

Agnew Jury Races Limitations Clock

By John Hanrahan

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The statute of limitations has emerged as a potential key factor in the federal investigation of Vice President Spiro T. Agnew in Baltimore concerning allegations that he received kickbacks from Maryland contractors.

The statute of limitations is a provision in the law that holds that persons cannot be indicted for various charges after a certain period of time has elapsed. In the Agnew probe, the period ranges from five to six years back.

The Justice Department on Friday raised the concern that it is engaged in a race with the clock in some aspects of the Agnew investigation. In legal papers filed in U.S. District Court in Baltimore, in answer to Agnew's effort to halt the investigation, the Justice Department stated:

"The statute of limitations with respect to some of the possible illegal activities being investigated will run (out) as early as Oct. 26, 1973"—less than three weeks away.

"Should this court suspend the grand jury investigation the result would likely be to accord the Vice President and other persons permanent immunity from prosecution through the running of the statute of limitations . . ."

Agnew, in the Aug. 1 Justice Department letter informing him that he was the target of an investigation, was told that the probe into his activities involved possible violations of

federal extortion, bribery, conspiracy and tax laws.

Extortion and bribery carry a five-year statute of limitations. Tax laws carry a six-year limit.

But the catch-all conspiracy statute enables a prosecutor to reach back into time and pull into an indictment allegedly illegal acts that are beyond the five- and six-year limits.

William W. Greenhalgh, associate dean of the Georgetown University Law Center and a leading authority on conspiracy law, said the conspiracy statute "is a legal vacuum cleaner. It sucks everybody in and lets the jury sort them out."

For example, Greenhalgh said, assume the five-year statute of limitations runs out on a bribery investigation on Oct. 5 of this year. If the government can find just one "overt act committed after Oct. 5, 1968, involving the alleged bribe-giver and bribe-taker or even third parties, it could then bring an indictment on a charge of conspiracy to commit bribery.

An overt act is any action that the government alleges occurred as part of a conspiracy. It could be criminal in nature—such as one person offering a bribe to another person. It could also be non-criminal in nature—for example, Greenhalgh said the government could allege in an indict-

See STATUTE, A28, Col. 1 →

STATUTE, From A27

ment that one of the conspirators purchased a newspaper and that this innocent act in some way advanced the conspiracy.

In a conspiracy indictment, the government would be able to go back as many years as necessary to show when the alleged conspiracy began. In so doing, it could bring in all kinds of alleged illegal activities in the indictment, even though all of the activities occurred more than five years ago.

The statute of limitations for bribery and extortion also has almost run out for all of Agnew's term as governor. Agnew left office as governor on Jan. 7, 1969—which means that in three months the limit will have been reached on all bribery and extortion offenses that allegedly occurred while he was governor.

The tax statute of limita-

tions covering Agnew's stint as governor will not run out until Jan. 7, 1975.

All of the alleged acts that fall beyond the five or six-year statute of limitations—even those going back to Agnew's early days as county executive 10 years ago—could, however, be pulled into a conspiracy indictment.

The only specific date concerning the allegations involving Agnew came in the legal papers filed Friday by the Justice Department when Oct. 26, 1973, was cited as a date when the statute of limitations would expire on some matters.

That date is about five years after Agnew presided over his last meeting of the Maryland Board of Public Works, the state agency that formally awards most state contracts. The three-member board is made up of the governor, the state comptroller and the state treasurer.

At that meeting on Oct. 22,

1968, the board awarded non-bid engineering contracts for the then-planned second Chesapeake Bay Bridge and the Baltimore outer harbor crossing. The main consulting engineers for both of the multimillion dollar projects was the J. E. Greiner Co., Inc., the parent firm for Greiner Environmental Systems.

Greiner Environmental Systems is now headed by Jerome B. Wolff, who was chairman of the Maryland State Roads Commission when the contracts were awarded. Wolff, a key figure in the Baltimore grand jury investigation, is a long-time associate of Agnew.

But, Agnew's case brings into focus the fact that there does come a time when a person cannot be prosecuted on most federal charges.

"It's a philosophy of letting sleeping dogs lie," said G. Robert Blakey, professor of law at Cornell University in Ithaca, N.Y.

"In any trial of any kind you have to make a determination of the facts. The greater distance in time you get away from the crime, the harder and harder it becomes to establish the facts."

Blakey said that the reasons society usually gives for prosecuting alleged crimes, and then jailing persons convicted of them, are to rehabilitate the criminal, to deter him and others from committing similar crimes, to incapacitate the criminal to prevent him from committing further crimes and to render moral condemnation of the crime.

After a certain period of time has elapsed, none of these reasons would be served by a prosecution, Blakey said. If the person has not committed another crime after a certain period of time has passed, then there is no need to rehabilitate or imprison him or to condemn his action because he has "reformed" himself, Blakey said. Also, the more time that passes, the more the deterrent factor is lost, Blakey said.

(A notable exception to all this, Blakey said, is murder, a crime for which there is no statute of limitations in any of the states.)

In a continuing conspiracy that extends from a more distant point in time to more recently, Blakey said, the doctrine of "let sleeping dogs lie" would not apply.

Blakey also noted that the statute of limitations becomes frozen at a certain point if a person under investigation takes flight to avoid the investigation.

Thus, if a person left the country for two years, the statute would not be running for those two years. Once the person returned to the country—even if it was more than five years since the date of the alleged crime—the government would still have two more years in which to investigate and possibly prosecute, Blakey said.

Blakey offered the opinion that if the courts rule Agnew cannot be indicted, "it should be argued by the government that Agnew is then in the same position as a person in flight. The statute of limitations should stop running at that point, and the government should be able to have that extra time to investigate Agnew after he leaves office."