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*file 2B2 (General)**file VP selection*

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JUN 16 1976

Rudolph W. Giuliani
Associate Deputy Attorney GeneralAntonin Scalia
Assistant Attorney General
Office of Legal CounselFBI Authority to Conduct Investigations of
Potential Vice-Presidential Nominees*out 6/16/76*

We have been unable to find any statute which authorizes the FBI to investigate possible Vice-Presidential nominees. The FBI can, however, conduct such an investigation if so ordered by a Presidential directive related to the President's exercise of his constitutional or statutory functions. Sec. 28 U.S.C. § 533(3). Such Presidential directive could take the form of a generalized instruction, contained in an Executive Order, or a particular request for a specific investigation. We have not, however, been able to identify any Presidential constitutional or statutory function which would clearly support such a directive in the present case.

Investigations of prospective or existing Executive Branch personnel can, of course, be supported by the President's general powers under the Constitution to "take care that the laws be faithfully executed," Art. II, § 3. Investigations of prospective judicial appointees upon Presidential request can similarly be justified as necessary for the President's proper performance of his nominating responsibilities under the Constitution, Art. II, § 2. As you have noted, that rationale applied to the extensive investigations of President Ford and Vice-President Rockefeller at the time of their respective nominations to the Vice-Presidency.

The Bureau regularly conducts investigations, upon request of Congressional Committees, of prospective and existing Congressional staff personnel. These might be justified on the basis that the President's responsibility for protecting sensitive military and foreign affairs information requires some assurance that the Congressional Committees to which he discloses such information have trustworthy staff personnel. It is not clear, however, that all of the Congressional staff investigations relate only to personnel having access to such information. Moreover, that justification would not explain the FBI investigations which are conducted of judicial clerks



and magistrates at the request of Federal judges. I think all of these investigations (which are invariably requested by the appointing Congressional Committee or by the appointing judge) may better be justified -- like Executive Branch personnel investigations -- on the basis of the President's inherent executive powers. That is to say, it can be maintained that certain aspects of the operation of Congress and of the courts require executive activity which may in some circumstances be performed for them by the Executive Branch without further statutory authorization.

Whichever of the foregoing justifications is adopted, it would not apply to the investigation of a possible Vice-Presidential nominee. Neither the President nor the Congress has any responsibility or power under the Constitution to screen candidates for public office. We understand that a rule against background investigations of elected officials has in the past been rigidly maintained by the FBI, and that no such officials have been targeted except in connection with criminal inquiries. It is possible (though I think unlikely) that the Congress has the power to permit or even require an investigation of candidates as a means of assuring fair and fully informed elections -- the same power underlying the Federal Election Campaign Act. But certainly without such Congressional authorization, we see no basis for the President independently to undertake such a responsibility.

The one plausible basis which we can conceive of for Presidential authorization of an investigation of a possible Vice-Presidential candidate is the necessity of assuring his trustworthiness for the purpose of receiving a national security briefing. (If consent to the investigation were not given, the briefing would presumably not be conducted.) There are several practical obstacles to effecting application of this theory to the present case. Such briefings have to our knowledge not previously been given to Vice-Presidential candidates; and they have been given to Presidential candidates only after party nominations have been decided; and it has never been the practice, even then, to conduct prior investigations. In addition, there is in our view a possible constitutional impediment to conditioning the conferral of such a clear benefit in the political campaign upon agreement to an investigation, particularly when the incumbent President himself is an opposing candidate.



We are, in short, unable to identify any authority which would properly support a directive to the FBI to conduct an investigation in the present case.



United States Senate

WASHINGTON, D.C. 20510

June 17, 1976

Mr. Philip W. Buchen
The White House
Washington, D.C.

Dear Mr. Buchen:

As a participant in the Institute of Politics' Study Group on Vice-Presidential Selection, I thought that you would be interested to know that I have reintroduced my bill to provide for background checks on prospective Vice Presidential candidates. For your information, I am enclosing a copy of the bill and my introductory remarks.

Very truly yours,


BILL BROCK

BB:gls

Enclosure





United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 94th CONGRESS, SECOND SESSION

Vol. 122

WASHINGTON, THURSDAY, JUNE 10, 1976

No. 89

Senate

By Mr. BROCK:

S. 3552. A bill to provide for an investigation of the character and past activities of potential Vice Presidential nominees by the Federal Bureau of Investigation. Referred to the Committee on Rules and Administration.

Mr. BROCK. Mr. President, the long primary process is now at an end, and our election focus will now be directed toward the national conventions. Thus, for the next few weeks, the potential Presidential nominees will receive intense analysis by the media and by the voting public, prior to the moment when each party selects its standard bearer.

Then what happens? The next order of business will be for a very tired nominee and an equally tired staff to pick a running mate for the Presidential candidate—his Vice Presidential nominee. That position is only a heartbeat away from the Presidency, and it is a position which 4 times in the past 25 years has led to the Presidency itself. As the process begins on nomination night, chances are all too good that the person chosen to fill the slot of the Vice Presidential nominee will be selected with perhaps a too cursory check and too superficial thought.

This procedure has led to embarrassment to both parties in the past 4 years. Yet, virtually nothing has been done to improve the system of selecting Vice Presidents.

Two weeks ago, there was an offer extended by President Ford to the Democratic nominee for the use of the services of the FBI to investigate potential Vice Presidential choices.

Mr. President, I think this is a step in the right direction. Three years ago, I offered this system of background information gathering.

I applaud President Ford for making such an offer, but I must point out that there may be two shortcomings in this offer.

First, there are some questions as to whether potential candidates can be investigated without a specific law, such as the one I suggest. Second, and perhaps more important, the President's proposal contains no safeguards and, indeed, could not have legal safeguards

without the passage of a law such as the one I now propose.

If a procedure is to be established for the investigation of a potential Vice Presidential nominee, we must insure that there are adequate safeguards to accompany it. I was intrigued upon hearing the directors of our intelligence operations testify earlier this year before the Government Operations Committee that they would welcome a set of established procedures for such investigations.

While safeguards and procedures are vitally important, I must also point out that FBI background investigations are very standard procedure. All of our military and Foreign Service officers have background investigations as do many other senior officials throughout the Government and congressional staffs. If a person cannot pass a check that our military and Foreign Service people must, he should not be the Vice President.

President Ford mentioned that during the course of his selection as Vice President, he was the subject of a searching inquiry by over 400 agents. And of course, Vice President ROCKEFELLER underwent a 4-month investigation and confirmation process, even though he had been in the forefront of public scrutiny for some 20-odd years. Yet, a Vice Presidential nominee in July and August will literally be chosen overnight.

An FBI check is not unprecedented. In fact, it might actually be considered a standard practice.

However, if it is going to become a continuous standard practice, we will need established procedures and safeguards.

With this in mind, I am once again introducing my bill to provide for an investigation of the character and past activities of potential Vice Presidential nominees by the FBI. Although this bill is especially for nominating procedures, it would also establish procedures for 25th amendment cases.

Briefly, this measure would allow, but not require, principal presidential candidates the opportunity, to submit the names of 10 possible candidates for vice president to the FBI. The investigation of the contenders shall consist of the

normal procedures used for a top-secret clearance. The results of the investigation would be released only to the winner of the Presidential nomination, or the President, and only with the written consent of the person investigated. Also, only the Presidential candidate himself and one other staff member chosen by the candidate may view the records.

An FBI agent would serve as custodian of the records. After the selection of the Vice President, all investigation reports, including that of the Vice Presidential nominee shall be destroyed. It will be a Federal offense of up to 5 years imprisonment and a \$50,000 fine for unlawful disclosure of the results of any investigation.

Mr. President, there have been other reforms suggested. While many have merit, I think that my investigation procedure is rather seminal to any true reform. I ask unanimous consent that my statement before the Republican National Committee in 1974 be printed in the RECORD at this point, together with the text of the proposed legislation.

There being no objection, the bill and statement were ordered to be printed in the RECORD, as follows:

S. 3552

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for purposes of this Act, the term—

(1) "Presidential primary" means any election held for the expression of a preference by the voters of a State for the nomination of a candidate for election to the office of President;

(2) "political party" means any political party whose candidate for election to the office of President in the most recently conducted Presidential election received more than 10 per centum of the total number of votes cast throughout the United States for all such candidates, treating votes cast for the election of Presidential and Vice-Presidential electors who are affiliated with a political party as votes cast for the Presidential candidate of that party;

(3) "national nominating convention" means a convention held by a political party for the purpose of nominating the candidate of that party for the office of President; and

(4) "Presidential candidate" means an individual who—

(A) is qualified under the Constitution to serve as President if elected to that office; and

(B) files with the Attorney General, not later than 30 days before the date on which the national nominating convention of a political party is scheduled to begin—

(1) a statement in writing personally signed by him stating that he is a candidate for nomination of that party for election to the office of President, and

(11) a substantial number of statements in writing each of which is personally signed by a delegate entitled to vote in such convention for the selection of the candidate of that party for election to the office of President stating that such delegate intends to vote for the nomination of that individual as the candidate of that party for election to the office of President when the convention is held.

For purposes of clause (11), an individual shall be considered to have furnished a substantial number of statements from delegates to the national nominating convention of a political party if he has furnished the greatest, next greatest, or third greatest number of statements from such delegates in comparison to the number of statements furnished by all other such individuals, or if he has furnished statements from 10 per centum of such delegates.

Sec. 2. (a) (1) Whenever there is a vacancy in the office of the Vice President, the President may, in writing, request that the Attorney General investigate not more than 10 individuals listed in such request by the President as potential Vice Presidential nominees.

(2) A Presidential candidate may, in writing, request the Attorney General to investigate not more than 10 individuals listed in such request by the Presidential candidate as potential Vice-Presidential nominees.

(3) The Attorney General, upon receiving a written request from the President under paragraph (1) or from a Presidential candidate under paragraph (2), shall direct the Federal Bureau of Investigation to conduct an investigation of the individuals listed in such request. The investigation shall be of the same nature, extent, and scope as an investigation conducted by the Federal Bureau of Investigation in connection with the granting of a top secret security clearance to any individual employed by the United States.

(b) The Attorney General shall notify each individual who is the subject of an investigation conducted under this Act when such investigation is completed and shall give such individual an opportunity to review the evidence and information obtained through such investigation. No evidence or information obtained by an investigation conducted under subsection (a) shall be released to any person without the written consent of the individual who is the subject of the investigation.

(c) If an individual investigated under subsection (a) consents in writing, as provided under subsection (b), to the disclosure of the evidence and information obtained in that investigation, the Attorney General shall permit inspection of such evidence and information by the President who requested the investigation and by one other person designated by the President, or by the Presidential candidate who requested the investigation and by one other person designated by such candidate, but only if such candidate has been nominated by the national nominating convention of the political party with which he is affiliated. Any such inspection shall be carried out on premises designated by the Attorney General and in the presence of an employee of the Federal Bureau of Investigation who shall be the custodian of such evidence and information. No copy, record, or memorandum of any matter contained in such evidence and information shall be made by the candidate or the person designated by the candi-

date to inspect the evidence and information, and no part of such evidence or information shall be removed from the custody of the Federal Bureau of Investigation.

Sec. 3. (a) Upon the nomination of a candidate for the office of Vice President by the President acting under the Twenty-fifth Article of Amendment to the Constitution of the United States, all evidence and information relating to such candidate obtained from an investigation authorized in section 2 shall be forwarded to the appropriate committees of the Congress. Upon the confirmation of such candidate by and with the advice and consent of the Senate, all evidence and information relating to other potential Vice-Presidential nominees obtained from an investigation authorized in section 2 shall be destroyed, and no memorandum, copy, or other record of such evidence or information shall be retained.

(b) Upon the nomination of a candidate for election to the office of Vice President by the national nominating convention of a political party, all evidence and information relating to potential Vice-Presidential nominees of that party obtained from an investigation authorized in section 2 shall be destroyed, and no memorandum, copy, or other record of such evidence or information shall be retained.

Sec. 4. No evidence or information obtained under or in connection with an investigation carried out under this Act shall be admissible in any proceeding before any court of the United States or of any State.

Sec. 5. The disclosure, release, or retention of evidence or information in violation of the provisions of this Act shall be punishable by a fine not to exceed \$50,000, imprisonment for not to exceed five years, or both.

STATEMENT OF SENATOR BILL BROCK

Mr. Chairman: The events of the past two years have amply demonstrated that we have to take a hard look at the methods we now use to choose our Vice Presidents. It is actually unfortunate that it has taken so-called "scandals" to make us address this problem, when in actuality, as we look at the Vice Presidential office since World War II, we see that three Vice Presidents have become Presidents—Trumana, Johnson and Nixon, while another Vice President, Hubert Humphrey, was a serious Presidential nominee. In short, the Vice Presidential office has taken on great importance, and it is unfortunate that it took problems in both our parties to bring about serious consideration of reform.

I have given this matter serious thought and, in fact, have introduced a bill, S. 2741, that could perhaps deal with the problems that have plagued the Vice Presidential candidates of both our parties. Briefly, my bill provides for a standard "top secret" clearance check of potential Vice Presidential candidates that the Presidential candidate could read before he made his selection.

Before explaining my bill, however, I would first like to establish some guidelines or standards, a touchstone that should be used for the selection of Vice Presidential candidates; then second, review some of the proposals for change now being advocated in the press and elsewhere.

STANDARDS FOR CHOOSING A VICE PRESIDENT

What are the standards and guidelines we should try to aim at for choosing a V.P.? The list of standards for the man who stands a heart beat away from the President is endless, but I have tried to conceptualize them under four general headings:

- I. Integrity.
- II. Compatibility with President.
- III. Political Pragmatism.
- IV. Democratic and Fair.

I. Integrity

Obviously, the man who may well be President should be a man of integrity. This is

the primary standard, yet it is the one most neglected under present V.P. selection procedures. A Presidential candidate must survive anywhere from three years to a minimum of six months of scrutiny by the fourth estate, and no man with skeletons in his closet can survive that scrutiny. A V.P., however, is chosen overnight, and although ostensibly is a man of character and integrity, as past events have shown, this is not always the case. Thus, the first requirement for any solution is to select a procedure to ensure that only men of integrity are chosen.

II. Compatibility

The man chosen for the job must be compatible with the Presidential candidate. Although many have suggested that a Vice President should often take opposing views on issues, in practicality, this would be utter nonsense and even dangerous. According to some, the then V.P. Humphrey was totally opposed to President Johnson's Vietnam policies, and they feel he should have spoken, but would this have served the country well? Think of the effect on allies, or worse, enemies if a President was in ticklish negotiations on one path, while his V.P. was advocating another.

I am not suggesting that a V.P. becomes a complete lackey of the President. But he must be a man of the same general persuasion. Thus, another requirement is that the Presidential candidate must have a strong voice in the selection of the V.P.

III. Political Pragmatism

Despite the outcry of some, political considerations must be allowed to be a criterion for the selection of the Vice President. I do not mean the backroom, smoke-filled room type politics, but honest, open politics.

What I mean by this is that there must be room for maneuvering in such areas as trying to obtain a balanced ticket or using the V.P. selection to try to heal party wounds. Some people say that Humphrey lost the 1968 election because he could not heal the wounds of the Democratic left, and I think that I can safely say that had John Kennedy not picked Lyndon Johnson as his V.P., he would have lost the election.

Another requirement and standard in the selection process of the V.P. must be allowed to cope with realistic politics. There is nothing dishonorable in honest, open politics.

IV. Democratic and Fair

Any method used to choose the V.P. candidate must be as fair and democratic as possible. The most obvious method would be for the V.P. candidate to also run (as some have suggested, and which I will mention later), but this would not always be commensurate with the other standards, namely: II. Compatibility, and III. Political Pragmatism.

Another requirement therefore is that the selection process should be as democratic and fair as possible under the circumstances.

Now, let me review and comment on some of the suggestions now being used or proposed for the Vice Presidential selection process.

To the best of my knowledge, there are now about ten methods used or being proposed:

1. Traditional Method.
2. Vice President as Candidate.
3. Immediate Declaration by Presidential Candidate.
4. Runner-up as Vice Presidential Candidate.
5. Self Nomination.
6. Open Convention.
7. 48 Hour Delay in Convention.
8. Special Convention.
9. 25th Amendment-type Method.
10. Pre-investigations.

1. Traditional Method

The tradition, of course, is to let

7. 48 Hour Convention Delay

Senator Humphrey has suggested an extra day for the convention with a day between the selection of the President and the Vice President. The obvious reason is to avoid the rush to choose the V.P. But I don't think a 48 hour delay is going to be sufficient time to get at the integrity of a man. It does give the Presidential candidate more time to look over the field, and thus meets the compatibility and political tests, and is as democratic as any present method, since the elected delegates have the final selection, but it does not get at the "Integrity" question.

8. A Special Delayed Convention

In 1972, the Democrats used a special convention to choose Shriver and Senator Humphrey has mentioned this as a method if the Presidential candidate desires more time. This would give the party time look into a candidate's "integrity," but I believe that it fails the other three requirements. First, it is not democratic, but smacks of the old backroom politics picked by the party bosses.

Second, this could definitely jeopardize the compatibility requirement, since, as we have seen all too often the party structure has a different philosophy from the convention delegates who are "elected" officials.

Third, this is not politically feasible since, for the same reasons cited in two (2), the Presidential candidate could find himself with a politically unacceptable partner who happened to be the favorite of the party.

We must remember that even though V.P.'s have become increasingly important, and often gone on to be Presidents, people still are voting for the President and he should have the right to have a strong input for a V.P. of his choice.

9. 25th Amendment-type Proposals

It has been suggested by some, and with a constitutional amendment by Senator Griffin, that the Presidential candidates run alone, and then afterwards use some sort of 25th Amendment-type proposal to choose the Vice President. There is a certain amount of appeal for this, especially if you are worried about the integrity of the Vice President Gerald Ford underwent probably the most careful and close scrutiny of anyone ever nominated for anything.

Although this has appeal, there is one major drawback in this approach that bothers me. I believe that in a democracy the people should have a chance to vote for their Vice President, and that any man chosen should be subject to the requirements of running for office.

10. Investigation Method

Unless the Vice Presidential candidate hits the campaign road for the entire period and comes under press scrutiny, the only way to satisfy the "integrity" problem is by using some sort of investigative method. Considering the fact that only one recent Vice President, Johnson, was under the press survey, while most were relatively unknown, I think that we do need some sort of investigative method for choosing our Vice Presidential candidates.

The Democrats have suggested, and then rejected, a special Party Board to go into the background of potential Vice Presidential candidates. I think the Democrats wisely concluded that any such private dossier system could be easily misused.

I have introduced a bill, S. 2741, that would take care of this investigative problem under standard government procedures. My bill would allow leading candidates to supply the FBI with a list of up to ten names of a standard "top secret" investigation, at least sixty days prior to the convention. In my estimation, this would satisfy all four standards for choosing a V.P. It should take care of the most serious problem—that of integrity. With a choice of ten, I believe that it would also satisfy the "compatibility" and "political pragmatism" tests. And, since the man would still have to be confirmed by the

elected delegates, it would be as democratic and fair as any other method.

My proposal would be a change in the law while this committee is really concerned with convention rules. I have two that I would like to suggest:

(1) I endorse the Humphrey proposal that we need a 48 hour delay between the selection of the Presidential candidate and his choosing a Vice Presidential selector, and

(2) I like the idea that the convention should have some kind of open choice of candidates, but I think that the Presidential candidate should be allowed to choose the two to five candidates.

However, I would like to point out that these suggestions, a 48 hour delay, and an open convention would still not solve the integrity problem, unless the provisions of my bill, S. 2741, are available to the Presidential candidates.

What I suggest in my plan, a "top secret" security clearance check on prospective Vice Presidents raises the specter of civil rights and invasion of privacy, which, quite frankly, have bothered me, but I would like to point out certain items:

(1) A top secret security clearance is a standard clearance required of virtually all our military and foreign service officers and many serious officials in other agencies, and, if a man cannot measure up to those standards, then he should not be Vice President.

(2) Jerry Ford went through a considerably more detailed inspection than I suggest, and I did not hear any civil libertarian objection.

(3) There are six personal safeguards in my bill:

First, a person first fills out a personal information background form, and since this is voluntary, the potential candidate could refuse initially.

Second, the report could only be released with the written permission of the person involved.

Third, only the Presidential candidate and one advisor are allowed to look at the reports.

Fourth, there are stiff penalties for disclosing information from these reports.

Fifth, information obtained by the investigation cannot be used against the persons

Sixth, and finally, the reports are destroyed after the selection.

Although I hate to suggest such a bill, I think that the events of past years have shown that we need better information on our Vice Presidential candidates, especially since so many may eventually become President. The President of the United States simply must be a man above reproach.



the Presidential candidate "pick" his choice. This usually makes the candidate compatible with the President, although not necessarily so, because this method also satisfies another criteria, Political Pragmatism, which has in the past made Presidential candidates choose incompatible, yet politically pragmatic people. This method is democratic and fair to the extent that the convention, elected officials, do confirm the man, yet they usually have little choice.

But, this method has obvious shortcomings.

2. The Vice President as Candidate

This was the method used by Endicott Peabody during 1972, and, quite frankly, it is the most appealing from the "democratic" viewpoint. Since he ran as a candidate, one would think that he would have been under close scrutiny, and thus passed his "integrity" test, but in fact, he was almost completely ignored by the press. However, were this the standard procedure, the press might pay more attention to V.P. candidates, but they would probably still be overshadowed by the Presidential race.

This method has two major drawbacks, however, it does not insure compatibility, and could even worsen this element, since over the campaign period the V.P. would have built his own constituency. Also, this might fall the political pragmatism test.

3. Immediate Declaration by Presidential Candidate

In a recent article, James I. Loeb has suggested that Presidential candidates immediately make known their choice. Like the "V.P. as Candidate" notion, this has some immediate appeal. It certainly passes the compatibility and democratic requirements, and probably also would take care of the "integrity" test.

But, what about the political pragmatic requirements? As the author himself points out, who would choose to be "second" on a ticket but even worse, this would eliminate Kennedy-Johnson type tickets, or, looking into the future, a Reagan-Percy type ticket. In short, immediate declaration type tickets would tend to polarize the party, which, in my estimation, is bad, and/or would eliminate Kennedy-Johnson type tickets.

4. Runner-up as Vice Presidential Candidate

It has been suggested by many that the runner-up should become the Vice Presidential candidate, and this, of course, does happen often. But, what about the situation where the Presidential candidate and runner-up are from completely different wings of the party? For politically pragmatic reasons, they may want to join forces to "heal party wounds," however, I would hate to see a situation where they were "forced" to join together.

5. The Self-Nomination Method

At the 1972 Democratic Convention, we saw Senator Gravel use the novel method of nominating himself. I believe that Senator Gravel was deadly serious, and I know him to be an honorable man. However, this type of method could be used by demagogues, plus, it fails all four tests for election of a V.P.

6. An Open Convention

I must admit that an open convention has quite a bit of appeal to me, but under certain limitations. I would not favor the completely open convention as done by Adlai Stevenson in 1956, because, again, I think you might come up against the compatibility problem. What I would like to see, however, is an open convention, whereby the Presidential candidate announces the name of two or three persons, and lets the convention choose. This would be fair and democratic as possible while fitting in with the realities of compatibility and political pragmatism.

However, this still does not get at the "integrity" issues, because, once again, a virtual unknown could still be chosen as Vice President with the same results.

Q What are the President's plans in going about choosing a Vice Presidential running mate? Is he going to continue not to consult with anyone or at some point does he plan to talk to people about this, or is he going to go to the top of the mountain?

MR. NESSEN: I don't know what the future plans are, but I am just trying --

Q Doesn't he think he better --

Q Let him answer the question.

MR. NESSEN: I started to tell Ed, I don't know what the future plans are for making his selection, but I have tried really in a very sincere way to convey to you what the situation is now, and that is all I can do.

Q Ron, can you explain why whenever Governor Connally comes in here it suddenly does not show up on the schedule? Is there any reason for it?

MR. NESSEN: I don't think there is anything, you know, especially unusual about that. There are a number of people and groups who come in from time to time to visit the President, and, you know -- we have gone over this before -- he does have a private schedule. Connally is on the private schedule sometimes and on the public schedule sometimes.

Q Ron, for the record--we overlooked this earlier--will the subject of possible troop movements in the Middle East come up this afternoon?

MR. NESSEN: There is no anticipation of any American military involvement in Lebanon.

Q Ron, to follow up Dick's question, when Vice President Rockefeller said that Governor Reagan would not be a candidate, you are not disputing the Vice President?

MR. NESSEN: I have not seen that statement by the Vice President. I cannot speak for the Vice President.

Q It was on Meet the Press.

Q On Meet the Press he said he was personally, absolutely certain that the Governor would not --

MR. NESSEN: I can't help you out in that area. All I am saying is that the first time you will hear anything that -- well, I don't know what the Vice President said and I would have to look at the transcript to find out, but, leaving that aside and in no way connected with it, I am saying that you will not know anything that is authoritative and represents the President's thinking until you hear it from the President, and if others --

Q Would you like to bet a dollar on that?

MR. NESSEN: I will, Ted, very much bet a dollar on that or any amount of money, because I know that that is indeed the situation and I know that -- I mean, you have been around Washington a long time. This is a quadrennial game of guess who the Vice President is going to be, and a lot of people down in the bowels of the building and some up in the top of the building like to suggest that they know either that he has made up his mind and, if he has, who it is, and that is, as I say, a quadrennial game. You are simply going to be wrong if you take any of those people's word for that during this period until you hear it from the President.

Q When you say this period --

Q When will we hear it from the President?

MR. NESSEN: As I said to Ed, I don't have a timetable for that.

Q Ron, are you saying that we should not take Connally's word on this, by the way?

MR. NESSEN: Just a step away from your question, Tom -- (Laughter) -- the President has not consulted on this with anyone.

Q Ron, are you through with that?

MR. NESSEN: I don't know.

Q Did Connally give him any kind of light lecture yesterday on the fact that he better get working on this thing, that it was going to get away from him if he was not careful?

MR. NESSEN: Well, Phil, there were only two people in the meeting and I was not one of them so I don't know what they discussed.

Q Ron, did the President meet with Congressman Joe Waggoner of Shreveport this morning, and did they discuss Waggoner's case in which he has been written about by the New York Post?

MR. NESSEN: Well, today was one of the Congressional hours and I think if you recall Congressional hour it is one of those occasions in which an hour or an hour and a half is set aside for very brief meetings with Members of Congress.

Q Yes, we know that, but that is not the question.

MR. NESSEN: Well, I want to set in context why Congressman Waggoner was here. He came in with one of his constituents, the Reverend Ashley T. Law --

Q Southern Baptist? (Laughter)

THE WHITE HOUSE

WASHINGTON

June 17, 1976

Dear Jonathan:

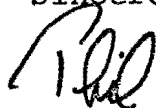
Many thanks for sending me a copy of the report recently completed by your Study Group concerning the selection of Vice-Presidential candidates.

I look forward to reading this report as I am sure it represents a very thoughtful commentary on this subject.

Congratulations on having completed this work so expeditiously!

Very best personal regards.

Sincerely,



Philip W. Buchen
Counsel to the President



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1976-79

June 8, 1976

Mrs. Deane W. Lord, Director

FOR RELEASE: Monday, June 14, 1976

Harvard University's Institute of Politics released today the report of its Study Group on Vice-Presidential Selection, containing fifteen "mutually reinforcing" recommendations favoring "a set of procedures more likely than the present ones to assure selection of Vice-Presidents competent to assume the Presidency itself."

Citing current one-to-two odds that the Vice-President will eventually become President, and the Eagleton-Agnew incidents, the report criticizes the present system as "too prone to error" and containing "an inherent and unacceptable degree of risk."

The study group's report is made public "in hopes of influencing the way the Vice-Presidential nominees are selected in 1976 and of improving the process further before 1980." Its recommendations:

- * Protect the predominant role of the Presidential nominee in the selection of a running mate, and reject methods of an "open" convention or a "mini-convention" convened subsequent to the regular national convention.
- * Emphasize a "more open system, responsive to the public" which would "strengthen the chances of informed and responsible choice," relying upon "sensible, feasible, and largely voluntary" roles for the parties, candidates, and the media.
- * Support "Presidential competence" as the primary standard for Vice-Presidential selection, with "electoral balancing" as a secondary factor, pointing out that the two "are neither mutually exclusive nor naturally contradictory."
- * Propose rearrangement of the schedule for national conventions so as to place the platform debates following the Presidential nomination and preceding the Vice-Presidential choice--allowing time for "more care and deliberation...with opportunity for more thorough and extensive consultation."
- * Endorse a strengthened party role by establishing advisory committees of the two national parties which would undertake advance preparation and background research prior to the convention, widen the process of consultation, and "provide information and advice on potential Vice-Presidential candidates to the nominee."
- * Urge the Presidential candidates to give higher priority to Vice-Presidential selection--through advance staff work, public discussion of criteria, and public listing of "serious preferences for the Vice-Presidency before the convention."
- * Oppose F.B.I. background checks for prospective Vice-Presidential candidates by administrative action; but request Congressional consideration of legislative authorization for "appropriate background investigations to be conducted by

the F.B.I., under timely and fair arrangements and with effective controls against violations of privacy and misuse of sensitive information."

- * Stress the key role of the media in public exposure and involvement in Vice-Presidential choice, urging the commitment of "reporters, time and funds to extensive coverage and investigation of potential running mates, including interviews plus in-depth reporting on issues and backgrounds."

The Study Group on Vice-Presidential selection, which began its work in February, reviewed earlier studies and proposals and interviewed various experts and current practitioners in the process, before completing its own analysis and recommendations. Its members are: Christopher Arterton, Assistant Professor of Political Science, Yale University; Timothy Barrow, Fellow, Institute of Politics, formerly Mayor of Phoenix, Arizona; Lawrence D. Brown, Assistant Professor of Government, Harvard University; Eugene Carlson, Fellow, Nieman Foundation, economics reporter, United Press International; Barney Frank, Massachusetts State Representative; K. Dun Gifford, Vice-President for Urban Affairs, Cabot, Cabot & Forbes, formerly Chairman of Common Cause/Massachusetts and Legislative Assistant to Senator Edward Kennedy; Charles Greenleaf, MPA Program, John F. Kennedy School of Government, formerly Legislative Assistant to Governor Milliken of Michigan; Ira Jackson, Special Assistant to the Institute Director, formerly Administrative Assistant to Mayor Kevin White of Boston; Elizabeth Goddard (Rapporteur), Institute staff; and Jonathan Moore (Chairman) Director of the Institute of Politics. Excerpts from the Study Group's Report:

On the problem:

"We take the view that rational discussion and exploration of alternatives should be continued, and that increased public attention to methods of Vice-Presidential selection is itself a necessary first step toward improvement.... Our general objective is to suggest a set of procedures more likely than the present ones to assure selection of Vice-Presidents competent to assume the presidency itself. Our point of departure is not that the present approach has worked poorly on the whole, but rather that it is inherently risky. We grant that no Presidential nominee would knowingly choose a running mate unfit to hold the highest office. However, we are skeptical that the present system is adequately self-correcting or that we can simply trust future Presidential nominees to exercise 'exquisite care' in choosing running mates in the absence of procedural reform.

"We do not believe that radical changes are desirable or workable.... We address, therefore, the practical roles which the parties, the candidates themselves, and the media can usefully and quickly play. Our recommendations recognize the inherently pluralistic and democratic character of the process, and we believe their non-dramatic nature makes them more rather than less compelling."

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On standards:

We recognize that strong short-term political needs--for regional balance, to heal party divisions, to prevent the Presidential nominee from being upstaged, and the like--may detract from competence as the main criterion. However, the selection of a running mate with the purpose of maximizing the popular vote, securing key blocs in the electoral college and creating a sense of representation and legitimacy among various population elements--therefore enabling an administration to govern effectively, is a valuable aspect of the political process.... It is implausible that the dictates of short-term political balance are so compelling, and the available set of high-quality political figures so limited, that a Presidential nominee need be forced to sacrifice competence to campaign victory in a possible successor."

On parties:

"By undertaking modest but useful reforms, the national parties can not only improve Vice-Presidential selection, but also strengthen their own relevance and influence in a period unhappily marked by party decline.... As it is now, both parties treat Vice-Presidential selection as a low-priority matter, an afterthought unworthy of serious preparation."

On candidates:

"In urging special responsibilities in Vice-Presidential selection on the Presidential candidate, along with recommendations affecting other participants in the process, we seek to strengthen and protect their role rather than to diminish it. If their responsibility is to remain a commanding one, however, it should be carried out with a greater commitment of time and effort than has generally characterized past behavior, beginning well before nomination rather than immediately following it.

"The greatest weakness in the present system is the fact that whereas the Presidential candidates go through months of exposure and arduous campaign work before coming to the convention, the Vice-Presidential candidate is often unknown, both to the public and the nominee. When the Vice-Presidential candidate happens to be chosen from the ranks of candidates actively contesting the primaries, there is much less of a problem, but this cannot be guaranteed.... (We) attempt to correct this weakness in the system without challenging the nominee's prerogative to make the choice."

On background checks:

"The question of background checks on prospective Vice-Presidential candidates is characterized by uncertainty and controversy. Many believe that they would not be

worth the risks involved, including possible violation of privacy, abuse of confidential information, lack of credibility, and misrepresentation.

"The study group believes that a thorough examination of a Vice-Presidential candidate's personal and political background, now lacking, is a desirable component of the overall process.... (But) any process of background checks must be accomplished with a maximum of understanding, support, and credibility. Otherwise the cost will be greater than the benefit, and we would do better without it. It is this belief that leads us to the conclusion that a systematic check for Vice-Presidential candidates should not be undertaken by administrative action and loose agreement among the interested parties, but only by way of the legislative process. This would assure adequate deliberation--solicitation of views through public hearings, careful analysis by Committee staff, open debate in both houses of Congress, and the chance for Presidential approval of a new statute."

On the media:

"The press should earmark a substantial slice of its resources toward calling attention to the inequities and foibles of the present selection system and toward covering prospective Vice-Presidential candidates.... The urgency of the ongoing campaigns and the uncertainty of the outcome leaves the unfortunate possibility that, once again, the selection of running mates will be a last-minute decision. In that event, it will be more crucial than ever for reporters to dig deeply into the backgrounds and public records of the candidates, acting as a supplement to a highly imperfect selection procedure. To the extent that potential contenders for the second slot can be identified and examined in advance, the process will be improved."

The Institute of Politics was established in 1966 in the John Fitzgerald Kennedy School of Government at Harvard University as a living memorial to the late President, with the objective of increasing the understanding and cooperation between the university community and the political world. It conducts a student program, a Fellowship program, a program of Faculty Studies, and a program of special projects, including analyses of the political process and orientation courses for freshmen members of Congress and newly-elected Mayors.

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Carter to Name Panel to Help Him Choose a Running Mate



Associated Press

Jimmy Carter airs strategy with (from left) Hamilton Jordan, Morris Dees, Greg Schneiders and other aides.

By Helen Dewar
Washington Post Staff Writer

ST. SIMONS ISLAND, Ga., June 17—Jimmy Carter, conceding that a faulty vice presidential choice could be a "fatal mistake" for his campaign, announced today he will immediately assemble a panel of 12 to 15 "distinguished Americans" to help him make the choice.

But he said he is reluctant to accept President Ford's offer of FBI assistance in probing the background of prospective candidates for the No. 2 Democratic spot. He indicated he would do so only if the candidate agrees to submit to an investigation and if the Attorney General rules that such probes are legal.

Carter also backed off at least partially from his earlier statement that he would ask the 3,008 convention delegates for their advice on a vice presidential nominee, saying that time remaining before the July 12 convention may not permit such a survey.

Use of a public advisory group would give him a broad-based "sounding board" for selection of a running mate, Carter said. The Carter campaign hopes it also would help provide a check against a recurrence of the Democrats' 1972 plight, when presidential nominee George McGovern

dropped Sen. Thomas F. Eagleton (D-Mo.) after it was discovered that he had been treated for a mental illness.

Carter—tanned and relaxed from two days of fishing and swimming with his family at Sea Island near here—disclosed the plan after a two-hour strategy session with a dozen or so members of the top echelon of his campaign staff.

It was the prospective nominee's first meeting with them since his opposition crumbled in the face of his relentless, 15½ month drive for convention delegates.

According to Carter and others, the meeting covered plans for paying off Carter's \$1.2 million primary campaign debt, convention logistics and fall campaign plans as well as the vice presidential selection.

Carter also said the group went over "some mistakes" that the campaign organization had made during the primaries, but he did not elaborate.

Later, press secretary Jody Powell said Carter complained during the meeting that the staff "in some cases had gotten a little cocky about this thing" (the nomination) and he wanted more humility.

Powell said Carter wanted the word passed through his entire campaign organization to "take great pains to make sure we did not give

the impression that we are more important than we really are."

And, said Powell, smiling, "he explained just how important we are."

Briefing reporters on the lawn of a resort hotel where his staff is staying during his five-day vacation, Carter said he would have more details within a few days on his vice presidential selection plans, including names of at least some representative members of the advisory group.

Aides said Carter appeared to have a "fair idea" of whom he intended to choose for the panel but did not want to disclose names until he had contacted them. Carter told reporters that no prospective vice presidential nominees would be on the panel, which, he said, would be composed of "distinguished Americans... whose judgment I respect."

Carter did not spell out exactly how the panel would operate, but Powell said it would probably be on an informal basis, without actual meetings.

Carter said he would "accumulate as many different opinions" as he could among members of the group and, if there are any "deleterious or critical" of any of the possible choices,

further investigations would be made.

"I don't know about the use of the FBI. We're reluctant to do that," said Carter. "The only way I would do that is if the Attorney General tells us it would be legal and if the nominee approved the interrogation or investigation."

He said he felt it was "important in this process to honor the privacy" of those who are under consideration for the nomination, and did not want "a full background check" of all who are being considered, regardless of their chances of being chosen.

The Carter campaign has already commissioned its polling firm, Cambridge Survey Research, to conduct a voter survey on 14 possible nominees: Sens. Edward M. Kennedy (Mass.), Frank Church (Idaho), Walter F. Mondale (Minn.), Alan Cranston (Calif.), John Glenn (Ohio), Edmund S. Muskie (Maine), Adlai E. Stevenson (Ill.) and Birch Bayh (Ind.); Govs. Michael S. Dukakis (Mass.), Wendell Anderson (Minn.) and Hugh L. Carey (N.Y.); Reps. Peter W. Rodino (N.J.) and Barbara Jordan (Tex.), and Mayor Thomas Bradley of Los Angeles.

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THE WHITE HOUSE
WASHINGTON

Barry,

Mr. Buchen would like you to
handle.

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THE WHITE HOUSE
WASHINGTON

June 21, 1976

Burben?

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MEMORANDUM FOR: RON NESSEN
FROM: DAVE GERGEN *DR*
SUBJECT: FBI Check on
 VP Nominee

Jimmy Carter's people say he will announce this week his procedures for selecting a VP nominee. Do we have a definite reading now on the legality of FBI checks?

→ cc: Dick Cheney

Dick Cheney





Avoiding Mistakes

(Editorial, excerpted, Atlanta Journal)

Though all sorts of things can still happen at the Democratic national convention itself, the party's platform committee has come up with a draft which is pleasing to probable presidential nominee Jimmy Carter. As a result, the committee also has avoided making some big political mistakes, which, without the Carter influence, it quite likely would have made.

Despite the grumbling of some who view silence on such issues as elevating political expediency above ideals, the platform committee refused to get as far out of step with the majority of the American people as party ideologues tended to do in 1972. It begins to appear that candidate Carter will not have to start the campaign disavowing most of his party's platform. -- (6/17/76)

Can FBI Be Trusted?

(Editorial, excerpted, Des Moines Register)

Jimmy Carter, the probable Democratic presidential nominee, has expressed reservations about an offer by Atty. Gen Levi to have the FBI run background checks on possible running mates.

An FBI check conceivably could alert the presidential nominee to factors in a person's background that would make that person an inadvisable vice presidential choice. But the FBI also conceivably could try to blackball somebody the agency disapproved. Carter is properly concerned about the possible consequences of giving the FBI even an indirect voice in the selection process.

For too long even presidents were cowed by the FBI and dared not appear to question the integrity of the agency. Jimmy Carter's reluctance to bring the FBI into the vice presidential selection picture is a healthy sign. -- (6/23/76)

Carter Twists the Record

(Editorial, excerpted, Daily Oklahoman)

Now that he has the Democratic presidential nomination virtually sewed up a month before the convention, Jimmy Carter is reportedly turning his attention to potential running mates and possible cabinet choices.

However, there is the little matter of a campaign and election before Carter can be sworn in as the 39th President of the United States next January. And as the contradictions in Carter's record become more apparent, a funny thing could happen to him on the way to the White House, like it did to Thomas E. Dewey in 1948.

Vice Presidential Selection in Question

The selection of Spiro Agnew and Thomas Eagleton as vice presidential running mates in 1972 has caused many to conclude the vice presidential selection process should be changed, Connie Chung (CBS) reported.

Changes range from an FBI investigation to giving the presidential nominee more time to choose a running mate, Chung said.

Hubert Humphrey commented (on ABC film): "Listen, Lyndon Johnson made the FBI look like amateurs. They investigated from top to bottom and I knew it."

Jimmy Carter has already begun an elaborate screening process to choose his running mate, Chung said.

The two Republicans aren't in Carter's fortunate position. Both camps support a thorough investigation but do not think it should overshadow the decision of the nominee.

Reagan campaign manager John Sears said (on ABC film): "I have no interest myself and I don't think Mr. Reagan does in making the selection process into something that might more resemble a police investigation."

Rogers Morton said (on ABC film): "The thing you want to avoid and I think the President would want to avoid is any system that would let the Executive Branch be the determining factor as to whether a person should or should not be the President of the United States or the Vice President of the United States." CBS -- (6/29/76)



Barry

THE WHITE HOUSE

WASHINGTON

June 30, 1976



MEMORANDUM FOR: DICK CHENEY
JACK MARSH

FROM: PHIL BUCHEN *P.*

SUBJECT: Authority for FBI to Investigate
Potential VP Nominees

The Department of Justice is of the opinion that present law does not permit the FBI to investigate prospective Vice Presidential nominees. Justice is unable to find any statute which would authorize the FBI to undertake such investigations. Although the President has inherent authority to direct investigations in the absence of a specific statute when the investigations relate to the exercise of his constitutional or statutory functions, Justice is unable to identify any function which would clearly support such a directive for this purpose. Moreover, Justice notes that a statute to provide for such investigations may be unconstitutional because it establishes consent by the nominee as a new qualification for Vice Presidential candidates.

At best, it is questionable whether present law would permit such an investigation even with the subject's consent. In the absence of new legislation, the only basis for proceeding in this manner would be after consultation by the Attorney General with the leadership of the House and Senate Judiciary Committees. The Attorney General does not favor the concept of a Federal police force investigating potential political candidates and the Deputy Attorney General recently explained to Governor Carter's staff that the FBI did not have the authority to investigate Vice Presidential candidates. (No objection to this opinion was raised by Governor Carter's staff. Despite a correction by the New York Times, the news media continues to report that the Attorney General offered the FBI for the investigations.)

INVESTIGATION OF PROSPECTIVE
VICE PRESIDENTIAL NOMINEES

Question

Mr. President, you recently stated that you would make available facilities of the FBI at the request of the Democratic Presidential nominee to investigate a prospective Vice Presidential nominee prior to the decision. Is this your present position?

Answer

The idea of such an investigation was recently raised by a reporter at which time I stated that I saw no objection to an investigation, to the extent permitted by law, as long as it was requested in writing by the Presidential nominee with the written concurrence of the Vice Presidential nominee. On the basis of my experience during my Vice Presidential confirmation process, I am not personally troubled by the thought of such an investigation. However, the Department of Justice has recently concluded that present law does not permit the FBI to undertake such investigations even with the consent of the subject and Governor Carter has so been informed by the Department of Justice.

I believe this is a matter that deserves further study. There are numerous practical problems that must be considered, such as the length of time to complete investigations of this magnitude, as well as policy considerations concerning individual privacy and investigations by the Government of potential political candidates. We must not get into a situation where the Federal Government screens who are to be our political candidates. I do not believe that such a study could be completed in time for this year's Conventions.



Senator Brock has introduced legislation, S. 3552, to provide for investigations for this purpose "of the same nature, extent, and scope as an investigation conducted by the Federal Bureau of Investigation in connection with the granting of the Top Secret security clearance to any individual employed by the United States." The bill does not require the consent of the prospective Vice Presidential nominee in order to conduct an investigation and would allow any candidate with written statements of support from more than 10 percent of the delegates to the Convention to request the Attorney General to investigate not more than 10 individuals for this purpose. The bill appears to prohibit the use of any evidence obtained during an investigation for any other purpose, including in criminal proceedings and provides that only the Presidential nominee or his designate could inspect the investigations after obtaining consent of the subject. Following the nomination of the Vice Presidential candidate, the investigations and all copies thereof would be destroyed. I recommend that the appropriate Justice officials meet privately with Senator Brock to discuss the practical problems raised by such legislation and Justice's reluctance to investigate potential political candidates.

With reference to the President's consideration of Vice Presidential candidates, we can review existing FBI background investigations on individuals who have been considered for Presidential appointment. As you are aware, we do not conduct such investigations with respect to members of Congress, but with consent do conduct investigations on Governors and other state officials. While such investigations are far less detailed than the one on Congressman Ford, they may be useful. Additionally, the questions we ask Presidential appointees (attached) concerning their financial interests and background provide us with basic information that should be reviewed prior to final selection and announcement of the President's running mate.



file VP selection

Vice-Presidential Candidate

The most important decision Governor Carter is likely to make for a very long time to come is the decision he has to arrive at within the next two days—if he has not reached it already. It is a decision of vital significance, not only for the prospective Presidential nominee and for the Democratic Party but, more to the point, for the American people. It is the selection of the Democrat best qualified for the Vice Presidency of the United States.

The traditional method employed by both parties in choosing their Vice-Presidential nominee has little to recommend it; and the results have often proved the point. The potential (and, in too many cases in recent years, the actual) successor to the Presidency has normally been appointed by the successful Presidential candidate, and anointed by the party convention—with thought only for real or imagined political advantage, and with virtually no thought of the standards requisite for holding the world's most important public office. As we noted last week, and many times in the past, some better method must be devised. But until it is, the procedure now being followed by Governor Carter, who has had the unusual advantage of time to give this matter the attention it deserves, is probably the best that could be worked out.

His specific choice, however, has not yet been named; and Mr. Carter must realize that a good deal of his

credibility as the Presidential nominee of his party may rest on this particular decision, i.e., on the individual whom he chooses to be his running mate. In a way that is unprecedented in recent years, the eyes of the nation are focused on the Democratic selection for the Vice Presidency; rarely if ever in this century has the country been so conscious of the importance of the choice. And the choice will be Governor Carter's, his alone to make; the responsibility rests on him and on him alone.

The seven members of Congress Mr. Carter named as the group from whom he would make his selection include at least three Senators clearly qualified for the Vice-Presidential office on grounds of experience, ability and character, and also because they represent the philosophy of Democratic liberalism in foreign as well as domestic policy, to which, we believe, Governor Carter basically adheres.

In this group are Senator Muskie, Senator Mondale and Senator Church; in it might well have been included Representative Udall, Mr. Carter's closest rival for the nomination, whose name was regrettably omitted by the victor from those under consideration.

It is natural for Governor Carter to wish to have a Vice President entirely compatible with his own views and one with whom he will be "comfortable"; but at the same time he needs to pick as running mate a man of outstanding and proven quality, and one in line with the liberal traditions of the mainstream of his party.

