

1977

American Bar Association Special Committee on Election Reform, Symposium on the Vice-Presidency, Panel Discussion 3. Conduct of the Office: Duties and Functions

Follow this and additional works at: <https://ir.lawnet.fordham.edu/flr>



Part of the [Law Commons](#)

Recommended Citation

American Bar Association Special Committee on Election Reform, Symposium on the Vice-Presidency, Panel Discussion 3. Conduct of the Office: Duties and Functions, 45 Fordham L. Rev. 737 (1977).
Available at: <https://ir.lawnet.fordham.edu/flr/vol45/iss4/4>

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Law Review by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

The role of the Vice-President as sort of a political hit-man is one of about three functions that he seems to serve during the campaign, the others being sort of an echo of the Presidential candidate, and the third as the chief celebrator of the Presidential candidate's credentials and virtues. [What is missing is a serious campaign showing his own abilities, as well as serious public scrutiny of him.]

Part of the problem we have in the election of Vice-Presidents is that to begin with very few people or relatively few people know who the Vice-Presidential candidates are. Polls were taken in 1944 and 1948 showing that relatively more people in Britain than people in the United States knew who the candidates for Vice-President were. I assume this has changed somewhat.

A further point, I think, is that Vice-Presidential candidates are really rarely accorded front-page media treatment. I went through some of the New York Times and Washington Posts for the past 24 years and looked at how often a Vice-President is discussed on page one. It really comes down to Presidential candidates making front-page news about ten or eleven times for every time that the Vice-Presidential candidate does. On the rare occasion when he does make the front page, it seems to be because he has made some ethnic comment or he has called somebody a Communist or something has come out about personal funds, or things like this.

In terms of institutional reforms, I am not sure there is much that can really be done, aside from Governor Peabody's suggestion or Senator Griffin's suggestion. To me, the type of proposal that the Harvard study group made is appealing in the sense that it is sort of a non-institutional change and along these lines I think, as Ira Jackson said earlier, the fact that Vice-Presidential debates happened this year was a very healthy thing in that it did cause people to look at the Vice-Presidential candidates for a change and gave them a forum in which to consider their Presidential qualifications, and that may have been a factor in the election. I think unless something like this becomes a regular feature, unless the media concentrate more attention on this sort of problem, the current system really is going to continue to encourage the same sort of behavior in Vice-Presidential candidates as it has in the past.

. . .

III. CONDUCT OF THE OFFICE: DUTIES AND FUNCTIONS

. . . VOICE: Neil Hammond, Public Radio. Professor Schlesinger has talked about the Vice-Presidential role. I would like to ask the members with Senatorial experience whether they think, realistically,

the legislative role of the Vice-President should be increased and I would like to ask Mr. Reedy and Mr. Kirbo whether they think the executive role of the Vice-President should be increased.

MR. FEERICK: I would like to ask Senator Smith to respond.

SENATOR SMITH: I would say no. I would say that the Vice-President is sort of waiting for the President and should continue in that way and not have his legislative rule expanded.

DEAN REEDY: As to the executive role, I would say only in an artsy-craftsy sense. In other words, the Vice-President is going to do whatever the President hands him to do, which can be taken away the following day.

He has one or two statutory duties, as you know. He is Chairman of the Space Council, under which the President listens or doesn't listen, depending on how he feels. He sits on the National Security Council, which is like sitting in on a Javanese temple dance. I think he has got one or two other minor things.

But the answer is: no, all executive power is in the hands of the President, and it is inconceivable that you could have a Vice-President who had a separate political base, which he would have to have.

SENATOR SMITH: The framers of the Constitution were very wise in that respect.

DEAN REEDY: They knew what they were doing.

VOICE: Would Mr. Kirbo have any comments?

MR. KIRBO: I am going to have to reserve my judgment for a couple of years. Governor Carter and Senator Mondale are making a determined and so far successful effort to work together. Senator Mondale is having an input in the selection of the Cabinet and in the development of names for consideration. It has been a very helpful and a very congenial relationship. I am hopeful that they will demonstrate that it can be worked out.

There is one thing that troubles all of us and that troubles me, and that is that you can't put the Vice-President in a position where the President will have to reverse him. If you put him in an executive function on a regular basis where you have got the risk of him doing something and then having the President go in there and turn it around, well, that is a bad relationship. I am hopeful, myself, that Senator Mondale will have a continuing input and relationship with the President on many issues, rather than giving him one particular job where you might find him in a position where the President might have to turn him around.

In a couple of years I will come back over here and I will tell you how it worked out.

MR. MITCHELL: With respect to Professor Schlesinger's observa-

tions about the function of the Vice-President, I think he does and can do a lot more than people give him credit for.

It so happens in this country we have had a long effort to try to change the rules of the United States Senate so that we could limit filibuster. It so happens that one of the most definitive and effective rulings against filibuster was made by Vice-President Nixon when he was the presiding officer in the United States Senate.¹⁶

A more recent example comes to mind, in that when we were tied up on a number of parliamentary problems in the Senate session which just ended, the Vice-President of the United States, Mr. Rockefeller, made a ruling which had the effect of clearing up a lot of the complicated parliamentary underbrush with the support of the acting Majority Leader, who was of a different party, Senator Byrd.

I think if we consider the fact that in the House of Representatives the Speaker usually foregoes his right to vote on a number of important issues because he wants to be an objective example as a presiding officer, in the Vice-President of the United States we have that already as provided by the Constitution. He can only vote in the case of a tie, and he is probably as close as you can get to a truly objective presiding officer. But he must make rulings on parliamentary questions. Under the present system, the presiding officer, whoever it might be, consults the parliamentarian on what he should do, and in fact, it is the parliamentarian who is ruling on important issues in the Senate of the United States.

I think, among other things, that if we explore the possibility of making the Vice-President of the United States a truly representative presiding officer, truly vested with the power to make decisions as Vice-President Nixon did with respect to the Senate rule and as Vice-President Rockefeller did with respect to that parliamentary tangle in which the Senate found itself, I think if we enhance that which is

16. Many illustrations of the limits on the Vice-President's authority as President of the Senate have arisen in the context of attempts to invoke cloture. Apart from the strategic power he wields in recognizing speakers during debate, his authority is clearly limited to ruling on parliamentary questions. Any such ruling may be appealed to the Senate and reversed by a simple majority. When Vice-President Humphrey ruled that a motion to cut off debate had passed after a vote of 51-49, despite a Senate rule requiring approval by two-thirds of those present and voting, an appeal was taken and the ruling was reversed. 115 Cong. Rec. 994-95 (1969). Similar rulings by Vice-President Rockefeller are illustrative. See 121 Cong. Rec. S23339, S2340, S2347 (daily ed. Feb. 20, 1975). When the cloture rule was later changed, it was by formal Senate resolution. S. Res. 4, 93d Cong., 2d Sess. (1975). See generally 121 Cong. Rec. S2333-34 (daily ed. March 7, 1975); 103 Cong. Rec. 168 ff. (1957).

In the influential statement referred to, Vice-President Nixon acknowledged this limit on his power, but went on to explain his own opinion that the view that the Senate could not amend its traditional rules was unconstitutional. 103 Cong. Rec. 178-79 (1957).

already there, the Vice-President will have a lot to do and he will be in the Senate of the United States much more frequently to help cut the Gordian knots that come there.

VOICE: Neil Rosnowar, *Barrister Magazine*. Dean Reedy seems to take a rather jaundiced view of the whole idea that legislative or Constitutional change would or should take place.

Do you see any value in a body such as this and any changes that should be put forth?

DEAN REEDY: My view is not quite as jaundiced as it seems. What I am saying, fundamentally, is that unless you are willing to change the Constitutional structure of the government itself, no meaningful changes are going to be made as to the Vice-Presidency. You are not going to get a meaningful change made unless you find some way of dividing the executive powers or unless you change the Constitution in some way as to provide a greater statutory relationship between the legislative branch and the executive branch.

For the time being, I think we have to reconcile ourselves to the fact that if we have and are going to continue with a Vice-President, it is going to be a miserable job and there is nothing we can do except put up with it.

PROF. KIRBY: He would continue presiding over the Senate.

DEAN REEDY: I think that is a total waste of time. I spent some time making a survey of the tie votes, so-called, going back fifteen years. There were an average of ten tie votes for the fifteen years. Of those ten, there were only three on which the Vice-President had any need to vote, because most ties are on a challenge to the administration and, therefore, the administration wins, if it is a tie. Consequently, that left him with about three meaningful acts over a period of fifteen years to perform as presiding officer of the Senate.

SENATOR GRIFFIN: I might just add, very often when there is a tie, the Vice-President isn't there.

DEAN REEDY: Of course, and it doesn't matter. Usually, a tie is on the side of the administration. That is the point, seven out of ten times.

MR. MITCHELL: But, George, what weight would you give to the rulings of Vice-President Nixon, Vice-President Johnson—

DEAN REEDY: Absolutely none, Clarence.

MR. MITCHELL: I would disagree with you.

DEAN REEDY: Clarence, if you take a look at the rules of the Senate very carefully, the Vice-President rules according to the orders of the Senate. He has no way of enforcing his rulings. If he wants, for example, to send the sergeant-at-arms out to do a simple thing such as

restoring order, he has to get a vote from the Senate in order to do it. He does not have the elbow room that the Speaker has.

Mr. Nixon, by the way, did not make a ruling on civil rights. It was not a ruling, to begin with.

MR. MITCHELL: The Nixon "statement," if you don't want to call it a "ruling," was a thing that we have relied on, and it was different from some other rulings.

I would say this, that I wasn't speaking generally. I was speaking of this specific question with respect to the Senate rules. And I would say that having been around there 30 years, I feel that there was great historical impact. If we demean that, it seems to me we are not doing justice to history, because these rulings have played an important part in the Senate's taking a hard look at itself with respect to its filibustering.

SENATOR GRIFFIN: Clarence has talked about the function of the Vice-President as the presiding officer of the Senate. As I have listened to the discussion, it occurs to me that if we wanted to do something about improving the matter of what the Vice-President does, we might consider a very simple Constitutional amendment that might not be as controversial as some of the other things, that is, to eliminate the requirement that he be the presiding officer of the Senate. I think that is a useless function which is only confusing; the idea that he has one foot in the legislative branch and one foot in the executive branch is somewhat ridiculous. It detracts from the likelihood or possibility that the President will give him meaningful responsibilities in the executive branch.

Our order of succession makes sense, as Arthur has suggested, for acting Presidents to go down the line of Cabinet officers. I would put forth the possibility that in eliminating the function of presiding officer of the Senate, we might require or at least strongly recommend that the Vice-President serve in one of the Cabinet positions. Why shouldn't he be a person capable of administering one of the Cabinet positions, selected as he is by the President? It seems to me that would give him a significant role and a significant kind of function. If at some time the President became displeased with how he was performing or something—that would be the difficult point—he perhaps would shift him to another Cabinet role that perhaps would not be as sensitive or not as important. Or instead, it could be framed in such a way that he would give him other functions that would be as important as a Cabinet role. However, I would not suggest that the President be required to name the Vice-President to a Cabinet post.

SENATOR SMITH: I rather agree with Mr. Read that we must begin by reassessing the functions of the Vice-President, to see whether they

should be changed. As I said this morning, the Vice-President is in sort of the position of being a waiter on the President and I think the Vice-President could be very, very helpful to the President if there is flexibility for him to do the things the President wants him to do, especially the liaison between the Congress and the President, also the good relations that could follow—I would not like to say “lobbying,” but there is much of that which can be done if it is done informally.

MR. FEERICK: Professor Schlesinger has been quoted, and I think he indicated as much this morning, that he thinks a great deal of what the Vice-President does now is in the nature of make-work. Do you share that view?

SENATOR SMITH: Well, no, I do not completely share that view, but I think that would be all right if that is what the President wanted done. I think the Vice-President must stay; we must have a Vice-President. I would go a little bit beyond that and say I feel that the Vice-President should be elected, and nominated through a direct primary and be one very close to the President. But I don't see any reason why we should change the function.

MR. GOLDEN: I admire Professor Schlesinger's sense of humor, his knowledge of history, and his pungent way of saying things, but I dissent more than mildly from his dim view of the office itself. I felt that perhaps we began to look at this problem from a completely negative point of view, and I don't think the problem is a negative one. I think we need some positive thinking here. Regardless of what has happened in the past, regardless of all the funny stories about Vice-Presidents and what they haven't done, the institution is with us.

Because it is with us, I do feel that the public wants it to be as viable and as important as possible. I would hope that this panel today might consider positive approaches to making the position more important to meeting the demands of the public. If indeed the Vice-President is a heartbeat away from the Presidency, the public has a right to know that the person holding that position is as talented as possible.

I would hope that we might this afternoon go into some constructive suggestions as to what the Vice-President might do that he is not doing, or what he should not do which he is doing. I know this is contrary to some of the opinions expressed today. As bad as the office may have been or as badly neglected as it may have been, I keep feeling that since it is with us, since the country has grown so, since there are so many responsibilities, that we might come up with some constructive suggestions to make the office more dignified and more important in many respects. I don't think that the problem is hopeless. We are never going to cure cancer if we don't try to cure it, if we don't investigate and study it in this world of research. I view this session

today as one in which, with all of the faults we have had, with the sorry history in some instances of the Vice-Presidency, as a time when we should view it more positively and say, what can we do to make the position more important, more viable, and I think that is what the public wants.

PROF. SCHLESINGER: Do you have any suggestions about specific tasks that the Vice-President would assume after January 20th to enhance the office?

MR. GOLDEN: It seems to me that now, with a nation of over 200 million as compared to what it was 75 years ago, just automatically the responsibilities of the executive branch have increased, even if we were to divide some of those responsibilities or delegate some. It would seem to me that some important responsibilities—I can't name them—could be delegated to the Vice-President, perhaps depending upon his background. If he is an experienced legislator, give him almost a full-time assignment of working actively as a brake between the legislative and executive branches of government.

SENATOR SMITH: Wouldn't you say that this was the reason for giving the President flexibility to use the Vice-President as he found necessary rather than setting it up by law?

MR. GOLDEN: I'm afraid the flexibility—well, the answer to your question is "yes"—but I'm afraid the flexibility has been abused.

SENATOR SMITH: But that is not the fault of the system. It is the fault of the people who are administering the system, isn't it?

MR. GOLDEN: Possibly so. Maybe it is the fault of the public in not being militant enough about this.

DEAN REEDY: I think we could get into some rather grave difficulties by trying to solve what is essentially a political problem through administrative means.

In the first place, I am not convinced that all of these deficiencies exist. In a nation that has been in existence since 1789, we have been selecting Vice-Presidents rather conventionally ever since the twelfth amendment, and the country still stands; the country stands, with Vice-Presidents good, bad or indifferent, just as our Presidents have been good, bad or indifferent, and I think there is a tendency in modern life where you feel you have to do something positive, don't just stand there, do something, and sometimes it is really a virtue to leave things where they are.

Let us take a look for a second at what we are talking about when we are talking about enlarging the duties of the Vice-President, or about handcuffing him or putting certain restrictions upon the manner in which a President will select a Vice-President.

What we do when we select a President is to get a man who has the

Constitutional obligation of running the United States Government. It is very simple. The Constitution puts all executive powers in his hands. Now, I think it is rather intolerable to do that to a man, but to tell him before the convention that he must have a certain person or a certain limited list of persons from which he is going to select a man who will take over in case he passes away is another real problem. You are really not going to do anything about the Vice-Presidency unless you give him a place of power. You don't give him a place of power if you find that all of these administrative tasks are going to be very meaningless to him. Politicians don't care about administrative work. They get no satisfaction out of it. That is not what they are there for. They are there to handle power. That is what politics is, it is the science of power. And the problem with the Vice-President is that you don't have any power you can give him unless you are going to take something away from the President. That is why I say you have to change the Constitution if you are going to do it.

PROF. KIRBY: As to the argument that Presidents don't like to share power, I don't believe it is fully that way, because they do share power with staffers they trust. Erlichman and Haldeman shared Nixon's powers to a great extent. The argument against a Vice-President sharing power is that the President can't dismiss him as he can Cabinet members and staff members who displease him. He cannot dismiss the Vice-President, but he can withdraw any power that he has granted to him.

I think an ingenious President could come up with an executive reorganization that would give the Vice-President something new, and not nominal as has been done in the past, and later withdraw anything that has been misused.

Rather than specify this power, I would say it should vary according to the Vice-President. One who comes from Congress could and should be used as a legislative link between the two branches. One with a background in management, like Nelson Rockefeller, perhaps, could be used in the executive branch in reorganization and continuing studies for efficiency. One who had a background in foreign affairs could be used as a Kissinger equivalent, perhaps.

But the main thing is to help the Vice-President continue to grow and to be close to the President and to be able to step in if he succeeds, which doesn't seem to be as well guaranteed under the present system as it could be.

MR. GOLDSTEIN: I wonder whether the evidence is completely convincing that Vice-Presidents do wither during their time as Vice-President. I mean, it would seem to me that probably, largely based on the Humphrey experience, or Nixon under Eisenhower, these were

worthwhile educational experiences; in that sense, I wonder whether Johnson's work on the Equal Employment Opportunity Commission didn't have some effect on his views on civil rights when he became President, and as for President Ford, I wonder whether his work in the Privacy Commission as Vice-President wasn't a worthwhile thing. What I am suggesting, I suppose, is: with the kind of relatively minor responsibilities that the Vice-President has now in chairing different commissions, whether there isn't some possibility for somebody to grow in office.

Also, I would like to suggest a rather modest proposal. I was reading Senator Humphrey's autobiography.¹⁷ One of the things that intrigued me was that he said when President Johnson got tired of hearing him on Vietnam, he just stopped holding meetings of the National Security Council because Humphrey was a member of the council and this was a way of freezing Humphrey out of decision-making. It seems to me one problem Vice-Presidents may have is that they are somewhat dependent on the President's advisors for their information. And I wonder whether it might be of some good to make sure that the Vice-President had a suitable staff of his own people who were plugged into the National Security Council, plugged into domestic affairs, so that he wouldn't be really so much dependent on the Secretary of State or Secretary of Defense but could really turn to his own people; and what this might do is that, to the extent that a Vice-President is involved in meetings in which decisions are taking place, it might have the effect of offering a second person who not only has basically a view of the political generalist in terms of decision-making, but somebody who would also be more in a position to make worthwhile suggestions.

DEAN JACKSON: I think there is a good deal of wisdom in what Mr. Kirby and Dean Reedy had to say about the change of process of selection. I wanted to turn to Mr. Golden's remarks because I agreed with his assumptions and disagreed with his conclusions.

Benjamin Franklin referred to the Vice-President as "His Superfluous Excellency." Nelson Rockefeller referred to the Vice-President as "excess baggage, standby equipment, the reserve President."

My contention is that the Vice-Presidency, to paraphrase John Nance Garner, might not be "worth more than a pitcher of warm spit," but that it is better than no Vice-Presidency at all. Returning for a moment to your suggestion, Mr. Golden, that you lay more administrative executive duties on the Vice-President, let me fill in what Joel was suggesting a moment ago, that other than the Presidency of the Senate, the Vice-President now does have several executive functions,

17. H. Humphrey, *The Education of a Public Man* (1976).

and I don't mean to be facetious by listing them, but other than the statutory obligation to be a member of the National Security Council, he also is required to serve on the Board of Regents of the Smithsonian Institution, and as chairman of the National Council on Indian Opportunity, and of the National Aeronautics and Space Council. By Executive Order he is a member of the Domestic Council. Some Vice-Presidents have been named vice-chairman of the National Security Council and of the Domestic Council. Other have been chairman of the Domestic Council Committee on the Right to Privacy, or of the National Center for Productivity and Quality of Working Life, or of the National Committee on Water Quality.

I think Professor Schlesinger may have overstated his case in terms of the history of the Vice-Presidency. Roosevelt did give Garner and Wallace substantial administrative duties, including chairmanship of the Economic Defense Board. Truman sought to involve Barkley in all major policy decisions. Eisenhower gave Nixon the chairmanship of the Operations Coordinating Board. Nixon traveled widely on good-will missions, and he was concerned with national security affairs. LBJ was chairman of the Peace Corps Advisory Committee and of the committee on equal opportunity. Agnew headed the new Office of Inter-Governmental Relations, and so on.

That leads me to three observations about the office and what we might propose or not propose about the administrative duties.

First, we should not unduly constrain the Chief Executive to tailor-make the duties and the tasks of his Vice-President. The flexibility of allowing nearly total freedom of assignment is necessary to insure the most appropriate match of Presidential needs with Vice-Presidential capabilities. I think a Vice-President ought to be viewed as someone, an indispensable someone in our political system, who can supplement and complement the skills and strengths and temperament of the President.

However, the President should not be hampered or saddled with statutory administrative responsibilities assigned to a Vice-President whom he cannot remove, such as a Cabinet post.

Secondly, I think we should both acknowledge and respect the indispensable utility of the office of Vice-President as an arm and instrument of our political system. Vice-Presidents are elected—or at least all but two have been elected—and as elected officials they carry political legitimacy. Presidents increasingly need Vice-Presidents, whether they use them for this purpose or not, as political “designated hitters,” to carry out tasks both short term and long range which appointed officials either can't or should not fulfill, in my opinion. The

question is not why shouldn't we abolish the office, an office without substance, but how can we convince future Presidents to take greater advantage of a relatively under-utilized political asset.

Lastly, I think we should welcome the opportunity—and I don't think there are many on this panel who agree with me—I think we should welcome the opportunity which the Vice-Presidency affords our political system, that rare luxury of time and relative inactivity and lack of substantial administrative or legislative tasks, and encourage Presidents to view the Vice-Presidency quite deliberately as an unprecedented chance for on-the-job training.

Former Senator Eugene McCarthy refers to the Vice-President as "the elected crown prince of the American political system." And despite the fact that we are not a monarchy, I think the analogy is apt because as the "crown prince" or at least the potential Chief Executive, the Vice-President does wait. That is his fundamental duty, more important than the Senate presidency or the political and administrative duties and the assets he provides. If this is the basic purpose, then we should again seize the opportunity rather than retire the office out of ambiguity and frustration. There is no adequate training ground for the Presidency, we can agree on that. The only way to prove qualifications for the Presidency is to be a good President, but I submit the Vice-Presidency offers a very useful training ground for the Presidency.

There has been a suggestion or inference that a Vice-President's experience is frequently both frustrating and humiliating. But I contend the vehicle of the Vice-Presidency offers the system the hidden chance to train and groom future Chief Executives, and I might add only somewhat facetiously, if the Vice-Presidency teaches some humility and exposes one to some frustration, those are wise and realistic attributes that a future President should acquire early in life.

MR. MITCHELL: I accept the thesis that the Vice-Presidency is here to stay. And we have the duty of trying to make it meaningful to the people.

After the Vice-President is in office, I think there are ways in which we can divide the functions of this government so that the Vice-President can have a meaningful input.

I think it was a disgrace that after President Roosevelt died, we learned that President Truman didn't know anything about the so-called Manhattan Project, which was the atom bomb at the time, while Jimmy Byrnes who was given by President Roosevelt the office of Assistant to the President as head of the Office of War Mobilization did know all about it. If so happens Jimmy Byrnes couldn't have gotten elected dogcatcher in my neighborhood but Truman could have.

A lot of these persons who get to be the head of the Office of Management and Budget or who get to be heads of some kind of great domestic mobilization program have never run for public office. They have no rapport with the people, and they don't know what they are doing most of the time so you can't expect them to have the confidence of the people.

I think, because I knew Vice-President Agnew—although I didn't agree with him, didn't vote for him—but the fact of life is I would have had much more confidence in his political judgments, because I happen to live in the state where he grew up and where he got into office—I would have had much more confidence in his political judgments than I would in some of the other people who were appointed to the Cabinet, for example.

Now, I feel that Presidents tend to become preoccupied with foreign policy. And because they do, they delegate to people who are not elected officials the responsibilities of handling domestic affairs. I think it could be worked out in a way that the President could delegate to the Vice-President a really meaningful position handling domestic affairs, and we should expect the people that I am associated with and some of whom voted in the recent election are expecting that in the Carter Administration there will be delegated to the Vice-President meaningful responsibilities in the domestic field. . . . I would say further—and maybe this is the last thing I should say—that if that doesn't happen, those who happen to have been black in this nation and voted so overwhelmingly for a Southern President will feel that they have been betrayed. And my honest opinion is that they would have been betrayed, because to be truthful about it I do not believe that Governor Carter could have attracted the amount of black votes that he got if he hadn't had Mondale on that ticket, and therefore, I feel that we who expect things of him are not expecting any figurehead operation up there.

So I trust very much that if any report is made on this meeting, it will be clear to all who read it that I not only think that it is realistic for the President to delegate meaningful functions to the Vice-President, but I think it ought to start with this administration.

MR. FEERICK: Would you leave that area of delegation to the good will of the President or would you suggest that we have some additional statutory or Constitutional provisions, if that should be necessary, that mandate it?

MR. MITCHELL: I think that we could do it two ways. I think we could do it with the intelligent discretion of the President. And I think that to the extent it would be necessary to implement it by legislation, it could be short-term legislation for the duration of the incumbency of

that particular President, with the understanding that it could be revised if another President thought about it a different way. But we should expect that the President would have enough discretion to assign meaningful duties, and as I said, if necessary, buttress it with legislation which he could formulate if he cared to and get it passed in Congress.

PROF. SCHLESINGER: I am sorry that Mr. Kirbo is not present to hear Clarence's eloquent statement, which I heartily endorse. I must confess this whole discussion since lunch seems to be taking place in an atmosphere of total unreality. We have had all of these admirable thoughts as to what Presidents might do to give meaning to the office of the Vice-Presidency. But the fact is that we have existed as an independent nation for 200 years, we have had Presidents and Vice-Presidents for all but a dozen years of that period, and no President has ever done this. We have had intelligent, responsible, sensitive Presidents, and the serious questions which you gentlemen of the American Bar Association must address yourselves to is why is it that no President has ever done any of these things and how to force Presidents to do it, accepting the Chairman's assumption, from which I earlier dissented, that we proceed this afternoon on the basis that the office continues.

Now, it is just not accidental, obviously, that every President of the United States has had the possibility to do these splendid things and no President has ever done it. I don't see how you can all go on in this carefree way "let's make him this, let's make him that." The serious question is why no one has ever done it. The Presidents, on the whole, have probably even been more intelligent than the people gathering around this table. They thought of it; yet they have not done it. This is clearly the critical question.

For all of us to sit around and for the American Bar Association to say, "Oh, yes, let's delegate him this and make him that"? There is nothing more poignant and pathetic than to list the list of offices Mr. Jackson read earlier.¹⁸

Nelson Rockefeller is the most recent beneficiary of all these great pleasures, and I suppose the most frustrated man in the United States for this last year has been Nelson Rockefeller. When you put the most hyperactive man in the country in the most meaningless job in the country, you are bound to get frustration. He had all of these opportunities, and so on; why was he frustrated? Because he discovered how empty all these functions were.

The question that Mr. Jackson raises is that this humiliation might

18. See p. 746 supra.

be good. Unfortunately—again, I keep invoking the historical record—Vice-Presidents have been humiliated, and when they become Presidents they proceed to inflict even more humiliation on their Vice-Presidents.

Theodore Roosevelt complained about how badly he was treated by McKinley. However badly McKinley treated him, it was nothing to the way Theodore Roosevelt treated Charles W. Fairbanks, or how badly Eisenhower treated Nixon—and Nixon deeply resented it, didn't enjoy being Vice-President; but that was nothing to the way Nixon treated Agnew, and subsequently, Ford.

I think George Reedy would agree that among the Presidential/Vice-Presidential relations, on the whole John Kennedy was a very considerate President. He liked the Vice-President, made an effort to include him in the discussions, and so on, but Lyndon Johnson by 1963 was a gloomy, wounded man. And then when Lyndon Johnson became President, far from having benefited by this humility, what he did to Hubert Humphrey we all know.

I think the approach, rather than sketching out these utopian fantasies about what Presidents might do, is to confront the reason why they have never done it.

I think the reason why they have never done it is deeply rooted first in their sense of Constitutional obligation to maintain control of their power, and second in what I discussed this morning about the psychic problems of having someone around who is waiting for you to die. I think these are problems so deep that they can't be overcome by our drawing up blueprints.

MR. FEERICK: I would like to give George Reedy a chance to respond on this historical record.

DEAN REEDY: Historically, Arthur is absolutely correct. I thought, myself, that President Kennedy was rather generous to Vice-President Johnson. But that didn't mean that Vice-President Johnson appreciated it in the slightest.

And I think that what this goes back to is a certain failure here to fully comprehend the political psychology. I think that, in a way, we are getting too obsessed with administration and we think of "meaningful work" in terms of filling out reports and giving orders, which means absolutely nothing to a political personality. The simple point is that the President is the only man in the Federal Government that has the right to say "yes" or "no" and make it stick. And unless you are willing to give the Vice-President some circumstances in which he can say "yes" when the President says "no" and the Vice-President's "yes" will stick, you might as well forget it. That's really the problem. It is right there. We are thinking too much of the Presidency in terms of an

administrative job and really it is not much of an administrative job. And when you try to hedge it around with administrative procedures, all you are really going to do is to invite Presidents to find ways of getting around them.

And as a parallel, suppose the President had to submit a list of candidates for Vice-President. If I were Mr. Carter, what I would have done is to send the following list: Otto Passman, George Wallace, Wayne Hayes, Walter Mondale. You have got to have a certain amount of realism about this, because assuming you can get around the other problems, that is what is going to happen to them.

I heard one remark here earlier about how Humphrey got frozen out of decision-making by bypassing Security Council meetings. Who the devil ever thought decisions were made in the Security Council? The Security Council is just where they meet so they can announce the decision to the public. Johnson didn't have to forego Security Council meetings to freeze Humphrey out. All he had to do was not invite Humphrey to the lunch the day before with the two or three people he really listened to. And if you pass a law that says Humphrey has to attend that luncheon, then what they will do is have a cocktail party beforehand, and you have a Never-Never Land here. You are dealing with political realities and you are trying to use administrative remedies and they do not apply.

MR. FEERICK: Governor Peabody?

GOV. PEABODY: Mr. Chairman, I congratulate you and the panel for holding this meeting, because in my opinion, for the first time at least since I have been involved in the problem in the last four years, we are really getting down to some truths which are not often discussed because there are very few students in this particular area, sad to say; therefore, there has not been deep discussion and involvement by the American public. But some real insights are coming through to me as a result of this trade of ideas which are being well expressed on both sides.

I have not, as a former Governor, conceived of a Governor sharing his executive power with anyone. And I don't want the President of the United States to do so either. The Founding Fathers of our Constitution, both in Massachusetts, who was John Adams, and in the nation, decided that all executive power should be in the Chief Executive, and believe me, that is where it belongs and it cannot be shared effectively. And this effort to keep the Vice-President busy is just that, to keep him from being humiliated and as an act of kindness and it doesn't really train him for the office in that respect. I think George Reedy has said this obsession with administrative responsibilities doesn't make him feel at all better. I recall when I was

Governor that the subject of capital punishment came up in parts of my administration. I had not made my mind up while I was a candidate for Governor, but my running mate, the Lieutenant Governor, had. He campaigned all out for abolition of capital punishment. I finally made the decision to go for abolition and so I invited him in and I asked him if he would be my legislative liaison with the Legislature in carrying this out. And he said, "I would like to think about it and I will get back to you." I am still waiting.

The fact is that Vice-Presidents or Lieutenant Governors or whatnot don't get their kicks out of this administrative responsibility. They are politicians. They are, as George said, dealing in the exercise of power, and if we want to bring them along, we ought to put them where the power is but in a way where it will not affect the President of the United States in the operation of the government.

Our Founding Fathers were wise in that respect. The only duties that they gave to the Vice-President were legislative duties. They were meager to be sure, and so meager that every Vice-President has been frustrated, and indeed, in the nineteenth century we rarely had a quality Vice-President because nobody wanted to run for the office.

SENATOR GRIFFIN: We don't want him running the Senate either.

GOV. PEABODY: It used to be said that a man had two sons, one went to sea and the other became Vice-President, and neither was heard from again.

I suggest that one way to bring the Vice-President along is to give him further duties in the Senate of the United States, to give him a full legislative vote, to let him express the national conscience on Capitol Hill, writing the legislation he deems needed by the nation which may be obstructed by regionalism or the chairman, legislation which he deems important, and let him work and strive in that direction.

The Speaker of the House is third in line for the Presidency and does have the opportunity; why do we deny it to the second in line?

The argument may be made, "Well, then you are creating another seat of power as opposed to the President," and this is something that we must be concerned about. For some reason, in this spot the argument might be, he should be loyal to the President. We have just been concerned about the imperial Presidency. Today, after Watergate, as Arthur said to me at lunch, the Presidency is indestructible and is not going to be destroyed by putting in the Senate a Senator-at-large who can carry on these duties, who can educate himself far more as to the duties and responsibilities of being President of the United States, in such an office which is a seat of power than he can elsewhere. I will leave to the Senators to decide whether he should be President of the Senate or where else to put him, but let him have a vote.

MR. YOUNG: I listened with interest to Dean Jackson's laundry list of statutory positions. I have never seen that full list before. I tend to agree more with Dr. Schlesinger that the list really hasn't much meat.

However, I don't think this exhausts the possibilities of the Vice-President in his current role. He does have another role. This also involves us in something that Dean Jackson mentioned. He suggested that the Vice-President become more of a political asset to the President.

My feeling is he is already too much involved in a political role. I can't speak as to perception in Washington of what Vice-Presidents have been in recent years; but as someone who views the Washington scene from afar, my impression of recent Vice-Presidents is that one after another they have served as cheerleaders for the various Presidents of the United States. They seem to be constantly on tour, making speeches, saying things such as: "He is the only President we have and let's support him." I think it is all right to be a cheerleader for a President, but it has become embarrassing for some Vice-Presidents. They have continued beyond all necessary and appropriate means to try to apologize for various administrations which have been falling flat on their face. This period of the outspoken Vice-President dates back to Henry Wallace's experience, about 1941, which is also about the time that Vice-Presidents began to take on additional responsibilities.

Wallace, for example, was very outspoken during World War II. He went so far as to call critics of FDR fascists. He said at one point, "They are grooming fascists in the United States." These were people, basically, who were disagreeing with FDR's prosecution of the war.

We have seen this down through the years, "nattering nabobs of negativism" in Agnew days, and Humphrey who went, I think, beyond what was appropriate. I believe Vice-Presidents have damaged their credibility and reduced their likelihood of going on to the White House by the role they played, and it seems to weaken their credibility. We have had questions asked: "Mr. Vice-President, was that speech written in the White House?"

"No, I wrote it myself." Then somebody from the White House says, "Yes, that speech was written there and handed to him and he was asked to read it."

I believe, therefore, we need to get Vice-Presidents out of the political arena. In the case of Ford, I think almost every night that he was Vice-President during a period of about eight months, he was on the road defending the Nixon Administration. In that case it might have been justified up to a point, because the Republican Party during this extended period was in very much a state of disarray, and Ford was one of the few national figures who was certainly free of the

Watergate scandal. Generally speaking, I don't know why Vice-Presidents are in this role. I think they should get out of it. But I don't think the solution is to get back to performing the duties that Dean Jackson named. There are only two or three substantive duties there. Most of them are meaningless, like serving on the Smithsonian Board.

I would say if we can't find anything else for the Vice-President to do—and I agree with Dean Reedy, he can't share executive power—if nothing else, he can go to the Oval Office, sit there at the right hand of the President, and observe on a day-to-day basis the flow of work that comes in, the problems that are being grappled with, the various people that the President sees; and I think in the absence of anything else, that might be the most logical solution.

MR. SPANN: So far as giving the Vice-President more duties with regard to the Senate, that doesn't spell itself out in my mind. I do not hear what those duties really may be. Giving him a vote I don't think means a whole lot. He has the vote, in case of a tie. About the only difference between that and if he were a member of the body is that a member of the body presiding would normally have a vote to make or break a tie; he can break a tie, he can't make it. I don't see very much difference in giving him the vote on every issue.

I agree with the thought that he is part of the executive department, and I don't think you ought to give greater power in the executive department over the legislative department. So that I do not know what these duties are that would produce the training.

DEAN REEDY: There is one question that I would like to address to Governor Peabody: How do you dispose of what I think is the biggest single objection to your proposal, which is, do you think the Senate of the United States would ever permit the President of the United States to have a vote in the Senate of the United States? This is what you would be doing if you gave the Vice-President a vote.

GOV. PEABODY: I think you probably are quite correct. . . . But as I say, we are not working for reform today. We are working for reform over a period of time. And if there is enough popular support for this proposal, I think that a lot of Senators themselves might support it.

DEAN REEDY: Let me make one more remark. I will never forget what happened to Lyndon Johnson when, as Vice-President, he tried to attend Democratic caucuses.

GOV. PEABODY: I would say you have to amend the Constitution and, of course, you need the Senate's vote for that, I agree.

SENATOR GRIFFIN: I don't want to be the only voice on this—I would like to hear what Margaret has to say—but one of my jobs is to count votes around the Senate and I think it will be a long, long time

before there is a two-thirds vote in the Senate to give the Vice-President any more power than he has got.

SENATOR SMITH: I can't see the value of it. I think his only function now is, to break a tie. I think this is a very important point. I remember when some of those Vice-Presidents stayed around for weeks waiting for a tie vote so that they could break it. That has been a very, very important part of it.

Do you remember the time that we had that vote with a hundred people on the floor and there was a 50/50 vote, and, of course, it was defeated because of the tie. Vice-President Agnew came in and voted just the same, but it was completely meaningless.

MR. MITCHELL: Mr. Chairman, I don't think the role of the Vice-President needs to be enlarged. I just think it needs to be taken seriously. I think it is time in this country that we face up to the fact that neither the Senate, the President, nor the House of Representatives should be above the Constitution of the United States. Of course the Senate is going to try to defend all of its prerogatives.

If I had been a member of the Senate when Vice-President Johnson attempted to preside at a caucus, I would have welcomed the opportunity to share with the experiences of a Vice-President who had been in the Senate as long as he had. And, indeed, when we were working for the passage of the 1964 Civil Rights Bill, President Johnson had almost a daily input, and perhaps the most eloquent evidence of the input that President Johnson had in the Senate of the United States came from Senator Richard Russell, who got on the floor of the United States Senate and said what President Johnson had been doing to influence the results and also told me personally what he had done.

The change-about by Senator Dirksen on the Fair Housing legislation and the Civil Rights Bill itself is evidence of the effectiveness of the intervention of the President into the affairs of the United States Senate.

So I would say, to me it is a concept that is entirely constitutional, that there should be input from the President of the United States in the United States Senate, and it is certainly reasonable to me to think that the Vice-President would be a channel for that rather than some of those White House lobbyists who operate around in the House and Senate and have to go hat in hand to get things done. It seems to me the dignity of the office of Vice-President as the Constitution has conceived it would make it possible for him to have an orderly meeting with members of either House to help forward the President's legislative program. I don't see anything unreasonable about that. I feel that there is just too much of an attitude in this country of people setting off little islands of power that they think are exclusively theirs even if it is

not in the national interest. I think it is in the national interest for everybody to work together. If it means incorporating the wisdom of a Vice-President in the legislative process, as presently permitted under the Constitution, then I think we ought to find ways of doing it.

PROF. KIRBY: I hate to be the technical Constitutionalist, but I must mention an objection to making the Vice-President the 101st Senator on Constitutional grounds which I know some Senators would raise. I will ask Senator Griffin to confirm this. The Constitution states that no body will be deprived of its representation without its consent. It has been proposed to give the District of Columbia two Senators from time to time, and that always runs into sizeable argument, or argument of a sizeable number of Senators, that it would deny this equality. When that argument is raised, I have never heard a very persuasive answer against it.

SENATOR GRIFFIN: I suppose if we amended the Constitution to provide more powers—

PROF. KIRBY: This is the un-amendable provision of the Constitution.¹⁹

SENATOR GRIFFIN: Speaking to Clarence's point, there is not, of course, any question that the President does have a lot of input on the Hill in the legislative process, and he can choose to try to exercise that through his White House lobbyists or he can, and does in many instances, use the Vice-President. Depending on the personality and the compatibility of the particular person that is in that office, the relationship to the Senate and so forth, he is more or less effective.

But if we are talking about giving the Vice-President more real power rather than just a legislative liaison function, then I think that you run into the jealous guardians of the separation-of-powers doctrine who see the Senate and the House—and, I think, rightfully so—as an entirely separate branch of the government, and I think that it would be a long, long wait before the Senate would approve any kind of legislation or Constitutional provision that would actually give the Vice-President more power in the Legislature.

VOICE: My name is Bill Lynch of NBC. I would like to explore with Senator Griffin his suggestion that perhaps the Vice-President could be a minister without portfolio in the Cabinet. Is this the kind of thing that would narrow the selection process, owing to specialized skills that such a person might need to have in order to perform adequately the function of Transportation Secretary or Secretary of the

19. The power of Congress and the states to amend the Constitution is limited by the proviso that "no State, without its Consent, shall be deprived of its equal Suffrage in the Senate." U.S. Const. art. V.