, none of which the department will confirm, that Mr. Richardson and his deputies offered the Vice President a chance to plead guilty to a lesser charge than the Government believed its evidence would support in return for his resignation. But the Agnew attorneys are said to have insisted that the price of his resignation was the dropping of all charges. Both sides declared an impasse, and now the matter has moved from negotiation to confrontation.

One observer noted today that "time is the name of the game," and there are indications that Mr. Agnew's lawyers may simply be trying to stall any indictment against him for as long as possible and by whatever means they can conceive, whether in Congress or in the courts.

The Federal statute of limitations in bribery and extortion cases is five years.

Since most of the evidence against Mr. Agnew reportedly concerns his activities while Baltimore County Executive and Governor of Maryland, before he ascended to the Vice Presidency, if he is not indicted before next Jan. 20 the statute will have run out on the period before he was inaugurated on Jan. 29, 1969.

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