

NYTimes SEP 29 1973
**AGNEW BIDS COURT
BAR INVESTIGATION
BY FEDERAL JURY**

**Contents a Vice President
Cannot Be Subjected to
Criminal Proceedings**

HISTORIC SUIT STARTED

**Judge Rules That the Inquiry
in Baltimore May Continue
Pending a Final Decision**

By **AGIS SALPUKAS**

Special to The New York Times

BALTIMORE, Sept. 28—Attorneys for Vice President Agnew filed a suit in Federal District Court here today seeking to halt a grand jury investigation of Mr. Agnew's possible role in political corruption in Maryland.

The legal papers in the historic suit, which may eventu-

A summary of Agnew motion is printed on Page 12.

ally be decided by the Supreme Court, cite the nation's founding fathers and contend that the Constitution prohibits criminal proceedings against a sitting Vice President.

The suit asks that the district court issue an order "prohibiting the grand jury from conducting any investigation looking to the possible indictment of the applicant and from issuing any indictment, presentment or other charge or statement pertaining" to the Vice President.

Would Curb Officials

It also petitions the court "to enjoin the Attorney General of the United States, the United States Attorney for the District of Maryland and all officials of the United States Department of Justice from presenting to the grand jury any testimony, documents or other materials" that might be used to indict Mr. Agnew.

The judge dealing with the case ruled that the Federal grand jury could continue to hear evidence against Mr. Agnew "pending final decision on the suit," and the prosecutor

said that the investigation "will continue as it has."

In another development, the formation of an "Agnew defense fund" was announced in Chicago by W. Clement Stone, who was the largest contributor to President Nixon's political campaigns. [Details on Page 13.]

Papers Filed with Clerk

In a 10-page affidavit that accompanies the suit, Jay H. Tophis, one of the Vice President's attorneys, accused the Justice Department of mounting a "deliberate campaign" to leak information on the case to major newspapers and magazines.

Late in the day, the department issued a statement in Washington denying this contention and saying that to engage in such a campaign would defeat "the very purpose" of the Agnew investigation.

The legal papers were filed this afternoon in the office of Paul R. Schlitz, the chief clerk

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of the United States District Court, by Stan Martenson, a member of the New York law firm of Paul, Weiss, Rifkind, Wharton & Garrison.

Mr. Schlitz, asked what the next legal step would be, said he was not sure, adding, "It's unprecedented."

In his affidavit Mr. Topkis said of the alleged leaks of information.

"One of two might be forgiven as the products of deplorable but perhaps inevitable inadvertence. But this case has seen leaks in such number and with such constancy as to rule out any explanation by accident."

"It is clear, I submit, that the Vice President is the victim of a deliberate campaign, calculated and intended to deprive him of his basic rights to due process and fair hearing."

The suit itself asks the court to enjoin Government officials from "discussing or disclosing to any person" any testimony, documents or materials relating to the Agnew case.

Hamilton and Morris Cited

The legal arguments in the suit were largely based on interpretations of constitutional law contending that a Vice President cannot be subjected to criminal proceedings until he has been removed from office by impeachment.

The memorandum accompanying the suit contained a long discussion of the intentions of Alexander Hamilton, Gouverneur Morris and others in framing the Constitution. All the quotations from the founding fathers supported the principle of impeachment before

court action.

The ruling letting the inquiry continue for the time being was made in Norfolk, Va., by Federal District Judge Walter E. Hoffman, who was appointed to deal with matters pertaining to the Vice President after judges in Baltimore disqualified themselves.

Judge Hoffman, the presiding judge of the Federal District Court in Norfolk, made his ruling after meeting in his chambers with all three of Mr. Agnew's attorneys—Mr. Topkis, Judah Best and Martin London—and with two top Justice Department officials—Henry E. Petersen, the Assistant Attorney General in charge of the Criminal Division, and his aide, Kevin Maroney.

The judge also set a schedule for hearings on the suit. He set Oct. 5 as the date for the

Justice Department to submit its brief on the Constitutional issue and Oct. 8 for the department to submit briefs on the remaining issues.

Mr. Agnew's attorneys, he ruled, are to submit their reply on Oct. 11, and final arguments will be heard in Baltimore on Oct. 12.

George Beall, the United States Attorney here who has headed the investigation of Mr. Agnew and Maryland politicians on charges of receiving political kickbacks, said, "There will be no change in the Government's course in this regard as a result of the filing of the suit."

The Justice Department's immediate response to the Agnew suit, an unsigned statement released by its public information office, declared that it was "patently ridiculous" to assert, as Mr. Agnew's attorneys have, that the investigation was a plot to "drive the Vice President from office."

August Date Noted

The statement noted that the Agnew investigation was unknown to the public before Aug. 1, the day the Vice President was formally notified that his activities in Maryland were being looked into; but that the investigation was under way "for a considerable period of time" before that date.

After Mr. Agnew publicly complained of leaks to the press about his case, Attorney General Elliot L. Richardson authorized an inquiry to determine whether any of his employes had been the source of such information.

But, the statement said, a preliminary report to Mr. Richardson on Monday indicated that all department employes who had been interviewed had sworn that they had not been the source of any of the published information and did not know who might have been.

Beal Firm in Stand

Mr. Beall, talking to newsmen in Baltimore, said he would stand on previous statements issued by his office denying

that there had been any leaks to newsmen from members of his staff.

Mr. Topkis, in his affidavit, said, "A number of officials in the prosecutorial arm of our Government have misused their offices in an immoral and illegal attempt to drive the Vice President from office to which he was elected, and to assure his conviction."

Mr. Topkis contended that these attempts made it impossible for Mr. Agnew to get a fair hearing on the merits of the case before the grand jury and that the only remedy was to halt the investigation.

He added, "Conceivably the prospectors will deny responsibility for what the record reveals. If any such denial has an element of creditability, I respectfully submit that the necessary course is a full hearing to determine the truth."

The historic challenge began about 2 P.M. when Mr. Martenson walked into Mr. Schlitz's office and handed him the legal document in the suit. He paid a \$15 filing fee and Mr. Schlitz sought advice by telephone on how to proceed.

The memorandum filed by Mr. Agnew's attorney argues that the office of Vice President is not merely symbolic but carries important duties vital to the nation.

'Awesome Responsibility'

He presides over the Senate, the paper says, and holds the tie-breaking vote. Recent Presidents, particularly Mr. Nixon, it argues, through Executive order and other means have expanded the duties of the Vice President and he now participates in the activities of executive agencies ranging from the National Security Council to the Domestic Council.

Finally, the document says, the Vice President is "charged with the most awesome responsibility: continuously to monitor the ability of the President to discharge the powers and duties of the Chief Executive and to decide whether action should be begun to remove the President by reason of disability."

"A Vice President so elected," it continues, "and charged

with such duties may not, we submit, be hindered or prevented from performing his office by the institution of a criminal proceeding against him."

"While he is Vice President, he must be free to function as Vice President. The nation must not be deprived of his services while he defends himself against an indictment voted by perhaps 12 of 23 grand jurors, or an information filed at the whim of a prosecutor."