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ber of either House during his continuance in office."

This language may now be compared with that which appears as Article I, Section 6, Clause 2:

"No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office."

The final important change alluded to was the addition by the Committee on Style of the words "be appointed to," the significance of which is discussed below.

The evolution of the clause therefore demonstrates the following: First, the Framers consciously limited ineligibility to civil offices rather than to the more encompassing phrase "any office" as had previously appeared. That this was a significant distinction in the minds of the Framers is indicated by the fact that the disqualification for dual office-holding in the last phrase of the Clause applies to "any office under the United States." Second, the addition of the words "be appointed to" gives further meaning to the term civil office since it conforms it to the sense of similar terminology found elsewhere in the Constitution. That is, where the term civil office appears in other provisions of the Constitution, it seems clear that a distinction is being made between offices created by the Constitution and offices to be created by the Congress. By specifically linking the concept of appointment to those offices which Members could not hold under the conditions specified, the Framers were making the Emoluments Clause consistent with those other provisions of the Constitution; and by that consistency the office of the Vice-President seems taken out from under the coverage of the Clause.

In the absence of any contrary evidence as to the meaning of "civil office" in the debates on this provision, the evolution in terminology must be deemed of significance in itself. The Framers, we have been taught, chose their words with care. And reference to analogous terminology in other provisions tends to confirm the thesis propounded.

Article II, Section 2, declares that: "The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, and other high crimes and misdemeanors." The distinction made between civil officers and the two elected constitutional officers is clear and unmistakable.

Article II, Section 3 provides that the President "shall commission all the officers of the United States." Of course the Vice-President is not commissioned by the President and it is significant that under the Twenty-fifth Amendment, the nomination and confirmation of a new Vice-President by both Houses of Congress is not followed by a commissioning.

Finally, Article II, Section 2, Clause 2 provides that the President:

"Shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and counsels, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of the departments."

Judicial interpretation of this provision has made it clear that there can be no offices of the United States except those which are

created by the Constitution itself, or by an act of Congress, and that no one can be deemed an officer of the United States unless appointed by the President by and with the advice and consent of the Senate, or appointed by the President alone, or a court of law, or the head of a department; and if the latter, Congress must have vested that power in the person making it, by some statute, and Congress must also have created the office, unless it is one created by the Constitution itself. *United States v. Germaine*, 99 U.S. 508 (1879); *United States v. Mouat*, 124 U.S. 303 (1888); *United States v. Smith*, 124 U.S. 525 (1888); *Burton v. United States* 202 U.S. 344 (1906); *United States v. Maurice*, 96, 26 Fed. Cas. No. 15, 747 (1823); *Scully v. United States*, 193 F. Rep. 185 (1911); and see also, *Willoughby*, *The Constitutional Law of the United States* (1929), pp. 605, 1447-1448, 1510; Corwin, *The President, Office and Powers* (1957), pp. 69-73.

In *United States v. Marshall*, Chief Justice Marshall (sitting as a circuit judge) held that "this clause makes a general provision, that the President shall nominate, and by and with the consent of the Senate, appoint to all offices of the United States, with such exception only as are made in the Constitution, and that all offices (with the same exceptions) shall be established by law."

In the *Germaine* case, the Supreme Court declared: "The argument is that provision is here made (that is, in Art. II, Sec. 2) for the appointment of all offices of the United States. . . . The Constitution, for purposes of appointment, very clearly divides all its officers into two classes. The primary class requires a nomination by the President and confirmation by the Senate. But, foreseeing that when officers became numerous, and sudden removals necessary, this mode might be inconvenient, it was provided that, in regard to officers inferior to those specifically mentioned, Congress might by law vest their appointment in the President alone, in the courts of law, or in the heads of departments. That all persons who can be said to hold office under the government about to be established under the Constitution were intended to be included within one or the other of these modes of appointments, there can be little doubt." In the *Smith* case the Court stated: "An officer of the United States can only be appointed by the President, by and with the advice and consent of the Senate, or by a court of law, or the heads of a department. A person in the service of the Government who does not derive his position from one of these sources is not an officer of the United States in the sense of the Constitution."

It may be noted that in subsequent decisions the Court has not departed from this rule although they have recognized that the word "officer" may have a broader meaning when used in statutes. In such cases the Court has distinguished between the constitutional and the statutory use of the term. Thus in the *Lamar* cases the Supreme Court held that Members of Congress are officers of the United States within the meaning of a provision of the criminal code. But Justice Holmes in the first *Lamar* case, and Justice White in the second, were careful to distinguish that ruling from earlier ones which held that Members were not officers in the constitutional sense. *Lamar v. United States*, 240 U.S. 60 and 241 U.S. 107 (1916); see also *United States v. Gradwell*, 234 Fed. 446 (1916).

Since the Vice President does not hold his office by virtue of an appointment under Article II, Section 2, Clause 2, and since the Twenty-fifth Amendment's nomination and confirmation process in no way changes the nature of the Vice Presidency as a constitutional office under the Constitution, it would appear reasonably certain that the office of Vice President was not intended to be en-

compassed within term "civil office" in Article I, Section 6, Clause 2.

In Summary, then it is concluded that, although not entirely free from doubt, Pub. L. 93-136 effected an increase in the emoluments of the office of Vice President, but that, assuming it effected such an increase, it does not appear that the Vice President is a "civil officer" in the sense in which that term is used in Article I, Section 6, Clause 2 and elsewhere in the Constitution.

MORTON ROSENBERG,  
Legislative Attorney.

### THE "SATURDAY NIGHT MASSACRE"

Mr. MONDALE. Mr. President, on October 20 this country experienced what has come to be known as the "Saturday Night Massacre." The President caused Special Prosecutor Archibald Cox to be fired; Attorney General Elliot Richardson resigned because he would not fire Cox; and Deputy Attorney General William Ruckelshaus was also fired for refusing to fire Cox. The "Massacre" was precipitated by the President's refusal to surrender the so-called Watergate tapes and Special Prosecutor Cox's insistence on using the courts to force the surrender of the tapes.

Following the massacre an unprecedented public outcry arose. The citizens of this Nation, political leaders from around the country, and people close to the President sent him an unmistakable message. This country does not allow anyone—including the President of the United States—to be above the law. The events of October 20 created a sense of turmoil and outrage in this country that is still evident in the mail I receive daily. The country saw that a complete investigation of the Watergate affair was necessary, and they told the President that they would not tolerate sabotage of that investigation.

It is against this background that I read the reports in this morning's Washington Post and New York Times of Ronald Ziegler's attacks on the Special Prosecutor staff with great alarm. As we all know, the President, after the discharge of Mr. Cox, appointed Mr. Leon Jaworski as the new Special Prosecutor, and Mr. Jaworski went to work with the aid of the Cox staff. Although I personally find the arrangement by which the current Special Prosecutor is serving unacceptable and I am, therefore, co-sponsoring S. 2611, which would create a completely independent Special Prosecutor, until such an independent arrangement becomes law, and possibly thereafter, Mr. Jaworski and his staff will continue to pursue the Watergate investigation. The men and women on the Special Prosecutor's staff have the day-to-day responsibility for one of the most important criminal investigations in American history.

I am, therefore, deeply disturbed to find the White House attacking, not the Special Prosecutor this time, but the Special Prosecutor's staff. According to the articles, which I would ask to have printed in the RECORD, Mr. Ronald Ziegler stated yesterday that members of the Special Prosecutor's staff have an "ingrained suspicion and visceral dislike for this President and this administration."

If this harsh expression of White House dissatisfaction with the Special Prosecutor's staff merely represents an inadvertent outburst caused by a sense of frustration over the events of the past weeks, Mr. Ziegler should say so. If, however, the White House does intend to raise questions about the competence, fairness, and objectivity of the Special Prosecutor's staff, it should do so with specific charges and examples. The Special Prosecutor's staff is charged with an important responsibility—bringing those guilty of criminal offenses in the Watergate and related matters to justice. Mr. Cox assembled, and Mr. Jaworski inherited, a staff of exceptionally talented and extremely dedicated individuals. Unfounded or unsupportable charges against the staff serve no useful national purpose.

My gravest fear, however, is that the remarks made by Mr. Ziegler yesterday are in some way an attempt to lay a groundwork for an administration attempt to discharge or force the discharge of certain members of the Special Prosecutor's staff. I seriously question the legality of such a move, and I am seriously dismayed if, in fact, thought is being given to such an action.

No step could more easily throw this Nation back into the turmoil that we experienced over the weekend of October 20 than an attempt by the White House to tamper with the Special Prosecutor's staff. Such an action would only serve to further undermine Presidential credibility and further undermine the public's faith that a fair and complete Watergate investigation will eventually result from our system of criminal justice.

Mr. President, I ask unanimous consent to have these articles printed in the RECORD.

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

ZIEGLER CITES "MISTAKES" BY LEGAL STAFF  
(By Carroll Kilpatrick)

The White House legal staff has made "some mistakes" and the office is being reorganized to bring in new legal talent to assist in President Nixon's Watergate defense, press secretary Ronald L. Ziegler said yesterday.

John J. Sullivan, a Chicago attorney, judge on the appellate court of Illinois, and an old friend of the President, has joined the counsel's office to work on Watergate issues, Ziegler said after what appeared to be a rebuke to J. Fred Buzhardt, who has handled the bulk of the court work involving Watergate.

Buzhardt is expected to remain in the counsel's office, but Leonard Garment, who has assisted Buzhardt in the legal work, is expected to leave the counsel's office and resume his work as an adviser on cultural and minority affairs.

When Buzhardt was told at U.S. District Court here of Ziegler's comments, the counsel said he "wouldn't disagree" with the press secretary's comment that he was overworked, and added: "I've never pretended I was perfect."

Buzhardt said he expected to remain on the Watergate case. Ziegler also said Buzhardt would continue in the counsel's office but would delegate authority to others being brought in, including Sullivan.

In a lengthy and impassioned defense of the President together with an attack on his

critics, Ziegler assailed members of the Watergate special prosecutor's staff as biased and politically motivated.

But he exempted Leon Jaworski, the chief prosecutor, from the attack, Jaworski is a "very responsible and fair man," Ziegler said.

However, members of his staff, whom former prosecutor Archibald Cox recruited have displayed "ingrained suspicion and visceral dislike for this President and this administration," Ziegler said.

Where asked whether the President has full confidence in Buzhardt, Ziegler replied: "I don't want to express any public dissatisfaction in relation to the work of any individual."

When a reporter asked if he was not cutting off Buzhardt at the knees, Ziegler said he was not and that Buzhardt "is doing a good job and will continue to do a good job."

Acknowledging that mistakes have been made, particularly in relation to public disclosure of the gap in one of the subpoenaed tape recordings, Ziegler said that does not mean the President is dissatisfied but that he recognizes additional help is needed.

Ziegler said that H. Chapman Rose, former under secretary of the Treasury and a Cleveland attorney, and Kenneth W. Gemmill, a Philadelphia attorney and former counsel at the Internal Revenue Service, have volunteered their services to assist the President.

Ziegler said, "we have provided all the crucial material needed to determine what the facts are and now it is said we should give more and more.

"We said earlier that once we provided the subpoenaed tapes that that won't satisfy some and there would be more requests." Some persons want to "scavenge through and ravage all of the President's conversations," Ziegler said.

The press secretary promised that the White House would make public next week a full report on Mr. Nixon's financial and tax position that would be "verifiable and accurate."

But he hinted that copies of the President's income tax returns would not be made available.

Tapes of presidential conversations turned over to U.S. District Court Judge John J. Sirica, with the exception of the one tape with an 18-minute gap, are "intact," Ziegler maintained. "There has been no tampering with the tapes."

He conducted the regular White House news briefing yesterday in the absence of his deputy, Gerald L. Warren, who was ill. Ziegler is one of the staff members working on the financial report and other documents Mr. Nixon has promised in answer to charges of corruption in his administration.

#### ZIEGLER ASSAILS JAWORSKI STAFF

(By R. W. Apple, Jr.)

WASHINGTON, November 29.—The White House bitterly attacked the staff of the special Watergate prosecutor today, charging that it has displayed an "ingrained suspicion and visceral dislike for this President and this Administration."

Ronald L. Ziegler, the Presidential press secretary, who has emerged in recent weeks as one of Mr. Nixon's three closest advisers, described Leon Jaworski, the prosecutor, as "a very respected man, a very fair man." But he added:

"I have very serious questions about the staff of the special prosecutor's office, though, in political terms."

Mr. Ziegler, briefing the press because of the illness of his deputy, Gerald L. Warren, also appeared to signal a decline in the status of J. Fred Buzhardt Jr., the special White

House counsel who has been handling the Watergate case.

Meanwhile, Mr. Buzhardt conceded today, to Judge John J. Sirica that the official White House explanation of the 18-minute gap in a Watergate tape recording was not a certainty but, instead, "just a possibility."

Asked whether the President was dissatisfied with Mr. Buzhardt's work, Mr. Ziegler replied obliquely, remarking that he did not want to express "dissatisfaction with the performance of any individual." At another point, he said that he did not want to leave the impression that he was "cutting his [Buzhardt's] legs off."

But Mr. Ziegler said the White House legal staff had been carrying a very heavy work load that led "to some mistakes." He mentioned as an example the staff's failure to discover until Nov. 14 exactly which Watergate tapes had been subpoenaed months earlier.

Asked by newsmen about reports that he was being taken off the case, Mr. Buzhardt said, "Nobody has told me." Asked about Mr. Ziegler's comment about "mistakes," the lawyer said, "I've never pretended I was perfect."

Another White House official said that he expected Mr. Buzhardt to remain on the Watergate case for the time being.

Asked specifically whether Mr. Buzhardt would remain in charge of the Watergate case, Mr. Ziegler would say only that lawyer would "continue to work on it, continue to play a key role." Mr. Buzhardt would himself want to delegate some of the responsibility, the press secretary suggested.

To those familiar with the Washington political code, Mr. Ziegler's veiled remarks seemed to add up to a demotion for Mr. Buzhardt. And other White House sources said control of the case was expected to pass in the next few days to Judge John J. Sullivan of the Illinois Appellate Court, a 59-year-old Democrat who has known Mr. Nixon since his Navy days. Judge Sullivan is already working at the Executive Office Building.

Mr. Sullivan was identified by Mr. Ziegler as one of the members of an informal working group that is assembling a series of statements on such questions as acquisition of Mr. Nixon's homes, the International Telephone and Telegraph Corporation case, the President's taxes, and so on. These are to be distributed, beginning next week, to members of Congress, the press and other opinion leaders, Mr. Ziegler disclosed.

#### MEMBERS OF GROUP

Mr. Ziegler said that, in addition to Judge Sullivan and the White House counsel's office, headed by Leonard Garment, the other members of the group are the following: H. Chapman Rose of Cleveland and Kenneth Gemmill of Philadelphia, prominent lawyers who have volunteered their time, with no compensation, to help Mr. Nixon; Mr. Ziegler himself, and David Gergen, head of the White House speech-writing office since the promotion of Raymond K. Price Jr.

Neither Mr. Ziegler nor Melvin R. Laird, a Presidential counselor, who met with reporters separately, would promise that Mr. Nixon's tax returns for 1970 and 1971—when he paid only "nominal" taxes—would be made public. They said that "full information" would be provided.

Mr. Laird said he expected Mr. Nixon to withhold some data, such as the amounts of his charitable contributions.

The former Defense Secretary also said that recent revelations about a gap in one of the Watergate tapes had undercut the President's Operation Candor to some unmeasurable degree. But he predicted, as he often has in the past, that Mr. Nixon would nevertheless survive the Watergate crisis.

Mr. Ziegler's remarks about the prosecutorial staff followed complaints earlier this

week from Mr. Karren about alleged leaks from that staff, and reflected continuing White House bitterness about the liberal Democratic politics of the team originally assembled by Archibald Cox, the first special prosecutor, who was dismissed.

They appeared to suggest trouble ahead between the White House and Mr. Jaworski, because he has made it clear that he trusts and admires the lawyers he inherited from Mr. Cox.

That point came up at the briefing this morning, when a reporter, noting that Mr. Ziegler seemed to be trying to dissociate Mr. Jaworski from his staff, remarked that Mr. Jaworski "has spoken kindly" of his associates.

"Well, I speak unkindly of them," Mr. Ziegler replied.

Mr. Ziegler rejected Mr. Jaworski's suggestion that all the White House tapes be turned over to the courts for safekeeping to prevent further mishaps, terming the suggestion "nonsense."

He said that the White House had argued all along that if it provided any of the tapes and other confidential materials, it would simply lead to demands that would "ravage" the files.

#### THE RETIREMENT OF HAROLD E. MERRICK

Mr. PASTORE. Mr. President, one of the great personal satisfactions of service in the Senate of the United States is that of experiencing the human worth and warmth of one's colleagues and associates.

We would not be worthy of our office if we did not know the exaltation of achieving something to make life happier or more secure for the times of our responsibility.

And we would be less than grateful if we did not acknowledge the ability, industry, and integrity of the devoted staff whose skills are inseparable from the successes we Senators and our committees may achieve on this Senate floor.

A fine tradition of the Senate—on the passage of an important measure—on the conclusion of the floor discussion and votes—is to mention the names and credit the contribution of the staff who otherwise would be the anonymous co-architects of the history that legislation makes.

My praise is general—though my thoughts are especially of the Appropriations Committee—and specifically of a dear friend—Harold Merrick.

Today—my words would be more than an annual tribute at the session's close. For Harold Merrick plans a retirement earned by 50 faithful years in the service of his Government.

My own service in this Senate has been half that time—but all of my years on the Appropriations Committee have been made memorable and fruitful by the diligence and devotion of Harold Merrick.

Together we have explored a wide range of responsibilities. We have scrutinized the intimate problems of the District of Columbia—we have surveyed the world commitments of State—and the grave concerns of justice at a point of time that teems with problems and perils.

In committee sessions for the District—held at night so that the humblest might be heard—I came fully to know the honor

and the humanity of Harold Merrick—and to know that devotion to duty was akin to his ideal of sanctity of his home.

I shall miss—as we all shall miss—the nearness of this scholarly gentleman—with a smile to brighten any meeting and a wisdom to lighten any task.

The days of his retirement deserve to be days of pride for his personal and positive contribution to what we believe is a better world.

They will be days assured of the appreciation and affection of all who had the privilege of this Senate association.

May they be days of health and happiness for Harold and for all he holds dear.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD a statement by the distinguished Senator from Mississippi (Mr. STENNIS).

The PRESIDING OFFICER. Without objection, it is so ordered.

#### STATEMENT OF SENATOR STENNIS COMMENDING HAROLD MERRICK AS HE COMPLETES 50 YEARS OF FEDERAL SERVICE

Today Harold E. Merrick of the professional staff of the Senate Appropriations Committee completes fifty years of valuable service to the Federal Government. I believe that the high degree of dedication to duty that he has displayed over that period of time deserves special recognition.

Born in Corydon, Iowa, Harold went to work on December 1, 1923, for the General Accounting Office, which had been created only two years previously to assist the Congress in auditing and investigating the accounts and activities of the Executive Branch. He worked for the GAO for over twenty years, being employed in an auditing capacity in both the Washington and field offices.

It was during World War II that he actually began a second career, being assigned to assist the staff of the Senate Appropriations Committee, which was inundated with work on wartime measures. On September 1, 1945, he formally joined the staff of the Committee and subsequently became one of the original members of the professional staff which had been created by the Legislative Reorganization Act of 1946.

From the time I was first associated with the Senate Appropriations Committee in 1949, I almost immediately became impressed by Harold Merrick's dedication to his job and his efficiency in carrying out the staff work on the numerous bills to which he was assigned. One of these was the important State, Justice and Commerce appropriations bill on which for many years he has been the principal staff aide. It speaks highly for his industry that, busy though he was, he was also able to undertake investigative work overseas in the fields of both foreign operations of the State Department and the utilization of foreign aid appropriations. In both instances his work was of great assistance to the Committee's consideration of the related bills. I especially remember the highly valuable assistance Harold rendered to many members of the Senate in fact-finding visits to other countries relating to the operation of the Marshall Plan and NATO.

Over the years I have grown to know Harold very well and value his friendship highly. His quiet proficiency, his thoughtfulness, his unselfish dedication to duty, his responsiveness in fulfilling Senatorial requests, his diligence in expediting appropriations, and his unquestioned loyalty to the Committee and to the Senate, all have combined to make him a most esteemed and trusted employee.

He has not only been pre-eminent in his

work; he has set high standards in both his work and his conduct. He has stood on high principles of character and honor. In all these years he has been greatly assisted by his charming and highly intelligent wife, Dorothy, who has been loyal to the Committee and who also has many friends.

With the end of this current session of Congress, Harold plans to seek a well-earned retirement. I am certain that I speak for all those who have known him and his excellent work in wishing him and "Miss Dorothy" the happiness they both deserve in the years to come.

#### UNIFORM ACCOUNTING STANDARDS FOR DEFENSE CONTRACTS

Mr. PROXMIRE. Mr. President, the Cost Accounting Standards Board was established by Congress in 1970 to require defense contractors to disclose their cost accounting practices and follow them consistently. Only if this requirement is enforced will there be a basis for fair dealings between the Government and defense contractors. At the present time, it is often not possible for Government officials to properly determine the cost of contracts. As a result, millions of dollars are paid out by the Defense Department annually for questionable and unnecessary costs charged to weapons programs.

#### DEPRECIATION

The board currently is considering a uniform cost standard on depreciation of tangible capital assets. The Board sought Admiral Rickover's views on depreciation because the Admiral has many years of experience in defense contracting. He also was instrumental in calling to the attention of the Congress the critical need for cost accounting standards in defense procurement.

#### ADMIRAL RICKOVER'S VIEWS

Admiral Rickover's statement to the Board is an excellent and remarkable one in several respects. He brings a perspective of realism, based on long experience, to what has too often been viewed as an accounting issue. He brings into sharp focus the contrast between depreciation as an incentive device and depreciation as a cost. He urges the Board to develop a standard which requires that depreciation be based on realistic estimates of physical deterioration and service lives of assets. Finally, the admiral, as he has done frequently, places the work of the Cost Accounting Standards Board in a philosophical context which reflects his deep concern about our society and its institutions.

Admiral Rickover places the work of the Board in the perspective of the roles of accounting and business in our society. He believes we are faced today with the question of whether a totalitarian or democratic capitalist society will predominate in our country. The admiral contrasts our system with the totalitarian one and notes that "our system finds the essence of freedom in spontaneity and the absence of coercion." He notes that our democratic capitalist system is under attack and is no longer used in large parts of the world and is subject to extensive government control in other areas. The admiral states that he supports our capitalist system and the right of business to