

# Dear Mr. Agnew:

By Roy M. Cohn

How could a man who made courage a household word lose his? How could one of this decade's shrewdest leaders make a dumb mistake such as you did in quitting and accepting a criminal conviction? If you had stood your ground as you promised the public you would, I give you my opinion that your chances for legal and political survival were excellent.

That opinion might mean something, because I went through three separate criminal proceedings very similar to those with which you were threatened. I was battered with pretrial publicity, including two poisonous Life magazine exposés on the eve of my trials.

In one case alone, seven of my "friends" testified against me. I was offered "deals" and "plea bargains." I turned them down and fought. When it was over, I had obtained three unanimous jury acquittals—and the prosecution didn't get one vote out of 36 jurors. And I am a relative nobody—you were one heartbeat away from being the most powerful man in the world.

You should have assessed the strength you had. The case against you was smelly from the start. Why a sudden concern in 1973 about contributions or payments in 1967? The public knows that virtually every political office-seeker gets cash contributions in one form or another, and that to suddenly single you out represented something more than routine law enforcement. Some people were obviously out to get you.

And the American public, which sits on juries, doesn't like it when Big Brother sets out to get someone. Next, the witnesses against you had made deals with the Justice Department to save their own necks by helping to hang you. Those deals furnish the strongest incentive to lie, and you could have taken those witnesses apart on cross-examination. The attempts by certain powers on the prosecutor's side and your political enemies to hang you in the press by leaks and by predicting the jury's verdict even before an indictment, had become transparent to the public. And the public—even those whose hero you never were—didn't like it, and

was determined to give you fair treatment.

When a case reaches court, it is all these extra-judicial considerations that bring about acquittals—and that would have won for you if you had fought. American juries are not composed of newsmen or lawyers. The basis of the jury system is that we look for jurors with no special qualification except one—a sense of fair play. They size up the whole ball of wax, and they alone, without the advice of the prosecutor or even the judge, decide whether on all the facts and issues, you have been treated fairly. This fair play concept is so strong in Maryland that in state courts there is a doctrine of "jury nullification"—meaning the jury can throw out a case even if the judge on the law instructs them they shouldn't.

You had all of this going for you—plus millions of armchair jurors who liked your guts, and who were ready to give you more than the benefit of reasonable doubt. Of course you had been badly treated, and of course you faced an ordeal. But you knew when you entered politics that an occupational hazard was facing ordeals. You never ran away from them before. Your family would have survived, not as now in disgrace, but with honor. And the country would have survived. We are resilient—we survived Vice President Henry Wallace, and might even have survived Eagleton—so the giving to you of your day in court would have been consistent with our constitutional treatment of the high and the low—and neither should be above or below it.

In resigning and taking a plea, you surrendered the fibre that had brought you worldwide respect. Alger Hiss and Daniel Ellsberg can still argue their innocence. You no longer can.

Your decision not to stand up and fight was more than a personal one. It was at best a grievous disappointment to, and at worst a betrayal of, millions of Americans who gave you the opportunity for greatness, and who thought that that opportunity had been accepted by you with a sense of responsibility to them as well as to yourself.

Roy M. Cohn, a New York attorney, was counsel to Senator Joseph R. McCarthy's investigations committee in the early nineteen-fifties.