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'Common Sense' in the Agnew Case

Should the bribery charges against Spiro Agnew be heard first in an ordinary trial or by an impeachment proceeding. Unless the charges are dropped altogether, which is almost unthinkable, that question is bound to surface as the Baltimore grand jury resumes hearings in the case this week.

As usual, the Constitution offers only ambiguous answers. But common sense argues powerfully that the Vice President should face the music in the court system, not an impeachment proceeding.

The Constitution, in Section 4 Article II, clearly states that the President, the Vice President and other civil officers can be removed by impeachment proceedings in the Congress. It stipulates "bribery" as one cause for such proceedings. It further asserts, in Section 3 of Article I, that a party removed from office by impeachment, shall be "liable and subject to indictment, trial, judgment and punishment according to law."

One reading of all this is that the Congress has the right to impeach civil officials, and that impeachment shall not give rise to a claim of double jeopardy against further prosecution. But another reading, asserted by the White House lawyers in the Watergate case, is that the President, at least, has to be impeached and removed before he can be made subject to grand jury proceedings. A similar claim of impeachment first has now been staked on behalf of Federal Judge Otto Kerner in the appeal of his conviction for perjury, income tax evasion and bribery.

These claims are well known to Mr. Agnew's lawyers and speculation suggests that they now see a promising line of defense in the impeachment first argument. For one thing, there is the matter of time.

The Congress is not organized for an impeachment proceeding and it would probably take months, and maybe even years. Rather than face such an ordeal, the instinct of many congressmen would be to forget the whole matter.

The more so as the issue is not one which excites the furious indignation of Mr. Agnew's fellow politicians. Almost all of them would be receptive to the argument that let him who has not done a few favors for campaign contributions cast the first vote for impeachment.

In contrast, the general public from which juries are drawn, is highly sensitive to the corruption issue. One prominent defense lawyer in Washington believes the public is so skeptical about politics that it is practically impossible for a public official to get a fair trial. In that spirit the defense in the case of Walter Jones, a prominent New Jersey official now facing corrup-

tion charges, is waiving the right to trial by jury.

Mr. Agnew's lawyers, in these circumstances, would be positively remiss if they did not seek to use the impeachment process to head off a grand jury indictment. The best guess is that they will be moving soon before the Justice Department and, if that fails, in the courts.

But what favors the Vice President's defense works the other way for the public interest. Even on the worst reading the charges so far aired against Mr. Agnew involve petty stuff, not historic wrongs. It would be absurd to tie up the Congress for months

to deal with some relatively small fixes when there is another, more traditional way to handle the matter.

Nor can it be argued that the cases of the President and the Vice President are similar. The President has responsibilities which must be constantly met if national life is to go forward. The responsibilities of the Vice President—including presiding over the Senate, which Mr. Agnew hardly ever does anyway—could easily be dele-

gated while he faced trial. If he was convicted, there is now, in the 25th amendment, an easy provision for replacing a Vice President who resigned.

Finally, there is the nature of the impeachment process. It has become the ultimate constitutional sanction against public officials. To use it as a defense convenience in an everyday kind of case would be to demean the Constitution. It would plunge the country still further into the banana republic atmosphere it has acquired under the present administration.

So whatever the constitutional obscurities, the common sense of the issue is clear. If there is a bribery case against the Vice President, the right forum is a court proceeding, not an impeachment. That is a self-evident rule of public policy to which the courts, the Attorney General, and even the Vice President himself should be sensitive.

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