

The Petersen Case: II

By William Safire

WASHINGTON, Oct. 3—The Deputy Attorney General of the United States, William Ruckelshaus, called the other day to tell me how wrong I was to accuse his associate, Henry Petersen, of personally leaking a prejudgment of the Agnew case: "We've got the evidence," Petersen was quoted as saying, "We've got it cold."

Mr. Ruckelshaus, who has earned a reputation for being a straight shooter, said that the leak was attributed to "sources close to the investigation," and not to Mr. Petersen, which the reporter has verified. My apologies: Mr. Petersen did not plant the story personally.

Then the Deputy Attorney General went on to make three points that say a great deal about the way the Agnew investigation is being conducted:

1. *Petersen never said those words.* Neither Petersen nor Attorney General Richardson, who was in the room, remembers Mr. Petersen saying that. The quote is probably a phony, they indicate now, about two weeks after the damaging pronouncement has had the widest circulation.

2. *Maybe the leak came from Agnew's lawyers.* Mr. Ruckelshaus was careful not to make this charge directly, but he asked rhetorically, "Who stands to gain the most? The prosecution stands to lose if the process is poisoned by prejudicial publicity." On this theory, the Agnew lawyers would be willing to blacken the name of their client and help speed his indictment in order to win on appeal. Seems far-fetched: The three Agnew attorneys have offered to swear to the contrary and Mr. Ruckelshaus wisely backed off it.

3. *"Petersen probably did use some strong language along those lines to attorneys for other potential defendants."* With that, Mr. Ruckelshaus went to the heart of the matter.

Put yourself in Henry Petersen's shoes: You have been made to look like a bumbling cover-upper before the Watergate committee. Your lifelong reputation as a tough cop has been unfairly compromised. Your old boss, John Mitchell, is testifying that there were illegalities connected with the extension of F.B.I. wiretaps, which could point right at you as a corner-cutter. And a major Justice Department scandal is about to break, which will reveal that you and an associate improperly signed somebody else's name to "notifications" of the right to wiretap, which could result in 159 criminal cases being thrown out by the Supreme Court.

In those circumstances, you have a natural desire to be known as The First Prosecutor to Get a Vice President. This will bring you immunity from criticism from anti-Agnew mouthpieces who believe that civil liberties do not exist for anybody to the right of Daniel Ellsberg.

Accordingly, you call in a series of

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attorneys for a group of scared, and possibly guilty, men. You say, in effect, that the first one in gets the best deal. (You might have even used that phrase, but I am reluctant to use direct quotes from recounted conversations.) You proceed to blackmail them: If their clients don't talk, or if they do not say the right thing when they do talk, they go to jail. But if they do say what the prosecutor wants to hear, they go scot free. That is not called bribery and coercion; the euphemism is "immunity," and it powerfully concentrates the mind.

In the course of these blackjackings, Mr. Petersen says—repeatedly—that he already has an airtight case against the Vice President. He spreads the word far and wide, to dozens of attorneys whose clients' interest calls for its leakage, that the head of the Criminal Division of the Department of Justice has the evidence "cold" to convict the Vice President.

Then Henry Petersen turns to Elliot Richardson and William Ruckelshaus and says—leak? Who, me? I never talked to a reporter. Where could this terrible prejudicial publicity be coming from?

Is it proper for the head of the Criminal Investigation Division of the Department of Justice to broadcast his assessment of any man's guilt in a series of meetings? Mr. Ruckelshaus won't say—but the Petersen technique of guilt-by-pronouncement makes a mockery of the assurance given to the President that Petersen was "in no way involved" with leaks or otherwise "guilty of an indiscretion."

Every one of the lawyers who were the target of the arm-twisting by Henry Petersen should be given the opportunity, under oath and with no prejudice to their clients, to report exactly what blackjacking they were subjected to.

"The average citizen does not know how the immunity statutes can be abused," says the Vice President. "When some guy sees a jail cell opening up, and a prosecutor says to him 'Wait—you don't have to go, just tell us about Mandel, or Agnew'—do you have any idea what that does to the system of justice?"

We don't know the facts, but we do know the techniques, and if we condone them in the case of Agnew, we will see reputation-conscious prosecutors using the immunity blackjack to get indictments on every man seeking the highest public office.

Double-standardeers will let their opinion of Spiro Agnew cloud their judgment on the prosecutorial precedents that are being set today: but the Robespierres of retribution will be applying the new rules tomorrow to John Connally and Ted Kennedy, to Edmund Muskie and Elliot Richardson. Or even you and me.