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Impeach or Indict . . .

In the search for personal vindication, Vice President Agnew has chosen a course of action that is constitutionally obscure and most likely to expose the nation to uncertainty and potential risk.

However much one may disagree with his legal position, Mr. Agnew is certainly within his rights to argue that the Constitution bars a criminal proceeding of any kind against him unless and until he is impeached and removed from office. But in seeking to use the House of Representatives as an alternative to the grand jury system and thereby opening up the prospect of a lengthy battle in the courts, he has made a serious misjudgment of where his responsibility lies.

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The Constitution and the precedents are much less clear on the issue of criminal proceedings against a Vice President than Mr. Agnew suggests in his letter to Speaker Albert. Article I, Section 3, Clause 7 states: "Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment according to the law."

That language suggests but does not expressly state that the authors of the Constitution envisaged that a President, Vice President or other "civil officers of the United States" would be removed from office by impeachment first and then subjected to indictment and trial. However, the clause could also reasonably be interpreted as simply stating that impeachment does not preclude other punishment. On its face, therefore, this language does not compel the House of Representatives to act on the impeachment issue in advance of criminal proceedings in the courts.

Constitutional experts disagree, and the only two precedents involving the Vice Presidency diverge. In 1826 Vice President John C. Calhoun called upon the House to investigate an allegation that he had profited from a contract while previously serving as Secretary of War in the Monroe Administration. A House select committee conducted an inquiry that exonerated Calhoun within a few weeks. Quite understandably, Mr. Agnew cites that precedent and quotes the eloquent language used by Calhoun.

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Equally understandably, Mr. Agnew does not cite the other precedent involving Vice President Schuyler Colfax in the first Grant Administration. Colfax in 1872 was accused of taking a bribe a few years earlier when he had been Speaker of the House. The House Judiciary Committee decided that Colfax could not be impeached because the alleged act occurred before he became Vice President and therefore the matter should be left to the courts. Colfax was never indicted—but he left public life in disgrace. It is uncertain whether the House could adopt the same position now with regard to the Agnew case because it is uncertain whether the charges against him relate only to his period as Governor of Maryland or extend also into the period of his Vice Presidency and include Federal as well as state contracts.

It is significant that members of Congress and Federal judges are also "civil officers" within the Constitution's meaning but that Congressmen and, in recent decades, judges have been indicted and tried on criminal charges without prior expulsion or impeachment.

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. . . Unacceptable Risk

When the news of possible criminal charges against him broke last month, Mr. Agnew responded with a brief statement expressing full confidence in the nation's criminal justice system. His reason for wishing now to bypass that system and throw his case into the political cockpit of the House is hardly persuasive. Referring in his letter to Speaker Albert to "a constant and ever-broadening stream of rumors, accusations and speculations," Mr. Agnew asserts, "the result has been so to foul the atmosphere that no grand or petit jury could fairly consider this matter on the merits."

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But Mr. Agnew can scarcely assume that the members of the House and Senate, all of whom are elected politicians, are less aware of these rumors and less likely to be biased than are ordinary citizens called to serve on a jury. In reality, the public could have much more confidence that the charges against Mr. Agnew, presuming that any indictment is forthcoming, would be fairly and dispassionately weighed in a court of law than they would be by the House acting as a grand jury and the Senate sitting as a trial jury. For this reason, Speaker Albert is surely wise in taking the position that the House will not act on Mr. Agnew's request as long as his case is before the court.

If Vice President Agnew's attorneys go ahead with their constitutional challenge against any action by the Baltimore grand jury in his case, then the matter could ultimately be resolved only by a decision of the Supreme Court. That could well take many months. During those months Mr. Agnew would be effectively incapacitated from performing his sole important function—that of serving as a standby President in the event of the resignation, death or total disability of Mr. Nixon.

As a citizen Mr. Agnew is unquestionably innocent until proven otherwise in a court of law. But as a potential President, Mr. Agnew should not only be presumed innocent but also should be perceived to be above suspicion. A prolonged procedural struggle in the courts concerning the priority to be given a possible impeachment as against a possible indictment would leave a cloud over Mr. Agnew's head and would pose the risk of an awkward and intolerable void in the transfer of Presidential power in the event of an emergency. From the standpoint of the nation, such a risk is unacceptable.