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Presidential Succession

If Vice President Agnew resigns or is ultimately removed from office by impeachment by the House and conviction by the Senate, the United States will have the first opportunity in its history to acquire a vice president by presidential nomination and confirmation by both houses of Congress. Every vice president to date has been elected as a sort of after-thought to the choice of the President, and there was no mechanism for filling a vacancy in the vice presidency until the 25th Amendment to the Constitution came into effect in 1967. That office has been vacant 16 times for a total of 37 years since 1789.

In the 1960s, Congress took a new look at the problem of presidential succession because of the several illnesses of President Eisenhower and the assassination of President Kennedy. Its major concern was not the filling of vice presidential vacancies but rather continuity at the White House in cases of disability on the part of the President. In the course of patching up the founding fathers' con-



fused provision for using the vice president when the chief executive is unable to function, Congress also took advantage of the opportunity to give greater continuity to that second post in the executive hierarchy.

Congress was confronted by the fact that eight vice presidents had succeeded to the presidency, seven others had died in office, and one had resigned. Some argued that, in view of this record, the country should have two vice presidents. Others thought Congress should be permitted to fill any vacancy in that office. It is interesting to note, in passing, that former Vice President Richard M. Nixon, then a private citizen, wrote an article for the Saturday Evening Post and testified before the Senate Judiciary Com-

mittee in favor of reconvening the electoral college whenever necessary to keep an under-study President in the wings.

The method that Congress wrote into the resolution which became the 25th Amendment was much simpler and more satisfactory. It provides that, "Whenever there is a vacancy in the office of Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress." As in the case of most constitutional provisions, however, its brevity leaves some questions unanswered.

The original language, which stemmed from a report by the American Bar Association, would have required the President to act within 30 days after the office became vacant. That requirement was eliminated on the assumption that both the President and Congress would act expeditiously.

In the absence of any guideline as to how Congress should proceed, experts studying the problem on Capitol Hill tend to assume that there would be hearings. Most likely the nomination would go to the Rules Committee or to Judiciary. What standards would be applied to a vice presidential nominee? In considering nominations to the cabinet, the Senate is inclined to give the nominee the benefit of doubts because he will be a member of the President's official family. Some other nominees (to the Supreme Court, for example) are held to stricter scrutiny of their qualifications. Congress will have to decide which measuring stick to use if it is called upon to con-

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firm a vice presidential nomination, or it may apply new criteria. It seems improbable that any vice presidential nominee will be accorded the soft treatment usually accorded Cabinet choices.

The biggest question is whether the President will use his opportunity to nominate a vice president, if it comes, as a means of influencing the choice of his successor. An attempt to install any one of the potential Republican candidates now preening themselves for the 1976 presidential race would certainly provoke a revolt on Capitol Hill. Congress might, in the end, confirm such a nominee if his qualifica-

tions were high, but the danger of entangling this constitutional duty in a political dogfight is obvious.

According to Sen. Birch Bayh, (D-



Ind.) chief sponsor of the 25th Amendment, the President could bypass this dilemma by naming several nominees so that Congress would have a choice. There is no indication, however, that he might resort to that conciliatory approach. When he testified in the 25th Amendment hearings, he said pointedly that the President should submit only one name for Congress either to accept or reject.

In this hearing, and in his Saturday Evening Post article, Mr. Nixon also gave clues as to what he would look for in a vice presidential nominee. Any one chosen for that office, he said, should be of the same political party as the President, should have the same political philosophy as the President and should be personally acceptable to the President. There is nothing in recent history to suggest any deviation from these views. However justifiable they may be on a philosophical basis, an attempt to make them the overriding issue, in case it becomes necessary to nominate a new vice president, is certain to enliven the contest in the general climate of 1973.

Democratic National Chairman Robert S. Strauss has called for a "non-presidential type of appointment" if Mr. Agnew quits, and there is talk in the Senate of an "elder statesman" for the potential assignment so as to short-circuit a full-scale political encounter. The difficulty with these conciliatory gestures is that the "non-presidential type" or the "elder statesman" might shortly be in the White House facing a national or international crisis. One basic reason for passing the 25th Amendment was to narrow the risk that the country might be caught in an emergency without a leader of presidential caliber capable of vigorous action.

It is a great misfortune that the first test of this new constitutional machinery may come at a time when political considerations are so acute. But history records that all changes in the

law of presidential succession have been powerfully influenced by personal preferences and political interests that were dominant at the time. If a shift is to be made in the vice presidency under this untested machinery, it will put both the President and Congress under heavy obligation to keep the drag on their new constitutional function to a minimum.