

The Petersen Case

By William Safire

ESSAY

WASHINGTON—“We’ve got the evidence. We’ve got it cold.”

That was what Assistant Attorney General Henry E. Petersen told CBS reporter Fred Graham on Sept. 22* about the case against Vice President Agnew. That leak of prejudicial publicity by the Justice Department official heading the investigation is what convinced the Vice President that he could not get a fair trial and caused him to turn to Congress for vindication.

If the CBS report was accurate, and it has not been denied, an Assistant Attorney General has adopted the role of prosecutor, publicist, jury tamperer, and judge. A man with that kind of ambition deserves a closer look.

Henry Petersen is a good cop. A public servant with a lifetime’s experience at the Justice Department, he is nonpartisan, honest, feisty and likeable. When the President wanted a man with the best credentials to take over the Watergate investigation last spring, he turned to Petersen.

Testifying before the Senate Watergate committee back in its heyday, Henry Petersen had to admit to being a little too courteous to Cabinet members and White House staffers the year before, the only lapse to besmirch his otherwise spotless reputation.

You had to like Petersen, as he frankly spoke his mind about the way the investigation had been ripped out of his hands before he could finish it, to be turned over to a special prosecutor. He was understandably irate. He had a reputation to protect; all he wanted was a chance to show the world that he was one incorruptible, uninfluenceable prosecutor.

The charges against Spiro Agnew gave Henry his chance. As the Vice President put it in his counterattack Saturday: “I’m a big trophy.” Whatever the evidence, viewed by the Vice President, it can probably be explained as fundraising and not wrongdoing; the same set of facts, viewed by a lifelong cop who had been recently stung by criticism that he had gone soft, is seen to be unmitigated venality for which he is certain he can get a conviction.

And so, in a spirit of candor and enthusiasm (not in malice, as the Vice President believes), this good cop and good man blurts out what he thinks: “We’ve got the evidence. We’ve got it cold.” He’ll get a conviction, Petersen thinks, which will put him down in history as a tough prosecutor rather than a bureaucrat who can easily be pushed around by White House big shots.

The Petersen case poses two problems: corruption and jury tampering. On corruption: the Department of

Justice must make its decisions on whether or not to prosecute on the basis of evidence, and not the reputations of its Assistant Attorneys General. Henry Petersen cannot be corrupted by money (he won’t let you buy him a cup of coffee) or intimidated by power (he’s learned his lesson there) but his judgment has been corrupted by the sin of pride.

Attorney General Elliot Richardson must remind his aides that the name of the department he heads is not conviction nor prosecution, but justice. When decisions are left to men seeking to repair their reputations they tend to put their thumbs on the scales of justice.

On jury tampering: Henry Petersen’s pronouncement of the Vice President’s guilt, duly reported on national television and every other media likely to be consulted by the grand jury now sitting in Baltimore, must affect the judgment of its members. Through the head of its criminal division, the Department of Justice has brought pressure to bear on jurors outside the courtroom. That is not much different from a threat or a bribe; if it tends to prejudice a juror, it is wrong.

What should Attorney General Richardson now do? He cannot change his mind about presenting the case to the grand jury. He can, however, take an action that will tell every Federal Attorney in the United States that no Federal law enforcement official is above the law—that he expects every Government attorney to respect the right to a fair trial of every defendant.

He can fire Henry Petersen.

As long as Mr. Petersen remains at the Justice Department, he stands as an example to every officer of every court that it is all right to try cases in newspapers. Petersen’s presence assures them that when they slip a few remarks or documents into the hands that will help put pressure on a jury to indict or convict, it will be winked at from on high.

If Mr. Richardson discovers that Mr. Petersen did make the announcement of a potential defendant’s guilt and dismisses him, he will be serving notice to every employe at Justice that he is serious about prosecuting the rights of defendants.

The decision as to whether the new Attorney General will root out that tradition of corruption, accidental or purposeful, is at hand. The Vice President has thrown down a gantlet that will test the principles of every liberal.

How about it, Mr. Richardson? You’ve got the evidence. You’ve got it cold.

*Graham reported this 22 Sep, said statement was made a few days earlier (WXP 2 Oct, Mackenzie).