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American Bar Association Special Committee on Election Reform, Symposium on the Vice-Presidency, Panel Discussion 2. Selection of Vice-Presidential Candidates

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II. SELECTION OF VICE-PRESIDENTIAL CANDIDATES

MR. FEERICK: I would like to pose a threshold question and leave it to the experts to carry the discussion: should we change the present selection process, and if so, how should it be changed?

Would anybody care to start off?

MR. MITCHELL: I would be glad to start it off because I think that I have, perhaps, an advantage . . . in that I have for many years been to both political conventions, and from my observation the conventions have increasingly become places where responsible people attend but have very little opportunity to have any impact on what happens. So it does seem to me that our system of choosing the top candidates at the convention as we now do is a good system but it needs to be improved by giving those who attend some real freedom to act.

With respect to the Vice-Presidency, I think that could be achieved by having the nominee for the Presidency choose a list of people with whom he could be compatible, and then have the delegates vote on which of that group would be the running mate of the Presidential candidate. I would not think that the other systems that have been proposed would be very good for the country.

MR. FEERICK: Under your suggestion, if the Presidential candidate or incumbent President wanted to nominate one person for the position, I would take it that he would be forced, as a result of the requirement to advance a list, to add to that one person the names of several additional people.

MR. MITCHELL: I would think that would be good. But I would hope that a Presidential nominee would have enough friends to give at least several names. At least, at all of the conventions I have ever attended for the last twenty-five years or so, I have heard a number of names bandied around, and indeed we now know that at the most recent conventions, both of the nominees had several persons that they considered or were purported to have considered.

I don't really believe that it would be a problem for a Presidential nominee to select perhaps even as many as fifty persons, one from each state, that he felt he could be compatible with if the convention chose any of them. But I don't believe it would be wise to go outside of the list that the nominee might offer.

MR. FEERICK: Governor Peabody?

GOV. PEABODY: I think it would be helpful in determining how we are going to change the selection process to determine what our standards or criteria are for the selection of the Vice-Presidential nominee. And I think that probably there is little difference of opinion on the subject, although there have been differences in practice, that

the person should be qualified and capable to be President of the United States. That certainly is the number one consideration.

When you get to number two, there may be some disagreement. I think that the way it has worked out, people would have to say the person has got to be someone who can help the ticket get elected; that certainly is very, very important.

Third, people have said that he must be compatible with the President.

And I come in with number four very strongly, and something that I think this group should give a lot more attention to, the question of popular selection of the Vice-President. Because there is no question that the people of the United States—and they exhibit this in poll after poll, one most recently taken by NBC this week and announced by John Chancellor—people are very upset with the way that we select our Vice-President and they think people should have more of an opportunity to select the Vice-President.

I, having campaigned for Vice-President, found that after people got over the shock of someone running for the office and not waiting to be appointed to it, they felt very strongly on this subject, so that I say one of the standards should be popular selection. And if we can agree on that, which I think we may have trouble with at this Symposium because popular selection and compatibility run counter to one another, my feeling is that then you come to the role that the Vice-President should play. I would change his role dramatically from what it is now, which is a big-nothing role where he is always in the way of the President, to give him a full vote in the Senate. If you change that role, then you can select him more on a popular basis.

My proposal would be to provide three ways in which a person would be eligible to be nominated as a vice-presidential candidate.

One is as a candidate in a state primary for President or Vice-President during the Presidential campaign. The second is as an announced candidate for Vice-President, having notified his party's national committee, within two weeks before the opening of the convention. And the third is by being recommended by a Presidential candidate within two weeks before the convention. And then the opportunity to have your name lodged with the convention would close.

In this way, the delegates, the party, the press, the people, would have a chance to analyze the qualifications of the candidate and would be able to voice their feelings in advance of the selection and it would not be left to that late-night effort by Presidential nominees to hurriedly select their running mates.

MR. READ: It occurs to me that perhaps we are approaching this in the wrong direction, and maybe we should be discussing the reform of the duties of the office of Vice-President first. I think that we have to have in mind what the Vice-President is to do, and then design a method of selecting the Vice-President that will best insure that whoever is selected will be able to do those duties that we have defined or set out for him.

In this line of thought, it has just occurred to me sitting here that perhaps a reverse of what Clarence Mitchell proposed here might be a viable way, particularly if we were to increase the executive responsibilities of the Vice-Presidency, and that would be to have some defined role within the political party structure whereby the party would nominate, say, five or ten individuals deemed qualified for the Vice-Presidency, and then let the Presidential nominee make the selection from among that list the one who would be most suited to help him in the executive departments of the government.

Perhaps if we were to expand the legislative role of the Vice-Presidency, then perhaps what Mr. Mitchell proposed would be best, and that would be to let the delegates to the convention from around the country select from among a list—either of candidates selected by the Presidential nominee, or of declared candidates, as Governor Peabody has proposed. But I think we have to have some way of defining the role of the Vice-Presidency first, and then picking somebody to fill that role.

PROF. SCHLESINGER: The first question is whether the office is worth preserving. And to decide that, I think the question is whether the office can be endowed—as it never has been in the past—with duties to make it full-time work for an intelligent, mature man. I think that that really is the basic problem.

The Vice-President of the United States has one serious job: that is to wait around for the President to die. He does nothing else. It is for this reason it tends to be a demoralizing, wasting, frustrating and damaging job to most Vice-Presidents.

We have had 41 Vice-Presidents in American history. No President, in spite of the assurances that all modern Presidents make, has ever given his Vice-President any serious duties. I do believe that before we get into the details and somewhat scholastic argument about which way to nominate a Vice-President, we ought to consider whether we ought to have a Vice-President at all, and as part of that whether we can reverse the whole course of American history and begin to give the Vice-President a serious role in working for the government. I think these are the antecedent problems.

DEAN REEDY: I hate to revive anything as discredited as the

domino theory, but looking at this thing, the problems that I have with all of these proposals are that we push over one domino and an awful lot of others fall in place.

I don't think you can give the Vice-President anything meaningful unless you are willing to revise the Constitution in such a way that executive authority is divided. The basic problem with the Vice-Presidential office is that we have the written Constitution which states that all of the executive powers are in the hands of one man. And from my own personal observation, both under Vice-Presidential direction and under Presidential direction, and from observations made by friends of mine who have been in other administrations, it has become very obvious to me that Presidents are quite jealous of that exclusive possession of power and that also they have all sorts of ways of maintaining it, regardless of what the law says.

I think here you are in a realm which law cannot reach, and that if you are going to enlarge the office of the Vice-President, I think then you have to go into the Constitution itself and find some way in which you can have a multiple executive branch of the government, or possibly go to a parliamentary system where you can make the cabinet officers responsible to the parliament rather than to the President.

When you start looking at it from that standpoint, you run into a number of problems. There is one point I would like to make here about the nomination process. When we talk about reforming, we are not talking about substituting one law for another, we are not talking about amending a law. What we are talking about is writing a law in a field where no law exists.

Up to this point, the selection of the Vice-President is a thing that has arisen by an evolutionary process. It has arisen out of custom. It has arisen out of responses to the system. And, therefore, what we have to realize is that what we are doing is saying that an evolutionary process does not satisfy us and that we are intent on changing evolution. Now that is not, in and of itself, a reason for not doing it but it is a reason for examining why things are the way they are, and I think the reason things are the way they are is because of our governmental structure.

We have one Chief Executive, period. And I think that if you start defining the role of the Vice-President, you are going to find that Presidents will develop a remarkable faculty for draining those roles of all meaning. It is a very simple thing to do, you know. The buck stops at one certain desk. It is easy to see that all subordinate agencies will either fit into that structure, or get sucked dry of any juice and vitality. And I rather think that if you are talking about changing the Vice-Presidency, then essentially you have three alternatives: one is leave it

where it is; second, abolish it; or, third, change not the Vice-Presidency but the constitutional structure insofar as it applies to executive power.

SENATOR BAYH: I have had no experience at all in what really goes on in the mind of a Presidential nominee. I was foolish enough at one time in my life to have some thoughts go on in the mind of a would-be Presidential nominee, so I have given a little tangential thought to the qualifications and how you would proceed, but that is not like being in on the final decision-making process.

We have heard from two who have a pretty good idea, were involved in this process, and can speak with some authority as to what really happens. We have another to my right who more recently was involved and perhaps some of the rest of you have been. I have had the opportunity to hear some of these gentlemen express their thoughts before a Constitutional Amendments Subcommittee⁵ and I guess I come to this Symposium as a realist who, hopefully, hasn't lost all of his idealism.

Realistically, ladies and gentlemen, we are talking about making basic changes, and as to those that have been suggested here or have been referred to here, we are talking about having to convince two-thirds of the United States Senate and two-thirds of the House of Representatives and three-quarters of the state legislatures to make the change. Despite the fact that we have gone through a rather harrowing experience which I hope will convince us to change the way we choose both President and Vice-President and to have a direct popular decision made, I do not believe there is enough support there for some of the ideas which may be theoretically sound, like disposing of the Vice-Presidency, which Arthur presents a very persuasive case for, and some of the ideas like those Chuck presents for the Vice-President out there running on his own; I can't see that we are going to have that kind of support there. And I ask myself whether we really want it or not.

. . .

Now, the popular element, the idea of a popular vote, disturbs me. I am a great election man and normally I would say, "Let's have a special election," but as you look at the experiences that surround this, the only experiences I have had with change, death or resignation, there is a great need for somebody to come along and say, "Okay, let's put it all together, let's have restored faith in the system of government." And despite my strong support of the direct election process, at

5. Senator Bayh has served as chairman of the Subcommittee on Constitutional Amendments of the Senate Committee on the Judiciary since 1963.

a time when we need unity, at a time when we need solidarity, an election is a very divisive instrumentality. If you have a Vice-President there, we have seen the people willing to accept that person and abide by his leadership, and for that reason I think the present system is about the best we can have.

. . . Some here disagree with the results of the twenty-fifth amendment and I guess as one of the putative fathers, I have a little lack of objectivity. But in the process of putting that together, I came to the conclusion that there is only one way you can have a more effective Vice-President while he is serving, and that is to have him closer to the President, more reliable to the President, not chosen by a separate clique. The practical matter is, there is only one Executive, and I don't think we want the Vice-President to have a political base of his own and to constantly divide and contest for the decision-making process with the President. And I think the present system of letting the Presidential nominee determine who that Vice-Presidential nominee is, having a major role in that, is indispensable.

The matter that concerns me is time, pure and simple time. Now, the Kennedy study,⁶ that suggests a change in the format of the conventions, I think is a step in the right direction. I don't think it goes quite far enough, frankly, and I would be prepared, realist as I am, to take a little broader step. I would like Mr. Kirbo to describe some of the thoughts, if he would, that went on during the very wonderful period of relative leisure in which the Carter campaign had a chance to think about this. What concerns me is that too many nominees do not have a chance to give ultimate consideration, they don't know what all their options are going to be because they don't know whether they are going to win, and this time we had a chance to get a studied thought process. And one of the ideas that I suggested—but I am surely not wedded to—is to go a step further than the Kennedy study and say there is nothing sacrosanct about the Vice-President being chosen by the convention. Bob Griffin says we ought to go the twenty-fifth amendment route. I would rather have the people involved in the choice.

What I suggest is we consider saying, "All right, we go home, the convention is adjourned;" the nominee then has a chance to think

6. Institute of Politics, John F. Kennedy School of Government, Harvard University, Report of the Study Group on Vice-Presidential Selection (June 14, 1976) [hereinafter cited as *Harvard Study*]. The Institute's substantive recommendations were that the major parties (a) rearrange their convention schedules to allow more time for considering Vice-Presidential candidates, (b) establish advisory committees to assist Presidential candidates and the convention in selection, and (c) request that Presidential contenders submit lists of preferred running mates to the advisory committees.

about it, and he sends a secret ballot to all the delegates—there can be one name on there or two or three names—and then the delegates vote on that. That way you have the people involved in the situation, but they are people who are directly responsible to the President, and then in the final analysis the democratic process of the people determining who their President and Vice-President are going to be, the general election, really makes it democratic in the final sense.

MR. FEERICK: I wanted to speak to the last comment, Senator. You would be willing to risk, I take it, with your suggestion, the potential negative impact on the ticket were the presidential candidate's choice rejected in that secret ballot, in that two or three-day period after the convention?

SENATOR BAYH: Yes, I am, and I am realistic enough to know there is probably going to be one person among equals on that list who is a little more equal than anybody else, and many of the delegates and those to whom the delegates respond are going to have a way to find out who that most equal is. Nevertheless, the present process, the President absolutely rubber-stamping the man who history has shown could very well be his successor, is not there. The delegates are up in arms and the nominee does try to force someone on them, but there is a chance of having the democratic process work.

I don't believe there is just one person that automatically fits the role. I think Governor Carter did a fantastic job of picking the person, who I just happen to believe was the best person from the beginning, but he had time to think about this.

PROF. KIRBY: I want to support the notion that the twenty-fifth amendment deserves some applause and note the fact that it places our subject in a whole new perspective. I just finished reading the Chairman's book on the twenty-fifth amendment⁷ which I think is must reading for anyone interested in this subject. For 37 years between 1841 and 1965 the Vice-Presidency was vacant as a result of the Vice-President succeeding the President.

PROF. SCHLESINGER: No harm came to the country as a result of that.

PROF. KIRBY: No, but not once did the succession go beyond the Vice-President to a member of the Congress. We were just lucky that our Presidents without Vice-Presidents have been such durable pieces, because I think it would be dangerous for this country for any period of time, especially in the nuclear age, for the Presidency to be taken over by a member of the legislative branch, perhaps of the opposite party, with no familiarity as to the secrets of the executive branch.

7. J. Feerick, *The Twenty-Fifth Amendment* (1976).

It is very important, I think, that the Vice-President be loyal to the President, acceptable to the President, and that is where the twenty-fifth amendment has given the Vice-Presidency a new significance. We have had a President resign, and we have also had the first dishonorable resignation of a Vice-President in our history, within the last three years as a result of the twenty-fifth amendment. It made possible the Agnew resignation. It made possible the Ford succession and the Nixon resignation. So now our Vice-President just doesn't wait around for the President to die; he waits around for the President to die, be impeached or resign. We just don't know what impact that is going to have on the relationship between those two offices and the stability of the Presidency.

We need really to digest the significance of the twenty-fifth amendment and our experience of the last three or four years before we make any major changes in our present situation.

MR. MITCHELL: Mr. Chairman, Senator Bayh said several things that I feel I have to comment on. Because my point of view would be a little bit different from his, I think I should preface it by saying that I think he has made some monumental contributions with respect to Presidential succession and I applaud him for them. But my differences with him stem from his observations with respect to the Electoral College and a little bit with respect to the succession to the Presidency.

But with respect to succession, I think we must look at the possibilities which would arise, for example, if you abolish the present system of electing the Vice-President and chose the Speaker and, in the absence of the Speaker, then the President pro tem of the Senate. It wouldn't have been so bad, in fact it might have been very good for some of the things that I am interested in if Carl Albert had succeeded to the Presidency as the Speaker, but it would have been a disaster if the president pro tem, who happens to come from the State of Mississippi, had succeeded to the Presidency of the United States.

I think we have to remember that our country is a magnificent example of how minorities with different points of view and different interests live together and work together. I am happy to say one of those minorities was just elected to the Presidency of the United States, which is a very good development in this country. But we do not yet have in this country a system of selecting people for the national office of the Presidency which really gives adequate safeguards to the various minority interests, economic, racial, religious, political, in the selection of that person. I think that was very apparent in the primary system. I felt that was very unfortunate, because it gave an opportunity to emphasize parochial as distinguished from national interests. In my

opinion the convention selection process, if it is properly organized, is the best way of selecting the national candidates. But I would say we need a system under which we can give due weight to the interests of all of the minority parts of this population, whether we agree with them or not.

I think we have gotten now the safest system, the Electoral College, convention selection, and succession as provided by the twenty-fifth amendment. It seems to me this was a thing which would have precipitated perhaps physical combat among opposing forces in this country had it not been for the twenty-fifth amendment and the way in which Congress handled that.

So I think we really ought to start with how we can improve existing machinery in the convention, in the Electoral College process, and in the succession process, rather than, as you pointed out, embarking on a course which would get us involved in having to get two-thirds of the Senate and of the House and three-fourths of the states of the Union.

PROF. KIRBY: Getting back to another question, I think it is most important that the compatibility feature spoken of by Governor Peabody be preserved in the selection of the Vice-President, because if he is not someone the President thinks is loyal to him and capable of continuing the mandate that the President got in the previous election, we are not going to have the sort of relationship that we want to prepare for succession.

GOV. PEABODY: May I speak to that compatibility very briefly.

I was a Governor who was replaced by my Lieutenant Governor. He ran against me in a primary and defeated me and almost succeeded me. During the course of that campaign, even though we were not compatible, the full reins of the executive power were in my hands. He had none. We accomplished, I felt, a remarkable success. A remarkable number of laws were passed and at no time was the state of Massachusetts threatened by this division between the Governor, who had all the executive power, and the Lieutenant Governor, who was trying to unseat him. And I think that much too much attention is given to this question of compatibility because, during twenty-two percent of our history, we have had a Vice-President in the President's office. As has been well pointed out by Joel Goldstein in his paper and as is on the record, the result is that the President thus selects his successor. Under our present system, we are permitting this great power to be given to a President of the United States, and this is the ruination of democracy, as I understand it.

DEAN JACKSON: I would agree with Senator Bayh that the recommendations of the Harvard group⁸ were only procedural, not radical

8. Harvard Study, *supra* note 5; see p. 720 *infra*.

surgery. The process of vice-presidential selection is irresponsibly primitive. But if I can take a moment to set the stage and to convey some of our assumptions behind the report, perhaps they can provide some better focus on our motivation for reaching those conclusions.

We began with the realization that, at the worst, American Vice-Presidents are selected without careful thought or advance preparation, with no time for anything but the most superficial background checks of candidates who don't have adequate exposure, by a just-chosen and exhausted Presidential nominee, advised in the last-minute decision in the wee hours of the morning by political power brokers and electoral mathematicians and according to standards, more important, which may be irrelevant, if not in direct conflict with the needed qualities of competence to succeed to the Presidency.

That process is rich in tradition. In 1848 Millard Fillmore was chosen partly on the ground that he wouldn't overshadow an undistinguished running mate and partly because he was assumed to be anti-slavery, which he wasn't. Four years later William Rufus Van King was picked because he was a Southerner but he had to take his oath of office in Savannah because he was ill and dying of tuberculosis, a fact not found an obstacle to his selection and later election.

As Joel reminded us in his very useful paper for the Symposium,⁹ Chester Arthur's prior public service was limited to seven years as a customs collector for the Port of New York; Vice-President Garrett Hobart had never held a post higher than state legislator; and Henry Davis was selected by a bankrupt Democratic Party because he was a man of considerable wealth, but he was also a man of considerable years, 80 to be precise.

Three observations stand out and really motivated this study. I will quickly summarize.

First, a central paradox of the American political system is that, on the one hand, we select Presidential nominees by a thorough process of exposure and deliberation that grows ever more tortuous and grueling, now encompassing 31 primaries over seven months. This year on the Democratic side it involved as many as twenty substantial Presidential candidates. But on the other hand, we continue to leave the designation of the vice-presidential contender largely to the personal judgment of the Presidential nominee, with twelve hours to spare and with little public exposure.

Secondly, the Vice-Presidency has become the major avenue to the Presidency itself. Of 38 elected Presidents, thirteen, more than a third, were first Vice-Presidents. Of the thirteen Presidents this century, six were Vice-Presidents. As Jimmy the Greek might say, the odds are

9. See Appendix B.

now one to two that the incumbent Vice-President will one day sit in the Oval Office.

Thirdly, recent events, particularly the Agnew and Eagleton affairs, suggest the present method of selection contains an unacceptable and inherent degree of risk.

I will quickly summarize in five sentences the recommendations of the Harvard report and perhaps they can be dissected and criticized in their entirety.

We start first: reduce the element of risk and error by placing greater importance on the office and the act of selection, specifically by encouraging early deliberation and thorough background investigation of Vice-Presidential aspirants by Presidential candidates, and wide and formalized consultation with party officials consistent with the recommendations of the Humphrey Commission¹⁰ report which encouraged Presidential candidates to provide a list of potential Vice-Presidential candidates in advance of the convention itself.

Second, encourage public accountability by a more open and less secretive process starting well before the convention itself.

Third, allow more time for the candidate by rearranging the convention schedule, moving deliberations on the platform discussion from before the Presidential nomination to after the Presidential nomination, allowing 36 hours rather than the present twelve for the selection of the Vice-President.

Fourth, encourage extensive media coverage both before, during and after the convention itself. I think the Vice-Presidential debates this year helped alleviate the problem that the media in the past had some difficulty in stressing competence to be President as the single most important criterion. Our conclusion was that it is implausible that the dictates of short-term political balance could be so compelling and the available set of high quality political figures so limited that a Presidential nominee need be forced to sacrifice competency to campaign victory in a possible successor.

MR. YOUNG: Dean Jackson cited a number of perilous, in retrospect, nineteenth-century succession problems, particularly the Arthur problem, which is probably the single most dangerous transition that we had.¹¹

10. The Vice-Presidential Selection Commission of the Democratic Party, known as the Humphrey Commission, which was created after disclosure of medical data led to Senator Eagleton's withdrawal from the 1972 ticket, recommended changes in Party rules to give Presidential nominees various options for delaying the selection of running mates and to establish an advisory and screening committee to conduct investigations before the convention. See 119 Cong. Rec. 40647 (1973); Washington Post, Dec. 14, 1973, at A2, col. 1.

11. Vice-President Arthur's views on certain major issues of the day were the opposite of

I would like to move on to the more recent past. It seems to me that we need to retain essentially the present process in selecting Vice-Presidential nominees, because we need to have some means of judging in which direction the next administration is going to go, and the Vice-President probably is going to be the only major appointment that the Presidential nominee will announce in advance of the November election. Particularly this year, we had a successful nominee in the Democratic Party who was virtually unknown outside of Georgia at the beginning of the year. Further, he had no record in the Congress of the United States, no voting record. We had very little to go on at the beginning of the year as to what course Governor Carter might follow if he became President of the United States.

One way we began to form an opinion—and this is repeatedly indicated in the press coverage—was to evaluate the process by which he chose the Vice-Presidential candidate. He went about it very carefully. He took a couple of weeks in a careful examination of about seven principal figures, and it was widely concluded—and we will have to see how it works out—that the choice of Senator Mondale indicated perhaps a shift toward the liberal end of the spectrum. But he had not announced any appointments of others in advance of the election; we had very little to go on at this point as to which way he would lean in his administration.

The Carter example is also useful, because, like most recent candidates, Carter had the nomination wrapped up several weeks in advance of the convention. This has been the case at probably 80 to 85 percent of the conventions in the last 30 years. For that reason, in most cases the Presidential or the likely Presidential nominee can indeed devote considerable time, if only he will do so, and I believe that the several weeks that were available to Carter were sufficient for him to make a suitable selection.

The idea of selecting the nominee at the convention means that the new Vice-Presidential nominee will be examined carefully by the media, he will be exposed to considerable scrutiny at the time of the convention, and the fact that the convention at least has a veto power over the choice of a Vice-Presidential nominee indicates that we have at least a little bit more democracy in action because, obviously, the delegates at the convention have been chosen at large by the public; whereas, if you have one of these mini-conventions coming after the national convention, perhaps with the Democratic National Commit-

those held by President Garfield, who died 80 days after being wounded by an assassin's bullet. However, both men were Republicans. After Arthur became President the election of presiding officers in both houses of Congress was delayed for some time because of concern that Democrats would be installed and might succeed to the Presidency.

tee or the Republican National Committee making the choice, this is less democratic and I think a less satisfactory means of selecting the nominee, except in a crisis brought on by a nominee's resignation as in 1972.

PROF. SCHLESINGER: I don't think that historically it is possible to deduce the policies of the President by the man he chooses as Vice-President. Sometimes the candidate may choose a man as a running mate because he agrees with him; sometimes he may choose him because he represents a faction of a party he seeks to conciliate. We know in 1924 John W. Davis selected Charles W. Bryan, Governor of Nebraska, William Jennings Bryan's brother, as a running mate. No one could conceivably have supposed that Mr. Davis did this because he and Bryan were in agreement. He did it in conciliation of the Bryan faction of the party. Franklin Roosevelt chose John Nance Garner.

It may have been true for Governor Carter and Senator Mondale; but if so, it represents rather an exception to the standards that Presidential candidates usually use in choosing Vice-Presidents.

MR. KIRBO: . . . The greatest defect you have is that the system has been administered by human beings, and any system you select with a human element entered into it, you have some odd things happening. As for the suggestion that you lay out two people or ten people and let a convention select among them, that is just not real. All you are going to do is put a heavier burden on the President or the nominee and his staff to select the man out of that ten or out of that five that he wants, and that is exactly what is going to happen. You are just dealing with a facade rather than something real.

SENATOR BAYH: Could I ask Mr. Kirbo a question? He has been more intimately involved in a Vice-Presidential decision-making process in which there was a time frame that had some degree of reasonableness than anybody else I know.

Do you believe that having the kind of time that the Pennsylvania primary and the other facts of life gave you before the convention in New York made it possible to make a more intelligent decision than if that decision had had to have been made in 48 hours? Although you might quibble with the list, and I can understand that, would it be helpful, given a fourth ballot or fifth ballot on the Carter nomination in New York, to then have had some sort of a vehicle which would have given you a matter of days to perform the function that in this election, in this nominating process, you were able to do beforehand?

MR. KIRBO: Well, that is the only suggestion I would have, or criticism, under the present system, that there is a possibility of your being in a position where you don't have enough time to reflect on it. But I think that there are several ways that that can be extended.

Now, at the same time you can have too much time to make a judgment. And a man that is running for President who hasn't given some thought to the subject of "who my running mate is or might be" until the night he is nominated is not apt to be nominated in the first instance. I know we began early in the process to contemplate that. And at the time of the nomination, we had a list that was informally developed, that was not total, but it was a list out of which the nominee selection came. So it was a matter of checking them out. And I could see that we had more time, and I think it sometimes can be increased and that would be of a certain help. But I was glad when the time ran out, frankly. Because you can just go on and on, and every day you are going to get some new names coming in.

MR. FEERICK: Mr. Kirbo, do you see any merit in the suggestion of post-convention procedure for deliberating on a nominee for Vice-President?

MR. KIRBO: I think it ought to be decided by the same convention, and it ought to be that maybe the convention time ought to be stretched out some. But it presents all sort of problems about money and about holding your people and all that. But I think that can be reconciled, and I think there ought to be some more time involved.

DEAN REEDY: I want, since it has been raised, to address myself to this problem of time for the selection of a Vice-President.

In my judgment that is the one thing we probably have under ideal circumstances right now. I think we get a little too obsessed with orderly procedure sometimes and assume virtues to orderly methods of doing things that may not necessarily be there. Because to me the conditions under which the Presidential nominee must act at the convention bear a very strong resemblance to the conditions under which he must act as President. If the man, if the Presidential nominee, the night of the convention—I assume Mr. Kirbo is absolutely correct; any serious candidate would have given some thought to it before that time—is incapable of making a prudent judgment on his running mate, I would have very strong reservations as to how he would handle himself in a conference with Mr. Brezhnev or if there were a series of crises around the world. And I am not at all certain that we would accomplish anything if we were to adopt a sort of aseptic method of selecting the Vice-President, which is really what we are trying to do with these various proposals. We are trying to say, eliminate political considerations and do this on a logical, orderly basis; I myself regard the Presidency as a political job. I don't think we gain anything by trying to introduce elements of administration that really don't apply.

There is one other point that I wanted to make. It seems to me that

we have a little teleological question involved. Presumably, if we are going to change the method of selecting the Vice-President, we are doing it for the purpose of improving the Vice-Presidents that we are going to get. From the conversation around this table, the major criterion that I have heard so far as to the qualifications of a Vice-President is that he should be fit to be President. And I quite agree with Mr. Kirbo; I don't think there is any on-the-job training. The only way you get training as President is stepping into the White House and starting to administer the place. Nothing prepares you for it, nothing.

But if we assume that we are doing this because we want to get better Vice-Presidents and if we assume a better Vice-President is a man who can become President, shouldn't we address ourselves to the qualifications of the President? Just what are the qualifications that make a good President? If we can answer that, which I don't think we can, then I think we can go ahead and say something sensible about how you select a Vice-President.

MR. GOLDSTEIN: The idea of allowing the Presidential candidate more time has an appeal to me partly, I think, because it seems to me that no matter how well-intentioned the Presidential candidate is and no matter how much thought he gives the question before his nomination, the circumstances aren't really right for him to give it a full consideration in that he doesn't know whether someone will accept the nomination. He doesn't know whether—he can't really go to a rival candidate and say, "I would be interested in having you as my running mate and I would like to see your medical reports and your financial reports." To me this is one reason why the sort of post-convention scheme that Senator Bayh suggests would have value in that it would create an atmosphere in which the Presidential candidate could deal with prospective running mates under conditions favorable to making a rational choice.

MR. MITCHELL: With respect to Mr. Kirbo's observation on the role of the convention, in choosing from a list of people that the Presidential nominee would submit, . . . it would seem to me that Mr. Kirbo's observations would make it appear that the delegates really don't have the kind of impact that they think they ought to have and the country thinks that they should have. I'm sorry to say, I think he is right. I think we have got to change that. When people make the effort to get elected as delegates to the convention they ought to have some opportunity to influence the result in a way that the public can see and which would mean that we seriously consider the importance of being a delegate to the convention.

I believe the way to do that with respect to the Vice-President is to

have a list submitted by the nominee, because I think such people ought to be compatible with the President, and on which the delegates have a bona fide opportunity to vote as individuals, not by a unit system.

SENATOR GRIFFIN: I might say, as President Ford's floor manager at the recent Kansas City convention and having been a delegate at the 1968 convention when President Nixon was first nominated, I bring a little different perspective, I think, from that of Mr. Kirbo, who worked closely with a candidate whose nomination was assured well in advance of the convention.

I think it was Mr. Young here at one point who rather lightly passed over the fact that the Presidential nominee, of course, could dictate—I am sure he didn't use these words—dictate his running mate, and that would be more or less “automatically rubber-stamped.” Just for purposes of the record and to put this in some sort of historical perspective, I think I might recall that in 1968, at Miami, Mr. Nixon had a great deal of difficulty getting that nomination. Mr. Rockefeller controlled the New York delegation. George Romney controlled the Michigan delegation. Governor Rhodes controlled the Ohio delegation. Governor Reagan controlled the California delegation. It went on and on. And none of these people was going to put their delegates behind Mr. Nixon at that convention. I can't say with authority that this was the case, but it has been widely reported, and I don't know that it has been denied, that the one way that Mr. Nixon finally became sure of getting the Southern delegates to barely give him enough to get the nomination was that they reached an understanding that the Southern delegation would have a veto power on who would be nominated for Vice-President.

Now, I wasn't as close to Mr. Nixon in the 1968 convention as I was to President Ford in the recent one. If the situation was as I have described it, then it certainly seems to introduce, I think, another element or consideration which up to now I don't think has really been emphasized. In conventions, then, some have the luxury of focusing on the political considerations of getting elected in November, and others must take into account getting the nomination. Sometimes those considerations are much more immediate and allow a lot less time to take various factors into account.

In the recent nomination of President Ford, it might be of some interest that we seriously considered advancing a proposal at an early stage of the convention to change the rules and provide that we delay the adoption of the platform until after the President had been nominated and then turn to the platform in order to have a day intervening. But I think that it might be of interest, somewhat ironic

perhaps, that while we would have argued strongly that we wanted to reform the process of selecting the Vice-President, one of the major considerations would have been the advantage to the Ford camp of delaying a possibly divisive battle on the convention floor over some very divisive issues such as the Panama Canal until after the nominee had gotten the nomination.

In the case of the selection of Bob Dole, I was one of nine people who met with President Ford between the hours of three and 5:30 in the morning, in the Brown Center Hotel. We recessed then and came back about nine o'clock and met again until about 10:30. At 10:30, the President had arrived at his decision, after consulting with the people there. I think it should be emphasized, however, that a lot of work and a lot of staff investigation had gone into the identification and checking qualifications and background of some two dozen people well in advance of that meeting, and that at that point President Ford, as has been reported in the press—I'm not really saying anything that is not already public—had more or less narrowed the choice down to four and asked for advice and suggestions and discussion concerning those four. He believed strongly, and I think everyone there did, that every one of those four people was well qualified to be President of the United States. We start with that.

I think the question that remains, however, is: to what extent do other factors enter in and to what extent is it in the interests of the country, for example, that they do? Joseph Kraft has written a column about the fact that one consideration in selecting Bob Dole was that he was acceptable to the Reagan camp, and that is a consideration of a kind that Mr. Carter didn't have to take into account.

I end up my own analysis of the whole process concluding that, while Arthur Schlesinger's suggestion has a lot of merit, I agree with Birch Bayh that the people really want a Vice-President, and that it would be too divisive and disruptive in many instances to have a special election.

I then go to the next stage of my thinking and suggest that the people really don't have very much to say in the present process. It is very limited, in any event. Certainly they have very little to say in terms of the selection of the nominee at the convention. Once he is selected and coupled with the Presidential nominee, it seems to me that the public has very little to say, really, in the election of a Vice-President.

MR. FEERICK: In terms of selection, Governor Peabody has suggested earlier today, and in a number of speeches and articles, that he thinks one way we can improve the entire process is to encourage

candidates for the Vice-Presidency to run for the office, to run in primaries. Senator Smith has advocated, I believe, a similar concept with reference to the Vice-Presidency. I would like to ask Senator Smith to comment on whether we should change the selection process along the lines that have been recommended. Don't you think if we had a separate election for the Vice-President along the lines of a direct primary, the potential danger is to bring together a team that can't function together because they come through a different selection mechanism and potentially may be independent of each other?

SENATOR SMITH: That doesn't seem to be a problem, as far as I am concerned. I would have both the President and the Vice-President nominated by direct primary. I have felt that through the years, as I think is well known. I think that we have differences between the executive and the legislative branch and it hasn't brought about too much of a problem. No, I would trust the American people, if you could get them to realize what their responsibility is.

What people want, I think, is a part in the election of the Vice-President, and this they are not getting through the convention.

I may be subjective in this, but I had an experience which I will take just a minute to tell you about. In 1952 there was a group who proposed me for Vice-President. I didn't do anything about it. But they had about 250 pledged votes for me. With the contest between Taft and Eisenhower, there was such a rift and so much bitterness on the part of the Taft forces that they threatened to vote for me against Richard Nixon. So, under the advice of Governor Dewey, General Eisenhower sent word down to the floor: "By no means let Margaret Smith's name come up for a vote, because she has 250 pledged delegates who with the Taft forces will create a split the party cannot stand!"

This is why I said if they are going to continue with the convention system, then let us require the candidates to submit a list two days before the day of the voting, of not less than three who would be acceptable as running mates. I think this would be very logical and very easy to follow. I don't understand what is meant by Presidential candidates not knowing what they are going to do. No one becomes a Presidential candidate overnight. And I am sure no one runs for President without giving some thought about those people he would like to have around him. So I don't have much patience with the feeling that you have to have extra time beyond the convention, if they are going to continue with a convention system.

MR. FEERICK: I take it from what you said that you would require a Presidential candidate to submit the names of three or four people before he was nominated as the candidate?

SENATOR SMITH: That's right, I would require he either call for an open convention or submit a list of not less than three at least two days before the day of voting so that the people themselves would know what was going on.

PROF. KIRBY: I think there is another factor here, too, that we have to remember. The selection of the Vice-President is a very important part of the political process itself. I think that this is one of the means through which we sustain a degree of unity in this country. I can still remember Kennedy saying to Johnson that he wanted to be President of a united country but he certainly couldn't be President of a united country unless he could be the leader of a united party, and he could certainly not be the leader of a united party, in his judgment, unless he and Johnson could get together somehow, because at that particular moment in history they represented the major wings of the Democratic Party. And by putting Johnson on the ticket, he was actually solving a problem of unity, and unity is an extraordinarily important thing in our country. You can't manage the country unless you can keep it together and, to a certain extent, I don't think a President knows all of his problems until after he has arrived at the convention.

Conventions are wonderful in one respect. They are a microcosm of the political process. They combine the whole political process into two or three days, all of the frustrations, all of the tensions, and I think that decisions of this kind are much better made under the tensions of a convention and after the President-elect has had an opportunity to see with what he must really cope.

I don't trust the decisions that he makes before he gets to that convention. The decisions that he makes before he gets to the convention are rational solutions—and by that, I mean solutions that follow certain patterns of logic—which may bear no resemblance whatsoever to the real situation that exists in the country. And I am very, very hesitant to start recommending so-called positive ways of doing something unless, first of all, I can see that it will give the Vice-President a separate political base; second, give him that separate political base without doing violence to our society; and third, unless it offers some method of making up the various unifying factors that are capable of being arrived at through the present means of selection of the Vice-President.

Presumably, if we are going to change the method of selecting the Vice-President, it is because we want a better Vice-President, and I submit: what are the standards of a better Vice-President? Just what

can we do that is going to guarantee that we have better Vice-Presidents or, for that matter, better Presidents?

SENATOR GRIFFIN: May I add, John Kennedy not only unified the party but won the election.

DEAN REEDY: South Carolina and a couple of other places, yes.

PROF. KIRBY: I don't think it is that we want a better Vice-President at the time he is chosen to be a running mate. We want a better Vice-President at the time he succeeds to the Presidency—and I was impressed with Dr. Schlesinger's arguments this morning that Vice-Presidents tend to diminish in office as they have been used in recent years—with something to keep his spiritual muscle from withering. Giving him responsibility, actual and apparent, seems to be the best way to do that.

MR. SPANN: I am here in an ex officio capacity, but I have certain observations from my listening. Governor Peabody earlier today talked about standards for the Vice-Presidency, and he suggested that the first standard was to be qualified to be President, an obvious standard; secondly, to help the ticket get elected—and then later suggested it might also be helping the candidate get the nomination as one further step on the route; his third, that he be compatible with the President.

These may or may not be standards which can be applied. I think in many instances they turn out to be inconsistent standards. The man who may help the ticket to get elected, help the candidate obtain the nomination, may not necessarily be the best qualified or available person to be President. And selecting him on the basis of getting the ticket elected, which perhaps was the case in the Kennedy-Johnson situation, doesn't mean there is going to be compatibility. To try to get them all into this system, it seems to me, is an almost impossible objective.

We talked a lot about Carter-Mondale. It is the obvious thing to talk a lot about, since it just happened. I think Mr. Mitchell's fears probably are not justified. I think it will work the way you think it should. Often only an incumbent President with a good chance of being nominated without opposition can look down the line as to whom he wants as his running mate. Carter had that opportunity and he worked at it. I know we had about five different people going in and out of Plains, spending a day or two down there and talking to him, and so on. I think in this peculiar circumstance, and because he had the fortunate opportunity of making that sort of selection, that you perhaps had more compatibility than you would have in a different situation. In fact, you did have the pre-screening and study opportunity which some of these proposals have suggested ought to be done. I

am at a loss to believe that 36 hours would be much better than twelve. The fact that the decision is made in twelve hours, the idea that one more day would make very much more of a difference—I think it takes a longer time than that. Maybe 36 is better than twelve, but not by any great degree.

Still, I don't see how, in the present system, you divorce the purely political elements from the objective of having a first-class, top-notch standby President, if that is what you want to call him.

These are reactions that I have had in listening. I can't find any consensus. I don't envy the American Bar Association Committee's job tomorrow in coming up and telling us what was decided, what they were led to believe by the panel discussion, as valuable as it is.

Independent election has been mentioned. I think this could be a tragedy. You can get complete incompatibility in this. Of course, Governor Peabody mentioned his Lieutenant Governor. I take it that is an independent election, isn't it?

GOV. PEABODY: It used to be.

MR. SPANN: It still is in Georgia. And one thing the Carter campaign has never said very loudly, is that the reason he really didn't do all he claims to have done for the State of Georgia was that his Lieutenant Governor was Lester Maddox, and Lester did control the Senate. He made the committee appointments. While Carter had a working majority in both the lower House and the Senate in Georgia, he didn't control the Rules Committee; Lester did. And he couldn't get many things on the calendar. He was frustrated for four years.

There was really no point in saying this in the national election; it was water over the dam. But this was an independent election situation. He was independently selected. This I think would be a far worse situation nationally.

I suppose I am coming down to the view that I have not heard anything about change that would indicate to me that we have any bright prospect which would improve greatly on what we have already.

MR. FEERICK: What about Mr. Mitchell's suggestion of requiring a Presidential candidate to submit a list of prospective nominees with whom he would feel compatible? Do you have any reaction to that?

MR. SPANN: He might submit such a list; of course, it ought to be a bona fide list. Another thing that bothers me is: when do you submit it, immediately after he is nominated? Nobody has told us that.

MR. MITCHELL: I am a practical person in political operation. If the prospective Presidential nominee had to designate somebody as his running mate before he got the nomination, he might very well never get the nomination. I would think that I have a lot more confidence in

the common sense of Presidential nominees than maybe some other people have. But it would be inconceivable for me that a person like Governor Carter, as I have listened to him—I don't pretend to know him personally, I have talked with him—it would be inconceivable to me that he wouldn't have enough common sense, integrity and belief in the people of this country that he would fail to submit a really bona fide list of prospective Vice-Presidential candidates with whom he could work. If you lose that faith in people, you lose faith in everything.

Assuming that I am correct with that assessment of Governor Carter, I would assume that once he got the nomination, he would submit to the convention a list of people that he honestly felt were capable and people that he could work with. In my judgment, that would be very helpful to the delegates in reaching a conclusion that they had meaningful participation in the convention, which they don't now have.

MR. SPANN: Well, I am sympathetic to the idea of meaningful participation. Some way ought to be developed to give it to them.

On the other hand, if the list is to be submitted immediately after the nomination of the President, the delegates are going to have little chance to appraise and select among the three or five people that may be on the list which the nominee would be tendering to them. But if the list were submitted in advance, it may as you say hurt his chances of getting the nomination. Secondly, there is always the possibility that he may want to submit someone who has been a rival Presidential candidate, and obviously he couldn't submit that in advance. He could, of course, after he has gotten the nomination. And this person would have been evaluated, of course, because he sought the Presidential nomination, but others would not have been evaluated by the delegates, and I don't know that they could give meaningful input in the short time that they had after the Presidential nominee said, "Here is my list" and they have to have a vote.

I think the idea of pre-screening of candidates is desirable. Carter had that opportunity, as you said. But there are going to be many instances when this is not possible, so that any general answer doesn't seem to me to meet all situations.

DEAN JACKSON: I am disappointed by Professor Schlesinger's somewhat cynical attitude about the possibility that Governor Carter or future Presidents will feel an obligation to use their Vice-Presidents more wisely or more effectively.

There are two aspects, selection of the Vice-President and utilization of the Vice-President. And I think in terms of the selection process, only four years ago we had Agnew and Eagleton, and four years later I

think we found Governor Carter conducting the most thoughtful, professional and thorough Vice-Presidential screening process in American history. He did have the luxury of time, but that doesn't fully explain Mr. Kirbo's going through the financial records and medical data with a full-time staff of aides months in advance of the convention. It doesn't fully explain his personal interviewing of five prominent candidates chosen not exclusively, I think, for their political value. And I think we have seen the media giving heightened importance to the office of the Vice-Presidency. We saw the Democrats conducting exhaustive debates through their Vice-Presidential Commission chaired by Senator Humphrey.

The Republican Rule 29 Committee was similarly motivated and some members worked to change the agenda of the 1976 convention, and Ronald Reagan proposed 16-C, which I thought was a bad idea,¹² but again elevated the office and the importance of the selection process. The Vice-Presidential debates were unprecedented, and were televised.

I think we are seeing reforms, increased importance and greater public expectations about the process of Vice-Presidential selection, and I don't think we can dismiss that cynically. I, for one, am optimistic that 1977 can be a good year for setting precedents in utilization of the Vice-President. We can't dismiss the possibility of public expectations that Vice-Presidents will be used, as Mr. Mitchell has suggested, for substantial positions of public responsibility. I think if the same attitude prevailed four years ago, we would still have Presidents issuing Gulf of Tonkin resolutions and palming money and perhaps even conducting Watergates.

DEAN REEDY: I think Mr. Jackson has illustrated a point I have been trying to make. A thoughtful President will use thoughtful processes in selecting his Vice-Presidential candidate. A thoughtless President will use thoughtless processes in selecting his Vice-Presidential candidate. An aggressive President may look for a gut fighter in selecting a Vice-Presidential candidate.

The point is this, that your problem again is not with the Vice-President but with the Presidency itself. And I think that if we are trying to get a better process of Vice-Presidential selection, I submit once more, what we must do is get to the process of how to select a President, what process do you have that guarantees that you are going to get a thoughtful President who makes a thoughtful decision?

12. The Rule 29 Committee was created at the 1972 Republican convention for the purpose of recommending any needed changes in the conduct of future conventions. Its final report, on January 1, 1975, recommended further study. Proposed Rule 16-C at the 1976 convention would have mandated disclosure by each Presidential hopeful, in advance of any balloting, of the name of his preferred running mate.

You are not, in my judgment, going to be able to enact any law that will make a thoughtless President a thoughtful one. And I think that what happens is when a thoughtless President thoughtlessly selects a Vice-President, he usually gets defeated because that act in and of itself is a symbol of the kind of President he would be.

This, again, is why I am so very uneasy about proposals to tie the President's hands. Because I think that the Presidential candidate in making his selection of the Vice-President is telling the people of the United States something very important. He is revealing there what kind of man he is in the manner by which he makes the selection.

. . .

Better Screening of Vice-Presidential Candidates

MR. FEERICK: Senator Bayh, you have proposed that the parties select Vice-Presidential nominees by a secret ballot of the delegates a few days after the nominating convention. How can we screen the candidates for Vice-President once they are proposed? I think we only have to go back four years. As we all know, we had a Vice-Presidential candidate of one party who after the election had to resign from office because of conduct committed prior to his Vice-Presidency, and we have had a candidate of the other party having to withdraw from the ticket before the election following certain health disclosures. How do we guard against that type of future occurrence in the suggestion that you have made?

SENATOR BAYH: That is, I think, a reasonable question. But if one is to follow it to its logical conclusion, then Arthur Schlesinger's idea of having no Vice-President at all is the only way you can protect yourself from it, because we are talking about small amounts of difference—whether it is twenty-four hours or twelve hours after a heated and extended nominating process, whether it is 48 or 72 hours under the Harvard plan,¹³ or whether it is a month—that gives the nominee, his advisors, the press, time to go at some of these trial balloons. The reason, I feel, is that we are striving for a fine enough screening to protect us from a rotten egg. Let me say history has shown it is awfully hard to make a screen that fine and we have not found one yet, because the specific example that you mentioned, the Agnew example—you are talking about a man who was nominated for Vice-President twice, was elected Vice-President twice, and served in the office for four years and we still didn't have a chance to screen out the imperfection that later came to light.

So I don't think that we can really effectively strive for absolute

13. See note 5 *supra*.

perfection, but by creating a period, a buffer zone, a time in which the Kirbos and the Carters and McGoverns and the others can have a chance to sit down and contemplate, that we are giving ourselves a better chance of protection. But we are never going to reach perfection.

MR. ARMSTRONG: During the Presidential primary process, Presidential candidates have their backgrounds fully scrutinized and examined. Too often, the Vice-Presidential nominee is only scrutinized and examined after he has been nominated. What methods might be employed to more carefully examine the backgrounds, see if there are any skeletons in the closet?

DEAN JACKSON: It is something we examined during the Harvard study. There are basically three ways you can go about checking.

You can have good staff work early on; you can undergo a thorough process of party consultation, which may be a formalized system. I know that Dean Reedy opposes that. We did propose a formal party consultative mechanism similar to the one which Senator Humphrey's commission proposed.

The third and most obvious is FBI background investigation. We felt strongly that to improvise, without legislative approval, FBI background investigations in 1976 would have been irresponsible, although administratively and legally feasible.

Senator Brock has introduced a bill,¹⁴ which has not received serious discussion in the Congress, I don't believe, to authorize Presidential candidates to submit up to ten names to the Federal Bureau of Investigation for thorough background investigation up to, I think, three months before the convention, upon the written consent of those ten potential Vice-Presidential nominees, with the guarantee of absolute privacy, and a \$50,000 fine and a mandatory five-year prison sentence attached for violations. I don't think those are adequate safeguards against abuse and misuse of that information, and the reason our committee didn't resolve this is that we felt there is a danger of repoliticizing the FBI and making them a part of the political process. "Re-politicizing," yes, emphasizing the "re."

PROF. SCHLESINGER: I honestly think that this whole notion that we should establish a form of scrutiny of potential Vice-Presidential candidates is a terrible idea. I mean, from what we know about the FBI, first about the use to which it has been put and second about its own incompetence, why should we assume this is going to give some kind of sacred judgment on the merits of candidates? They investigated G. Harrold Carswell for months and failed to discover allega-

14. S. 2741, 93d Cong., 1st Sess. (1973).

tions that he was a racist. This notion of confiding anything to the FBI or any other governmental investigative agency is very wrong. This is something where we have to stand or fall on the democratic process. The democratic process is not infallible. One supposes that the electoral process in an adversary situation is likely to bring up any problems with people who are likely to be nominated. But it did not work in the case of Eagleton. He had been through several elections in Missouri, a state with several good newspapers, and everything had failed in that instance. But through most of American history the electoral process, the adversary process has been perfectly adequate.

Rather than this whole theory that we should confide in a bunch of flatfoots in the scrutiny of candidates, the judgment on candidates ought to be made by the people through the conventional processes, and I think on the whole that has worked very well, and I strongly deplore the demeaning notion of why we should do more about Vice-Presidents in this regard than we do about Presidents. If you really think that you have to go through the tax returns and the private lives, why stop at the Vice-Presidency? The Presidency is a far more serious office; why not do it for Presidents? Why, if we don't subject Presidents to it, is the whole apparatus of snoops and spies and so on, invoked as to this meaningless and inconsequential office as if you are going to save the country?

MR. FEERICK: What about the recommendation about a party mechanism, an advisory committee?

PROF. SCHLESINGER: I think if we are going to stick with this horrible office, that all of this business of the submission of lists and every effort to try to solve, as George Reedy has said, a political problem by structural means is a mistake. If the party doesn't have in its own processes through the convention, a judgment on the quality of candidates, then the notion that you can establish a kind of party snooping commission, which is going to hale these people up, then have it for the important office, which is the Presidency. But the notion that the Presidential candidates are exempt from all this but the poor old Vice-Presidential candidates have to come up and show somebody their income tax returns is, it seems to me, illogical, demeaning, and I am against it.

GOV. PEABODY: In concurrence, I think that the safety factor is a disclosure of candidacy in advance of the convention, as my proposals would employ. Then it is left to the delegates, the party, the press, to comment on their qualifications and put it up to the candidate himself who is an announced candidate to disclose his qualifications in advance of the convention. Then if they still were not disclosed, then we must ride on it. Probably lots of things are not disclosed about many

candidates for Vice-President or President which have not come to the fore, but we have to take this chance with the adversary process and the democratic process.

MR. MITCHELL: I agree with Arthur about the matter that you don't want investigative agencies prying into the personal affairs of the people who are running for public office, and that the people ought to be the judge. But with respect to structure, the structure is already there. The only thing lacking is the chance for the people to get in on it, and the only way I see you can do that is to bring it out into the open and give the people an opportunity to vote. It is a fiction to assume that in American political life there is no structure, because it is there, and it is against the public interest for the most part.

MR. GOLDEN: We have had responsible members of the press here all day, and some of our panelists are established and highly experienced journalists. I wonder if I might throw a question out to the press or those people on the panel who write.

James Reston, on May 19, 1976, wrote: "Reporters of press, radio and television are usually accused of being too nose-y in their questions to Presidential candidates. And sometimes they are. But on the problem of picking Vice-Presidents, they have probably been too casual and even indifferent."¹⁵

Can the press help us in any way in making the Vice-Presidential selection process better than it is?

MR. BAAB: I am not a journalist but it seems the press doesn't have much of an opportunity to assist in the process as you are suggesting, because we don't know who the Vice-Presidential candidate is until after the convention and there is not much time between then and the election. I think it would be a different story if you had a Vice-Presidential candidate campaigning with the President throughout all of the primaries, not just in one, as Governor Peabody suggested, but a good many of them. I don't see how you could do it any other way. The hopeful Vice-President ought to be campaigning in all the primaries.

MR. GOLDSTEIN: I think we have been focusing largely on the selection process and the duties of the office. As I suggested, these are really two aspects of the problem. But it seems to me there is really a third aspect, maybe the most resistant to reform. Yet, I think it is important to mention it. And that is the election.

15. Reston, *Who's for Another Agnew?*, N.Y. Times, May 19, 1976, at 41, col. 1.