

# Agnew Probe May Cause Test of 25th Amendment

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WASHINGTON — There are more questions than answers to date in the constitutional quagmire presented by the legal problems of President Nixon and Vice President Agnew. But they are real, compelling and shockingly immediate.

They could bring the first test of the 25th Amendment, which covers filling a vice presidential vacancy by nomination by the President and confirmation by Congress.

For example:

- If indicted on charges growing out of the current Baltimore federal investigation of contractor kickbacks, would Agnew (1) accept trial while in office, (2) insist that the Supreme Court first rule on that issue or (3) "stand down" by resigning his office so he could be judged like any other citizen?

- If he should resign, would President Nixon — whose own "separation of powers" resistance to prosecutor intrusion is now in court — delay nominating a successor until Agnew's verdict was in?

- If the vice president was found innocent, as he

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insists he is, would the President then nominate him for a return to his old job, or turn to someone else?

The 25th Amendment, so recently brought under retards by Nixon's Watergate troubles and Agnew's grand jury scrutiny in his home state of Maryland, provides in Section 2:

"Whenever there is a vacancy in the office of the vice president, the President shall nominate a vice president who shall take office upon confirmation by a majority vote of both houses of Congress."

The operative verb is "shall" — the President shall nominate and the vice president shall take office upon confirmation.

But does "shall" mean a presidential choice right away tomorrow or next week or next month? Does the other "shall" mean the next step of confirmation by both houses of Congress as fast as they can call their rolls?

Obviously not. Had it been otherwise, by legislative custom the amendment would have specified a time period of days or weeks within which action had to be taken.

As a matter of fact, it was acknowledged in Senate debate on the 25th Amendment, which dealt with the modern problem of presidential succession, that some period of time could elapse and that during such time the speaker of the house would be the next in line of succession to the presidency.

But the basic assumption, understandably, was that action would be taken promptly.

In his Aug. 14 letter to U.S. Attorney George Beall in Baltimore, Agnew volunteered his records, and his person for prosecutor interrogation, but carefully rejected the "propriety of any grand jury investigation of possible wrongdoing on the part of the vice president so long as he occupies that office." He viewed this as a constitutional question still to be resolved.

### Supreme Court

President Nixon's attorneys argued in their "executive privilege" brief that the President could only be tried on criminal charges after having been removed from office by impeachment conviction. Only the Supreme Court can say finally whether this applies equally to the vice president.