

New Justice Dept. Tactic on Agnew

Congress May Get Case First

Baltimore

The Justice Department said yesterday it is willing to give the House of Representatives a chance to impeach Vice President Spiro Agnew before trial should he be indicted by a federal grand jury investigating him.

A vice president can be indicted and tried on criminal charges while he is in office, the Justice Department argued in a 5000-word memorandum.

Allowing the House a chance at impeachment before any trial would give Agnew an opportunity to have "this matter considered in the forum provided by Congress" and at the same time prevent the statute of limitations from excluding criminal prosecution, the department said.

STATUTE

The statute of limitations will begin to expire on October 26 on some of the matters the Baltimore grand jury is investigating, the Justice Department continued.

Unless indictments are returned by then, the government could be precluded from ever bringing charges, it said.

The Justice Department presented its position in a

memorandum filed in answer to a suit by Agnew to block the Baltimore grand jury investigation into allegations that he took bribes.

On September 28, Agnew asked the U.S. district court here to halt the grand jury investigation, contending that a sitting vice president has the same immunity

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from prosecution as the president.

Agnew has called the investigation "malicious" and has said that officials in the Justice Department have been leaking information to reporters in an attempt to discredit him.

Under a court order, Agnew's lawyers yesterday subpoenaed reporters to ask them who had given them information about the nine-month-long inquiry into Agnew's finances.

The Justice Department's answer to Agnew's suit was filed by Solicitor General Robert H. Bork.

SUIT

The justice department said that because of the "historic independence and vital function" of grand juries it ordinarily would have sought to have a suit such as Agnew's dismissed.

"But in the special circumstances of this case, which involves a constitutional issue of utmost importance, we believe it appropriate — in the interest of both the Vice President and the nation — that the court resolve the issue," the department said.

If the courts agree that a Vice President can be indicted and tried, the government will complete the presentation of evidence to the

grand jury, it said.

"Should the grand jury return an indictment, the department will hold the proceedings in abeyance for a reasonable time, if the Vice President consents to a delay, in order to offer the House of Representatives an opportunity to consider the desirability of impeachment proceedings," the government's memorandum to the court said.

"The department believes that this deference to the House of Representatives at the post-indictment stage, though not constitutionally required, is an appropriate accommodation of the respective interests involved.

"It reflects a proper comity between the different branches of government, especially in view of the significance of this matter for the nation.

"We also appreciate the fact that the vice president has expressed a desire to have this matter considered in the forum provided by congress."

PROBE

Agnew, himself, last month asked the House to investigate the allegations against him, citing the appointment of a committee to investigate Vice President John C. Calhoun almost 150 years ago. But Speaker Carl Albert declined to entertain such an idea at this time, pointing out that the matter was in the courts.

In its answer to the vice president's suit claiming immunity, the Justice Department said it agreed that the President cannot be indicted and brought to trial while he is in office.

To allow the president to be made to answer criminal

charges while trying to run his office could "incapacitate" the government, the Justice Department said.

"Although the office of the vice presidency is of course a high one, it is not indispensable to the orderly operation of government," the memorandum said.

"There is in fact no comparison between the importance of the presidency and the vice presidency" it said.

In his suit, Agnew argued that the vice presidency is the second most important office in the government, and that a vice president must be ready at all times to assume the office of president, if it became vacant.

OFFICE

Whether a president can be indicted and tried in office has never been decided by the courts.

But the Justice Department said "almost all legal commentators agree . . . that an incumbent president must be removed from office through conviction upon an impeachment before being subject to the criminal process."

The Justice Department lawyers said they would not argue this point.

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