

Petersen Role in Probe Is Under Fire

By George Lardner Jr. ^{4/29/77}
Washington Post Staff Writer

"Isn't it awful," the witness asked vehemently, "at a time when we need all the confidence in the establishment that we can get—we are all part of it, you know—that this has to be brought out?"

The speaker was Henry E. Petersen, assistant attorney general in charge of the Justice Department's criminal division. His topic—in an appearance before the Senate Judiciary Committee last year—was the cynicism surrounding the Department's handling of several controversies of the moment.

One was the settlement of three Justice Department antitrust suits involving the International Telephone and Telegraph Co., which had reportedly pledged \$400,000 for the Republican National Convention. Another was the Department's public exoneration of a U.S. Attorney in San Diego who, Petersen conceded, had been guilty of "highly improper" conduct in blocking a subpoena to a close personal friend.

If Petersen was unhappy over the blackening of the government's image then, he should be furious by now. As the man in charge of Watergate investigation No.

2 for President Nixon, he has been facing growing protests over his assignment in light of the inadequacies of Watergate investigation No. 1, which he also supervised.

Mr. Nixon himself attested to No. 1's shortcomings April 17 in announcing—10 months after the break-in at Democratic National headquarters—that "real progress has been made in finding the truth." Forecasting new indictments in the pervasive scandal, the President also took pains to condemn "any attempt to cover

See JUSTICE, A11, Col. 1

ception to Petersen's daily consultations with the President.

"I think we need a chief investigator-prosecutor who will run this on an independent basis and report to the American people and not report day to day to the President," he says. "I don't do any impugning of Mr. Petersen. I simply think that, on the record, we need an outside investigator. Mr. Petersen just won't do."

Former Attorney General Ramsey Clark said he has felt since last summer that an independent prosecutor should be appointed. "There should always be a special prosecutor when there's a problem this close to the heart of Government," he said. "You can't have a subordinate investigating a superior. It's an impossible position for anybody."

Called Whitewash

The seven Watergate conspirators were indicted by the federal grand jury assigned to the case last Sept. 15. The next day, Democratic presidential candidate George S. McGovern convened a press conference at his Washington home to denounce the results as a "whitewash" engineered by the Nixon administration to skirt the crucial questions about who ordered the espionage, who paid for it, and who was privy to the fruits of the spywork.

The White House did not even bother to comment, leaving that chore to Petersen. He dismissed the McGovern charges as "completely unfounded."

"This investigation has been conducted under my supervision," the assistant attorney general said in a statement put out so hurriedly that it gave him the wrong middle initial. "Indeed, the investigations by both the FBI and the grand jury have been among the most exhaustive and far-reaching that I have seen in my 25 years at the department."

"All aspects of the break-in and bugging were studied in detail including questions

JUSTICE, From A1

up in this case, no matter who is involved."

The trouble, the latest Gallup Poll showed a few days later, is that four out of every 10 Americans had already become convinced that the President himself "knew about the Watergate situation in advance."

That conviction is sure to grow with the allegations of complicity—both in the break-in last June 17 and the subsequent cover-up—on the part of some of Mr. Nixon's closest advisers, men whose roles the President himself has said "are in effect an extension of the presidency."

For Mr. Nixon, that poses an excruciating dilemma. How can any investigation of the presidency not include the President? And even if it does, how can the President preside over it and leave the public satisfied that the whole story has at last come out?

The official view at the Justice Department is one of complete confidence in the administration's ability to investigate itself.

Attorney General Richard G. Kleindienst has already disqualified himself because of his "close personal and professional relationships" with new suspects in the case. With that, the spokes-

men at Justice maintain, all conflicts of interest of any consequence have thus been removed. Petersen, they say, is a thoroughgoing professional, a Justice Department careerist and veteran prosecutor with a reputation as a "completely honest," tough-minded man.

If his probing leads to hard questions for the President, one government source even asserts, "we will follow normal procedures, which I won't discuss."

Double Mandate

Meanwhile, the President has been conferring daily with Petersen, presumably to compare notes on what Mr. Nixon has described as their own separate investigations. Petersen, in his effort, one well-placed source reports, has been given the impossible double mandate to "do it right" and "don't embarrass the President."

Critics on Capitol Hill and elsewhere who have called for appointment of an outside prosecutor insist that it is simply too much for any bureaucrat to meet the demands of the Watergate scandal, which is to say justice perceived as well as justice done. Senate Majority Whip Robert C. Byrd (D-W.Va.) and Rep. Henry S. Reuss (D-Wis.), among others, emphasize the fact that it was Petersen who was in charge of the first Watergate investigation which failed to get beyond seven low-ranking conspirators. Reuss, for one, also takes ex-

about the source and distribution of any funds relating to the incident," Petersen insisted. "As the trial goes forward, the thoroughness of the grand jury investigation will become apparent."

It was not his only bad prophecy of the month. At a national conference of federal prosecutors in Myrtle Beach, S.C., Sept. 23, Petersen said he doubted the entire truth would ever come out. He said he frankly expected that "the jail doors will close" behind the seven men accused in the break-in without their revealing any more details.

Claims Slipping

The claims of thoroughness were already being questioned. It turned out that the President's chief fund-raiser in 1972, Maurice Stans, had been permitted to submit a sworn statement to the grand jury rather than appear in person and undergo cross-examination. Then, at the trial in February, Federal District Judge John J. Sirica repeatedly expressed his dissatisfaction with the limited nature of the case and its patent failure to bring out "all the facts."

Acting FBI director L. Patrick Gray III continued to insist at his hapless confirmation hearings in February and March that the bureau's investigation had been a "full-court press" with "no holds barred." But then he admitted turning over 82 files compiled by his men to Presidential Counsel John W. Dean III — a practice that Gray defended despite his acknowledgment that Dean "probably" lied to his agents early in the investigation.

Now the FBI is in disarray, with its second "acting director" in less than a year. Gray resigned Friday, sagging under Thursday's disclosure that he destroyed incriminating documents belonging to Watergate conspirator and onetime White House consultant E. Howard Hunt last July. They had been turned over to him by Dean and presidential aide

John D. Ehrlichman, reportedly with the warning that the papers should "never see the light of day."

FBI agents assigned to the Watergate investigation were already furious, authoritative sources in the bureau say, on learning with the rest of the world at Gray's confirmation hearings that he had been secretly giving the bureau's files to Dean. Gray not only told no one at the bureau, these sources say, but he failed even to follow the late J. Edgar Hoover's at-the-minimum precaution of leaving a memo for the record, saying that ABC was done on a certain date at the request of XYZ. That omission, coupled with Gray's failure to go through normal channels such as the attorney general, began to arouse dark suspicions, even in the bureau, of a cover-up.

Described as anxious to testify before the grand jury himself now, Gray is said to have learned for the first time this week that both Petersen and Attorney General Kleindienst had refused earlier requests by Dean last year for the FBI files.

But that only raised further questions. If Gray were unaware of their refusals, and if he thought Dean's request proper, why didn't Gray at least try to go through normal channels first? And if Petersen and Kleindienst's refused because they thought the request improper, what action, if any, did they take to deal with that impropriety? Or to scrutinize Dean's activities in the Watergate case more closely?

Confidence Affirmed

Some insights into that may be gained by Petersen's testimony last year in defending the department's issuance of a press release in February of 1971, under Kleindienst's name, affirming "the full confidence of the attorney general" in U.S. Attorney Harry Steward of San Diego. Asked how that could be squared with Petersen's assessment that Steward had been guilty of "highly improper" conduct in stopping a subpoena to a close friend and political ally, Petersen said he thought exoneration best for the department, espe-

cially since he did not feel that Steward's actions were so improper as to warrant his dismissal.

"If you are asking me whether every mistake in judgment within the Justice Department ought to be made available to the public, I don't agree with that," Petersen told the Senate Judiciary Committee. "We had a situation between human beings, two people who were close personal friends over a long period of time. We had to treat it with some under-

standing of the human relationships."

Several former Justice Department hands who have worked closely with Petersen—a 52-year-old ex-Marine staff sergeant and former FBI agent—say they still have confidence in his toughness and ability to bring the Watergate investigation to a satisfactory public conclusion, especially the second time around. Institutionally minded, they see no need for an outside prosecutor despite such potential inhibitions as Petersen's admiration for former Attorney General John N. Mitchell who promoted Petersen to his present job. (Mitchell, who resigned as Mr. Nixon's campaign director a few days after the Watergate burglars were arrested, has been accused by one high deputy of approving the bugging and of helping arrange to buy the silence of the seven convicted conspirators. He has denied the allegations.)

"Henry has a second chance here to redeem himself," says one former colleague. "In the first investigation, he obviously labored under restraints. But now, with the impetus that this has, if there is any hesitation, I think he'll be able to put it aside. With special prosecutors, you lose effectiveness. Your influence over the bureau is restricted. You have a limited staff. Your resources are thin."

Says another: "The way I look at it, you've got a couple of very capable prosecutors in the U.S. attorney's office (Earl J. Silbert and Seymour Glanzer) handling

the grand jury. To me, the whole thing's academic. You have the grand jury. You have the Senate investigating committee under Sam Ervin (D-N.C.) in the wings. You've got civil suits going. You've got every reporter in town slobbering up what the grand jury is doing. And you have Jack Anderson who's been printing the grand jury transcripts. I think the whole story is going to come out."

"Henry Petersen is just as straight, just as zealous as you can find, a real man of integrity," says another attorney. "I'm not pretending that it's not difficult for him. But if you don't have the facts, I don't give a damn how zealous you are. Now something's come loose and it's like a ball of yarn. I guess McCord did it."

Part of Disclosure

That certainly was part of it. Breaking a long silence on the part of all seven defendants, Watergate conspirator James McCord charged, in a March 20 letter submitted to Judge Sirica by his probation officer, that Government witnesses had perjured themselves at the trial and the defendants had been pressured to plead guilty and remain silent. But he offered no testimonials to the Justice Department. He told the judge that he "could not feel confident" talking to the FBI or to prosecutors "who work with the Department of Justice."

On that same day, March 20, The Washington Post reported this week, White House Counsel Dean told Mr. Nixon that drastic steps were needed "to save the presidency." Dean reportedly said that Dean himself, White House Chief of Staff H.R. Haldeman and Ehrlichman would have to tell all they knew about the Watergate bugging case and the subsequent coverup, and risk jail terms in the process.

Mr. Nixon later announced it was on the next day, March 21, that he began "intensive new inquiries into this whole matter" as a result of "serious charges which came to my attention..."

By now, the Watergate bugging itself is only a part of the problem. Besides dis-

qualifying himself in that investigation, Attorney General Kleindienst has also renounced any role in a burrowing federal grand jury investigation in New York of embattled financier Robert L. Visco's unreported \$200,000 cash-in-a-suitcase contribution to the Nixon campaign last year. Vesco was reportedly seeking help at the time in the face of an intensive inquiry by the Securities and Exchange Commission; numerous calls are said to have been placed last summer from Vesco's business headquarters in New Jersey to Nixon campaign headquarters here, including some to the phone of the President's brother, Edward C. Nixon.

Petersen has been assigned to full command of the Vesco inquiry as well. Meanwhile, he has ordered copies of all the transcripts of testimony before the Watergate grand jury, according to chief prosecutor Earl Silbert, the principal U.S. attorney here.

Asked if Petersen was relaying them to the White House, Silbert told reporters: "I hope not." No doubt mindful of the controversial pipeline from Gray to Dean in the first investigation, the White House and Justice both hurriedly disavowed any such service for Mr. Nixon.

Deputy White House Press Secretary Gerald Warren said the President had "specifically directed" Petersen "not to send him any information relating to the grand jury" testimony, including relating to the grand jury" testimony, including not only transcripts, but also excerpts, summaries or any other account. Federal prosecutors, however, often interview witnesses separately and beforehand. Dean reportedly told them all he knows on April 6 and the President's 1972 deputy campaign direc-

tor, Jeb Stuart Magruder, leveled accusations against Mitchell and Dean in interviews with government lawyers on April 14. Ex-acting FBI director Gray admitted his destruction of documents to Petersen on April 16.

White House spokesman Warren said the President's directive to Petersen did not necessarily bar information obtained outside the grand jury.

Stepping up his campaign for an outside lawyer which he first urged Monday, Reuss followed up several days later by zeroing in on Petersen's Sept. 23 Myrtle Beach, S.C., prediction that the seven conspirators would go to jail without talking.

Citing various published reports of recent days, Reuss alluded to grand jury testimony attributed to McCord in which the former

security director for the Committee to Re-Elect the President said he received \$18,000 in one lump-sum "salary" payment in September. Reuss also charged that it was in "mid-September" that McCord said the possibility of eventual executive clemency was first mentioned to him by co-conspirator Howard. The Wis.-Hunt. consin congressman challenged Petersen to explain "on what Mr. Petersen based his September prediction... a strange prediction for someone charged with getting to the bottom of all this."

No Comment

The Justice Department had no immediate comment. A spokesman said simply that Reuss's earlier complaints about Petersen had been rejected as "unwarranted" and affirmed the department's support of the assistant attorney general as "fully capable of conducting a fair, impartial and extensive inquiry into all aspects of this matter."

On a less personal level, the New York City Bar Association has suggested it would still be best to avoid even the appearance of conflicting loyalties. In a letter to Mr. Nixon that drew only silence from the White House, the 10,000-member



By James K. W. Atherton—The Washington Post

Assistant Attorney General Petersen: Watergate prober.

bar association said lawyers and laymen alike would have "greater confidence" with an eminent attorney "who has no connection with the Department of Justice or any of the persons under investigation."

Teapot Dome Recalled

That was the course chosen back in the days of Teapot Dome. Then, as one chronicler described the Coolidge administration's search for special prosecutors with the consent of the Senate, "it was almost an impediment ever to have bought 10 gallons of gas at a filling station." One lawyer was rejected when it turned out that he was an attorney for an oil company in Texas. Another was turned down simply because he had served as counsel for a trust company that had been trustee for an oil corporation bond issue.

Petersen himself has been

unavailable for comment on the debate swirling about him. But even some of those who know and respect him seem tacitly to agree that the executive branch, the "system" that has been Petersen's life since 1947, is not equipped to pursue the worst. What if the President knew?

Said one former Justice Department official: "That

would be a matter for Congress."

Ramsey Clark dissents:

Even with appointment of a special prosecutor, he said, "basically you have to keep enforcement of the laws within the executive branch. And I can't believe that in a government of law, there is anyone in the jurisdiction who is not subject to it."