

Brief Cites Publicity, Constitution

By Edward Walsh
and Richard M. Cohen
Washington Post Staff Writers

Vice President Spiro T. Agnew, contending that the constitution shields him from criminal prosecution, asked a federal judge yesterday to halt the grand jury investigation into his possible violation of bribery, extortion, conspiracy and tax laws.

The long-awaited court action by Agnew joined the Vice President in an unprecedented constitutional confrontation with the country's top law enforcement officials. In his request, Agnew argued that he cannot be investigated or indicted by the grand jury unless he is first impeached and removed from office by Congress. The House leadership Thursday rejected Agnew's request for a separate congressional investigation, that would not be a formal impeachment proceeding.

In a motion filed in U.S. District Court in Baltimore, lawyers for the Vice President also argued that leaks to the press about the investigation have already made it impossible for him to receive a fair hearing by the grand jury, or at any later criminal trial.

Justice Department officials, Agnew's lawyers charged in a memorandum that accompanied the motion, are responsible for the leaks and have "misused their offices in an immoral and illegal attempt to drive the Vice President from the office to which he was elected, and to assure his conviction."

In Washington, Attorney General Elliot L. Richardson issued a statement calling the charges against Justice officials "patently ridiculous."

Late yesterday afternoon, U.S. District Court Judge Walter E. Hoffman announced that a hearing on Agnew's request would be held at 10 a.m., Oct. 12 in Baltimore. In the meantime, the judge said, federal prosecutors could continue to present evidence against Agnew to a special

grand jury in Baltimore.

Hoffman, who was assigned to the Agnew case by Clement F. Haynsworth, chief judge of the U.S. Fourth Circuit Court of Appeals, made the announcement following an hour-long meeting in his office in Norfolk with Agnew's three lawyers, Assistant Attorney General Henry E. Petersen, and Deputy Assistant Attorney General Kevin T. Moroney.

In Baltimore, George Beall, the U.S. attorney for Maryland who is heading the investigation, said, "the investigation will continue as it has" at least until Hoffman rules on Agnew's request. The grand jury, which first heard evidence against the Vice President during a seven-hour session Thursday, is expected to

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hear from several more witnesses next week.

The confrontation is one that the White House and the Justice Department tried strenuously to avoid in a series of negotiations with Agnew's lawyers that apparently broke down late last week. According to informed sources, the discussions included the possibility of Agnew's resignation and his pleading guilty to a relatively minor charge.

For his part, the Vice President appeared determined to fight the investigation with every legal weapon at his command. In a report published yesterday in the New York Times, Agnew was quoted as declaring flatly that he will not resign even if he is indicted.

Agnew's contention that leaks to the press have made impartial proceedings by the grand jury impossible also apparently is unprecedented in American legal history. A legal scholar here, who asked that his name not be used, said yesterday that while criminal convictions have been overturned because of pretrial publicity, he knows of no cases in which publicity was an issue while the grand jury was still investigating allegations.

Agnew was notified by Beall Aug. 2 that he is under investigation for possible violations of bribery, extortion, conspiracy and tax laws. The investigation, according to informed sources, involves allegations that Agnew accepted cash kickbacks from engineers and architects while governor of Maryland from 1966 to 1969

and, in at least one instance, since becoming Vice President.

Agnew's motion seeking an end to the grand jury investigation was filed in Baltimore at 1:45 p.m. yesterday by Stanley Mortenson, a lawyer from the firm of Paul, Weiss, Rikind, Wharton & Garrison. Mortenson first met for about 10 minutes with Beall, then filed the motion and supporting documents at the court clerk's office and paid a \$15 filing fee.

The meeting in Judge Hoffman's office in Norfolk began at 3:15 p.m. Agnew was represented by his principal

attorneys in the case, Jay H. Topkis and Martin London of the New York firm, and Judah Best of Washington, who flew to Norfolk on the same plane with Petersen and Moroney of the Justice Department.

None of the lawyers would comment about the meeting. Hoffman later issued a terse, written statement to more than 50 reporters who milled around the federal courthouse in Norfolk. The statement said:

"At the conference between counsel and the court, the following schedule was agreed upon with respect to the motion for protective order filed by the Vice President:

"Oct. 5—Brief of the department of Justice on the constitutional issue to be submitted.

"Oct. 8—Brief of the Department of Justice on the remaining issue to be submitted.

"Oct. 11—Reply brief of the Vice President to be submitted.

"Oct. 12—Argument at U.S. District Court in Baltimore at 10 a.m.

"The grand jury may continue in session pending a final decision on the motion unless otherwise ordered by the court. No further questions will be answered."

Legal briefs are written arguments submitted to a judge who is to rule in a case. They form the basis for oral arguments between opposing lawyers at a hearing before the judge.

Hoffman, who normally presides at a federal court in Norfolk, was selected to rule in the Agnew case after every federal judge in Maryland disqualified himself because of past associations with Agnew.

Hoffman's decision on Agnew's motion is expected to be appealed by the losing side to the Fourth U.S. Circuit Court of Appeals in Richmond, and ultimately to the Supreme Court. Because of the extraordinary nature of the case, legal observers predict that the appeals process, which nor-

mally might stretch over months, will be handled rapidly by federal court officials.

Justice Department officials in Washington are expected to handle the government's response to Agnew's motion while Beall and his staff continue the grand jury investigation of the Vice President.

In a 24-page memorandum submitted to Hoffman with the motion, Agnew's lawyers argued that the nation cannot afford to have a Vice President burdened with having to defend himself against criminal charges.

Calling the Vice President "second only to the President in personifying the national will and dignity," the lawyers argued that "the nation must not be deprived of his services while he defends himself against an indictment by perhaps 12 of 23 grand jurors, or an information filed at the whim of a prosecutor."

Rather, the lawyers said, impeachment by the House and removal from office by the Senate are the only proper actions that may be taken against a Vice President. They cited a section of the Constitution that makes provisions for impeachments and says that any impeached official "shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law."

By mentioning indictment and conviction after impeachment, the framers of the Constitution meant to permit criminal proceedings against a President or Vice President only after impeachment and removal from office, the lawyers argued.

President Nixon's lawyers have used the same argument in defending the President's refusal to surrender the Watergate tapes. They contend that the President is not subject to court proceedings while he is in office.

In addition to the constitutional prohibition against indictment of a Vice President, Agnew's lawyers contended that it is in the national interest to have the allegations against Agnew investigated by the House.

"A grand jury has a duty to level charges whenever it believes that there are charges to be answered," the lawyers said. "It is none of the grand jury's business whether the matter is serious or trifling, whether the nation should give up its Vice President while the charges are tried. . . The House, by contrast, has the welfare of the nation as its primary concern, and can make the decision whether or

not to accuse in the nation's interest."

In an affidavit accompanying the suit, Agnew's lawyers accused the Justice Department of a "steady campaign designed to deprive the Vice President of that basic right of a free man: the right to be judged fairly, on the merits, without prejudice."

The affidavit, written by Topkis, included copies of newspaper and magazine articles that revealed details of the allegations against Agnew and high-level Justice Department actions on the case. He cited a New York Times account of a CBS television report in which Assistant Attorney General Peterson was quoted as saying, "We've got the evidence; we've got it cold."

"The source of this report can only have been in the Department of Justice," Topkis wrote, adding that it was only the latest in a "flood of similarly prejudicial reports."

"One or two might be forgiven as the product of a deplorable but perhaps inevitable inadvertance," he continued. "But this case has seen leaks in such number and with such constancy as to rule out any explanation by accident."

Topkis cited stories in The Washington Post, The New York Times, The Baltimore Sun, and Time and Newsweek Magazines.

In his brief, Topkis conceded that the Justice Department might deny that it has been the source of the leaks. In that event, he wrote, he would ask the court for a "full hearing to determine the truth." Topkis did not indicate whether he would request newsmen to appear at such a hearing and be asked to divulge their sources.

The Justice Department was quick to respond. In a sharply worded statement authorized by Attorney General Richardson, the department said there was "no basis whatsoever—in fact or common sense—for the assertion that the Department of Justice has engaged in a steady campaign of statements to the press for the purpose of prejudicing grand or petit (trial) hearings. Such a campaign would defeat the very purpose of an investigation by the Department of Justice."

Since the investigation became public Aug. 6, Agnew

has complained that he has been the victim of persistent leaks to the press about the allegations against him.

In a nationally televised press conference Aug. 21, Agnew charged that "some Justice Department officials have decided to indict me in the press whether or not the evidence supports their position." The same day, Agnew dispatched a letter to Richardson demanding an investigation into the source of the leaks.

Yesterday, the Justice Department statement said that Richardson had received a preliminary report on the investigation on Sept. 24. "The report indicated that all Department of Justice employees interviewed swore under oath that they themselves were not the source of published information concerning the investigation . . . and that they were not able to identify any other person who was such a source," the statement said.

Federal agents, meanwhile, have apparently issued wide-ranging subpoenas in what appears to be a thorough attempt to trace all of Agnew's recent financial activities. Subpoenas, for instance, have been issued to some Washington and Baltimore area brokerage houses, a Towson haberdasher where Agnew occasionally shopped and the Loch Raven Kiwanis in Baltimore County, which Agnew was president of in 1961.

Among the brokerage firms subpoenaed was the Washington office of Paine, Webber, Jackson and Curtis whose manager, Robert J. Kelley, said they held no Agnew accounts. The subpoena was for the accounts, if any, of Agnew and his wife. Kelley said that similar subpoenas had been issued other brokerage firms in the Washington-Baltimore area.

In addition, The Washington Post learned yesterday that federal investigators asked the owner of a Towson men's shop last Friday for records of Agnew purchases made between 1954 and 1968.

Oliver H. Swick, owner of Oliver's Mens Shop, said that the agents seemed particularly interested in one canceled check for \$6.18 that was written in January, 1968. Swick said he furnished federal agents with a copy of the bill

of sale that was charged to Agnew's account. He said the purchase consisted of two \$3 ties.

On Tuesday, FBI agents asked Edward Shannon, president of the Loch Raven Kiwanis, for records relating to

Agnew's membership. Shannon said the records were supplied. Agnew's dues amount to \$100 a year.

Contributing to this story were Washington Post Staff Writers Douglas Watson and Bill Richards.