

United States Senate

MEMORANDUM

get ¹¹ someone to circulate a
memo stating afl ~~fact~~
~~are~~ args on both sides
so as to thresh out situation

Bess - hold til
you get those
resolutions

June 28, 1962

Memo to Jack

From Senator

What do you know about this particular Constitutional
Amendment proposal -- Presidential succession. Is there
such an amendment. And if not, should one be introduced.

S.J. RES. 125 Keating

S.J. RES. 19 Kefauver

The Presidential Succession

A proposed amendment to the Federal Constitution would meet the problem of what to do when a President becomes incapacitated. This amendment has recently been endorsed by the Association of the Bar of the City of New York and has wide support among constitutional lawyers and others.

The question is not who shall succeed if the President dies or is clearly unable to perform his duties. That is all taken care of under existing law. The difficulty lies in determining when a President is in fact unable to serve. If he is dead he cannot serve, if he has been impeached he will not be allowed to serve, but just how and by whom shall it be determined that he can no longer serve or should no longer serve? A case in point is that of President Wilson, who was grievously ill during the latter part of his second term, but who never was superseded.

Four years ago President Eisenhower and Vice President Nixon made a private agreement, and a similar agreement was made in 1961 by President Kennedy and Vice President Johnson. This was that the Vice President should serve as Acting President if the President asked him to, or if it was otherwise clear that the President could not function. The decision as to when the President's inability had ceased would be left to the President himself. This is not a satisfactory arrangement, since there is no provision for action in a case where the President is not fitted to serve but is unwilling to relinquish the powers and duties of his office. There ought to be some disinterested agency to decide in a given situation what should be done.

The amendment supported by the New York City Bar Association would stipulate that a nine-man commission be appointed by the President at the beginning of each Administration. This commission would include three members of the Cabinet, two Senators, two Representatives and two Supreme Court justices. It would be empowered to certify the President's inability, and if he recovered to certify his ability to take up his duties again.

The issue is, fortunately, not an imminent one. Nevertheless, the absolute necessity of avoiding any gap, even momentary, in the Executive power, or any doubt as to the propriety of its exercise, grows more imperative with each passing year. There could be times when the safety of the nation depends on a decision being made instantly and accepted without question.

COPY

December 16, 1963

The Honorable Birch Bayh
United States Senate
Washington, D. C.

Dear Birch:

Thank you for requesting my co-sponsorship of your amendment on Presidential succession.

In an attempt to gain knowledge myself and to use that information in formulating a plan for the changing of the present law, I am asking the foremost political scientists in the country to share their thoughts on this subject with me. I am hopeful that they will reach some consensus on the best course to take and that this course can be successfully formulated into law.

So, since I am already committed to some future action on this matter, I am withholding active support from any measure until it is clear what I may want to do myself.

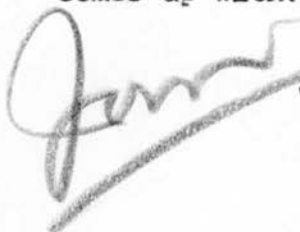
Your plan is one of the best I have seen and if it were not for the action I have already taken I would be more than happy to join you. You certainly are to be commended for your timely and thoughtful treatment of this important subject.

Best personal regards.

Sincerely yours,

Hubert H. Humphrey

Senator: Do you want to join Senator Bayh on his presidential succession bill or wait to see what John Stewart comes up with?

 Jane

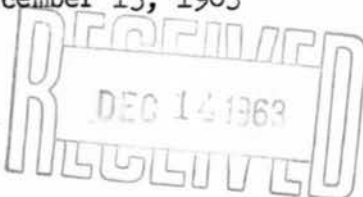
Tell Sen Bayh -
Thanks, but I'm
asking for guidance
on this matter
from Col Seentest
etc -
Commend him
etc

United States Senate

WASHINGTON, D.C.

December 13, 1963

Honorable Hubert H. Humphrey
Senate Office Building
Washington 25, D. C.



Dear Colleague:

On Thursday, December 12, I introduced an amendment to the Constitution designed: (1) to provide for the selection of an acting Vice President in times when there is none, (2) to clarify the problems resulting from Presidential disability, and (3) to restore the line of Presidential succession to the Cabinet. The purpose of the amendment is to provide continuity of Government in any future crisis.

Under this amendment, the President would--in the event of a vacancy in the office of Vice President-- be required to submit to the Congress his nomination for a new Vice President. Upon the approval of a majority of both Houses of Congress, the new Vice President would assume all the powers and duties of the office.

In the event of Presidential disability the powers of the President would pass to the Vice President during the period of the President's disability. Such disability could be assumed only on the written declaration of the President, or by declaration of the Vice President acting with the written approval of a majority of the members of the Cabinet. In the case of subsequent dispute as to whether the President had recovered, the Vice President could retain his office as "Acting President" only with the written approval of a majority of the Cabinet and the concurring vote of two-thirds of the members present in both Houses of Congress.

The need for clarification and supplementation of our Constitutional provisions dealing with the succession problems has seldom been clearer. But it is important that any proposals dealing with basic Constitutional issues adhere closely to the design of Constitutional system. By leaving the nomination of the new Vice President up to the President himself, and the approval of that nomination up to the representatives of the people in Congress, my amendment provides a means of selection very similar to the one which now prevails in our nomination and election process.

Page 2

In regard to the succession laws, it is the purpose of my amendment to restore succession to the executive branch and thus preserve the separation of powers so basic to our system. Equally important, my amendment would insure political continuity by allowing the President to participate in the selection of his own successor.

I am enclosing a copy of the amendment, which will lay on the table until Wednesday, December 18, in the hopes that you will become a co-sponsor. If you wish to do so, please have your secretary call Larry Conrad on extension 5623.

Sincerely,

A handwritten signature in cursive script, appearing to read "Birch".

Birch Bayh
United States Senator

From the Office of
SENATOR BIRCH BAYH
1205 New Senate Office Building
Washington 25, D. C.
CA. 4-3121, Ext. 5623

88th CONGRESS
1st Session

S. J. RES. _____

IN THE SENATE OF THE UNITED STATES

Mr. BAYH introduced the following joint resolution; which was
read twice and referred to the Committee on _____

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States relating
to succession to the Presidency and Vice Presidency and to cases where
the President is unable to discharge the powers and duties of his office.

1. Resolved by the Senate and House of Representatives of the United States of
2. America in Congress assembled, (two-thirds of each House concurring therein),
3. That the following article is proposed as an amendment to the Constitution of the
4. United States, which shall be valid to all intents and purposes as part of the
5. Constitution when ratified by the legislatures of three-fourths of the several
6. States:
7. "ARTICLE --
8. "SECTION 1. In case of the removal of the President from office, or of his
9. death, or resignation, the Vice President shall become President for the unexpired
10. portion of the then current term. Within a period of thirty days thereafter, the
11. new President shall nominate a Vice President who shall take office upon confirma-
12. tion by both Houses of Congress by a majority of those present and voting.
13. "SEC. 2. In case of the removal of the Vice President from office, or of
14. his death or resignation, the President, within a period of thirty days there-
15. after, shall nominate a Vice President who shall take office upon confirmation
16. by both Houses of Congress by a majority vote of those present and voting.
17. "SEC. 3. If the President shall declare in writing that he is unable to
18. discharge the powers and duties of his office, such powers and duties shall be
19. discharged by the Vice President as Acting President.
20. "SEC. 4. If the President does not so declare, the Vice President, if
21. satisfied that such inability exists, shall, upon the written approval of a
22. majority of the heads of the executive departments in office, assume the discharge
23. of the powers and duties of the office as Acting President.

1. "SEC. 5. Whenever the President makes public announcement in writing that
2. his inability has terminated, he shall resume the discharge of the powers and
3. duties of his office on the seventh day after making such announcement, or at
4. such earlier time after such announcement as he and the Vice President may
5. determine. But if the Vice President, with the written approval of a majority of
6. the heads of executive departments in office at the time of such announcement,
7. transmits to the Congress his written declaration that in his opinion the Presi-
8. dent's inability has not terminated, the Congress shall thereupon consider the
9. issue. If the Congress is not then in session, it shall assemble in special
10. session on the call of the Vice President. If the Congress determines by concur-
11. rent resolution, adopted with the approval of two-thirds of the Members present
12. in each House, that the inability of the President has not terminated, thereupon,
13. notwithstanding any further announcement by the President, the Vice President
14. shall discharge such powers and duties as Acting President until the occurrence
15. of the earliest of the following events: (1) the Acting President proclaims that
16. the President's inability has ended, (2) the Congress determines by concurrent
17. resolution, adopted with the approval of a majority of the Members present in each
18. House, that the President's inability has ended, or (3) the President's term ends.

19. "SEC. 6(a)(1). If, by reason of death, resignation, removal from office,
20. inability, or failure to qualify, there is neither a President nor Vice President
21. to discharge the powers and duties of the office of President, then the officer
22. of the United States who is highest on the following list, and who is not under
23. disability to discharge the powers and duties of the office of President shall
24. act as President: Secretary of State, Secretary of Treasury, Secretary of
25. Defense, Attorney General, Postmaster General, Secretary of Interior, Secretary of
26. Agriculture, Secretary of Commerce, Secretary of Labor, Secretary of Health,
27. Education, and Welfare, and such other heads of Executive Departments as may be
28. established hereafter and in order of their establishment.

29. "(2) The same rule shall apply in the case of the death, resignation, removal
30. from office, or inability of an individual acting as President under this section.

31. "(3)(a) To qualify under this section, an individual must have been appointed,
32. by and with the advice and consent of the Senate, prior to the time of the death,
33. resignation, removal from office, or inability of the President and Vice President,
34. and must not be under impeachment by the House of Representatives at the time the
35. powers and duties of the office of President devolve upon him.

1. "(3)(b) In case of the death, resignation, or removal of both the President
2. and Vice President, his successor shall be President until the expiration of
3. the then current Presidential term. In case of the inability of the President
4. and Vice President to discharge the powers and duties of the office of President,
5. his successor, as designated in this section, shall be subject to the provisions
6. of sections 3, 4, and 5 of this Article as if he were a Vice President acting
7. in case of disability of the President.

8. "(c) The taking of the oath of office by an individual specified in the
9. list of paragraph (1) of subsection (a) shall be held to constitute his resigna-
10. tion from the office by virtue of the holding of which he qualifies to act as
11. President.

12. "(d) During the period that any individual acts as President under this sec-
13. tion, his compensation shall be at the rate then provided by law in the case of
14. the President.

15. "SEC. 7. This article shall be inoperative unless it shall have been ratified
16. as an amendment to the Constitution by the legislatures of three-fourths of the
17. several States within seven years from the date of its submission."

12/12/63

Wash. Post

Today and Tomorrow ... By Walter Lippmann

The Presidential Succession

SPEAKER McCormack, who now stands next in line to the President, is naturally enough diffident about discussing the problem of the presidential succession. But the country cannot take his view that the matter is too horrible to think about, much more to talk about.



Lippmann

The problem is of the highest importance and there should be no more squeamishness about discussing it than there is when a man or woman makes a will.

The law which has put the Speaker so unexpectedly where he now finds himself was proposed only in 1945 during the emotional upset following President Roosevelt's death and passed in 1947. What it did was to insert into the line of succession—President, Vice President, Secretary of State and so forth—two members of Congress—the Speaker of the House and the President pro tem of the Senate. The theory of the bill was that the man who becomes President should owe his place in the line of succession to an election, not to an appointment. In fact the 1947 law did not adhere to this principle. For after naming the two members of Congress it went back to the old line beginning with the Secretary of State.

DEFENDERS of the 1947 law appeal to the principle of election on the mystical ground that because Mr. McCormack has been elected repeatedly from the 9th District of Massachusetts he has become thereby anointed and qualified for President. Applied to the concrete facts, the "principle" is nonsense, and it has no relation whatever to any real choice of the

President by the will of the people.

There are several very grave objections to the present law. One is that because the Congressional system operates by seniority and whatnot it has provided a successor who is unprepared and unqualified to succeed. Nobody has ever given five minutes' thought to the qualifications of the man who may be the next President of the United States. Under the old law, where the next in line would be the Secretary of State, the fact that he might become President would become a great consideration in his appointment and his confirmation by the Senate. The reality of this was proved in 1945 when President Truman's accession left Secretary Stettinius as the next in line. Though Edward Stettinius was a nice man, he was manifestly unqualified to be President, and a great agitation arose at once which brought about his replacement as Secretary of State by a man of vast experience in government, James Byrnes of South Carolina.

THERE IS another radical defect in the present law. In our system of government it has happened many times that one or both of the houses of Congress is controlled by the opposition party. It happened, for example, both to President Truman and to President Eisenhower. Under the badly considered 1947 law, the whole administration of the government can be transferred from one party to the other by the act of one sniper.

There should never be such a premium on the assassination of a President offered to criminal lunatics or conspirators to brood upon. The very thing that has sustained the country since November 22 has been the continuity of the Presidency, the undisputed accession of a completely qualified man. Had there been any intelligible

purpose in the assassination, it would have been defeated.

The sovereign principle of continuity is sacrificed in the law of 1947, and we ought lose no time in wiping it off the statute books. We should return to the old law which would put Secretary Rusk next in line, and then we should let Congress and public opinion make it known to President Johnson, as they did to President Truman in 1945, whether they are content.

THERE IS a way, undoubtedly an organic part of the intent of the Constitution, in which real deference can be paid to the principle of election. We know from James Madison that the authors of the Constitution meant to leave to Congress "a supply of the vacancy (in the office of President) by an intermediate election of the President." Congress was to decide whether to call an intermediate election.

It would be quite feasible, and perhaps desirable, to provide that when the line of succession reaches the Secretary of State or the other Cabinet officers, the man who takes over the office shall be only the Acting President until a new election can be held at mid-term or at the end of the four-year term. I think myself that this ancient formula should also apply to the Vice President when he succeeds. It would not affect President Johnson who must face the voters in less than twelve months.

IF WE arouse ourselves enough to deal firmly with the problem of the succession, we should proceed at once to repair the other great hole in our system, which is what to do when a President is incapacitated, as were Garfield and Wilson, and for a time Eisenhower. Nobody will, I think, propose that the Speaker of the House should, or that constitutionally he could, serve also as the Acting President.

SUCCESSION STUDY MAPPED IN SENATE

Bayh Panel Plans Hearings on Line to the Presidency —Javits Presents Plan

By **JOHN D. MORRIS**

Special to The New York Times

WASHINGTON, Dec. 12 —

Early Senate hearings were assured today on proposals to change the line of succession to the Presidency.

Senator Birch Bayh, Democrat of Indiana, announced that he would schedule a full study of the Presidential succession by the Senate Judiciary Subcommittee on Constitutional Amendments, of which he is chairman.

He said that public hearings would start "immediately after the first of the year."

The House Judiciary Committee will also explore the matter fully and hold public hearings some time next year, a spokesman for the chairman, Representative Emanuel Celler, Democrat of Brooklyn, said.

Amendments Proposed

Meanwhile, Senator Hubert H. Humphrey of Minnesota disclosed that he was soliciting the written views of 50 leading political scientists on the question. Mr. Humphrey, the assistant Senate Democratic leader, said he would turn the replies over to the appropriate Senate committee.

President Kennedy's death and President Johnson's accession have prompted a rash of proposals for changing or supplanting the succession law. Under the present law, the Speaker of the House, John W. McCormack, Democrat of Mas-

Continued on Page 25, Column 5

Macy's

IT'S SMART TO BE THRIFTY

THE
LOVELY
STOCKINGS
YOU
WANT
ARE

***** FOES DELAY MOVE TO UNSEAT HOFFA

Await Outcome of Trial—
Details of Rift Learned

By JOHN D. POMFRET

Special to The New York Times

WASHINGTON, Dec. 12 — No move within the International Brotherhood of Teamsters to unseat James R. Hoffa as president is expected until after his trial in Nashville on Federal charges of tampering with a jury.

That was indicated today by reliable sources in touch with developments in the 1.5 million-member union, the nation's largest.

The resignations, effective

Washington Proceedings

Yesterday
(Dec. 12, 1963)

THE PRESIDENT

Saw Edwin Neilan, president of United States Chamber of Commerce; met with Ministerial delegation from Guinea; participated in signing of nondiscrimination pledge in hiring by 64 concerns; saw Christian Herter, special trade negotiator; met with Budget Director Gordon and Deputy Budget Director Staats.

THE SENATE

Completed Congressional action and sent to the White House bill authorizing \$102 million for Peace Corps this fiscal year; confirmed 53 postmaster nominations in 14 states; passed a \$1,821,343,000

Rusk urge approval of the full \$3.6 billion compromise foreign aid authorization as essential to foreign policy and security.

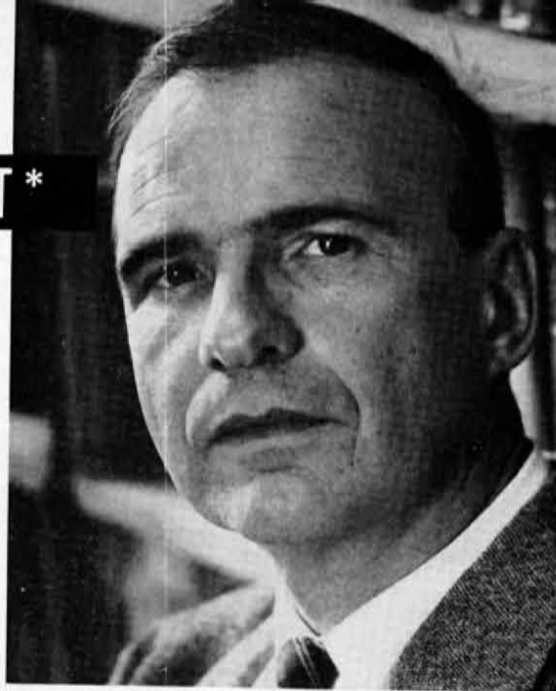
THE HOUSE

Approved 328 to 47, and sent to the Senate a \$4.4 billion compromise appropriations bill to finance public works projects and the activities of the A.E.C.

Banking and Currency Committee unanimously approved bill to mint a 50-cent coin bearing the likeness of John F. Kennedy.

DEPARTMENT & AGENCIES

Defense Secretary McNamara announced program for closing of 33 military installations with a reduction of 16,300 in personnel.



Professor Burns, political scientist at Williams College, is an authority on presidential leadership. Friend and biographer of the late President (John Kennedy: A Political Profile), he has championed reforms to improve the quality of U.S. government.

LET'S STOP GAMBLING WITH THE PRESIDENCY

By James MacGregor Burns

The nation can survive assassination. But what would we do if the President were disabled?

Nothing could have seemed worse than that news from Dallas last November. But two things could have been worse for the country: if Lyndon Johnson had been assassinated too; or if John Kennedy had been left alive but mentally disabled.

We have gambled too long with the question of presidential disability. At least three Presidents have been so seriously stricken that they could not perform their duties for weeks and even months.

As Richard Nixon pointed out in these pages last week, we take chances with presidential succession too. Since 1947 we have had a law that could project into the White House men not equipped for the presidency, or even leaders of the party rejected by the voters in the presidential election. In short, we are slipshod about a situation which demands reflection and reform.

As the presidency has become increasingly important in our system of government, the stakes in our gamble with the presidency have become higher too. Consider what might happen in this age of chronic crisis if we had a repetition of the tragic death of President James A. Garfield. A madman named Guiteau shot Garfield in July, 1881. For 80 days Garfield lingered, bearing his ordeal with incredible grace. Fevers came and went; cheerful bulletins alternated with cautious ones; infection spread; the sick man rallied, then fell; he underwent operations without anesthesia. The President could do no work, though he went through a few motions. The Government drifted.

"Arthur is President now!" Guiteau had shouted as he shot Garfield. But Vice President Chester A. Arthur did not become President during the 80 days. His position was awkward. A New York machine politician, he had been on the outs with the President. The day after the assassination he met with Garfield's Cab-

inet, but they greeted him so coolly that he almost left. Arthur did not know what to do, so he did nothing.

During this period there was a flurry of interest in the problem of presidential disability, but concern soon died away. In the fall of 1919 Woodrow Wilson suffered a cerebral thrombosis that brought paralysis of his left side. For days he was in a coma; for a month he was completely inactive; for another month he was a secluded convalescent; never again was he able to dictate to his secretary for more than a few moments at a time. "His mind was uninjured," says historian John M. Blum, "but his emotional balance was permanently upset. . . . What remained was not Woodrow Wilson but a shell and travesty of him."

A critical situation arose. Mrs. Wilson, as any wife might, tried to shield her husband from difficult problems. Neither Congress nor the people were given the truth about Wilson's condition. Should the Vice President take over? Vice President Thomas R. Marshall, an affable politician whose main gift to history was his famous remark about the five-cent cigar, felt just as Arthur had; he did not want to reach for power. And few thought him competent to exercise it. So Wilson remained President, and once again the Government drifted. But times were more serious now; during Wilson's 18 months of near-disability in office he lost his Senate battle for the League of Nations.

Again there was a flurry of interest in presidential disability, but again the interest died. Dwight Eisenhower's heart attack raised the whole problem once more. He was unable to meet with his Cabinet for two months. Meanwhile Vice President Richard Nixon attended Cabinet meetings but carefully sat in his old chair at the table. There was the usual interest in presidential disability, but even though Ike had two other serious illnesses,

ileitis and a stroke, nothing was done.

Except for one thing. Eisenhower and Nixon agreed in writing after the third illness that in the event of severe presidential disability, the Vice President could decide on his own to serve as Acting President. But this was a makeshift arrangement that missed the crucial questions: How would presidential disability be determined? What procedures would the Vice President use to establish his right to take over? Under what conditions would the disabled President recapture his office?

So we were still gambling with the presidency on November 22, 1963. This gamble is absurd, because presidential disability is intrinsically one of the least perplexing of our governmental problems. All we need do is agree on a quick, sure, responsible method for determining disability and then—more difficult—get the procedure enacted into law.

Why the delay so far? Largely because Congress has not been able to agree on the best method. Some members want the decision to be made by the Vice President, others by the Cabinet, others by one or both branches of Congress. All these methods are defective.

The Cabinet cannot make the decision. Consider the problems that Cabinet members would face. They would want to be loyal to their stricken chief, but they would also want to support—and perhaps cultivate—the Vice President. Lacking clear medical advice, they could not even be sure of the facts in the case. Cabinets merely advise Presidents and are not equipped to make decisions; they do not even vote.

The Vice President is the worst person to decide presidential disability. Not because he would want to make a grab for power (though this is always possible), but the opposite: He would hesitate to take any action that would appear over-

eager or that might be used against him in the next election. This is the main reason that Vice Presidents have been virtually paralyzed in previous crises.

Nor should Congress make the decision. It is a big, cumbersome body that might not be in session, a slow-moving body that would doubtless argue for weeks over the matter. Worst of all, it might turn the whole question into a great public brawl. Even politicians with the best of motives would be suspect. Questions would be asked. Was the opposition party voting for the good of the nation or for partisan advantage? Were men in the Administration party in Congress trying to curry favor with either the President or Vice President?

The following is, I suggest, a simpler and surer procedure:

To be prepared for any case of presidential disability we should establish a "presidential commission" composed of the chief justice, the two ranking Cabinet members at the time (State and Treasury), the Speaker of the House, and the President pro tem of the Senate. Following informal consultations with advisers closest to the President and with the Vice President, the chief justice would call the commission into session. Each member of the commission would designate one member of a physicians' panel to report the medical facts. On its own initiative the commission could certify the Vice President as Acting President and later, if possible, restore the stricken President to his office. If the physicians continued to report presidential disability—as measured against the commission's understanding of the requirements of the presidency—the commission could certify the Vice President not merely as Acting President but as full President.

Such a commission could act intelligently and authoritatively. It could be convened quickly and even in the middle

**One measure of a democracy's strength is the freedom of its citizens to speak out—to dissent from the popular view. Although the editors often disagree with the opinions expressed in Speaking Out, they dedicate the series to that freedom.*

Coca-Cola=Coke.
Both trade-marks
mean the same thing
and identify only the
product of The
Coca-Cola Company.

SPEAKING OUT

of a national emergency. It would have the confidence of the nation. It could deal with a variety of circumstances.

The above procedure should promptly be voted into law by Congress. But as soon afterward as possible the change should be embodied in more than an ordinary statute, so that Congress later, in a time of political turmoil, could not suddenly alter the law. Hence Congress should also propose a constitutional amendment embodying the essence of the plan. The Eisenhower-Nixon agreement, which was later adopted by Kennedy and Johnson, and which last month was continued by Johnson and Speaker John McCormack, could be redrawn from Administration to Administration to meet any special or personal needs. Both the congressional statute and the presidential-vice-presidential agreement should allow for maximum flexibility to deal with all possible eventualities, but within the basic procedures set forth in the proposed new amendment.

The main question remains: After a century of inaction, how can we get such a proposal made into law? Here I would urge again some measures that I presented last June to the Subcommittee on Constitutional Amendments of the Senate Judiciary Committee. (This committee and its House counterpart both plan public hearings on succession soon; presumably they will also study disability.)

First, we should put the presidential-disability provision into a package of "housekeeping" constitutional amendments that would arouse wide, bipartisan support from Americans. Unfortunately, presidential disability is not our only presidential gamble. Another is our faulty electoral-college system, which allows presidential electors to violate their pledges and to raise hob with the electoral process—even to the point of plunging the country into uncertainty for months, until the presidential election might be thrown into Congress. Not only are the electors legally free to ignore the popular vote but they do not truly represent the popular vote. In any given state the voting results are often distorted because of the rule of winner take all. Conservatives complain that the system gives the big urban voting blocs excessive influence in electing a President, while liberals argue that they will hang onto this presidential "gerrymander toward the left" as long as the conservatives have their "gerrymander toward the right" in Congress. This controversy keeps Congress from agreeing on fundamental changes. But it could agree at least to make electors keep their pledges and thus carry out the will of the voters.

Perhaps most important of all, the constitutional "package" containing these two proposals, on disability and electors' pledges, should deal with our other great gamble—the handling of presidential succession in the event both the President and the Vice President die or are disabled. Under the present provision, the Speaker of the House—who is often, as he is today, a septuagenarian—and the President pro tem of the Senate—today an octogenarian—are next in line. As Mr. Eisenhower has suggested in this magazine, we should go back to the pre-1947 arrangement, under which the Secretary of State and the other Cabinet members would succeed the Vice President in order of rank. This would protect the President's interests; it would also insure that a leader of the opposition party could not

capture the White House (as would have happened in 1948, for example, when Republican Speaker Joe Martin was next in line after Truman). If Congress insists on a safeguard here, it might reserve the power to select the next in line after the Vice President—but only from the Cabinet.

The constitutional package could include other changes that might not be controversial—for example, advancing elections two or three weeks, thus enabling the President to take office before the New Year and the new Congress; and perhaps giving the President item veto over appropriations—the power to reduce or strike out items in an appropriations bill without vetoing the whole bill.

Can we get such a "housekeeping package" adopted? Not if history repeats itself. But it need not if these reforms could be given some political sex appeal and momentum. Only one man can take the lead in this—President Johnson. He should establish a high-level, blue-ribbon presidential commission to survey the strengths and weaknesses of the Federal Government. Not only would such a commission come up with important findings and recommendations—including, one hopes, a proposal on disability. It would also have enough prestige and enough backing from the President to inform and arouse public opinion.

No more Throttlebottoms

We must do one other thing to resolve the problem of presidential disability—and this could be the simplest of all mechanically, though difficult politically. One great problem in the past has been the incapacity of Vice Presidents really to fill the shoes of stricken chief executives. The reason for this was often political; the vice-presidential nomination has been thrown as a sop to a party faction opposed to the presidential candidate, as in the case of Arthur. Or the vice-presidential nomination has been decided almost as an afterthought by exhausted party leaders at the end of a convention. Even in the case of Nixon, General Eisenhower admitted later that he had left the decision largely to a group of advisers, and that he thought Nixon was older than he actually was. Generally, however, the recruitment of vice-presidential candidates has improved in the last 20 years. Clearly, John Kennedy had confidence in Lyndon Johnson's capacity to serve as President; and Nixon's choice of Henry Cabot Lodge as his running mate indicated the nominee's need for a man who stood squarely in the G.O.P.'s moderate, internationalist wing. Vice Presidents have also been brought much more fully into presidential affairs.

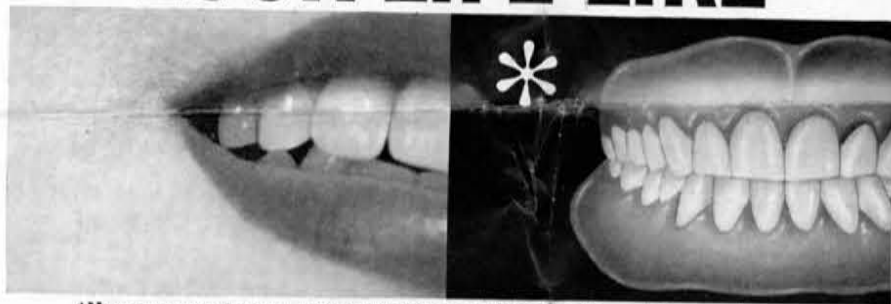
If this trend is to continue, we must give up for good our old-time view of the vice presidency as a place for Throttlebottoms. Not only must the Vice President be able to step into the President's shoes. He must stand for the same program, or at least the same direction in national and international affairs, for which the President was originally elected. This may take some of the fun out of vice-presidential nominations. It means, for example, that Republicans can toy with the delightful idea of nominating Margaret Chase Smith for Vice President only if they believe that she is equal to the presidency.

Meantime our frightening gamble with the presidency continues. Whether we run out of luck one of these days depends on the President and on Congress—and on the people.

THE END



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RKO GENERAL BROADCASTING

IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

Richard M. Nixon

The Constitution of the United States is one of the most remarkable documents ever conceived by man. And yet like all instruments, it was not perfect. In two respects, involving the Vice Presidency of the United States, there has been a defect, and I believe that now is the time to correct those defects.

The first deals with the problem of Presidential succession, which has been brought very dramatically home to the people of the United States by the assassination of President Kennedy.

Today, the United States does not have a Vice President. The Speaker of the House, Mr. McCormack, would become President in the event that President Johnson were to die. This is no reflection on the qualifications of the Speaker of the House, be it Mr. McCormack or any other Speaker to be President of the United States. But I believe that it is essential, in view of what happened under President Eisenhower when I was Vice President, and under President Kennedy when he trained Vice President Johnson to take over in the event of his death, that the United States not be without a Vice President.

Putting it another way, I think the man best qualified to be President in the event something should happen to the President is a Vice President of the United States.

Therefore, I think the problem of Presidential succession should be handled by a Constitutional Amendment, which would provide that the President of the United States would convene the Electoral College. This is the group which elects the President, selected of course by the voters in the last Presidential election. And therefore, this group would always elect as Vice President a

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Richard M. Nixon (Page Two)

man who was of the same party as the President of the United States. It would also, of course, have in mind and probably follow the recommendation of the President of the United States.

This kind of man, selected as Vice President of the United States within 30 days after the death of a President, I think would best be qualified to take over as President in the event that the man who would become President because of the death of the previous President were to die.

Now the second point in which the Constitution was deficient is with regard to what we call the inability or disability of the man who happens to be President.

I think perhaps the most striking example of this was in the case of President Wilson. At the conclusion of World War I, when he had given remarkable leadership to the cause of freedom and to his country, President Wilson had a stroke. And in the last critical 18 months of his administration, when it was time to win the peace after winning the war, he could not carry out the duties of President of the United States. His family would not allow the Vice President to take over, or the Secretary of State. So the country went along without Presidential leadership.

During President Eisenhower's administration we had the same problem when President Eisenhower had a heart attack and then a stroke. Fortunately, in his case, there was an understanding that I as Vice President would step in and carry on the necessary duties during that period.

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Richard M. Nixon (Page Three)

At the present time, there is a letter which President Johnson has written following the procedure which President Eisenhower adopted with me -- a letter to Mr. McCormack, who is next in succession, indicating that he would step in in case the President suffered disability.

But a letter is not enough. What we need here is either a law passed by the Congress or a Constitutional Amendment providing for what will happen when a President is unable to handle the duties of the office, and when and how the Vice President takes over the duties of the office. We can't afford any period at this time of atomic weapons when no finger, in effect, is on the trigger.

So in both of these cases, Presidential disability and Presidential succession, I think the time is now for action. And that's why I've suggested that there be appointed a high-level commission -- made up possibly of the three former Presidents of the United States who are living, and also of appointees by the Speaker of the House and the President pro tem of the Senate -- who will make recommendations, considering these that I have made and others, so that finally this one great defect in an otherwise remarkable document may be corrected.

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IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

JOHN W. McCORMACK, SPEAKER OF THE HOUSE OF REPRESENTATIVES

The present succession law has been upon the Statute books since the latter part of the 1940's. It was recommended then by former President Harry S. Truman. That changed the line of succession from the Secretary of State after the Vice President to the Speaker of the National House of Representatives.

I voted for that bill, and I still favor such legislation.

I realize that there are honest differences of opinion, and I have no objections to those difference of opinion being expressed, and I would interpose no difficulties towards any Congressional action. But my own personal view is that I strongly support the present law as between the Speaker being next to the Vice President and the Secretary of State.

This is no reflection at all upon the Secretary of State or any Cabinet officer. But I feel that the Speaker more nearly represents the viewpoint of the people of the country than the Secretary of State, in that he's been elected by a Congressional District and also selected by the colleagues of his party in the caucus and then elected by the House of Representatives. That gives the Speakership, which is one of the Constitutional offices, a national atmosphere and national influence.

On the question of disability legislation, I think it's a matter of paramount importance that some agency, some means, some instrument be devised as quickly as possible whereby there'll be a legal determination of disability and when ability is restored.

I take this position because the very legitimacy of government could be involved unless some such legal agency, instrument, or means exists.

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IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

JOHN W. McCORMACK, SPEAKER OF THE HOUSE OF REPRESENTATIVES (Page Two)

So, briefly, on the question of succession as between the Speaker being next in line to the Vice President or the Secretary of State, I favor the Speaker. And second on disability legislation, the means to determine that and the restoration of ability, I strongly favor legislation to establish some instrument or means whereby that can be done.

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IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

SENATOR LEVERETT SALTONSTALL OF MASSACHUSETTS

We in the United States can be justly proud of our form of government, which can sustain itself even in the face of a tragic event such as the recent death of President Kennedy. However, we must be sure that the line of succession to the Presidency, as provided for by the Constitution and carried out by the Congress, is simple and unequivocal and insures that the necessary change-over will be both rapid and efficient. Above all, the continuity of the Government must be maintained.

The present law, enacted in 1947, calls for the Speaker of the House to take over the duties of the Presidency if something happens to both the President and the Vice President. However, it is conceivable that under this system the successor could belong to a different political party than the deceased President. Such a change in the highest levels of the Government would hardly be conducive to the smooth and uninterrupted conduct of the nation's affairs.

I believe that Article II, Section 2 of the Constitution should be amended to provide that in the event of a vacancy in the office of Vice President, the President can nominate a successor. If the nominee were not confirmed by a majority of the Senate and House sitting in joint session, a second name could be offered.

A further question is that of Presidential disability. On the three occasions when a President has been disabled, the steps taken were those that seemed the most expedient at the time. This situation should be clarified by Constitutional amendment to avoid any confusion about when and to what extent the second in command should assume the duties of the President. Perhaps a committee, made

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SENATOR LEVERETT SALTONSTALL OF MASSACHUSETTS (Page Two)

up of the four senior members of the Cabinet and eight members of Congress, four from each body, to determine the extent of the President's disability, would be the best method in which to resolve this problem.

Finally, any change in the law of succession should not take effect until after November, 1964. We must have a clear and definite Constitutional and Legislative policy on this matter, carefully designed to meet every conceivable eventuality.

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IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

Senator Jacob K. Javits of New York

The tragic assassination of President Kennedy, of beloved memory, has brought on a great national debate with respect to what the country does when it faces a situation like it faces now and there's no Vice President in office, the Vice President having succeeded to the Presidency because of the death of the President. This has happened four times in this century alone and it's a matter therefore of very great moment.

Now every time a thing like this happens there's a discussion exactly like the one that's going on, as to what we ought to do about it, and generally, as a little time goes by, it's forgotten about, as the matter is discussed. It is then just filed away and that's the end of that.

Now since 1947 we have had a succession statute which puts the Speaker of the House of Representatives and the President pro tempore of the Senate, in that order, after this President -- if this President, having succeeded to office should have anything happen to him. We certainly hope and pray this won't happen. This is a very inadequate plan because it doesn't give us a Vice President, and we need one.

We need one for the National Security Council, we need one to preside over the Senate. Most importantly, we need one today as a right arm to the President all around the world, as our recent Vice Presidents, Vice President Nixon and Vice President Johnson have been.

Therefore, I have proposed that upon such an event happening, the Congress should meet in joint session and should immediately elect a Vice President, the new Vice President, and that that person should be subject to the consent of the incumbent in office, to wit President Johnson, as he will be his principal man.

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Senator Jacob K. Javits of New York (Page Two)

I think this is the most democratic and responsible way to do it, and I believe that the one thing which we must all resolve to bring out of the present debate is that there shall not be a time in our history when we not only do not have a President -- we've provided for that in our succession laws -- but that we must have a Vice President too, and we must do that by Constitutional Amendment..

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IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

Senator Thomas H. Kuchel of California

In 1916 the United States was on the verge of war. We also had a Presidential election that year. President Woodrow Wilson, to his great credit, wondered what would happen if he were defeated in November and Charles Evans Hughes, his Republican opponent, would not take office until the following March. Here was a hiatus of several months during which very difficult and tragic events might take place within moments; and a lame duck President should not assume the responsibility for his successor or for his people.

President Wilson decided that, if Mr. Hughes were to be elected, he would immediately appoint Mr. Hughes Secretary of State, that he, Mr. Wilson, and the Vice President would then both resign, making Mr. Hughes, as Secretary of State, President immediately.

The recent, monstrous tragedy in Dallas indicates again that the American people have a direct interest in the succession to the Presidency if 1) the President, or 2) the President and the Vice President, are either removed or are incapacitated.

Today, under the present succession statute, the Speaker of the House of Representatives would follow the Vice President, if the Vice President, becoming President, were then to be removed.

In my judgment, the old system is better, and I favor legislation under which, when the Vice President becomes President, the next successor -- if anything happened to the new President -- would be the Secretary of State.

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IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

SENATOR PAUL H. DOUGLAS OF ILLINOIS

There are two distinct problems in this matter. The first is Presidential succession, and the second Presidential disability.

Now the chief trouble on Presidential succession is the question of who will become Vice President when the Vice President becomes President. The present provision is that the Speaker of the House shall have the first line of succession, and then the President of the Senate. I think this is in general correct, except, that if the Speaker of the House is of the opposite party of that of the President, then I think the successor should be chosen by the members of that party of the House and the Senate.

The problem of Presidential disability is more serious than that of Presidential succession, because a President can be disabled and he will not admit it. For instance, President Garfield was disabled for two months prior to his death from assassination in 1881, and President Wilson was disabled for 17 months from late September 1919 to March of 1921. President Eisenhower was disabled on at least two occasions.

I think the American Bar Association has probably made the best suggestion in this connection. Namely, that an advisory committee be set up -- not for the emergency -- but a standing advisory committee be created of representatives of the Judiciary and the Legislative, with competent doctors attached. And that they will make recommendations upon which House and Senate, meeting in joint session, will act.

In other words, that some control will be exercised.

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IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

SENATOR KENNETH B. KEATING OF NEW YORK

Recently the Constitutional Subcommittee on Amendments, of which I am a member, began hearings on various plans to solve the problems of Presidential succession and Presidential inability.

The tragic assassination of President Kennedy and the ever-present danger of crippling mental or physical injury to the President underlines the pressing need for legislation on these matters.

On succession, I've proposed an amendment calling for the election of two Vice Presidents at the regular four-year Presidential elections. Each party would nominate two Vice Presidential candidates as part of the national ticket: one running for Executive Vice President, who would be first in line of succession if the President died, and the other running for Legislative Vice President, who would be second in line. The Executive Vice President would handle a wide variety of special assignments, at the request of the President. He would, in fact, be a full-time Presidential understudy. The Legislative Vice President would preside over the Senate, and also pitch in on Executive assignments.

Now some have said this plan would downgrade the Vice Presidency. I emphatically do not agree. Two Vice Presidents would strengthen the line of succession with officials elected by all the people, and would give the President two right arms to assist in carrying out the crushing burdens of his office.

On the subject of inability the real danger is that right now there is no established procedure to determine when a President has become unable to carry out his duties, or when a disabled President has recovered enough to resume his responsibilities. Too many times in our history, we've had to get along without decisive leadership from the Presidency due to serious illness.

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IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

SENATOR KENNETH B. KEATING OF NEW YORK (Page Two)

I propose that Congress be given the power to set up the ground rules on Presidential inability, and I'm hopeful that action will be taken this year. I think this is more important at this time than succession. For at least there is already a law on the books to take care of it.

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IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

SENATOR JOHN J. SPARKMAN OF ALABAMA

The tragic death of President John Kennedy brings home to us, all too strongly, the need to fill what has been called "a gaping hole" in our system of selecting a successor to a deceased President. We cannot afford to procrastinate in this vital need any longer. The truth is that ever since this nation was established we have been exceedingly lucky that our system of Presidential succession has worked so well despite weaknesses in it that could be catastrophic. During that time we have seen eight Presidents die, seven Vice Presidents die, and one Vice President resign. The result is that for 40 years of this country's existence we have been governed under a system of succession that could be perilous.

To me, a basic flaw in the present system is that the line of succession could include persons not of the same political faith. This does not make for orderly government or orderly succession.

I believe many people in the nation desire a system whereby the people would have the final say as to who would be the successor. Perhaps the vacancy could be filled through a special popular election or within the framework of the electoral college which selected the deceased President in the last election. This means that the people would have a voice in choosing the President, which is what the Constitution intended.

Hand in hand with the problem caused by the death of a President is the infinitely more complex problem of Presidential disability. This problem is so important and so great that I feel it must necessarily be resolved through a Constitutional amendment simply because the Constitution does not say who is to judge when a President is incapable of performing his duties or capable of returning to the performance of his duties once he has been relieved of them.

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IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

SENATOR JOHN J. SPARKMAN OF ALABAMA (Page Two)

It is my fervent hope that a better system to handle death and disability in the Presidency can be established in the near future. In this regard, the Senate Constitutional Amendments Subcommittee is now studying testimony taken at recent hearings -- hearings established to try to improve our system of Presidential succession and disability,

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IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

SENATOR BIRCH BAYH OF INDIANA

The death of President Kennedy once again focused attention on two critical problems facing this country. First, for the seventeenth time in our history we are faced with a vacancy in the office of Vice President. Today we have no Vice President to assist the President in carrying on his tremendous burdens. Second, we have no formula which permits the Vice President to serve as acting President in the event the President, because of disability, is unable to do so. The problem must be solved.

The best way to fill the office of Vice President, in case there is a vacancy, is to permit the President to nominate the new Vice President, and the Congress sitting together to elect him. This is close to the present system, in which we find the President of the United States having a definite voice in deciding who the Vice Presidential candidate will be. Each Congressman can represent the wishes of his constituents when he votes for the new Vice President.

In event the President, because of sickness or other disability, is unable to perform his duties, the Vice President may assume the duties as acting President. First, the President may state his disability, and second, if he is unable to do so, the Vice President with the consent of a majority of the Cabinet may nonetheless assume the duties as acting Vice President for the remainder of the term of disability.

The important fact is that we must at all times have a healthy President and Vice President during this perilous time.

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IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

GOVERNOR EDMUND G. (PAT) BROWN OF CALIFORNIA

It has been suggested to me that the law of succession be changed so that the Governor of the largest state in the union automatically becomes the Vice President of the United States provided that he is of the same political party as the party in power, of the President that dies. However, even though that would apply to California, I don't think it would be the best idea, although a governor's job is very similar to the President's.

I personally believe that the law of succession should be changed so that the Secretary of State became the President in the event of the death of the President, the accession of the Vice President and then his inability to serve or his death.

The Secretary of State, of course, has been with foreign affairs, and when the President selects this man to literally do business with the world, it seems that he would be the man that the President would most likely want to succeed him.

In view of the critical nature of international affairs today, I really believe that the Secretary of State would be the person to succeed to the Presidency.

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IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

SENATOR THRUSTON B. MORTON OF KENTUCKY

I am glad that the Congress is giving some thought to the question of the Presidential succession and I hope the Congress will do something about it at this session. I am opposed to the present law. I think that it has certain weaknesses. Now I have nothing against the present Speaker of the House. I happen to be a great admirer of Mr. McCormack's and a friend. But I don't think any Speaker of the House can stay close enough to the policy-making decisions that go on downtown. Running the House is a full-time job. Now the Presiding Officer of the Senate, the Vice President, that's different. He doesn't run the Senate. But the Speaker of the House is really Mr. Capitol Hill and he can't maintain a suite of offices downtown and spend half or three-quarters of his time with the Executive Branch.

Also, I am not impressed with the former law under which the Secretary of State would succeed in the event that the President and the Vice President both died in office. For indeed, a Secretary of State should be selected for his ability to manage and advise the President on foreign affairs, not necessarily to be a man of all-around knowledge on such items as Labor Management Relations, Agriculture, Welfare, and so forth.

I have a plan and I don't think that it requires a Constitutional Amendment. We are working on drafting the legislation now. When a situation develops where a Vice President succeeds to the Presidency, he within the next sixty days will nominate his successor and that successor must be approved by a majority of the Congress meeting in joint session. The House is closer to the people than the Senate and under my plan a House Member would have a vote as well as a Senate member. Equal votes, one for each. I put in this safeguard so that the people do have a veto power. But I think that it is far and away the best plan. And

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IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

SENATOR THRUSTON B. MORTON OF KENTUCKY (Page Two)

today, actually, when a man is nominated by either Party for President he has the major voice in selecting his running mate. So it just carries the Convention tradition forward.

RKO GENERAL BROADCASTING

IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

Arthur Krock, New York Times

For the period since the Federal Union was established, 174 years, this country has been left exposed to the danger that at any moment its government could be paralyzed. In this age of nuclear weapons, the danger could be mortal within the space of 15 minutes.

Paralysis of government would set in if a President became unable to discharge the powers and duties of his office, and either refused to declare his inability, or was physically and mentally incompetent to do so.

It also would happen if, after having declared his inability, he announced his recovery while still incompetent to resume the exercise of the powers and duties of the Presidency.

These enormous perils to the national security are created because the Constitution provides no process by which they can be averted. It does not define what is a state of Presidential disability. It does not specify how and by whom a declaration of Presidential disability is to be initiated or declared, and it doesn't specify how and by whom it shall be decided when the period of Presidential disability has ended.

These omissions make it entirely possible for a President who has become incompetent -- physically, mentally or both -- to retain his powers and duties until a successor is elected. And conceivably the period could last from the time he takes the oath until his four-year term has ended. The only remedy the Constitution provides is the impeachment of the President on charges submitted by the House and the Senate and sustained by two-thirds of the Senate.

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IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

Arthur Krock, New York Times (Page Two)

I favor a Constitutional Amendment which will authorize Congress to establish a Presidential Inability Commission, consisting of certain Cabinet members and the Congressional leaders of both major parties. Two members not of the incumbent President's party could summon a meeting of the Commission which, with the benefit of five members of the medical staffs of private hospitals to be appointed by the Surgeon-General, would decide by majority vote whether a President was disabled who had refused or was incompetent to declare it; also, whether if he declared his disability had ended, it had in fact. In the meanwhile, which would continue until the next election, the Vice President would assume and exercise the powers and duties of the President.

This introduces the second topic, Presidential succession. Suppose, in the circumstances I have just described, there was no Vice President, as is now the case and has been seven times before. The provision under the present law is that first the Speaker should take over the White House, and in the event of his death, disability, resignation or removal the succession would fall on the Senate President pro tem. This substitutes for an earlier statute which began the line with the Cabinet, starting with the Secretary of State.

There are flaws in both methods. For example, the Speaker could be a member of the opposition party; and a Secretary of State nearly always lacks the direct experience in politics a successful President absolutely requires.

I have no perfected formula, but I prefer the one proposed by Herman Phleger, the former Legal Adviser to the Secretary of State. This provides that Congress shall meet in joint session immediately after a vacancy occurs in the office of Vice President, and fill it from a list of nominees, one

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Arthur Krock, New York Times (Page Three)

definitely made by the President, with each Representative and Senator entitled to one vote and Congress required to remain in joint session until it has made its choice.

Thank you.

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IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

JAMES MacGREGOR BURNS, POLITICAL SCIENTIST AND BIOGRAPHER

I see two problems in regard to the Presidency. One is the problem of succession and the other is the problem of inability.

Now the problem of succession is relatively simple. We need to go back to a very good system we had until a few years ago, where, if the President is killed or dies, and then if a Vice President should have the same thing happen, then the next in succession is the Secretary of State and then the Secretary of the Treasury.

This way you're sure of getting into the office a man who had the confidence of the President, because he had appointed him to the State Department. And you're bound to get a man of some eminence, or he wouldn't be Secretary of State. It's much better than the present system of having the Speaker come in after the Vice President, because the Speaker for example might be very old, or he might be a man who is in the opposition party.

The other problem is more difficult, and this is the problem of Presidential inability, or incapacity. What do you do when there is some question as to whether the President is able to do his job?

My suggestion on this score is rather simple. You don't need another Vice President, you don't need to get very complicated about this. All you need to do is have an impartial group of people, hopefully under the Chairmanship of the Chief Justice, with perhaps the Secretary of State on it to represent the ill President, who will appoint a committee of physicians -- an impartial committee -- to make a judgment about the President's condition. And then, if necessary, to call the Vice President into the office to make a decision in terms of how the President is medically, and then, whether the President is able to do the job -- which they will know because they are eminent men in government.

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IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

MAX LERNER, SYNDICATED COLUMNIST, N. Y. POST; AUTHOR; PROFESSOR, BRANDEIS U.

I'm a little depressed by the impasse that we've gotten into over this whole problem. There's a school of thought that wants the present system, a kind of apostolic succession of men who have been elected either by the people or by Congress -- that is the Speaker of the House and the President pro tem of the Senate -- succeeding the Vice President. And then there are others who want the earlier system of the Secretary of State and the other Cabinet people.

Now as far as I'm concerned, I'd like to cut across that whole problem and get a kind of new deal: if the President dies, the Vice President succeeds him; within 30 days after the President's death have a special election for a new Vice President -- which means that the people will be able to act directly.

So far as the certifying of Presidential disability goes, I think the same thing ought to apply. The certifying agency ought to be a group of men who would be at least sympathetic to the incumbent President. And I should imagine it would be a standing committee of his Cabinet -- men who know him, men who have been working with him. Once he has been certified for disability, the same procedures would apply for picking a new Vice President to replace the Vice President who has succeeded him.

In this way you avoid getting the Speaker of the House and the President pro tem of the Senate, who after all have a certain provincialism of viewpoint that all Congressmen and Senators may possibly have. And it also means getting away from picking people who have not been directly elected by the people of the United States themselves.

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MAX LERNER (Page Two)

In the kind of age that we're living in, of overkill weapons, you want the people to vote for a Vice President who may eventually become President and have to command the problems of the country. This is a way of giving the power back again to the people where it belongs.

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IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

ERWIN D. CANHAM, EDITOR, CHRISTIAN SCIENCE MONITOR

It's pretty generally agreed that our present laws regarding who shall succeed a Vice President who has himself succeeded to the Presidency, are inadequate.

As far as I'm concerned, I think it would be better to go back to the old law which we lived with for a great many years, namely, the succession goes down the line of the Cabinet. And when the Senate confirms the members of the Cabinet, it could keep in mind their suitability to be a Vice President.

On the other hand, another idea would be for the President who has succeeded to nominate his own successor and have him confirmed by the whole Congress.

As to the question of disability of a President in office, the agreement between the President and his successor, which has prevailed in the last three Presidencies, also is not adequate. It's only a stopgap.

One idea there would be to make sure by law that the duties but not the office go to the substitute President when a President is disabled. To have the President himself indicate when he's disabled, and have his indication confirmed by a majority of the Cabinet. Then when he becomes able again, also to have him indicate his ability, and again have it confirmed by a majority of the Cabinet.

If we don't clean up our laws on the succession and on disability, we might have a very serious national and international crisis one of these days.

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IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

Reuben Maury, Chief Editorial Writer, New York Daily News

Our Presidential succession law provides for succession -- but rather messily. As last amended in 1947, this law provides that the man in line for the White House after the Vice President shall be the Speaker of the House of Representatives. Then comes the President pro tem of the Senate, and then a long line of Cabinet officers.

Congress has a tendency to change this law whenever Congress doesn't want the next man in line for the Presidency to get it.

What to do about all this confusion?

Unlike some people in the newspaper business, I do not know everything about everything. Especially do I not know all the answers to these varied and complex questions of Presidential succession and Presidential disability.

I do know, though, that former Vice President Richard M. Nixon is profoundly informed on such matters, and that he has made a specific suggestion about them.

Mr. Nixon says President Johnson should appoint a nine-member commission to consider the whole subject.

Three members of this commission would be ex-Presidents Herbert Hoover, Harry S. Truman, and Dwight D. Eisenhower. The other six would be selected from Congress -- three from each party.

They would, after due deliberation, give Congress their advice as to how to dispose of these questions once and for all. We could safely expect that advice to be impartial, specific, constructive, and strictly nonpolitical.

RKO GENERAL BROADCASTING

IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

Reuben Maury, Chief Editorial Writer, New York Daily News (Page Two)

The Nixon proposal, of all those now in circulation, is the one which strikes me as the best and most sensible.

But the main thing is to get started on solving the weighty and dangerous problems raised once more by the murder of President Kennedy. That can be done only with a husky push from President Johnson, or Congress, or both.

RKO GENERAL BROADCASTING

IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

William V. Shannon, Washington Correspondent, New York Post

When the Vice Presidency is vacant, as it is now, I think that we need a Constitutional Amendment to provide for a proper succession. The President, under such an amendment, would submit to the Senate a man to serve as Vice President, and as President if anything should happen to him. And the Senate would confirm him, just as it now confirms members of the Supreme Court and the Cabinet.

I think this simple plan has advantages over the other three alternatives that I have heard proposed by various commentators. I don't think we ought to have two Vice Presidents because the job is a fairly awkward one as it is, and we have some trouble inventing work for one Vice President to do. What we would do with two I do not know.

As far as having a Speaker of the House succeed, as is the present situation, the Speaker could be of the opposite political party, which would cause a real upheaval in the government.

And a third possibility is to go back to the system we had before 1947 where the Secretary of State succeeds when the Vice Presidency is vacant. That is an unfortunate system, I think, because often a man is well qualified to be Secretary of State, but would not make a popular or well-regarded President. For example, Dean Acheson and John Foster Dulles were both strong Secretaries, but I don't think they would have had popular backing as Presidents. Therefore, I think simple appointment by a President is the best solution.

RKO GENERAL BROADCASTING

IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

RUTH MONTGOMERY, SYNDICATED COLUMNIST, HEARST HEADLINE SERVICE & KING FEATURES

In my opinion, it is vital that the man next-in-line should be of the same political party as the President. This is not necessarily true in the present succession law.

I should like to suggest that within two weeks after a vacancy occurs in the office of Vice President, the President would submit to the House of Representatives the names of five qualified members of his party, whom he considers of Presidential stature.

The House would be permitted up to a week to consider the nominations, before calling for a vote. Balloting would then continue, just as at a political convention, until one nominee had a majority.

The membership of the House more nearly represents the popular vote of America than any other body. I would permit each member one vote, rather than providing for a bloc vote by states as in the electoral college, in order to gain the widest popular support at such a crucial time.

The balloting should be secret to avoid political recriminations, or to prevent a rubber-stamp vote for the Speaker of the House, if he happened to be one of the nominees.

This same procedure could be used in the event of Presidential incapacitation. Should the President recover and resume his duties, the newly-elected Vice President could step back to a position equivalent to "Second Vice President" for the remainder of the term.

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IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

Ruth Montgomery (Page Two)

Continuity of government is vital. This method, I believe, would ensure the availability of a top caliber man -- or woman -- who could be learning the awesome tasks of the Presidency.

RKO GENERAL BROADCASTING

IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

ANTHONY J. HOWARTH, EDITORIAL WRITER, NEW YORK WORLD TELEGRAM & THE SUN

I personally don't think much of the system which would elevate Speaker McCormack to the White House if anything happened to President Johnson. This system is based on political wrangling rather than on the realities of the domestic and global tension.

John McCormack is a fine gentleman. Perhaps there's great promise in him. Perhaps he has administrative skills that have never been shown before. Perhaps he has knowledge of the intricate balance engineered into the pendulum of world power. Perhaps he is fully cognizant of the domestic problems and has ideas about their solution. He is, nevertheless, an old man who was nurtured in the narrow political wars of Massachusetts, who has spent his life as a public servant in the House of Representatives and only there, who has not in any way prepared himself for the Presidency and its problems -- and, most important, would not be placed in the White House by a popular vote, but by a vote based on the entrenched seniority of the House.

This Congressional seniority is not likely to vanish. After McCormack, there will be another product of this system. Carl Hayden, for instance, 86 years old.

The alternative is to return to a system in which a member of the Cabinet is entrusted with caretaker functions until a new President can be elected by popular vote. It was once the Secretary of State. It should be that way once again.

In the world today, despite Moscow's statements last year in the aftermath of November 22, the Communists would undoubtedly take advantage of us if we were completely leaderless, without President or Vice President. Trigger-sharp decisions must be made, not by a man who's being advised, but by a man who knows. Such a man as the Secretary of State.

RKO GENERAL BROADCASTING

IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

DR. OSCAR HANDLIN, WINTHROP PROFESSOR OF HISTORY, HARVARD UNIVERSITY

The Constitution gives us a mechanism that we have never adequately used. In the Presidential election, of course, we don't vote for an individual, we choose an Electoral College through the medium of which the President is ultimately selected.

Now what would happen in the case of the death of a President when the Vice President succeeded if, instead of the cumbersome machinery we now depend upon -- the Speaker's succession to the various offices of government -- instead of that, we called upon the Electoral College to reassemble and choose a new Vice President who would in turn be available if anything should happen to the incumbent?

In that event, we would have as close to a recreation of the original situation of the election as possible. We would have a man selected by the Electoral College who would reflect the same balance of opinions and of political forces that was involved in the designation of the original President. And in such a circumstance, we would do the least damage to the orderly succession of governmental policies and powers -- in the event of a disaster that would in turn take away first the President, and then the Vice President.

This seems to me to be the most orderly and most democratic means of meeting the problems of Presidential succession.

RKO GENERAL BROADCASTING

IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

EUGENE BURDICK, AUTHOR, AND PROFESSOR OF POLITICAL SCIENCE, UNIVERSITY OF CALIFORNIA

Whether we are discussing the succession because of death of the President or disability of the President, my solution would be the same.

America today has only one person who represents all of the people in the United States. This is the President. This is an era of personal politics. When the President dies, I believe that as much as possible his personal views and politics should be continued. This would mean that the next person in succession would be the Vice President. After that in an existing situation, it now goes to Congressional parties in Congress who are often wildly out of consonance with the President.

So I would then reverse this so that the members of the President's Cabinet, whom he has chosen and presumably reflect his personal politics, would continue his policies. I think the first member of the Cabinet should be the Secretary of the State, and second Secretary of Defense, and after that I don't really think it makes much difference. But these two Secretaries do have a broader view of the international situation, which is probably most important.

And that is the change I would recommend.

RKO GENERAL BROADCASTING

IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

PROFESSOR PAUL A. FREUND, HARVARD LAW SCHOOL

Presidential inability and succession are two distinct problems, but they are inter-related. For both of them, the goal should be prompt action if required, continuity of administrative policy, and safeguards against intrigue.

For disability, the Constitution should be amended to make it plain that the Vice President or other successor takes over only the powers and duties of the office until the President recovers.

Who should determine the fact of disability? Obviously the President himself, if he can and will. But there should also be a fact-finding body in the Executive Branch -- either the Cabinet, or preferably a commission appointed by the President at the beginning of his term. The end of disability would be declared by the President, subject to being over-ruled by the same fact-finding body plus two-thirds of Congress on the analogy of impeachment.

What of the problem of succession and its relation to inability? The Speaker, as successor, might be of the opposite political party, thus threatening a break in the continuity of administrative policy. Cabinet members have not been elected, and they might be thought to have too great a stake in finding the President disabled.

The key to the problem of succession is to keep the office of Vice President filled at all times, and by one who has the President's confidence. This can be done through election by the Congress from a nominee submitted by the President.

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IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

PROFESSOR MILTON KATZ, DIRECTOR OF INTERNATIONAL LEGAL STUDIES, HARVARD LAW SCHOOL

The choices before us group naturally around three questions. Is action needed? By what means? Of what kind? I believe action desirable through a Constitutional Amendment to accomplish a triple objective: the continuity of Presidential power, the protection of Presidential authority against risks of intrigue, and the maintenance of complete public confidence in the legitimacy of Presidential authority.

Such an amendment would provide first, that the President may proclaim his own inability to discharge the powers and duties of his office whenever he finds himself in such a condition. The Vice President shall thereupon exercise the powers and duties of the Presidency. The President may at any time resume his office by proclaiming his own recovery and thereupon the acting Presidency shall be terminated and the Vice President return to his previous office.

Second, by analogy to the existing power of Congress to remove a President from his conduct through impeachment, the House of Representatives may initiate an inquiry whether the President is able to discharge the powers and duties of his office. If the House finds the President unable to do so, the Senate shall examine the question. When sitting for this purpose, each Senator shall be under oath or affirmation. The Chief Justice of the Supreme Court shall preside and the Vice President shall be excluded. If the Senate makes a finding of inability concurred in by two-thirds of the Senators present, such findings shall have the same effect as a Presidential Proclamation in the provision previously discussed. And the President may be restored at any time by a finding of the Senate in a similar proceeding that he has recovered. Members of the Cabinet, like the Vice President, will take no part because they are in the line of potential succession.

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IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

PROFESSOR RALPH M. GOLDMAN, DEPARTMENT OF POLITICAL SCIENCE, SAN FRANCISCO STATE COLLEGE

In my view any realistic proposal for Presidential succession arising out of death or disability of the incumbent must take the national party conventions into account.

The building of a national party ticket is a complex process. This ticket is quite often vigorously fought over. After negotiation among factional interests, the national ticket is almost always the very best that a party can produce to represent the major interests both within that party and within the nation at large. In short, the conventions are the place where the nation's leadership succession is arranged before being submitted to the voters. The factors at work in a national convention need to be revived in any emergency.

The simplest and most direct way to accomplish this is to create a second Vice Presidency. The creation of such a new office would then lead the national conventions to fill out the slate with a third choice, and -- like the rest of the slate -- this choice would be subject to the usual politics of national conventions.

Another plan could produce a similar convention procedure but would not require a second Vice Presidency. If the Electoral College were authorized to reconvene in an emergency, each party's national convention might in advance limit the College's choice by regularly naming an alternate for the Vice-Presidential nomination. Since the voters will have indicated their party preferences in the previous election, all the Electoral College need do is consider the alternate nominated by the convention.

Another way of going about this would bring Congress as well as the national conventions into the act. Congress, if authorized to make the decision, could be required to invite the national convention of the deceased or disabled President to reconvene in special session to nominate to it another person to fill the vacated Vice Presidency.

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IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

PROFESSOR RALPH M. GOLDMAN, DEPARTMENT OF POLITICAL SCIENCE, SAN FRANCISCO STATE COLLEGE (Page Two)

The object of these proposals, of course, is to bring the national conventions into the procedure of emergency succession. The conventions, after all, are one of the major institutions involved in this process under normal circumstances.

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IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

Lucius Wilmerding, Jr., Author of The Electoral College

The act of 1947, declaring what officer shall act as President in the event of a double vacancy in the executive office, names the wrong officer for the wrong time.

The Speaker of the House is not the man who, from the nature of his office, would most naturally succeed. As a member of Congress, his whole life has been spent in the legislative branch. As Speaker, his business has been to preside over the forms of the House. It is very unlikely, indeed impossible, that such a training would qualify a man to preside over the affairs of a great nation.

By designating the Secretary of State for the temporary appointment, Congress would avoid this difficulty. That officer is already charged with the conduct of foreign affairs -- in the present state of the world the most important and difficult branch of executive business. He would seem to be the most natural successor.

As for time, no person not elected to the Presidency by the people themselves should exercise that office a day longer than is absolutely necessary. If the designated officer succeeds in the first half of the Presidential term, a new President and Vice President should be elected at mid-term.

The disability question is essentially different from that of the succession. When the President is ill, the first difficulty is to ascertain by indisputable evidence the nature of his illness. The idea that he should be examined by a panel of doctors not chosen by his family is open to many objections. What is wanted is not an examination of the President, but an

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Lucius Wilmerding, Jr., Author of The Electoral College

examination of the doctors in attendance on the President. A Disability Commission, composed of persons possessed of the highest confidence of the country, might be appointed to make such an examination.

The second difficulty is to determine the necessity for a devolution of power. This is a political rather than a medical question.

If illness produces a failure of executive authority, it is the people who must put in motion the measures prescribed by the Constitution to supply it. The Senate and the House are their organs of speech; these remain entire, though the President be silenced; and it is through them that the sense of the people must be discovered. In short, Congress alone must decide.

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IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

PROFESSOR DAVID M. AMACKER, DEPARTMENT OF POLITICAL SCIENCE, SOUTHWESTERN COLLEGE, MEMPHIS

It is vital to national security, to peace and to the safety of the free world that the Presidential office never be weakened, never be in doubt, never be vacant. Transitions must be smooth, certain, instant.

For example, to throw the election into Congress, where the House might fail to elect the President and the Senate fail to elect the Vice President, is a frightening responsibility. Congress has power to fix the succession after the Vice President, and in 1947 placed the Speaker of the House and the Senate President pro tempore, then the Cabinet in line. This guarantees first, men of long, unmatched legislative experience in national government with the wisdom of that experience, followed by younger administrators, often new to politics and rather of the specialist type, but close to day-by-day executive problems.

I see no reason to change the system now. What is vital is that both Speaker McCormack and Senator Hayden should be constantly and fully briefed on executive problems. Both should attend the National Security Council and both should sit in on important Cabinet meetings. Thus the entire present succession would be kept informed and prepared for the Presidential office.

But the line of succession needs to go further, for an atomic strike or other catastrophe could obliterate them all. Congress can extend the succession to other officers of the United States, and should do so at once.

As to Presidential inability to discharge the powers and duties of the office, the constitution is vague. There are no standards of inability, and no agency to set the President aside and promote the Vice President. An agreement was made between President Eisenhower and Mr. Nixon, and President Kennedy and Mr. Johnson, and now between President Johnson and Speaker McCormack, which is roughly satisfactory when good will exists. But if there is a clash or lack of sympathy between the two men, as between Wilson and Vice President Marshall, a law and a Constitutional Amendment are needed to back up, enforce and supplement the agreement.

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IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

GEORGE C. S. BENSON, PRESIDENT, CLAREMONT MEN'S COLLEGE, CLAREMONT, CALIFORNIA

Americans find themselves confronted with an unusual problem. For years we have thought of our form of government as being unusually thoughtfully worked out with a careful procedure for replacement if we lose the Chief Executive, who is of course by far the most important person in our government.

Right now, however, we find ourselves in a difficult spot. We have a President who's had a heart attack, who's working very hard; and yet under our laws of succession, the two people who would succeed him are first the Speaker of the House -- a Congressman of honorable reputation and years of service, but a man who's had no experience with the Executive Branch, and who's well along in his seventies, and the President of the Senate, who is nearing 90, and who again has had no administrative experience. This doesn't really look very good.

I think the trouble comes in that we have changed our old law of succession, the old law of succession that the Presidency went after the Vice President to the senior members of the Cabinet, the Secretary of State or Treasury or Defense. These are men who know the executive jobs, who are young and vigorous, and who belong to the party of the President. So that if there should be an unfortunate event like an assassination or a heart attack, we know that the administration will remain in pretty much the same hands.

There were good reasons, presumably, for changing the succession to include these elected members of Congress, but it seems to me that by far the best answer for us would be to return to the old system -- and to have the Cabinet members follow the President and the Vice President in this all-important matter of succession.

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IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

PROFESSOR WILLIAM GERBERDING, DEPARTMENT OF GOVERNMENT, UCLA

The present succession law provides that, in the event of the death of the President and the Vice President, the Speaker of the House of Representatives shall succeed to the Presidency, and in the event of his death, the President pro tem of the Senate.

I believe that this law is a bad law, and I believe the reasons behind its enactment were also faulty. President Truman was anxious to have the preceding law changed. The preceding law provided that in the event of the death of the President and the Vice President, the Secretary of State, followed by the Secretary of Defense and then on down through the Cabinet, would succeed to the office of Presidency.

President Truman disapproved of this law on the grounds that it was undemocratic, that no President should be able to appoint his successor. Well, actually our present practice is very much like that, because each Vice Presidential nominee in either party is really selected by the nominee after his original selection. Therefore, the present system is much that way. The President selects his successor, and I believe the present system is a good one.

For one thing, we don't run into the possibility that the succession will involve a change in parties, as we do when we talk about the Speaker becoming President of the United States. For six of Eisenhower's eight years, for example, the Speaker of the House was a Democrat. This would have involved a radical change in administration right in the middle of a Presidential term, which I believe to be bad. I also believe that Speakers are selected, as are President pro tems, for reasons which are wholly different from serving as President of the United States. They are members of Congress, not Presidential aspirants.

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IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

PROFESSOR WILLIAM GERBERDING, DEPARTMENT OF GOVERNMENT, UCLA (Page Two)

The alternative, which is proposed today, is to have two Vice Presidents. I believe this is equally bad. The second Vice President would always be, almost certainly, a man of inferior quality. It's hard enough to get Presidential-calibre people to run for the Vice Presidency today. It would be virtually impossible to get people to accept the second Vice Presidential nomination.

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IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

WILLIAM R. FRASCA, PROFESSOR OF GOVERNMENT, FORDHAM UNIVERSITY

A Constitutional amendment is desirable and should be adopted. It should provide that when a vacancy occurs, due to death, removal or resignation, the Vice President shall become President for the balance of the unexpired term. It should be made equally clear that in cases of inability to serve, the Vice President shall assume the powers and duties of the office, only until the disability is removed. Finally, Congress should be given authority to enact implementing legislation on the enormously important questions of who is to determine when an inability exists and when it comes to an end.

My own preference is that the basic mechanism for this should be located entirely within the Executive Branch, through collaborative action of the Vice President and the Cabinet, according to the model of the agreements entered into by President Eisenhower and the late President Kennedy.

This arrangement is certainly not contrary to anything in the Constitution at the present time, but rather, logically consistent with the present acts. It has the additional advantage of conforming to what Eisenhower, a Republican, and Kennedy, a Democrat, both felt should be done.

The order of succession should revert to the pre-1947 practice, with the heads of the Executive Departments, led by the Secretary of State, next in line.

These proposals, singly and as a group, are thoroughly in accord with the great structural principle of separation of powers and conform as well with the idea of responsible Presidential, Cabinet Party government as we in this country understand that term.

RKO GENERAL BROADCASTING

IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

DR. ROGER WINES, DEPARTMENT OF HISTORY, FORDHAM UNIVERSITY

Of the several plans proposed to solve the critical problems of Presidential succession and disability, the best would be the election of a new Vice President when a President dies and is succeeded in office.

A Congressional heir apparent, like the Speaker of the House, would not always have the Executive experience, might be of a different party, and would be prevented by conflict of interest from participating in the work of the Cabinet or the Executive Branch.

On the other hand, the Secretary of State has frequently, especially by strong Presidents, been chosen for his expertise in the limited field of diplomacy, rather than for his over-all qualifications as a potential President.

Ideally, immediately upon taking office, the new President should nominate one or more candidates for the vacant post of Vice President. The new man would then be elected by a joint session of Congress. This would provide a successor acceptable to the President and endorsed by the Representatives of the nation. It would give a more rapid and orderly procedure than either a new popular election or reconvening the Electoral College. In the event of a major disaster, the surviving members of Congress could then reconstitute the Executive Branch of government.

Several good alternative plans have been laid before the present Congress. Almost any one of them would be better than the present law or lack of it. The need is now and action should be soon. America deserves better insurance against future national disaster.

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IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

IDEAS PROPOSED

PRESIDENTIAL SUCCESSION

Speakers favoring the present law (Speaker of the House and President pro tem of the Senate next to the Vice President in line of succession):

Professor David M. Amacker, Department of Political Science, Southwestern College, Memphis. Suggests that the House Speaker and the Senate President be thoroughly and continuously briefed by the Executive Department, and that the line of succession be extended.

Senator Paul H. Douglas of Illinois

Would include a new provision: if the Speaker is of the opposition party, House and Senate members of the President's party should choose a new President.

John W. McCormack, Speaker of the House

Speakers favoring a return to the pre-1947 law (Secretary of State and other Cabinet members next to the Vice President in line of succession):

George C. S. Benson, President, Claremont Men's College, Claremont, California

Governor Edmund G. (Pat) Brown of California

Professor Eugene Burdick, Department of Political Science, University of California

James MacGregor Burns, Political Scientist and Biographer

Erwin Canham, Editor, The Christian Science Monitor

Professor William R. Frasca, Department of Government, Fordham University

Professor William Gerberding, Department of Government, UCLA

Anthony J. Howarth, Editor of the Editorial Page, N. Y. World Telegram & Sun

Senator Thomas H. Kuchel of California

Lucius Wilmerding, Jr., Author of THE ELECTORAL COLLEGE

Would include a new provision: if a President dies in the first half of his term, a new President and Vice President should be chosen at mid-term by popular election.

Speakers favoring a Constitutional Amendment whereby if a vacancy in the office of Vice President occurred, as is now the case, the President would be authorized to convene the Electoral College for the purpose of choosing a new Vice President:

Dr. Oscar Handlin, Winthrop Professor of History, Harvard University

Reuben Maury, Editor of the Editorial Page, New York Daily News

Richard M. Nixon

Senator John J. Sparkman of Alabama

(or favors popular election of a new Vice President)

PRESIDENTIAL SUCCESSION (Continued)

Speakers favoring filling any vacancy in the office of Vice President by a Presidential appointment, with Congressional approval:

Senator Birch Bayh of Indiana

Professor Paul A. Freund, Harvard Law School

Arthur Krock of the New York Times

Suggests one vote for each Senate and each House member.

Senator Thruston B. Morton of Kentucky

Suggests one vote for each Senate and each House member.

Senator Leverett Saltonstall of Massachusetts

William V. Shannon, Washington Correspondent, New York Post

Favors Presidential appointment of a new Vice President with just Senate approval.

Professor Roger Wines, Department of History, Fordham University

Speakers favoring the election of two Vice Presidents, an Executive Vice President (first in line), and a Legislative Vice President (second in line):

Professor Ralph M. Goldman, Department of Political Science, San Francisco State College
(or favors alternate Vice President to be named at each party's national convention)

Senator Kenneth B. Keating of New York

Speaker favoring filling any vacancy in the office of Vice President by a Congressional appointment, with Presidential approval:

Senator Jacob K. Javits of New York

Speaker's suggestion if a vacancy in the Vice Presidency occurred, the President should present a list of five candidates to be voted on by the House by secret ballot:

Ruth Montgomery, Columnist, Hearst Headline Service & King Features

Speaker favoring filling any vacancy in the office of Vice President by special popular election:

Max Lerner, Syndicated Columnist, N. Y. Post; Author; Professor, Brandeis University

IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

IDEAS PROPOSED (Page 3)

PRESIDENTIAL DISABILITY

Speakers favoring the formation of a Disability Commission to determine when a President is disabled:

James MacGregor Burns, Political Scientist and Biographer

Senator Paul H. Douglas of Illinois

Professor Paul A. Freund, Harvard Law School

Favors a Constitutional Amendment specifying the conditions under which the Vice President would assume Presidential duties, in addition to a Disability Commission.

Arthur Krock of the New York Times

Max Lerner, Syndicated Columnist, N. Y. Post; Author; Professor, Brandeis University
Suggests the Commission be comprised of members of the President's Cabinet.

John W. McCormack, Speaker of the House

Senator Leverett Saltonstall of Massachusetts

Favors a Constitutional Amendment specifying the conditions under which the Vice President would assume Presidential duties, in addition to a Disability Commission.

Lucius Wilmerding, Jr., Author of THE ELECTORAL COLLEGE

Speakers favoring the adoption of a law or Constitutional Amendment indicating the extremities when the Vice President should be put in charge:

Professor David M. Amacker, Department of Political Science, Southwestern College, Memphis

Professor William R. Frasca, Department of Government, Fordham University

Professor Paul A. Freund, Harvard Law School

Also favors formation of a Disability Commission.

Reuben Maury, Editor of the Editorial Page, New York Daily News

Richard M. Nixon

Senator Leverett Saltonstall of Massachusetts

Also favors formation of a Disability Commission

Speaker favoring the adoption of a Constitutional Amendment specifying who shall judge when a President is disabled:

Senator John J. Sparkman of Alabama

Speaker favoring the adoption of legislation whereby the President may proclaim his own disability or the House may initiate an inquiry into the state of the President's health. If the Senate concurs with the House as to the President's inability, the Vice President shall assume Presidential duties. The President may be similarly restored to his official powers:

Professor Milton Katz, Director, International Legal Studies, Harvard, University

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IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

IDEAS PROPOSED (Page 4)

PRESIDENTIAL DISABILITY (Continued)

Speaker's suggestion that Congress be given power to implement appropriate legislation:

Senator Kenneth B. Keating of New York

Speaker's suggestion the President indicate his own inability and retire from his duties with Congressional consent, allowing the Vice President to perform in his place. When ability is restored, the President would resume his duties in the same way:

Erwin Canham, Editor, The Christian Science Monitor

Speaker's suggestion when a Vice President takes over for an ailing President, he suggests men of Vice Presidential timber to the House. The House votes for a new Vice President. When Presidential ability is restored, the new Vice President steps back to the post of "Second" Vice President:

Ruth Montgomery, Columnist, Hearst Headline Service & King Features

Speaker's suggestion if a President is unable to state his disability, the Vice President with the consent of a majority of the Cabinet may nonetheless assume the duties as acting President for the remainder of the term of disability:

Senator Birch Bayh of Indiana

IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

SOME KEY EXCERPTS

PRESIDENTIAL SUCCESSION

Professor David M. Amacker, Southwestern College, Memphis

"I see no reason to change the system now. What is vital is that both Speaker McCormack and Senator Hayden should be constantly and fully briefed on executive problems. Both should attend the National Security Council and both should sit in on important Cabinet meetings. Thus the entire present succession would be kept informed and prepared for the Presidential office."

Senator Paul H. Douglas of Illinois

"The present provision is that the Speaker of the House shall have the first line of succession, and then the President of the Senate. I think this is in general correct, except, that if the Speaker of the House is of the opposite party of that of the President, then I think the successor should be chosen by the members of that party of the House and Senate."

John W. McCormack, Speaker of the House of Representatives

"The present succession law...changed the line of succession from the Secretary of State after the Vice President to the Speaker of the National House of Representatives. I voted for that bill, and I still favor such legislation."

George C. S. Benson, President, Claremont Men's College, Claremont, California

"I think the trouble comes in that we have changed our old law of succession that the Presidency went after the Vice President to the senior members of the Cabinet, the Secretary of State or Treasury or Defense. These are men who know the executive jobs, who are young and vigorous, and who belong to the party of the President."

Governor Edmund G. (Pat) Brown of California

"The Secretary of State, of course, has been with foreign affairs, and when the President selects this man to literally do business with the world, it seems that he would be the man that the President would most likely want to succeed him."

Senator Thomas H. Kuchel of California

"In my judgment, the old system is better, and I favor legislation under which, when the Vice President becomes President, the next successor -- if anything happened to the new President -- would be the Secretary of State."

Dr. Oscar Handlin, Winthrop Professor of History, Harvard University

"Now what would happen in the case of the death of a President when the Vice President succeeded if, instead of the cumbrous machinery we now depend upon -- the Speaker's succession to the various offices of government -- instead of that, we called upon the Electoral College to reassemble and choose a new Vice President who would in turn be available if anything should happen to the incumbent?"

PRESIDENTIAL SUCCESSION (Continued)

Richard M. Nixon

"I think the man best qualified to be President in the event something should happen to the President is a Vice President of the United States.

"Therefore, I think the problem of Presidential succession should be handled by a Constitutional Amendment which would provide that the President of the United States would convene the Electoral College....It would, of course, have in mind and probably follow the recommendation of the President."

Senator John Sparkman of Alabama

"To me, a basic flaw in the present system is that the line of succession could include persons not of the same political faith. This does not make for orderly government or orderly succession.

"I believe many people in the nation desire a system whereby the people would have the final say as to who would be the successor. Perhaps the vacancy could be filled through special popular election or within the framework of the electoral college which selected the deceased President in the last election."

Senator Thruston B. Morton of Kentucky

"I have a plan and I don't think that it requires a Constitutional Amendment. We are working on drafting the legislation now. When a situation develops where a Vice President succeeds to the Presidency, he within the next sixty days will nominate his successor and that successor must be approved by a majority of the Congress meeting in joint session. The House is closer to the people than the Senate and under my plan a House Member would have a vote as well as a Senate Member. Equal votes, one for each."

William V. Shannon, Washington Correspondent, New York Post

"When the Vice Presidency is vacant, as it is now, I think that we need a Constitutional Amendment to provide for a proper succession. The President, under such an amendment, would submit to the Senate a man to serve as Vice President, and as President if anything should happen to him. And the Senate would confirm him, just as it now confirms members of the Supreme Court and the Cabinet."

Senator Jacob K. Javits of New York

"I have proposed...Congress should meet in joint session and should immediately elect a Vice President, the new Vice President, and that that person should be subject to the consent of the incumbent in office, to wit President Johnson, as he will be his principal man."

ARKO GENERAL BROADCASTING

IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

SOME KEY EXCERPTS (Page 3)

PRESIDENTIAL SUCCESSION (Continued)

Max Lerner, Syndicated Columnist, N. Y. Post; Author; Professor, Brandeis University

"Now as far as I'm concerned, I'd like to...get a kind of new deal: if the President dies, the Vice President succeeds him -- within 30 days after the President's death, have a special election for a new Vice President -- which means that the people will be able to act directly."

Senator Kenneth B. Keating of New York

"On succession, I've proposed an amendment calling for the election of two Vice Presidents at the regular four-year Presidential elections. Each party would nominate two Vice Presidential candidates as part of the national ticket: one running for Executive Vice President, who would be first in line of succession if the President died, and the other running for Legislative Vice President, who would be second in line."

Ruth Montgomery, Columnist, Hearst Headline Service & King Features

"I should like to suggest that within two weeks after a vacancy occurs in the office of Vice President, the President would submit to the House of Representatives the names of five qualified members of his party, whom he considers of Presidential stature.

"The House would be permitted up to a week to consider the nominations, before calling for a vote. Balloting would then continue, just as at a political convention, until one nominee had a majority."

RKO GENERAL BROADCASTING

IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

SOME KEY EXCERPTS (Page 4)

PRESIDENTIAL DISABILITY

Lucius Wilmerding, Jr., Author of THE ELECTORAL COLLEGE

"What is wanted is not an examination of the President, but an examination of the doctors in attendance on the President. A Disability Commission, composed of persons possessed of the highest confidence of the country, might be appointed to make such an examination. The second difficulty is to determine the necessity for a devolution of power. This is a political rather than a medical question.

"If illness produces a failure of executive authority, it is the people who must put in motion the measures prescribed by the Constitution to supply it. The Senate and the House are their organs of speech; these remain entire though the President be silenced; and it is through them that the sense of the people must be discovered. In short, Congress alone must decide."

Arthur Krock of the New York Times

"I favor a Constitutional amendment which will authorize Congress to establish a Presidential Inability Commission, consisting of certain Cabinet members and the Congressional leaders of both major parties. Two members not of the incumbent President's party could summon a meeting of the Commission which, with the benefit of five members of the medical staffs of private hospitals to be appointed by the Surgeon General, would decide by majority vote whether a President was disabled who had refused or was incompetent to declare it; also, whether if he declared his disability had ended, it had in fact. In the meanwhile, which would continue until the next election, the Vice President would assume and exercise the powers and duties of the President."

James MacGregor Burns, Political Scientist and Biographer

"You don't need another Vice President, you don't need to get very complicated about this. All you need to do is have an impartial group of people, hopefully under the chairmanship of the Chief Justice, with perhaps the Secretary of State on it to represent the ill President, who will appoint a committee of physicians -- an impartial committee -- to make a judgment about the President's condition. And then, if necessary, to call the Vice President into the office..."

Professor Milton Katz, Director, International Legal Studies, Harvard Law School

"By analogy to the existing power of Congress to remove a President from his conduct through impeachment, the House of Representatives may initiate an inquiry whether the President is able to discharge the powers and duties of his office. If the House finds the President unable to do so, the Senate shall examine the question...If the Senate makes a finding of inability concurred in by two-thirds of the Senators present, such findings shall have the same effect as a Presidential Proclamation (of inability)."

RKO GENERAL BROADCASTING

IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

SOME KEY EXCERPTS (Page 5)

PRESIDENTIAL DISABILITY (Continued)

Professor William R. Frasca, Department of Government, Fordham University

"A Constitutional amendment is desirable and should be adopted...It should be made... clear that in cases of inability to serve the Vice President shall assume the powers and duties of the office, only until the disability is removed...Congress should be given authority to enact implementing legislation on the enormously important questions of who is to determine when an inability exists and when it comes to an end."

Erwin D. Canham, Editor, The Christian Science Monitor

"As to the question of disability of a President in office, the agreement between the President and his successor, which has prevailed in the last three Presidencies, is not adequate. It's only a stopgap.

"One idea there would be to make sure by law that the duties but not the office go to the substitute President when a President is disabled. To have the President himself indicate when he's disabled, and have his indication confirmed by a majority of the Cabinet. Then when he becomes able again, also to have him indicate his ability, and again have it confirmed by a majority of the Cabinet."

Senator Birch Bayh of Indiana

"In the event the President, because of sickness or other disability, is unable to perform his duties, the Vice President may assume the duties as acting President. First, the President may state his disability, and second, if he is unable to do so, the Vice President with the consent of a majority of the Cabinet may nonetheless assume the duties as acting Vice President for the remainder of the term of disability.

"The important fact is that we must at all times have a healthy President and Vice President during this perilous time."

RKO GENERAL BROADCASTING

IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

BIOGRAPHICAL INFORMATION ABOUT SPEAKERS (In Alphabetical Order)

David M. Amacker

Professor of Political Science, Southwestern College, Memphis. Rhodes Scholar from Louisiana to Oxford University, where he earned B.A. and M.A. Oxon degrees. Following World War I he was a member of the Translation Bureau of the United States Peace Delegation at Paris, and served for a time as oral French interpreter with the Peace Conference Committee on the League of Nations, of which President Woodrow Wilson was Chairman.

Senator Birch Bayh of Indiana (D.)

Elected to four terms in the Indiana House of Representatives, one term of which he served as Speaker, and two terms of which he served as Minority Leader. A Senator since 1962, Mr. Bayh is Chairman of the Senate Judiciary Subcommittee on Constitutional Amendments, which now is studying the problems of Presidential succession and disability.

George C. S. Benson

President, Claremont Men's College, Claremont, California. Has taught at Harvard, University of Chicago, University of Michigan and Northwestern University. Served as Research Director of the U. S. Commission on Intergovernmental Relations. Author: FINANCIAL CONTROL AND INTEGRATION, CIVIL SERVICE IN MASSACHUSETTS, THE STATE ADMINISTRATIVE BOARD IN MICHIGAN, THE NEW CENTRALIZATION.

Governor Edmund G. (Pat) Brown of California (D.)

Admitted to the California Bar in 1927. Twice elected District Attorney for the City and County of San Francisco, in 1943 and 1947. Served as Attorney General of California 1951-1958 and as a Delegate from California to the Democratic National Convention in 1940, 1944, 1948. Has been Governor of California since 1959.

Eugene Burdick

Professor of Political Science, University of California. Author: THE NINTH WAVE, THE UGLY AMERICAN with W. J. Lederer, THE BLUE OF CAPRICORN, FAIL SAFE with Harvey Wheeler.

James MacGregor Burns

Political Scientist and Biographer. Professor of Political Science at Williams College since 1953. Served with the Hoover Commission in 1948. Was a member of the Massachusetts Delegation to the Democratic Convention in 1952 and 1956, and ran for Congress on the Massachusetts Democratic Ticket in 1958. Author: CONGRESS ON TRIAL, GOVERNMENT BY THE PEOPLE with Jack W. Peltason, ROOSEVELT: THE LION AND THE FOX, JOHN KENNEDY: A POLITICAL PROFILE.

RKO GENERAL BROADCASTING

IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

BIOGRAPHICAL INFORMATION ABOUT SPEAKERS (Page Two)

Erwin D. Canham

Editor of The Christian Science Monitor since 1945. Former Chairman of the U. S. Delegation to the U. N. Conference on Freedom of Information (1948), and U. S. Alternate Delegate to the United Nations General Assembly (1949). Was a member of the U. S. Commission for Information, U. S. National Commission for UNESCO (1948-1951). Author: AWAKENING: THE WORLD AT MID CENTURY with others, NEW FRONTIERS FOR FREEDOM, COMMITMENT TO FREEDOM.

Senator Paul H. Douglas of Illinois (D.)

Member of the Economics Department, University of Chicago, 1920-1948. President, American Economic Association, 1947. Drafted first Illinois Old Age Pension Act and helped draft Illinois' unemployment insurance law. Adviser to Governor Roosevelt on New York's social security problems, and helped revise the Federal Social Security Act in 1939. Awarded the Bronze Star for heroism as a Marine during World War II. Author: THE THEORY OF WAGES, REAL WAGES IN THE UNITED STATES, and SOCIAL SECURITY IN THE UNITED STATES. Senator since 1948.

William R. Frasca

Professor of Government, Fordham University. Former Chairman of the Department of Political Philosophy at Fordham. During World War II was Personal Consultant to the Director of Price Stabilization.

Paul A. Freund

Professor of Law at Harvard since 1940. Admitted to the bars of D. C. in 1935 and Massachusetts in 1947. Law clerk to Mr. Justice Brandeis 1932-1933, Special Assistant to the Attorney General 1935-1939 and 1942-1946. Author: ON UNDERSTANDING THE SUPREME COURT.

William P. Gerberding

Professor of Political Science, UCLA. Member of Select Sub Committee on Education for U. S. House of Representatives (1961) and Consultant to the Defense Department (1961). Author: "American Foreign Policy: The First Year of the Kennedy Administration" in the American Government Annual.

Ralph M. Goldman

Professor of Political Science and Associate of Institute for Research on International Behavior, San Francisco State College. Has taught at the Universities of Chicago and California and at Michigan State University. In 1952 served as consultant for the Democratic National Committee. Dr. Goldman was one of the founding members of the American Liberal Association (American branch of the Liberal International). Author: THE POLITICS OF NATIONAL PARTY CONVENTIONS with Paul T. David and Richard C. Bain, PRESIDENTIAL NOMINATING POLITICS with Paul T. David and Malcolm Moos, PRESIDENTIAL PARTY POLITICS (forthcoming).

RKO GENERAL BROADCASTING

IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

BIOGRAPHICAL INFORMATION ABOUT SPEAKERS (Page Three)

Oscar Handlin

Professor of History at Harvard since 1954. In 1958 became Director of the Center for the Study of Liberty in America. Awards: History Prize - Union League Club (1934), J. H. Dunning Prize for American History (1941), Award of Honor - Brooklyn College (1945), Guggenheim Fellow (1954), Christopher Award (1958). Dr. Handlin's book, THE UPROOTED won the Pulitzer Prize for History in 1952. Author: BOSTON'S IMMIGRANTS, COMMONWEALTH, THIS WAS AMERICA, THE UPROOTED, THE AMERICAN PEOPLE IN THE TWENTIETH CENTURY, ADVENTURE IN FREEDOM, CHANCE OR DESTINY, RACE AND NATIONALITY IN AMERICAN LIFE, READINGS IN AMERICAN HISTORY, THE NEWCOMERS - NEGROES AND PUERTO RICANS IN A CHANGING METROPOLIS, THE DIMENSION OF LIBERTY with M. F. Handlin.

Anthony Howarth

Editor of the Editorial Page, New York World-Telegram & Sun. Yale, 1955. Member, National Conference of Editorial Writers.

Senator Jacob K. Javits of New York (R.)

Admitted to the New York Bar in 1927. Assistant to the Chief of Operations of Chemical Warfare during World War II. Awarded the Legion of Merit and Army Commendation. Served in 80th, 81st, 82nd and 83rd Congresses. Elected Attorney General of New York in 1954. Senator since 1956.

Milton Katz

Director of International Legal Studies, Harvard Law School, since 1955. Admitted to the New York Bar in 1932 and the Massachusetts Bar in 1958. U. S. Special Representative in Europe, with rank of Ambassador extraordinary and plenipotentiary (1950-1951), Chairman of the Defense Financial and Economic Committee under the North Atlantic Treaty (1950-1951). Associate Director of the Ford Foundation (1951-1954). Mr. Katz has been decorated with the Legion of Merit. Author: CASES AND MATERIALS IN ADMINISTRATIVE LAW, GOVERNMENT UNDER LAW AND THE INDIVIDUAL with others.

Senator Kenneth B. Keating of New York (R.)

Holds rank of Brigadier General in the United States Army. Awarded Legion of Merit with Oak Leaf Cluster; American, European and Asiatic Theatre Ribbons with three Battle Stars. Sits on the Board of Directors of the New York World's Fair and American Political Science Association. Elected to the House of Representatives, 80th through 85th Congresses. Senator since 1958.

Arthur Krock

Washington commentator for the New York Times since 1953. Formerly Editor in Chief, Louisville Times (1919-1923). Decorations: Legion d'Honneur, Officer's Cross Polonia Restituta, Knights' Cross in Order of St. Olav (Norway). Recipient of the Pulitzer Prize as a Washington Correspondent in 1935 and 1938.

RKO GENERAL BROADCASTING

IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

BIOGRAPHICAL INFORMATION ABOUT SPEAKERS (Page Four)

Senator Thomas H. Kuchel of California (R.)

Admitted to the California State Bar in 1935. Elected to the State Assembly from Anaheim for two terms beginning 1936 and to the State Senate for two terms beginning 1940. Appointed State Controller by Governor Warren in 1946. Was subsequently elected to the office for two terms. In 1952 Governor Warren appointed him United States Senator. He has served in the Senate as an elective officer since 1954.

Max Lerner

Columnist for the New York Post since 1949 and Professor of American Civilization at Brandeis University since 1949. Formerly Editor, The Nation (1936-1938) and Professor of Political Science, Williams College (1938-1943). Author: IT IS LATER THAN YOU THINK, IDEAS ARE WEAPONS, IDEAS FOR THE ICE AGE, THE MIND AND FAITH OF JUSTICE HOLMES, ACTIONS AND PASSIONS, AMERICA AS A CIVILIZATION, THE UNFINISHED COUNTRY, BEYOND THE POWER PRINCIPLE.

Reuben Maury

Chief Editorial Writer for the New York Daily News since 1926. Admitted to the Montana Bar in 1923. Awards: Pulitzer Prize for editorials printed in 1940, Christopher Editorial Award (1954). Author: THE WARS OF THE GODLY: THE STORY OF RELIGIOUS CONFLICT IN AMERICA, AMERICANS TO REMEMBER, EFFECTIVE WRITING with Karl G. Pfeiffer.

Representative John W. McCormack, Speaker of the House of Representatives (D.)

Member of the Massachusetts Constitutional Convention 1917-1918. Elected to the Massachusetts House of Representatives in 1920 where he served one term and to the Massachusetts Senate in 1923. In 1925 and 1926 he was Democratic leader of the Massachusetts Senate. Mr. McCormack was a member of the 70th through 79th Congresses and served successively as Democratic Whip of the 80th Congress, Majority Leader of the 81st and 82nd Congresses, Democratic Whip of the 83rd Congress, Majority Leader of the 84th, 85th, 86th and First Session of the 87th Congress. Was elected Speaker of the House beginning the Second Session of the 87th Congress and has served as Speaker since.

Ruth Montgomery

Syndicated Columnist for Hearst Headline Service and King Features. Awards: Pall Mall Journalistic Award (1947), Front Page Award - Indianapolis Press Club (1957), George Holmes Journalism Award (1957). Former President of the Women's National Press Club (1950-1951) and member of its Board of Governors (1951-1954).

Senator Thruston B. Morton of Kentucky (R.)

Formerly Chairman of the Board, Ballard & Ballard Company, Inc., Louisville, Ky.; former Director, Louisville Board of Trade and Louisville Goodwill Industries; present Director, Frontier Nursing Service, Lincoln Institute. Member of the 80th, 81st and 82nd Congresses Assistant Secretary of State, 1953-1956. Chairman, Republican National Committee, 1959-1961. Senator since 1956.

RKO GENERAL BROADCASTING

IN SEARCH OF A SOLUTION: PRESIDENTIAL SUCCESSION AND DISABILITY

BIOGRAPHICAL INFORMATION ABOUT SPEAKERS (Page Five)

Richard M. Nixon

Member of the California and New York State Bars. Has served as a Congressman in the 80th and 81st Congresses and as a Senator from 1951 to 1953. Mr. Nixon was twice elected Vice President in 1952 and 1956 and was nominated President of the U. S. Republican Party in 1960. He is a member of the Board of Trustees of Whittier College, his alma mater.

Senator Leverett Saltonstall of Massachusetts (R.)

Assistant District Attorney for Middlesex County, 1921-1922. Member of the Massachusetts House of Representatives, 1923-1936, and Speaker of the House for eight years of his term. Elected Governor of Massachusetts for three successive terms from 1938. Chairman, National Governors' Conference, 1944; Chairman, New England Governors' Conference, 1939-1944; President, Harvard Board of Overseers, 1943-1949. Senator since 1944.

William V. Shannon

Washington Correspondent, New York Post. Author: THE TRUMAN MERRY-GO-ROUND, THE AMERICAN IRISH.

Senator John J. Sparkman of Alabama (D.)

Admitted to the Alabama Bar in 1923. Elected to the 75th Congress in 1936 and reelected for five terms. Majority Whip during his last House term (80th Congress). Democratic candidate for Vice President in 1952. Senator since 1946.

Lucius Wilmerding, Jr.

Political Economist. Director, Bureau of Reports, U.N.R.R.A. (1944-1945). Member, Institute for Advanced Study at Princeton (1945-1948). Author: GOVERNMENT BY MERIT, THE SPENDING POWER, THE ELECTORAL COLLEGE, JAMES MONROE: PUBLIC CLAIMANT.

Roger A. Wines

Assistant Professor of History, Fordham University. Was awarded a Fulbright Scholarship (1958-1959) to study German history at its source. Author: THE JOURNAL OF LONG ISLAND HISTORY.

IN THE SENATE OF THE UNITED STATES

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States relating to vacancies in the Vice Presidency and to cases where the President is unable to discharge the powers and duties of his office.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), that the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution only if ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"Article ———

"SECTION 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

"SEC. 2. Whenever there is a vacancy in the office of Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

"SEC. 3. If the President declares in writing that he is unable to discharge the powers and duties of his office, such powers and duties shall be discharged by the Vice President as Acting President.

"SEC. 4. If the President does not so declare, and the Vice President with the written concurrence of a majority of the heads of the executive departments or such other body as Congress may by law provide, transmits to the Congress his written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

PRESIDENTIAL INABILITY AND
VICE PRESIDENTIAL VACANCIES

Analysis of Study

SUBCOMMITTEE ON CONSTITUTIONAL AMENDMENTS

Senator Hubert H. Humphrey

1 "SEC. 5. Whenever the President transmits to the Congress his written
2 declaration that no inability exists, he shall resume the powers and duties
3 of his office unless the Vice President, with the written concurrence of a
4 majority of the heads of the executive departments or such other body as
5 Congress may by law provide, transmits within two days to the Congress his
6 written declaration that the President is unable to discharge the powers and
7 duties of his office. Thereupon Congress shall immediately decide the issue.
8 If the Congress determines by two-thirds vote of both Houses that the
9 President is unable to discharge the powers and duties of the office, the
10 Vice President shall continue to discharge the same as Acting President;
11 otherwise the President shall resume the powers and duties of his office."

Analysis of Testimony

Testimony

Total Witnesses	14
Exhibits	3
Total	17

I. CONSTITUTIONAL AMENDMENT

- (1) Replace Vice President
 - (a) President nominate and confirmed by majority of Congress sitting in joint session*1 (11)
 - (b) Permit Members of Congress to serve as Vice President (1)
 - (c) Elect two Vice Presidents (1)
 - (d) Electoral College called (1)
- (2) Disability Provision*2
 - (a) Powers and duties devolve (10)
 - (b) President could declare inability in writing (10)
 - (c) Disability established by Vice President and Cabinet (9)
 - (d) President resume powers by written declaration (8)
 - (1) Vice President and majority of Cabinet and Congress could deny (9)
 - (a) other body (commission) (6)
 - (1) prefers commission (3)
- (3) Succession Law
 - (a) Vice President fills unexpired term (2)
 - (b) Clarify Tyler precedent (2)
 - (c) Place such responsibility on Congress (1)
 - (d) Pre 1947 line (3)
 - (e) Where line of succession reaches Cabinet level Congress to provide for new election (1)

*1 Mr. Hamilton prefers confirmation by Senate only

*2 Gov. Rockefeller stated that the permanent solution should be by constitutional amendment

II. STATUTE OR INFORMAL AGREEMENT

- (1) Replace Vice President
 - (a) Create office of Acting President (3)
 - (1) President would nominate with consent of Senate (2)
 - (b) Give President right to make informal agreement (1)
 - (c) For 1965 National Conventions to select two additional people for President and Vice President. (1)
- (2) Disability Provision
 - (a) Commencement and termination to be by law (1)
 - (b) Informal Agreement (1)
 - (c) President could declare own disability (1)
 - (d) Vice President on own or with Cabinet to make determination (1)
 - (e) Powers and duties devolve (1)
 - (f) President could resume powers (1)
 - (g) Any defacto inability (1)
- (3) Succession
 - (a) Congress to determine (1)
 - (b) Where vacancy in Presidency and Vice Presidency Congress to elect new ones (1)
 - (c) Pre 1947 Law (4)
 - (d) When succession reached Cabinet level, Congress to provide for new election (1)

III. OPPOSED

- (a) Disability machinery in Constitution (2)
- (b) Judiciary omitted from any disability proceeding (1)
- (c) Commission on disability (5)
- (d) Opposed to Electoral plan (3)
- (e) Succession line in amendment (1)
- (f) Two Vice Presidents (4)
- (g) Dislikes 1947 law (2)
- (h) Cabinet on disability (1)
- (i) Dislikes President nominating Vice President (1)

MEMORANDUM ON BILLS RELATING TO PRESIDENTIAL
INABILITY AND PRESIDENTIAL SUCCESSION
FIRST SESSION, 88th CONGRESS

The numerous bills introduced during 1963 on Presidential inability and Presidential succession represent many divergent views on solutions to problems raised in both areas. Many of the bills relate primarily to the question of inability, specifying in addition that Congress may provide by law for succession. Others are directed to inability only; still others to succession only. Some relate equally to inability and to succession by determining the line of succession.

A Constitutional amendment is the necessary solution for the inability problem, according to some Congressional sponsors. Among others it is believed that an Act of Congress will do.

The following categories should be helpful in reviewing the various proposals: I. Inability and Succession - Constitutional amendments, II. Inability Only - Legislation, III. Succession Only - (a) Constitutional Amendment, (b) Legislation.

I. INABILITY AND SUCCESSION- CONSTITUTIONAL AMENDMENTS

S. J. Res. 28, Sen. Kefauver (D-Tenn.), January 9, 1963:

1. In case of the President's removal, death or resignation, the Vice President succeeds to the office for remainder of term.
2. In case of the President's inability, the powers and duties devolve until inability has terminated.
3. The President may declare his inability in writing; if he does not, the Vice President discharges the powers and duties with written approval of a majority of heads of executive departments.
4. The President may declare in writing termination of inability; or, Congress may consider issue if Vice President so decides with written approval of a majority of heads of executive departments.
5. If 2/3 members present in each House determine the inability has not terminated, the Vice President continues as Acting President until the earliest of these events: (a) Acting President proclaims inability has ended, (b) Congress determines inability ended by a majority of members present in each House, (c) President's term ends.
6. Congress may by law declare the line of succession in case of removal, death, resignation, or inability, both of the President and Vice President.

S. J. Res. 35, Sens. Kefauver (D-Tenn.) and Keating (R-N. Y.), February 5, 1963:

1. In case of the President's removal, death or resignation, the Vice President succeeds to the office.
2. In case of the President's inability, the powers and duties devolve until inability has terminated.
3. Congress may by law determine the method for commencement and termination of inability.
4. Congress may by law declare the line of succession in case of removal, death, resignation, or inability, both of the President and Vice President.

S. J. Res. 84, Sens. Hruska (R-Neb.) and McClellan (D-Ark.), May 28, 1963:

1. In case of the President's death, resignation, or removal, the Vice President becomes President for the remainder of the term.
2. In case of the President's inability, the powers and duties devolve until the inability has terminated.
3. Congress has power to determine procedure for inability; procedure must be "compatible with the maintenance of the three distinct departments of government, the legislative, the executive, and the judicial and the preservation of the checks and balances between the coordinate branches."
4. Congress may by law declare the line of succession in case of removal, death, resignation, or inability, both of the President and Vice President.
5. Article II, section 1, paragraph 6 is repealed.

*See also H. J. Res. 868 on page 8

S. J. Res. 139, Senators Bayh (D-Ind.), Bible (D-Nev.), Long (D-Mo.), Burdick (D-N. D.), Pell (D-R. I.), Moss (D-Utah), and Randolph (D-W. Va.), December 12, 1963:

1. In case of the President's removal, death or resignation, the Vice President becomes President for remainder of the term. The new President nominates a Vice President who must be confirmed by a majority of members present and voting of both Houses of Congress.
2. In case of the Vice President's removal, death or resignation, the President nominates a new Vice President who must be confirmed by Congress.
3. In case of the President's inability, the powers and duties devolve to the Vice President until inability has terminated.
4. The President may declare his inability in writing; if he does not, the Vice President discharges the powers and duties with written approval of a majority of heads of executive departments.
5. The President may declare in writing termination of inability; or Congress may consider issue if Vice President so decides with written approval of a majority of heads of executive departments.
6. If 2/3 members present in each House determine the inability has not terminated, the Vice President continues as Acting President until the earliest of these events: (a) Acting President proclaims inability has ended, (b) Congress determines inability has ended by a majority of members present in each House, (c) President's term ends.
7. In case there is neither a President nor a Vice President, the officer from the following list shall succeed (to Presidency in case of death, resignation, or removal of both President and Vice President; to powers and duties in case of inability of both President and Vice President): Secretary of State, Secretary of Treasury, Secretary of Defense, Attorney General, Postmaster General, Secretary of Interior, Secretary of Agriculture, Secretary of Commerce, Secretary of Labor, Secretary of Health, Education and Welfare, and such other heads of Executive Departments as may be established hereafter and in order of their establishment.

S. J. Res. 140, Sen. Keating (R-N. Y.), December 19, 1963:

1. The office of Vice President is abolished, and offices of Executive Vice President and Legislative Vice President are established.
2. If the President-Elect dies, the Executive Vice President-Elect becomes President. If both have died, the Legislative Vice President-Elect becomes President. The joint resolution contains additional provisions relating to who acts as President if President has not been chosen before beginning of term or if President-Elect has not qualified.
3. In case of the President's removal, death or resignation, the office devolves upon the Executive Vice President.
4. In case of the Executive Vice President's removal, death or resignation, or when he becomes President, the office of Executive Vice President devolves upon the Legislative Vice President.
5. In case of the President's inability, the powers and duties of the President devolve upon the Executive Vice President until inability has terminated.
6. In case of inability of both the President and Executive Vice President, the powers and duties of the President devolve upon the Legislative Vice President until inability of the President or Executive Vice President has terminated.

7. Congress may by law determine the method for commencement and termination of inability.

8. Congress may by law provide for the line of succession in case of removal, death, resignation, or inability of the President, the Executive Vice President, and the Legislative Vice President.

9. The Legislative Vice President shall be the President of the Senate.

H. J. Res. 28, Rep. Curtin (R-Pa.), January 9, 1963:

1. In case of the President's removal, death or resignation, the Vice President becomes President for remainder of term.

2. In case of the President's inability, the powers and duties devolve on the "individual next in line of succession" until inability has terminated.

3. The President may declare his inability in writing; if he does not, any two members of a Commission may initiate action. The "Presidential Inability Commission" would be composed of these members: Chairman--the Chief Justice, voting only in case of a tie; the Senior Associate Justice of the Supreme Court; the Secretaries of State and of Treasury; the Speaker; the House Minority Leader; the Majority and Minority Leaders of the Senate.

4. The Commission is empowered to consider inability and must seek competent medical advice. Five members must concur in reaching a determination.

5. The President may declare in writing termination of inability if he declares his own inability, otherwise the Commission must make the determination.

H. J. Res. 77, Rep. Bennett (D-Fla.), January 9, 1963:

Same as S. J. Res. 35.

H. J. Res. 210, Rep. Robison (R-N. Y.), January 29, 1963:

Same as S. J. Res. 35.

H. J. Res. 272, Rep. Lindsay (R-N. Y.), February 21, 1963:

Same as S. J. Res. 28.

H. J. Res. 580, Rep. Halpern (R-N. Y.), July 29, 1963:

Same as S. J. Res. 35.

H. J. Res. 818, Rep. Ayres (R-Ohio), December 2, 1963:

1. If there is no Vice President, the President submits names to the Senate for a choice by the Senate.

2. The individual selected to serve as Vice President shall serve the remainder of the Presidential term. The powers and duties of the office of President devolve on the Vice President in case of the removal, death, resignation or inability of the President.

II. INABILITY ONLY - LEGISLATION

H. R. 707, Rep. Multer (D-N. Y.), January 9, 1963:

1. The House of Representatives requests the Senate to take appropriate action to determine whether the President is unable to discharge the powers and duties of his office.
2. The Chief Justice convenes the Senate and presides for a special session. Senate by 2/3 vote of those present may determine the President is unable to discharge the powers and duties of his office and may direct the Vice President to act as President until inability is terminated, or until the end of the term.
3. The Senate action may be revoked, restoring the President to assumption of powers if House requests a special session.
4. The same procedure applies to determining the inability of the Vice President or any other individual acting as President.

H. R. 1164, Rep. Wyman (R-N. H.), January 9, 1963:

1. The President may announce his inability and the power and duties devolve upon the Vice President as Acting President.
2. If the President does not announce, the Vice President or person next in line of succession or two members of a Commission on Presidential inability may initiate action.
3. A Commission is established composed of the Chief Justice, as chairman, who votes only in case of tie; Majority and Minority Leaders of the House and Senate; and the Surgeon General.
4. If four members of the Commission determine the President is unable to discharge the powers and duties of his office, the House votes on a resolution to request the Senate to make a final determination.
5. The Chief Justice presides over the Senate throughout the Senate's deliberation of this question. Notice and opportunity to be heard is given to the President.
6. If the Senate determines by two-thirds of its members present and voting that the President or person acting as President is unable to discharge the powers and duties of his office, it directs the Vice President or person next in line of succession to act as President during the period of inability or the remainder of the term.
7. Any determination made by the Senate may be revoked, and inability terminated in the same manner as the original determination. By a vote of two-thirds of the Senate present and voting, the President may be restored to the powers and duties of his office.

H. R. 9531, Rep. Rhodes (R-Ariz.), December 19, 1963:

Same as H. R. 1164.

H. R. 9534, Rep. Derwinski (R-Ill.), December 19, 1963:

Same as H. R. 1164.

III. SUCCESSION ONLY

(a) Constitutional Amendment

S. J. Res. 138, Sen. Javits (R-N. Y.), December 12, 1963:

1. When the office of Vice President is vacant because of his death, removal or resignation, or because he assumes the powers and duties of the Presidency, the "person discharging the powers and duties of President" convenes the Senate and House in joint session to elect a person to act as Vice President.

2. Such person is selected by majority vote of members of House and Senate present and voting. Selection shall be from heads of executive departments or members of Congress.

3. The person chosen serves the remainder of the term and has the same status, powers and duties as an elected Vice President.

H. J. Res. 858, Rep. Gary (D-Va.), December 10, 1963:

In case of the vacancy of the office of the Vice President, by death, resignation, removal, failure to qualify, or succession to the office of President, the Senate and House, by majority vote, in joint session, selects a new Vice President.

(b) Legislation

H. R. 9305, Rep. Ayres (R-Ohio), December 2, 1963:

1. If there is no Vice President, the President submits names to the House of Representatives for selection of individual to act as Vice President.

2. Each state shall have one vote in the House.

3. The powers and duties of the office of President do not devolve on any individual chosen under this legislation.

*H. J. Res. 868, Rep. Auchincloss (R-N. J.), December 13, 1963:

1. Establishes offices of First Vice President and Second Vice President.

2. The First Vice President would perform duties assigned by the President.

3. The Second Vice President would be President of the Senate. He would act as First Vice President if the First Vice President assumes powers and duties of Presidency or in the case of his removal, death, resignation, or inability; Second Vice President acts as President in case of removal, death, resignation, or inability of both the President and First Vice President.

S. J. Res. 147, Senator Ervin (D-N. C.), January 29, 1964

1. Within 10 days after the day on which the office of the Vice President becomes vacant, the person discharging the powers and duties shall convene the Senate and House of Representatives in joint session to elect a successor to the office of Vice President.

2. Within 10 days of the day on which the office of the President and Vice President both become vacant, the person discharging the powers and duties of the President shall convene the Senate and the House of Representatives in joint session to elect a President and Vice President.

3. A quorum of each House is necessary for any selection and in case of vacancies in both offices, President and Vice President shall be chosen by a majority vote of the Members of both Houses.

4. Any person chosen shall serve until the end of the term for which the successor was elected.

5. The Congress may by law provide for the designation of a person who shall discharge the powers and duties of President at any time there is no President or Vice President.

S. J. Res. 148, Senator Church (D-Idaho), January 22, 1964

1. Whenever there shall be a vacancy in the office of Vice President, the President, by and with the advice and consent of the Senate, shall nominate not more than five nor fewer than two persons for the office. The House of Representatives shall immediately, by ballot, choose one of these persons to be Vice President. A quorum for this purpose shall consist of two-thirds of the whole number of Representatives, and a majority of the whole number shall be necessary to a choice.

S. J. Res. 149, Senator Young (D-Ohio), January 22, 1964

1. Within 60 days after the day when a vacancy occurs in the office of the Vice President and at a time no later than 120 days before the expiration of the term for which the Vice President was elected, the person discharging the powers and duties of the President shall nominate, and by and with the consent of the Senate, a person to be appointed Vice President.

2. The Senate must act upon such nomination within 30 days after receipt of the nomination.

3. If the Senate does not act within said time and more than 90 days of the term for which the Vice President was elected remain, another name shall be transmitted to the Senate within 30 days after the vote was taken on the first name.

4. A Vice President selected under this article shall serve out the unexpired term of his successor. Nothing contained in this article shall prevent the Congress from providing by law for the designation of an officer who shall act as President at any time at which vacancies exist in the office of both President and Vice President.

1. The President may delegate in writing such of his powers and duties as he deems appropriate to the Vice President.

2. In case of the removal, death or resignation, the Vice President shall become President and shall serve out the unexpired term.

3. In case of inability, powers and duties of the office shall be discharged by the Vice President until the end of the Presidential term or until such time as the President's inability is removed.

4. Creates a permanent commission on Prevention of Lapse of Executive Power. Its membership shall consist of members of the Judiciary Committees of the Senate and the House of Representatives. Congress by law shall prescribe rules for determining inability and the Commission shall determine all questions concerning inability. Each such determination shall require the concurrence of two-thirds of the members of the Commission present and voting.

5. Whenever at a time more than 6 months before the end of a Presidential term

- (a) the Vice President becomes President
- (b) the Vice President undertakes to discharge the powers and duties because of inability, and probable duration of which has been determined by the Commission to exceed 6 months
- (c) there is no Vice President
- (6) the Vice President has suffered an inability the probable duration of which has been determined by the Commission to exceed 6 months

a second Vice President shall be elected by the Congress from not fewer than three persons who are qualified to serve as President and who are recommended for election as Second Vice President by the National Committee of the political party of which the President is a member.

6. Whenever there is no Vice President, the Second Vice President has been elected, the Second Vice President shall become Vice President.

Whenever the Vice President is discharging the powers and duties of the President or the Vice President has suffered an inability and a Second Vice President has been elected, the Second Vice President shall discharge the duties of the Vice President

- (a) until the end of the term for which the Vice President was elected
- (b) the early resumption by the Vice President of the discharge of the powers and duties of his office.

7. The Congress may by law declare what persons shall discharge the powers and duties of the President and said person's selection in any case where there is no persons who are qualified as President, Vice President or Second Vice President.

Neither the Vice President nor a Second Vice President shall preside over the Senate. The President of the Senate shall be chosen by members of the Senate.

8. Congress shall have power to carry this article into effect by appropriate legislation.

1. Whenever the House of Representatives, by proceedings taken as in the case of an impeachment, declares its belief that the President has suffered an inability, the Senate shall determine whether such inability exists. During such Senate proceedings, members shall be on oath or affirmation and the Chief Justice shall preside. No determination of inability may be made without a concurrence of two-thirds of the Senate present.

2. Whenever a President makes a written declaration that his inability has been removed, the Senate shall so determine. Such removal determination shall be made in the same manner as provided above except that a majority of the Members of the Senate voting is sufficient to determine said disability has been removed. Upon such determination, the President shall resume the discharge of his powers and duties.

WALTER CRAIG

President, American Bar Association - Feb. 24, 1964 - Vol. 2 pages 162-172

I. Constitutional Amendment

A. To Replace Vice President

- (1) President shall nominate a person who shall be Vice President if approved by a majority of the Congress sitting in Joint Session (page 169)

B. Disability Provision

- (1) In event of disability powers and duties but not office would devolve (page 168)
- (2) President could declare disability in writing (page 168)
- (3) Disability could be established by Vice President with concurrence of majority of Cabinet OR
 - (a) other body as Congress by law may provide (page 168)
- (4) President to resume powers and duties by his written declaration (page 168)
 - (a) If Vice President and a majority of Cabinet OR
 - (1) other body as Congress by law providesdoes not concur such disability shall be determined by a two-thirds vote of Members of each House

C. Succession

- (1) When vacancy occurs in Presidency person ascending to Presidency shall fill unexpired term (page 169)

II. Statute or Informal Agreement

- (1) Mr. Craig believes an informal agreement is a partial solution but not acceptable permanent solution

* The recommendations of Mr. Craig and Mr. Powell were result of a Bar Consensus which consensus was unanimously endorsed by House of Delegates of the American Bar Association.

LEWIS F. POWELL, JR.

Pres.-Elect, American Bar Association - Feb. 24, 1964 - Vol.2, pages 172-182

I. Constitutional Amendment

A. To Replace Vice President

- (1) President shall nominate a person who shall be Vice President if approved by a majority of the Congress sitting in Joint Session
- (2) President could declare disability in writing
- (3) Disability could be established by Vice President with concurrence of majority of Cabinet OR
 - (a) other body as Congress by law may provide
- (4) President to resume powers and duties by his written declaration
 - (a) if Vice President and a majority of Cabinet, OR
 - (1) other body as Congress by law providesdoes not concur such disability shall be determined by a two-thirds vote of Members of each House

B. Succession

- (1) When vacancy occurs in Presidency person ascending to Presidency shall fill unexpired term
- (2) Clarify Tyler precedent (page 173, para. 5,6; page 174)

II. Statute or Informal Agreement

- (1) Mr. Powell believes an informal agreement is a partial solution but not acceptable permanent solution.

III. Opposition

- (1) System where Vice President would be replaced by Electoral College decision (page 179)
- (2) Special election to fill a Vice Presidential vacancy (page 179)

MARTIN TAYLOR

Chairman, Committee on Constitutional Law, N.Y. Bar Assn., Feb. 24, 1964
Vol.3, pages 202-210

I. Constitutional Amendment

A. To Replace Vice President

- (1) Reserved comment on this until further study

B. Disability Provision

- (1) That only powers and duties but not office would devolve (pages 202,3,4)
- (2) Commencement and termination of inability to be by law (pages 202,3,4)

C. Succession

- (1) Make constitutional Tyler precedent (pages 202,3,4)
- (2) Congress by law to determine who will act as President when vacancy occurs in Presidency and Vice Presidency (pages 202,3,4)

II. Statute or Informal Agreement

A. Disability

- (1) Would by amendment provide that the commencement and termination of any inability be determined by such method as Congress by law provides (pages 202,3,4)

B. Succession

- (1) Would by amendment place responsibility for succession on Congress to pass legislation (pages 202,3,4)

III. Opposition

- (1) Disability machinery of Bar Consensus places responsibility on Vice President not contemplated in Constitution (page 204)
- (2) Feels broad, simple language is best without specifics

JAMES MacGREGOR BURNS

Political Scientist, Williams College, Feb. 25, 1964 - Vol. 4, pages 214-243

I. Constitutional Amendment

A. Disability Provision

- (1) Commission (page 216)
 - (a) Composition
 - (1) Chief Justice
 - (2) Secretary of State
 - (3) Secretary of Treasury
 - (4) Speaker
 - (5) Pres. Pro Tem
 - (b) Commission could even declare a Vice President full President (page 226-228)
 - (c) Would omit Congress as a body from any part in deciding inability (pages 217-225)

B. Succession

- (1) Prefers pre-1947 line (page 219)

II. Statute or Informal Agreement

A. Disability

- (1) Mr. Burns believes all three could be utilized (page 217)
 - (a) amendment
 - (b) statute
 - (c) informal agreement

B. Mechanics for Disability

- (1) Determination
 - (a) Same as in the amendment
- (2) Termination
 - (a) Same as in the amendment

III. Opposition

- (1) Disability machinery of Bar Consensus places responsibility on Vice President not contemplated in Constitution.
- (2) Feels broad, simple language is best without specifics

PAUL A. FREUND

Professor of Law, Harvard University, Feb. 25, 1964 - Vol. 4, pages 244-258

I. Constitutional Amendment

A. To Replace Vice President

- (1) President shall nominate a person who shall be Vice President if approved by a majority of the Congress sitting in Joint Session

B. Disability Provision

- (1) In event of disability powers and duties but not office would devolve (page 244)
- (2) President could declare disability in writing (page 245)
- (3) Disability could be established by Vice President with concurrence of majority of Cabinet OR (page 247)
 - (a) other body as Congress by law may provide (page 248)
- (4) President to resume powers and duties by his written declaration (pages 248, 249, 256)
 - (a) If Vice President and a majority of Cabinet OR
 - (1) other body as Congress by law provides does not concur such disability shall be determined by a two-thirds vote of Members of each House

III. Opposition

- (1) Feels that Judiciary should be omitted from any disability proceeding (page 257)

HERBERT BROWNELL

President, New York City Bar Assn., Former Attorney General of United States
February 25, 1964 - Vol. 4, 259-277

I. Constitutional Amendment

A. To Replace Vice President

- (1) President shall nominate a person who shall be Vice President if approved by a majority of the Congress sitting in Joint Session (page 265)

B. Disability Provision (pages 260-264)

- (1) In event of disability powers and duties but not office would devolve
- (2) President could declare disability in writing
- (3) Disability could be established by Vice President with concurrence of majority of Cabinet OR
 - (a) other body as Congress by law may provide
- (4) President to resume powers and duties by his written declaration
 - (a) if Vice President and a majority of Cabinet OR
 - (1) other body as Congress by law provides does not concur such disability shall be determined by a two-thirds vote of Members of each House

C. Succession

- (1) Prefers pre 1947 line (page 267)

III. Opposition

- (1) Feels that a commission should not determine disability (page 263)
- (2) Opposed to Electoral College plan (page 266)

FRANCIS BIDDLE

Former Attorney General, Feb. 25, 1964 - Vol. 4, pages 278-289

I. Constitutional Amendment

A. To Replace Vice President (page 278)

(1) President shall nominate a person who shall be Vice President if approved by a majority of the Congress sitting in Joint Session

B. Disability Provision

(1) Three men to decide. If temporary, they so declare. If permanent, Congress decides. (page 282)

II. Statute or Informal Agreement

A. Mr. Biddle has no preference as to amendment or statute for disability (pages 280-282)

B. Succession

(1) Where double vacancy occurs (President and Vice President) Congress to elect. (pages 279-285)

JOHN D. FEERICK

New York Attorney, Author, Feb. 28, 1964 - Vol. 5, pages 292-311

I. Constitutional Amendment

A. To Replace Vice President

- (1) President shall nominate a person who shall be Vice President if approved by a majority of the Congress sitting in Joint Session (pages 297-298)

B. Disability Provision (pages 295-297)

- (1) In event of disability powers and duties but not office would devolve (page 295)
- (2) President could declare disability in writing (page 296)
- (3) Disability could be established by Vice President with concurrence of a majority of Cabinet OR (page 296)
 - (a) other body as Congress by law may provide (page 297)
- (4) President to resume powers and duties by his written declaration (page 297)
 - (a) if Vice President and a majority of Cabinet, OR
 - (1) other body as Congress by law providesdoes not concur such disability shall be determined by a two-thirds vote of Members of each House

C. Succession

- (1) Only change would be, Officer to person -- if at all (page 306)

III. Opposition

- (1) Dislikes any commission method (page 308)
- (2) Would not favor amendment to change line of succession (page 305)

RUTH C. SILVA

Political Scientist, Pennsylvania State University, Feb. 28, 1964
Vol. 5, pages 313-324

I. Constitutional Amendment

A. To Replace Vice President

- (1) President shall nominate a person who shall be Vice President if approved by a majority of the Congress sitting in Joint Session (page 318)

B. Disability Provision (pages 313-314)

- (1) In event of disability powers and duties but not office would devolve (page 313)
- (2) President could declare disability in writing (page 313)
- (3) Disability could be established by Vice President with concurrence of majority of Cabinet
- (4) President to resume powers and duties by his written declaration (page 314)
 - (a) if Vice President and a majority of Cabinet does not concur, such disability shall be determined by a two-thirds vote of Members of each House

III. Opposition

- (1) Dislikes any commission method as suggested by Mr. Craig (See B. (3) (a)) (pages 314, 315, 321)
- (2) Dislikes Electoral College (page 320)
- (3) Would not favor two Vice Presidents (page 323)

RICHARD NEUSTADT

Professor, Columbia University, Feb. 28, 1964 - Vol. 5, pages 326-353

I. Constitutional Amendment

A. To Replace Vice President

- (1) Amendment to permit Members of Congress to serve as Vice President

II. Statute or Informal Agreement

A. Replace Vice President

- (1) Create office of Acting President (pages 327-330)
- (2) Give President right to make informal agreement (page 327)

B. Procedure for Replacing Vice President

- (1) President would nominate with consent of Senate (pages 327-331)

C. Disability

- (1) Informal agreement (pages 333, 338, 339, 340, 344, 342, 343)

D. Succession

- (1) Pre-1947 law

III. Opposition

- (1) Against any constitutional amendment except to allow Members of Congress to be a Vice President (page 351)
- (2) Dislikes two Vice Presidents (page 351)
- (3) Dislikes 1947 Succession Law (page 330)
- (4) Dislikes Cabinet for commission in cases of disability (page 331)

SIDNEY HYMAN

Author, February 28, 1964 - Vol. 5, pages 356-376

I. Constitutional Amendment

- (1) Election of two Vice Presidents (pages 259-363)

II. Statute or Informal Agreement

A. Replace Vice President

- (1) Statute for 1965 only

B. Procedure for Replacing Vice President

- (1) National Conventions select two men in addition to candidates for President and Vice President. They are to succeed and then to Cabinet

C. Succession

- (1) Cabinet (page 365)

III. Opposition

- (1) Dislikes President nominating person to be confirmed by Congress (page 263-4)
- (2) Dislikes 1947 law (page 365)

LETTER FROM GOV. NELSON ROCKEFELLER

Governor of New York, February 28, 1964 - Vol. 5, page 375

I. Constitutional Amendment

A. Disability Provision

- (1) Permanent solution should be by constitutional amendment

II. Statute or Informal Agreement

A. Replace Vice President

- (1) Create office of First Secretary of Government

B. Disability

- (1) Informal agreement set out. Any dispute on beginning or termination of inability be determined by Chief Justice

C. Succession

- (1) Cabinet Pre-1947

D. Procedure for Replacing Vice President

- (1) Appointed by President. Confirmed by Senate.

LAURENS HAMILTON

Attorney, February 28, 1964 - Vol. 5, pages 377-387

I. Constitutional Amendment

A. To Replace Vice President

(1) President shall nominate a person who shall be Vice President if approved by confirmation of Senate only (page 380)

B. Disability Provision

(1) President could declare disability in writing (page 382)

II. Statute or Informal Agreement

A. Succession

(1) Cabinet

CLINTON ROSSITER

Professor, Cornell University, March 5, 1964 - Vol. 6, pages 394-431

I. Constitutional Amendment

A. To Replace Vice President

- (1) President shall nominate a person who shall be Vice President if approved by a majority of the Congress sitting in Joint Session (page 401)
- (2) Mr. Rossiter would use "immediately" rather than "30" days."

II. Statute or Informal Agreement

A. Replace Vice President

- (1) Create temporary office of Acting Vice President (page 404)

B. Disability

- (1) President could declare own disability (page 393)
- (2) Vice President on own or with Cabinet to make determination (pages 393,311)
- (3) Vice President only to act as President (page 496)
- (4) President could recover powers (page 496)
- (5) Any defacto inability (page 496)

III. Opposition

- (1) Would not favor two Vice Presidents (pages 410, 423, 415)
- (2) Dislikes Electoral College (pages 402,418,419)

LETTER FROM PRESIDENT DWIGHT D. EISENHOWER

March 5, 1964 - Vol.6, pages 433-434

I. Constitutional Amendment

A. To Replace Vice President (page 433)

- (1) President shall nominate a person who shall be Vice President of approved by a majority of the Congress sitting in Joint Session

B. Procedure for Replacing Vice President

- (1) Congress to provide for new election of Vice President and President where line of succession reached Cabinet level

C. Disability Provision

- (1) In event of disability powers and duties but not office would devolve
- (2) President could declare disability in writing
- (3) Between President and Vice President (page 434)
 - (a) Subject possibly to a concurring majority opinion of the President's Cabinet
- (4) If dispute on termination go to a commission of
 - (a) Three senior Cabinet members
 - (b) Speaker
 - (c) Minority Leader of the House
 - (d) Pres. Pro Tem
 - (e) Minority Leader of the Senate
 - (f) Four medical people

D. Succession

- (1) Pre 1947 as line of succession
 - (a) when succession reached Cabinet level such person would serve only as Acting President until Congress could call election

LETTER FROM DR. PAUL DUDLEY WHITE

Physician, March 5, 1964 - Vol. 6, pages 431-432

I. Constitutional Amendment

A. To Replace Vice President

- (1) President shall nominate a person who shall be Vice President if approved by a majority of the Congress sitting in Joint Session

B. Disability Provision

- (1) In event of disability powers and duties but not office would devolve
 - (2) President could declare disability in writing
 - (3) Disability could be established by Vice President with concurrence of majority of Cabinet OR
 - (a) other body as Congress by law may provide
 - (4) President to resume powers and duties by his written declaration
 - (a) if Vice President and a majority of Cabinet OR
 - (1) other body as Congress by law provides
- does not concur such disability shall be determined by a two-thirds vote of Members of each House

LETTER FROM PRESIDENT DWIGHT D. EISENHOWER

March 5, 1964 - Vol. 6, pages 433-434

I. Constitutional Amendment

A. To Replace Vice President (page 433)

- (1) President shall nominate a person who shall be Vice President if approved by a majority of the Congress sitting in Joint Session

B. Procedure for Replacing Vice President

- (1) Congress to provide for new election of Vice President and President where line of succession reached Cabinet level

C. Disability Provision

- (1) In event of disability powers and duties but not office would devolve
- (2) President could declare disability in writing
- (3) Between President and Vice President (page 434)
 - (a) Subject possibly to a concurring majority opinion
- (4) If dispute on termination go to a commission of
 - (a) Three senior Cabinet members
 - (b) Speaker
 - (c) Minority Leader of the House
 - (d) Pres. Pro Tem
 - (e) Minority Leader of the Senate
 - (f) Four medical people

D. Succession

- (1) Pre 1947 as line of succession
 - (a) When succession reached Cabinet level, such person would serve only as Acting President until Congress could call election.

RICHARD M. NIXON

Former Vice President of the United States, March 5, 1964 - Vol.6, pages 439-470

I. Constitutional Amendment

A. Replace Vice President

- (1) President reconvene the Electoral College (pages 445,476,470)

B. Disability Provision

- (1) In event of disability powers and duties but not office would devolve
- (2) President could declare disability in writing
- (3) Disability could be established by Vice President with concurrence of majority of Cabinet OR
 - (a) other body as Congress by law may provide
- (4) President to resume powers and duties by his written declaration
 - (a) if Vice President and a majority of Cabinet, OR
 - (1) other body as Congress by law providesdoes not concur such disability shall be determined by a two-thirds vote of Members of each House

III. Opposition

- (1) Would not favor commission for disability (page 449)
- (2) Would not favor two Vice Presidents (pages 458-461)

Ray W.

9/64) Pres Succession

J. W. FULBRIGHT, A.
JOHN SPARKMAN, ALA.
HUBERT H. HUMPHREY, MINN.
MIKE MANSFIELD, MONT.
WAYNE MORSE, OREG.
RUSSELL B. LONG, LA.
ALBERT GORE, TENN.
FRANK J. LAUSCHE, OHIO
FRANK CHURCH, IDAHO
STUART SYMINGTON, MO.
THOMAS J. DODD, CONN.
GEORGE A. SMATHERS, FLA.

BOURKE B. HICKENLOOPER, IOWA
GEORGE D. AIKEN, VT.
FRANK CARLSON, KANS.
JOHN J. WILLIAMS, DEL.
KARL E. MUNDT, S. DAK.

United States Senate

COMMITTEE ON FOREIGN RELATIONS

January 22, 1964

CARL MARCY, CHIEF OF STAFF
DARRELL ST. CLAIRE, CLERK

EDNA

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Dear:

The tragic event of President Kennedy's death has again brought to the attention of the nation and Congress the question of determining the most appropriate provisions for Presidential succession and of clarifying the Founding Fathers' intentions in regard to periods of Presidential inability as stated in Article II, section 1 of the Constitution.

I am writing to seek your advice and counsel on these two vital matters. In particular, your response to the following questions would be very much appreciated:

(1) What do you consider to be the appropriate line of Presidential succession* Why* What is your opinion on the proposals for Presidential succession which would require a constitutional amendment, e.g., to empower Congress to elect a Vice President to fill the vacancy created by the regularly elected Vice President becoming President* Are there other approaches which the Congress should consider*

(2) What was the intention of the Founding Fathers in providing for periods where the President is unable to discharge the powers and duties of his office* Does the Vice President become the President or does he merely act as President until the inability is removed* What is the most appropriate way to clarify the existing ambiguity in the Constitution* What specific procedures would you recommend to be followed in such times of Presidential inability*

January 22, 1964

Page 2

As an authority on the Constitution and politics, your conclusions will be extremely valuable to me in formulating certain recommendations I hope to propose in this second session of Congress. Of course I would welcome any general comments you might wish to offer which relate to this matter. I hope you can find time in your busy schedule to give me the benefit of your thinking.

Best wishes.

Sincerely yours,

Hubert H. Humphrey

P. S. If, for any reason, you desire that your opinions not be publicly attributed, I will, of course, consider them on a strictly confidential basis. Otherwise, I plan also to make them available to the appropriate Congressional committees considering these matters.

Law School of Harvard University

Cambridge 38, Mass.

27 January 1964



Senator Hubert H. Humphrey
United States Senate
Washington, D.C.

Dear Senator Humphrey:

Thank you for your letter of January 22 asking me to give you my views on the problems of Presidential succession and the Presidential disability.

I cannot pretend that this is a matter of constitutional law which I have studied closely. In conversation with more learned colleagues I have, however, gained some understanding of the problem. Since these talks and some independent thought have led me to believe that no proposals are wiser than those which have resulted from the American Bar Association's recent Conference on Presidential Inability and Succession, I believe it would be a superfluous exercise for me to recited the grounds of my conviction. It will, therefore, I hope suffice for me to say that the Conference proposals seem to me highly desirable and clearly preferable to all other suggestions which have recently been made.

All that I might add to that very general observation is the suggestion that I can see some advantages in a minor modification in the Conference proposal with respect to succession. It would seem to me preferable, perhaps, to have the President's nomination submitted, not to a joint session of the Congress, but to the Senate of the United States. Though it well may be, that political considerations make it appropriate to involve both Houses in the process of selection, I am somewhat fearful that those considerations might get out of hand and breed obstructive consequences. I should, therefore, somewhat prefer to have this Presidential nomination follow the normal course.

If this summary statement of my opinion seems inadequate I shall be glad to set it forth more fully. It seemed to me, however, that at this juncture my reiteration of a position which has been effectively stated by others would simply clutter your desk with academic redundancy.

Very sincerely yours,

Mark DeW. Howe

no enclosure

The Rockefeller Foundation

111 WEST 50th STREET, NEW YORK 20

HUMANITIES AND SOCIAL SCIENCES

CABLE: ROCKFOUND, NEW YORK
TELEPHONE: COLUMBUS 5-8100



January 28, 1964

Dear Senator Humphrey:

Thank you indeed for your letter of January 22 asking me to comment on the problem of Presidential succession. I am greatly honored by your request, and I am preparing a statement which should be in your hands within a week. Meanwhile, I should like to add my voice to what must be a general sentiment of gratitude within the profession of political science that this inquiry is in your hands.

I am also enclosing a statement of the Constitutional Democracy Program of The Rockefeller Foundation to let you know of the interest here in the general problem area into which your present inquiry falls. On two occasions now we have circulated this statement among scholars, many of whom have responded with entries in the competition for research awards. In all we have had about seventy-five applicants, of whom we have been able to give awards to approximately one-third. I am not sure that this program will be continued by the Foundation, but I wanted you to know about its existence and about the experience under it.

With best wishes,

Sincerely yours,

A handwritten signature in cursive script that reads 'Charles M. Hardin'.

Charles M. Hardin
Associate Director

The Hon. Hubert H. Humphrey
United States Senate
Washington, D. C.

CMH:ch

Enclosure

CORNELL UNIVERSITY

ITHACA, NEW YORK

DEPARTMENT OF GOVERNMENT

WEST SIBLEY

January 31, 1964



The Hon. Hubert H. Humphrey
United States Senate
Washington, D.C.

Dear Senator Humphrey:

I am honored by your request for "advice and counsel" on the sticky problems of Presidential disability and succession. Permit me to respond with two statements that have been largely drawn from my book The American Presidency, revised edition, 1960. You may, of course, make whatever use of these statements seems appropriate to you, whether public or private.

I commend strongly your desire to clear up the confusions and doubts that surround these problems, and I hope that Congress will give serious consideration to Senator Monroney's proposal of a twelve-member, bipartisan commission to review all the issues of disability and succession. There are several danger spots in our system of electing a President that ought to be eliminated by law or constitutional amendment. I think, for example, of the hitherto unanswered pleas for Congressional action "by law" in Amendment XX, sections 3-4, as well as of the confusion that would follow upon the death or disability of a President-elect in the period between the election in November and the meetings of the electors in December.

We all wish you the best of luck in your attempt to plug these holes in our constitutional system.

Sincerely yours,

Clinton Rossiter
Clinton Rossiter

The Problem of Disability in the Presidency

The Constitution speaks cryptically in Article II, section 1, clause 6 of "inability to discharge the powers and duties" of the Presidency. The word "disability" is used later in the same clause and may be regarded as exactly interchangeable with this phrase. John Dickinson asked his colleagues on the floor of the Convention of 1787 to tell him what was meant by "disability" and who should decide that it existed, but no one found it necessary or possible even to hazard a guess. We will never know what the Framers had in mind. This is clearly an instance in which we must find our own way, something we have hitherto done with no success whatever.

There have been two occasions in the history of the United States on which a President was unquestionably in no condition for a considerable length of time "to discharge the powers and duties" of his office.

From the day James A. Garfield was shot in 1881 until the day he died, a period of more than eleven weeks, he was unable to put his mind to a single issue of importance for the country; his one official act was to sign an extradition paper. In the last few weeks his mind seems to have deteriorated along with his wounded body.

From the day of Woodrow Wilson's breakdown of September 25, 1919 (followed by a paralyzing stroke a few days later) until well into 1920, he, too, was at his best, only a fragment of a President. Acts of Congress became law because of his failure to pass on them; he did not meet his Cabinet for eight months, nor did he learn for four months that it was meeting without him; requests for information by the Senate Committee on Foreign Relations went unanswered. Wilson's disability was,

in an objective sense, more acute than Garfield's because the times called more loudly for presidential leadership. His collapse took place during a nationwide tour designed to win friends and influence Senators in the history-making debate over the League of Nations.

There have been other occasions on which the Presidency was, in effect, a fully paralyzed office (if not institution)--the last days of William Henry Harrison, Zachary Taylor, William McKinley, and Warren G. Harding, the last few hours of Abraham Lincoln and Franklin Roosevelt, and the first few hours or days after each of Dwight D. Eisenhower's three sudden illnesses--but all were self-resolving crises of short duration which, except perhaps for the instances in which Eisenhower was the stricken protagonist, no one wanted to complicate further by insisting upon a heavy-footed interpretation of the Constitution.

To these should be added two potential cases of disability that tease the historian's imagination: The chaotic situations that would have arisen if either James Madison or Lincoln, as was altogether possible, had been captured by enemy forces. Quite needless to add, except that we have a habit of ignoring it, is the plain truth that every day of his life every President has faced, like everyone else in the country, the chance that accident or disease would strike him helpless or even unconscious without striking him dead.

The problem of disability is, then, a real problem, real in history and even more real in the threat of demoralized chaos it constantly poses. Perhaps the single most pressing requirement of good government in the United States today is an uninterrupted exercise of the full authority of the Presidency. We need a man in the Presidency at all times who is capable of exercising this authority; we need one, moreover, whose claim to authority is undoubted. No man should be expected or

or permitted to wield the power of the Presidency without the clearest of titles to it. Whatever arguments may exist for the grand doctrine that all power must be first of all legitimate apply twice as severely to the power that is lodged in the American Presidency.

For this reason, if for no other, the problem of disability in the Presidency presses hard upon us, and we have a right to expect our men of decision, which in this instance means the men who lead Congress, to do their statesmanlike best to provide the most workable solution of which American ingenuity and common sense are capable. We have done a lot of talking about this problem in the years since September 24, 1955, just as we did in the first years after July 2, 1881 and September 25, 1919, but thus far the only acting has been done by Dwight D. Eisenhower, John F. Kennedy, and now Lyndon B. Johnson, which is perhaps as it should be, but still is not enough. Our continued failure to come to grips with this problem is not a product of carelessness or petty politics. It is, rather, our left-handed way of acknowledging how slippery it really is.

The road to a workable solution must be built out of reasonable answers to four questions raised directly or obliquely, and answered not at all, in the Constitution.

- 1) What is "disability" in the Presidency?
- 2) Who decides that disability exists?
- 3) In the event of a clear-cut case of disability, what does the Vice-President assume--"the powers and duties of the said office" or the office itself? Is he acting President or President pure and simple?
- 4) If he is only acting President, that is to say, if the Presidency is recoverable, who decides that disability, in the words of the Constitution, has been "removed"?

After all the hearings and editorials and learned commentaries of the past few years, there is not much new to be said on any of these questions. Let me sum up the present consensus on each (or where no consensus exists, the most important points of disagreement) and see if we can make a good start down the road to that "workable solution."

1) Most persons who have done any sound thinking at all on the subject would now agree with Professor Ruth Silva that the words of the Constitution contemplate "any de facto inability, whatever the cause or the duration, if it occurs at a time when the urgency of public business requires executive action." Since the state of the President and the state of the Union must both be considered in any judgment of disability, it would be the height of folly to define disability any more precisely than this. A detailed law imagining all possible cases of disability would prove, as Emerson said of all "foolish legislation," a "rope of sand" that would "perish in the twisting." It might be pointed out in passing that, thanks respectively to Andrew Johnson and Woodrow Wilson, neither impeachment nor voluntary absence from the country falls within the definition of disability.

2) No one has ever doubted the President's right to decide and proclaim his own disability; few have doubted the Vice-President's duty--in a situation so obvious that even the inner circle at the White House would be anxious to give way--to initiate a determination of disability in the absence or even defiance of the President's express wish. But what of situations in which some doubt exists? What, in particular, of a Vice-President as reluctant as Vice-Presidents Arthur, Marshall, and Nixon all proved to be? How could he be persuaded to assume the powers of the Presidency? And how could we be persuaded that his assumption was

constitutionally and morally legitimate? The answer that appeals to most persons who have thought about it at all is: a decision of disability by an organ so legitimate in its own right, so laden with power and prestige, that the nation would be disposed to accept its judgment without hesitation.

Congressman, editors, lawyers, and professors of political science have had a field day trying to imagine the identity or composition of such an organ in the last few years, and their imaginations have stretched as far as all these possibilities:

The Vice-President alone, who would act according to his conscience and take his chances with Congress, the Supreme Court, public opinion, and history.

The Cabinet, whether a) with or b) without the consent of the Vice-President, and with the concurrence of a) an ordinary or b) an extraordinary majority of its members.

The Secretary of State, with the advice and consent of the Cabinet.

Congress, which would act by concurrent resolution a) on its own initiative, b) on application of the Cabinet, c) on application of the Vice-President, or d) on application of both. The vote in Congress would be a) by a simple majority in each house, b) by a two-thirds majority, or c) by a three-fourths majority.

The Supreme Court, acting a) in its capacity as a court or b) as a special tribunal, and by margins ranging from a simple majority to unanimity.

The governors of all or some of the fifty states.

A panel of leading physicians.

A panel of eminent private citizens, including all former Presidents of the United States.

Any one of the several dozen combinations that can be constructed

out of the officers and institutions listed above.

A special tribunal composed of great officers of state--for example, the Chief Justice, two senior Associate Justices, the Speaker of the House, the President pro tem of the Senate, the minority leaders of both houses, and the Secretaries of State, Treasury, and Defense. Some of those who propose such a privy council would make its decision binding; others would limit its role to giving advice to Congress or the Cabinet or the Vice-President, as the case might be. At least one learned publicist would reserve a place on this tribunal for the President's wife.

I do not wish to render this problem even more confusing than it must now appear, but it should be pointed out that there is a serious division of opinion between those experts who think it can be settled by statute and those who insist upon an amendment to the Constitution.

3) It should be noted that the Framers of the Constitution never intended the Vice-President to become President except by election in his own right. If John Tyler and his associates had paid heed to these intentions in 1841 (or, to be fair to Tyler, if the intentions had been proclaimed in unmistakable language), this third question would never have arisen. And if it had never arisen, the question of disability would not have been half so difficult to answer. Neither Arthur nor Marshall could have been persuaded to take over from his ailing President because too many men whose co-operation was needed were certain that such a transfer was irrevocable. A President who moved or was pushed aside, they argued, was no longer President at all; indeed, it was constitutionally impossible to have two Presidents at the same time, one acting and one mending on the shelf. For every one person who was certain that this was the meaning of the Constitution as it had developed through precedent, there were another ten who were at least in doubt. Under these

circumstances of doubt, neither Arthur nor Marshall could have been permitted to take over. These doubts have been largely but not entirely laid to rest in recent years.

4) Although almost every method proposed for determining that disability exists has also been proposed for determining that it has come to an end, once again the chief responsibility is pinned on the President himself. His announcement that he was ready to reassume his powers would, in the nature of things political and constitutional, be conclusive. I am assuming, of course, that a deranged President would not be permitted to announce anything to anyone who would dare or care to "leak" it to the press. I could be wrong. ¶ What then should be our solution to the problem of disability? Before I try to answer this question, let me record the circumstances and details of the first arrangement for a transfer of power to be given formal expression. I speak, of course, of the Eisenhower-Nixon agreement, which was revealed in outline by the President February 26, 1958, and in detail (by popular demand) five days later, and which has been reconfirmed by Presidents Kennedy and Johnson. For months Mr. Eisenhower had been asking Congress to bring some order out of the confusion raised in all our minds by his three illnesses, and, then, despairing of legislative action, he decided to do the best he could simply as President. This he did by coming to a "clear understanding" with his Vice-President, which was announced to the nation in these words:

The President and the Vice-President have agreed that the following procedures are in accord with the purposes and provisions of Article 2, Section 1, of the Constitution, dealing with Presidential inability. They believe that these procedures, which are intended to apply to themselves only, are in no sense outside or contrary to the Constitution but are consistent with its present provisions and implement its clear intent.

(1) In the event of inability the President would--if possible--so inform the Vice-President, and the Vice-President would serve as Acting President, exercising the powers and duties of the Office until

the inability had ended.

(2) In the event of an inability which would prevent the President from communication with the Vice-President, the Vice-President, after such consultation as seems to him appropriate under the circumstances, would decide upon the devolution of the powers and duties of the Office and would serve as Acting President until the inability had ended.

(3) The President, in either event, would determine when the inability had ended and at that time would resume the full exercise of the powers and duties of the Office.

Except for a few largely petty criticisms there was nothing but praise, warm or cool according to the political allegiance of the man who spoke it, for this simple and sensible arrangement.

In my opinion, we need something more than this arrangement, however compelling a precedent it may be for future Presidents, and something less than one of the grandiose schemes presented for our consideration in the past few years. I say "something more" because there are simply too many people of influence who remain in doubt about this question, "something less" because it would be either feckless or reckless to lay out an elaborate plan to solve a problem that in one sense is not much of a problem at all and in another is quite insoluble.

I would agree with those Congressmen and scholars who think that most of what we CAN reasonably hope to do can be done by a simple concurrent resolution of Congress. Such a resolution could end debate on at least five doubtful issues; the rest could properly be left to the men of good will and good sense we expect to govern us in the years to come. And these are the points it could make with conviction, principally because they express what has always been the most thoughtful opinion on

the matter:

(1) The President of the United States has the right to declare his own disability and to bestow his powers and duties upon the Vice-President or, in the event there is no Vice-President, upon the next officer in line of succession.

(2) If the President is unable to declare his own disability, the Vice-President is to make this decision on his own initiative and responsibility.

(3) In the event of disability, the Vice-President shall only act as President; his original oath as Vice-President shall be sufficient to give full legitimacy to his orders, proclamations, and other official actions.

(4) The President may recover his powers and duties simply by informing the Vice-President that his disability no longer exists.

(5) Disability, to repeat Professor Silva's words, means "any de facto inability, whatever the cause or duration, if it occurs at a time when the urgency of public business requires executive action."

These points could doubtless be made with a good deal more legal precision than I have given them. They are, in any case, the common sense of the matter, conformable alike to the intentions of the Framers, to the assumptions of those who initiated the Twentieth and Twenty-second Amendments (which teem with men "acting as President"), and to the foreseeable needs of the nation. They add exactly nothing, in my opinion, to the situation as it now exists, and as it was so honestly put by President Eisenhower; but if a resolution incorporating them would help clear the air of doubt, let us by all means have it. And for the benefit of those who would still have doubts, let us at the same time move to declare these principles in an amendment to the Constitution.

Let us be careful to do no more than that. Let us not write a law that tries to provide for all the eventualities that might arise, lest we trap our descendants in a snare or technicalities. Let us not go beyond the President and Vice-President in search of machinery to decide doubtful cases of disability, lest we construct a monstrosity that raises more doubts than those it is supposed to settle.

I see almost nothing to give us confidence, rather a great deal to give us pause, in the dozens of schemes that would drag Congress or the Cabinet or the Supreme Court or former Presidents into the picture. A judgment of presidential disability would be, in both great senses of the word, a political decision--a determination of high policy, and thus a task for men who can be held accountable to the country; a demonstration of "the art of the possible," and thus a task for men (the same men, I should think) who are permitted to practice their art under the most favorable circumstances. The men who count politically, whether in Congress or in the Cabinet, will have their say in any case, and I think we should leave it to them to decide how best to have it. The men who do not, among whom I would include all governors, physicians, private citizens, former Presidents, presidential spouses, and Justices of the Supreme Court, should speak only when spoken to--and, in the case of the Justices, not even then. It is comforting to learn that all members of the present Court are said to agree with this argument. They want no part of any of the schemes that would incorporate them, whether as Court or as individuals, into the machinery of decision in this delicate area.

As to the proposal of a special tribunal, a Presidential Disability Commission, the notion that it could lay our doubts to rest seems quite unsubstantial. The last thing we should do is to provide

a method that resembles a trial, complete with expert witnesses and cross-examination. In circumstances that called for action it would use up too much time; in a crisis that called for unity it would open up need-
less wounds.

The next to last thing is to provide a method that would make it too easy for a President to surrender his powers temporarily. We have labored for generations to preserve the unity of the Presidency, and I for one would tremble to see us open the door even a little way to pluralism in this great office.

All suggestions that an indisposed President can, like an indisposed corporation executive or union chief or general or even Secretary of State, hand over his powers formally to his first deputy betray a lack of understanding of the qualitative difference between this office and all others in or out of the government of the United States. They ignore, too, the harsh fact of history that the Vice-President is very seldom the President's "first deputy," that he is as likely as not to be someone who stands well outside the President's inner circle. This was certainly one of the difficulties of Arthur's position, for he was a "Stalwart" who had been placed on the ticket to heal the wounds opened by the nomination of a "Half-Breed" (we would call him a Modern Republican) like Garfield. Marshall, too, was an outsider whom the President had never taken into his confidence. Worse than that, he was Thomas R. Marshall and the President was Woodrow Wilson; the contrast between their relative standings in the eyes of Congress, the Cabinet, the American people, and the world was so sharp that the notion of the one acting for the other in any important way still seems ridiculous. Marshall might have signed a few laws and made a few appointments, but he could hardly have done anything

to influence the debate over the League of Nations. The one thing we could not expect an acting President to do would be to commit his disabled chief to a policy or bargain which the chief would never have made himself.

I am led by all these considerations to repeat my observations that in one sense, probably the most important sense, the problem of disability is quite insoluble. We may yet solve it legally by framing an understanding in law and custom that leaves no doubt about the terms on which power is to be transferred from an ailing President to a healthy Vice-President; we can even do away with the practical difficulties we have already met in the Vice-President who is an outsider of the President who is a giant, not to mention the President who is mentally alert but physically confined. A period of clearly established presidential disability will always be a messy situation, one in which caution or even timidity must mark the posture of the acting President.

A period of doubt, a time in which a Roosevelt declines or an Eisenhower recovers, will be even messier, and it is really no help at all to ask why a Truman or a Nixon should not take over in such a situation. The answer is that he cannot, that the Presidency is an office governed by none of the ordinary rules, that a wise custom of the American people commands us at all reasonable costs to guard the unity of the Presidency and the dignity of the man who holds it.

This, in any case, is what has troubled the people, the professors, and the politicians over the past few years: not the memory of Garfield or the phantom of another Wilson, but the disturbing sight of the partial paralysis that stole over the White House during the confused days after each of Eisenhower's three illnesses. We had a right to be troubled, and at least one ingredient of our discomfort was the

realization that we were caught up in a situation that had no easy solution, perhaps no solution at all except patience, prayer, and improvisation. To expect any neater solution than we got on each of those occasions is to ask something of our political institutions that they cannot give. Putting aside the plain fact that Eisenhower was not disabled except for a few hours or days, that not a single piece of routine business failed to get done, we might ask just what it was that Nixon could have done any better or would have done any differently during the weeks in which, on each of these occasions, the President was recovering. And the answer is: exactly nothing. As acting President he would have done just what he and the other members of the Eisenhower team did so well in so painful a pause: he would have kept the shop. Let us be entirely clear on this point: the only thing a Vice-President can do, so long as there is the slightest chance that the President will recover, is to keep the shop. All the machinery in the world cannot alter that fact, which is inherent in the status and functions of all great offices of state, and most especially in the unique case of the American Presidency.

I conclude by expressing a modest hope that Congress will move to enact a law expressing "the common sense of this matter" as I tried to describe it. Armed with such a declaration, with our compelling instruments of publicity, and with the knowledge that decency and patriotism and political maturity still pervade the upper reaches of our government, we can face this problem with as much confidence as we can ever expect to muster in the face of chance. I would call special attention to those "instruments of publicity", for they have already gone far, in my opinion, to correct the unpleasant situation that arose in the illnesses of Garfield and Wilson. We have long since reached and passed the point of no return in our journey toward "the public Presidency." The American

people now assume that nothing of this nature is to be kept from them, and they would expect and surely get daily, if necessary hourly, reports on the condition of a stricken President. The palace guard now exists to feed information, not to withhold it.

For those who entertain doubts on this score, I recommend thoughtful study of the sharp contrast between the way things were done in Grover Cleveland's day and the way they were done in Eisenhower's. ~~Grover~~ Cleveland underwent an operation for cancer of the jaw in 1893, and the first credible news the nation had of it was in 1917, nine years after his death, twenty-four after the fact. Dwight D. Eisenhower had a heart attack in 1955, and the news, which was both credible and full, started to gush forth within a couple of hours. In less than forty-eight hours, with an explanation that it would be "good for the morale of the people", Dr. Paul Dudley White and James Hagerly were telling us all about the President's bowel movements. I mention this with no relish, because I think it was a show of vulgarity rendered even more vulgar by White's remark that "the country is so bowel-minded anyway," but simply to clinch my argument that henceforth and forever we will be informed directly of every bit of information on a stricken President's condition necessary for us to make our own judgment about his ability to bear the burden of his office. If we cannot have confidence in our ability to make such a judgment as men of sense and decency, then what in heaven's name can we have confidence in at all?

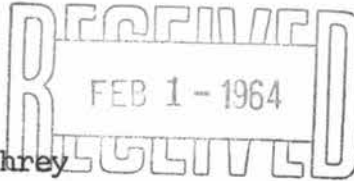
HARVARD UNIVERSITY

FACULTY OF ARTS AND SCIENCES

DEPARTMENT OF GOVERNMENT

CAMBRIDGE 38, MASSACHUSETTS

January 31, 1964



The Honourable Hubert H. Humphrey
United States Senate
Washington, D. C.

Dear Senator Humphrey:

Like so many other Americans, I have been much concerned in recent months about the problem of presidential succession. I doubt that I have any insights that will be new to you, but perhaps you can add them to the general weight of the opinions you are collecting. I'll try to be brief.

(1) I think the standing arrangement for succession should be the one abandoned during the Truman administration in favor of the present legislation, i.e. from Vice President to Secretary of State, and so on down through the cabinet. I know there was some idea that it would be more democratic to vest succession in elected officials. I think it is actually less democratic, since the cabinet member is likely to resemble more closely in ideas and style the man whom the people elected to the presidency. However, this arrangement should in any case be relevant only in the event of the simultaneous death of both President and Vice President. In the event that the Vice President becomes President, I think the Senate might choose a Vice President from a slate of five nominees chosen by the House. (In some ways, I would prefer to reverse this procedure on the ground that the House more nearly represents the population, but the Constitution does provide that, in elections thrown into the House, the votes shall be taken by States, and I therefore think that this arrangement would more nearly reflect the intent of the framers. If we want to break with that intent and provide for popular election, we should do it with respect to the regular presidential election, as well as the election of this interim Vice President). I do not think that the nominees should necessarily be members of the Congress, but neither do I think that members should be ineligible.

(2) I don't think it is possible to make any confident statements about the intention of the framers with respect to presidential inability. I suspect that the framers had simply not thought the matter through. It may seem somewhat illogical to say that the Vice President merely acts as President in the event of presidential disability, since custom has clearly established that the Vice President actually becomes President in the event of presidential death. But disability and death are different, and I think a different understanding can apply to them. I'm not sure by the way that it greatly matters what the regent is called. My only thought about disability

Senator Humphrey

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January 31, 1964

is that the question cannot be handled tidily, since the only cases where it would arise would be the doubtful and delicate ones. I would want the declaration of inability to come from a vote by both Houses of Congress. I think I know the political difficulties that would be involved in such a vote, but I see no better and safer solution.

Sincerely,



Robert G. McCloskey
Professor of Government



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