

Joseph Kraft WXPost

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# The Agnew Case: Mr. Nixon's Options

Unthinking haste characterizes the speculation about what name President Nixon will submit to the Congress as a replacement for Spiro Agnew. Not merely, or even mainly, because the Vice President has denied reports of imminent resignation.

The true issue is whether Mr. Nixon himself is not under a cloud that unfits him, at least temporarily, to nominate a new Vice President. Particularly if it is a matter of, in effect, naming now the presidential nominee who should rightly be selected by the Republican convention in 1976.

The cloud over the President's head is not that vast and tangled mess known as Watergate. It is a very specific issue certain to be resolved one way or another in a month or so. It is the matter of the tapes of his conversations and phone calls.

Archibald Cox, the special Watergate prosecutor, has sought access to these tapes as part of his investigation. The President has refused on the grounds that releasing the tapes to anybody would violate the principle of confidentiality. The issue is now before the courts.

Possibly a new compromise will be struck whereby the White House and the special prosecutor will arrange for some kind of examination as to whether the tapes supply new material relevant to various crimes. If not, the issue will go to the Supreme Court.

The court is due to meet on Oct. 1 and will probably decide the matter by the middle of the month. If it holds against Mr. Nixon and the President still refuses to cough up the tapes, the country will be in the presence of a serious constitutional crisis. Mr. Nixon will have defied the ultimate authority as to the meaning of the Constitution. There will be a *prima facie* case for impeachment proceedings against him.

In those circumstances, with Mr. Nixon himself only a few weeks away from a set of events which could jeopardize his tenure in office, it is against all reason that he designate a successor. It is furthermore against the spirit of the Constitution.

The clear intent of the framers of

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the Constitution was that in the event of the removal of a President and Vice President the vacancies be filled by congressional action pending a special election. Article II, section 1, clause 5 provides:

"The Congress may by law provide for the case of removal, death, resignation or inability, both of the President and the Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected."

The various laws of succession, while somewhat ambiguous, also imply that a President under the cloud of impeachment should either clear his name or, in the event no replacement

is available, be vindicated or replaced by a special election. It would be inappropriate, accordingly, for the President to rush fences in naming a new Vice President. The appropriate thing would be for Mr. Nixon to wait until the issue of impeachment posed by the tapes is resolved one way or another.

Even then, if Mr. Nixon does satisfactorily resolve the issue of tapes, it would be wrong for him to use the appointment of a successor as a means of tilting the Republican nomination of 1976. The country has, in the system of party primaries and party conventions, a well-tested and generally accepted means of making presidential nominations.

It would be fit, at a time when integrity of government and politics is the central issue of the day, to name someone who is not an aspirant for 1976. The more so as there are large numbers of competent and honorable men in both parties who could clearly fulfill the duties of Vice President in a credible way that would build the national harmony.

All of this, to be sure, is dry stuff compared to making lists of possible candidates. As a result, political Washington has been almost mute on the subject. But the true need now is for men of solid integrity without any personal ambitions—for example, Majority Leader Mike Mansfield of the Senate—to subordinate the making of lists to an exploration of the ground rules for a fair choice.

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White House Photo

Hobart Rowen is on vacation.