

NYTimes AUG 9 1973
**Agnew Suddenly Shares
In Nixon's Legal Dilemma**

NYTimes

By **WARREN WEAVER Jr.**
Special to The New York Times

WASHINGTON, Aug. 8—Vice President Agnew is suddenly contending with some of the same complex and controversial legal questions that have been taxing President Nixon and his lawyers for months.

At his televised news conference today, the Vice President declined to assert any special legal rights based on his office, saying that he was not a "profound constitutional scholar" and that he would

seek advice from his lawyer before committing himself on how to handle the investigation involving him.

Mr. Agnew's concession that he was under investigation by a Federal grand jury in Baltimore looking into bribery, tax fraud, extortion and conspiracy raised the question of whether his position as the Vice President might make him immune from indictment, prosecution or even testifying.

Even though the two cases differ in several respects, the Vice President may want to raise on his own behalf some of the arguments that President Nixon presented in Federal Court yesterday in an effort to keep from giving a District of Columbia grand jury recordings of some of his personal conversations.

The President's lawyers said in their 10,000-word brief that their client was "not above the law" but was "liable to prosecution and punishment in the ordinary course of law for

Continued on Page 20, Column 7

Continued From Page 1, Col. 7

crimes he has committed, but only after he has been impeached, convicted and removed from office."

If Mr. Agnew should adopt the same stance and be sustained by the courts, it would mean that he could not be reached by the Baltimore investigation unless the House of Representatives votes impeachment charges against him and the Senate convicted him of "high crimes and misdemeanors" after a trial.

The White House lawyers also argued on behalf of the President yesterday that the courts could subpoena him if they wished but could not compel him to appear or to produce any records whose surrender he did not believe to be in the public interest.

If Mr. Agnew should claim the same immunity by virtue of his office, he would not be available to testify before the Baltimore grand jury, much less respond to court orders involved in any indictment that the jury might subsequently vote.

There are no statutes or Supreme Court decisions holding that the Vice President is entitled to the same privileges and immunities as the President, but most legal scholars believe that it would be difficult to distinguish between the two offices for such purposes.

Role Clarification Likely

However, for Mr. Agnew to contend in court that he was entitled to invoke the doctrine of executive privilege to keep confidential his personal records, he would presumably have to demonstrate that he was inextricably involved at the highest level in executive branch decisions.

One of the principal contentions in the Nixon brief is that the President could not adequately conduct the important business of his office if the courts had the power to compel him to surrender documents from time to time.

The Vice President's position is considerably different from the President's, however, in that the grand jury inquiry in which he is involved deals largely with events during his service as Baltimore County Executive and Governor of Maryland.

Should Mr. Agnew refuse to testify before the grand jury, the courts would be required to decide whether any immunity he enjoyed now could be stretched to cover his activity before he became Vice President.

The requirement that a President or Vice President be removed from office before he could be charged with a crime, if sustained by the courts, could introduce serious practical prob-

lems into any attempt to discipline such officials.

From the beginning of the Watergate affair, many members of both houses of Congress have expressed reluctance over even the remotest prospect of bringing impeachment charges against Mr. Nixon.

Whether Congressional reluctance to move against Mr. Agnew would be as strong, should he be seriously implicated in the Baltimore investigation, is a question that must await further developments.

There are a number of material differences in the legal situation facing the two Republican leaders. Mr. Agnew is under personal investigation in the Baltimore case while only the President's aides are known to be the subject of the special prosecutor's efforts in the Watergate case.

The President is able to argue that White House conversations even those that may have involved discussions of criminal activity, were part of his constitutional role as Chief Executive. The Vice President, should he be implicated in the Baltimore affair, may have more difficulty connecting his acts with his official duties.

Issue of Crime Unclear

Some legal authorities believe that Congress can impeach on the basis of charges that constitute less than a crime, as defined by Federal statute, such as negligence, lack of capacity or a contention that the defendant had brought his office into disrepute.

Others argue, as did attorney for President Andrew Johnson, who was acquitted, that there can be no impeachment unless the official is charged with violating a law in existence at the time.

As for the necessity of impeaching before prosecuting, as proclaimed by the Nixon attorneys yesterday, other lawyers point out that Federal Judge Otto Kerner of the United States Court of Appeals was indicted and convicted of bribery without any attempt by his defense to argue that he had not been impeached first.

The Constitution provides that impeachment may be used to remove from office "the President, Vice President and all civil officers of the United States," and nine of the dozen men who have been tried by the Senate were Federal judges.

The three others were Senator William Blount of Tennessee, President Andrew Johnson and Secretary of War William W. Belknap, all of whom were acquitted.

Should the Vice President be impeached convicted and thus removed from office, the 25th Amendment to the Constitution — ratified in 1967 — provides that "the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both houses of Congress."