

Advice to Agnew: 10/1/73 C.D.N. Leave fate up to due process

WASHINGTON — The vice president of the United States is receiving a vast deal of advice these days from his lawyers. This may be sound advice as a matter of law, but it is terrible advice in every other respect. Some of us who admire Spiro Agnew are hoping he will suggest to his counselors that they go jump in the nearest lake. They are leading him down a wrong-way ramp.

This is one trouble with lawyers, especially criminal lawyers. They tend to move from one lawyerly objective to another. Their first purpose is to see that a client is not indicted. If he is indicted, they work to get the indictment dismissed. If the indictment is not dismissed, they seek to postpone a trial. And so on.

ALL THIS IS well and good if a client's sole purpose is to stay out of jail. But the vice president's friends cannot believe that his chief purpose is merely to stay out of jail. What he seeks — what he must try to win above all else — is vindication.

By
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How can Agnew seek vindication? It is highly doubtful that he can achieve it through investigation by an unnamed House committee, along the lines he proposed last Tuesday. Surely he will never get there through the smoke-screens and dust clouds his lawyers are raising now. Their argument now is that the Baltimore grand jury can't even hear the evidence.

Such an argument, if sustained, would chop off the criminal process before it had even begun. The outcome would be hailed as a lawyers' coup, but it would be like the brilliant operation in which the doctors succeeded but the patient died.

HIS LAWYERS' contention, in my own view, is flimsy. They rely upon the last paragraph of Article I, Section 3 of the Constitution. It says, in substance, that if a President or vice president is convicted by the Senate on impeachment, and thus removed from office, "the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment according to law." From this provision, Agnew's lawyers infer that a vice president cannot be indicted until he is first removed by impeachment.

The argument is unimpressive. It ignores the historic role of a grand jury, which, as Justice Black once remarked, is "not appointed for the prosecutor or for the court, but for the government and for the people." A grand jury, if I am not sorely mistaken, can indict anyone. In the immediate case, by summoning its own witnesses, this grand jury conceivably could find probable cause to believe that the contractors offered bribes, and probable cause to believe that then-Gov. Agnew took them. This would be an indictment.

IF AGNEW wants to remain in public life, he must seize the initiative. He tried to do this last Tuesday, in his unprecedented letter to House Speaker Carl Albert, but the procedure he has suggested lies in some parliamentary Never-Never Land. A House investigation would confuse the issue, not clarify it.

The vice president unhappily is putting himself in the position of a defendant who stands mute, takes the Fifth, or pleads a statute of limitations. Bpt this won't win him vindication.

"I will fight to prove my innocence," Agnew has said. He has called the charges "damned lies." His admirers — I count myself among them — believe him. But only in a grand jury's failure to indict or in a grand jury's verdict of not guilty would he gain his vindication. He is not likely to find it any other way.