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PRESIDENTIAL DISABILITY AND THE TWENTY-FIFTH AMENDMENT: THE DIFFICULTIES POSED BY PSYCHOLOGICAL ILLNESS

*Robert E. Gilbert**

INTRODUCTION

History tells us that Presidents do more than win nominations and elections. They even do more than govern. They also do many of the same things that non-presidents do. They are energized and they become weary, they succeed and they fail, they rejoice and they mourn, they become sick and they die. The Framers of the Constitution surely knew that the latter would be the case. All of them lived in states that had governors, and some of those governors had gotten sick and had died. So they realized only too well that the same fate would befall Presidents. After deciding that the United States would have a President, and only one President, and after deciding how the President would be elected and some of the powers he would be given, the Framers turned their attention to the problems of presidential disability, death, and succession—but they did so toward the end of the Constitutional Convention, when they were tired and anxious to go home. In September 1787, they inserted the following clause into the draft Constitution: “[I]n case of [the President’s] removal as aforesaid, death, absence, resignation or inability to discharge the powers and duties of his office, the vice-president shall exercise those powers and duties until another President be chosen, or until the inability of the President be removed.”¹

A few days later, however, the draft constitution went to the Committee of Style for polishing, and this particular provision came back to the Framers in a quite different form. It then read: “In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president.”²

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1. 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 499 (Max Farrand ed., 1937).

2. *Id.* at 598–99.

This wording—which was accepted by the Framers and incorporated into the Constitution as Article II, Section 1, Clause 5—presented three significant problems:

1) It is not clear to what “the same” refers. Do these words refer to the presidential office or to the powers and duties of the presidential office? The difference between the two is significant. If the presidential *office* passes to the Vice President, the Vice President becomes President; if the *powers and duties of the office* pass to the Vice President, the Vice President only serves as Acting President. The latter is what the Framers seemed to intend, but their intentions became clouded in the final wording of the Constitution.

2) It is not clear what the Framers meant by “inability.” Also unclear is *who* determines “inability,” *how* “inability” is determined, and *who* determines when and if “inability” has ended.

3) The Framers placed in the same sentence of the Constitution three *permanent* conditions under which a President may leave office (removal, death, and resignation) with one *temporary or even fleeting* condition (inability). If the Vice President inherits the *office* of the presidency when any one of these conditions exists, it is unclear whether a disabled President could get back the office after the inability ended. It is not surprising, then, that, for much of American history, Presidents were reluctant to admit publicly that they were ill or disabled because this admission might have provoked a constitutional crisis.

I. THE TYLER PRECEDENT AND THE TWENTY-FIFTH AMENDMENT

The problems with this unclear constitutional language were compounded in 1841 when the United States saw a President die in office for the first time. When William Henry Harrison died on April 4, 1841, his Vice President, John Tyler, insisted that he was then President of the United States and not merely Acting President.³ Some of his political contemporaries disagreed. Former President John Quincy Adams, a member of the House of Representatives at the time, wrote in his diary, “I paid a visit this morning to Mr. Tyler, who styles himself President of the United States, and not Vice-President, acting as President, which would be the correct style.”⁴

On the floor of the Senate, Senator William Allen of Ohio raised a troubling question. If a Vice President becomes President when the President dies, resigns, is removed, or is disabled, what happens if a President recovers from a disability only to find the Vice President claiming to be President? “What would become of the office? Was it to vibrate between the two claimants?” He then warned that if the “office” of

3. 2 LYON G. TYLER, *THE LETTERS AND TIMES OF THE TYLERS* 12 (Richmond, Va., Whittet & Shepperson Cor. 1885).

4. 10 *MEMOIRS OF JOHN QUINCY ADAMS, COMPRISING PORTIONS OF HIS DIARY FROM 1795 TO 1848*, at 463 (Charles Francis Adams ed., Philadelphia, Pa., J.B. Lippincott & Co. 1876).

President devolved on the Vice President in a succession event, “the most fearful convulsions might follow.”⁵

Tyler, however, was fiercely determined, and insisted that he was, in fact, the nation’s new President. To drive home the point, he took the presidential oath of office, gave an inaugural address in which he proclaimed that the presidential office had devolved on him and moved into the White House.⁶ Faced with his intransigence, Congress finally acquiesced. This created a powerful precedent: when the presidency was vacated *permanently*, the Vice President became President of the United States rather than Acting President.

But the matter of *temporary* vacancies remained a major sore point for the political system. In 1967, Congress dealt with it by adding the Twenty-Fifth Amendment to the Constitution.⁷ The Amendment does four things:

First, the Twenty-Fifth Amendment enshrines the Tyler precedent in the Constitution. Permanent vacancy in the presidency results constitutionally in the Vice President becoming President and not just Acting President.⁸ This provision overturns the Framers’ original intentions and makes the Tyler precedent the law of the land. It was invoked in 1974 when Gerald Ford became President after Richard Nixon’s resignation in the face of looming impeachment and removal from office.⁹

Second, the Amendment provides for filling vacancies in the Vice Presidency by allowing the President to nominate a new Vice President who takes office when confirmed by both Houses of Congress.¹⁰ Since the Vice Presidency has been vacant on eighteen occasions thus far, this provision is a very useful addition to the Constitution. However, Section 2 does not address situations in which a Vice President suffers an inability that prevents him or her from serving.¹¹ It also does not address “situations of presidential disability during which the Vice [P]resident acts as president, leaving a vacancy of uncertain duration in the office of Vice [P]resident.”¹² Section 2 has been invoked twice since 1967; the first was after Spiro Agnew resigned the office of Vice President in 1973 and President Nixon

5. CONG. GLOBE, 27TH CONG., 1ST SESS. 5 (1841).

6. Joel K. Goldstein, *The New Constitutional Vice Presidency*, 30 WAKE FOREST L. REV. 505, 521–22 (1995).

7. A constitutional amendment pertaining to presidential disability was proposed by the Eisenhower Administration but such an amendment was not ratified until February 10, 1967, during the presidency of Lyndon Johnson. See JOHN D. FEERICK, *THE TWENTY-FIFTH AMENDMENT: ITS COMPLETE HISTORY AND APPLICATIONS* 54–56, 111 (2d ed. 1992).

8. U.S. CONST. amend. XXV, § 1.

9. See Marjorie Hunter, *Ford Is Approved by Senate, 92-3; House Set To Act*, N.Y. TIMES, Nov. 28, 1973, at A1; Letter from Richard Nixon, President of the United States, to Henry A. Kissinger, U.S. Sec’y of State (Aug. 9, 1974), available at <http://watergate.info/nixon/resignation-letter.shtml>.

10. U.S. CONST. amend. XXV, § 2.

11. *Id.*

12. KENNETH R. CRISPELL & CARLOS F. GOMEZ, *HIDDEN ILLNESS IN THE WHITE HOUSE* 208 (1988).

named Gerald Ford to take his place.¹³ The second invocation occurred in 1974 when Ford vacated the Vice Presidency to become President and then nominated Nelson Rockefeller to succeed him as Vice President.¹⁴

Third, although the Amendment does not attempt to define inability in any way, Sections 3 and 4 provide two methods by which it may be determined. Section 3 allows the President to inform Congress *of his own volition* that he is unable to exercise the powers of office for any reason at all and to designate the Vice President as Acting President. The President, however, remains President. Whenever the President wishes to resume the powers and duties of office, he or she merely informs Congress of this fact and the powers and duties automatically revert.¹⁵

To date, Section 3 has been invoked on three occasions. Most recently it was invoked by President George W. Bush in both 2007 and 2002 when he was about to undergo colonoscopies while under anesthesia.¹⁶ On both occasions, Vice President Cheney served briefly as Acting President. It was also invoked in 1985 when President Reagan was about to undergo colon cancer surgery and designated Vice President George H.W. Bush as Acting President.¹⁷ Although Reagan initially stated that the Twenty-Fifth Amendment was *not* applicable to instances such as the surgery he then faced, he nonetheless followed the form specified by Section 3 of the Amendment to the letter.¹⁸ Moreover, he later claimed that he had indeed invoked Section 3, writing that “Before they wheeled me into the operating

13. Carl Albert, *A Voice in Naming Ford*, N.Y. TIMES, Oct. 15, 1973, at 10; Richard L. Madden, *Ford's Nomination Sent to Congress; He Bars '76 Race*, N.Y. TIMES, Oct. 14, 1973, at 1.

14. Gerald Ford, President of the United States, Remarks from the Oval Office, Washington, D.C. (Aug. 20, 1974), reprinted in *Remarks by President and Rockefeller*, N.Y. TIMES, Aug. 21, 1974, at 25 (presenting Rockefeller to Congress as his vice presidential nominee).

15. U.S. CONST. amend. XXV, § 3.

16. See Letter from George W. Bush, President of the United States, to Rep. Nancy Pelosi, Speaker of the U.S. House of Representatives (July 21, 2007) (temporarily transferring power to the Vice President), available at <http://georgewbush-whitehouse.archives.gov/news/releases/2007/07/20070721-5.html>; Letter from George W. Bush, President of the United States, to Rep. Nancy Pelosi, Speaker of the U.S. House of Representatives (July 21, 2007) (resuming power), available at <http://georgewbush-whitehouse.archives.gov/news/releases/2007/07/20070721-8.html>; Letter from George W. Bush, President of the United States, to Sen. Robert Byrd, President Pro Tempore of the U.S. Senate (June 29, 2002) (temporarily transferring power to the Vice President), available at <http://georgewbush-whitehouse.archives.gov/news/releases/2002/06/20020629-4.html>; Letter from George W. Bush, President of the United States, to Sen. Robert Byrd, President Pro Tempore of the U.S. Senate (resuming power), available at <http://georgewbush-whitehouse.archives.gov/news/releases/2002/06/20020629-2.html>.

17. *Texts of Reagan's Letters*, N.Y. TIMES, July 14, 1985, at 20; see also 131 CONG. REC. 19,008–09 (1985) (containing the text of President Reagan's letter to Hon. Strom Thurmond, the President Pro Tempore of the U.S. Senate).

18. Stuart Taylor, Jr., *Power Transfer Seen as Precedent*, N.Y. TIMES, Jul. 16, 1985, at A12; see also K.R. Crispell & Carlos Gomez, After Dinner Address to the American Clinical and Climatological Association: Presidential Illness and the 25th Amendment (Oct. 21, 1986), in 98 TRANSACTIONS AM. CLINICAL CLIMATOLOGICAL ASS'N 135, 142–43 (1987); 2 PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: RONALD REAGAN 1985, at 919 (1988).

room, I signed a letter invoking the Twenty-Fifth Amendment, making George Bush Acting President during the time I was incapacitated under anesthesia.”¹⁹

Unfortunately, Reagan reclaimed his powers and duties only nine hours after he passed them on to his Vice President, an unwise decision. He later admitted that he awoke from surgery “somewhat confused. I had an incision that ran up past my naval [sic] to my chest. I was laced with tubes [and] very much a patient in for a stay.”²⁰ Under these circumstances, Reagan would have been well-advised to allow Bush to continue to function as Acting President until his own recovery was more advanced. If he had done so, his Administration might never have been stained by the Iran-Contra scandal that apparently worsened during his hospitalization.²¹

Fourth, Section 4 of the Amendment allows for *involuntary* transfers of power. If the Vice President and a majority of the Cabinet (or some other body created by Congress to act in place of the Cabinet) inform Congress that the President is unable to exercise the powers of his office, those powers pass to the Vice President who functions as Acting President. When the President indicates that he wishes those powers returned, he need only inform Congress of this fact and the powers are returned. If the Vice President and Cabinet challenge the President, Congress must decide the matter within a maximum of twenty-three days. A two-thirds vote in each house is needed for the Vice President to prevail.²² This Section—which pertains to the most difficult instances of disability—has never, to date, been invoked.²³

Although the Twenty-Fifth Amendment makes a number of major contributions to the constitutional order of the United States, it does not and almost certainly cannot definitively resolve all disability issues. Terrorism, for example, poses new and expanded problems for both disability and succession as will later be addressed. Another problem is that Presidents still remain reluctant to admit any serious inability because they fear that such an admission will lead to a lessening of their power and prestige. This fear is not unwarranted.

II. A BRIEF HISTORY OF PRESIDENTIAL ILLNESS

The American people want their President to be strong and vibrant, not sick or feeble. Strength or the illusion of strength bolsters leadership; weakness or the appearance of weakness undercuts it. Since so many presidential illnesses have been concealed, contemporary observers might believe that illness has been a rare occurrence. But physiological illness has been a close companion to the American presidency as history abundantly reveals.

19. RONALD REAGAN, AN AMERICAN LIFE 500 (1990).

20. RONALD REAGAN, THE REAGAN DIARIES 342 (Douglas Brinkley ed., 2007).

21. STEVEN F. HAYWARD, THE AGE OF REAGAN: THE CONSERVATIVE COUNTERREVOLUTION 1980–1989, at 437 (2009).

22. U.S. CONST. amend. XXV, § 4.

23. See FEERICK, *supra* note 7, at 200.

President George Washington, in June 1789, experienced the growth of a large and painful tumor on his left thigh. Surgery was performed to remove it and the President's condition remained critical for several days.²⁴ During this period, correspondence had to be handled by secretaries and almost two months elapsed before Washington fully resumed his responsibilities.²⁵ In May 1790, he was stricken with influenza and perhaps pneumonia, and suffered from pulmonary difficulties. For several days he appeared to be in danger of death. Washington himself acknowledged the severe impact of these ailments, warning that if he experienced another serious illness, it would "put me to sleep with my fathers."²⁶ In July 1791, a second tumor appeared on Washington's leg, crippling him for a week and leaving him debilitated and exhausted for an extended period.²⁷ By the end of his first term, he complained that he found the "fatigues of his position" to be "scarcely tolerable."²⁸ During his second term, he experienced a quickening of memory loss²⁹ and a cancer-like growth developed on the right side of his face. The latter condition necessitated another surgery.³⁰ At the end of his eight year presidency, associates thought Washington looked ravaged.

President John Adams suffered severe hand tremors during his second year in office and commented that his health was "sinking . . . under my Troubles and fatigues.' 'I . . . never shall be very well—certainly while in this office.'" More serious, he appeared to show signs of emotional instability with several observers describing him as "mentally confused" and "irritable." Apparently in an effort to avoid a major breakdown, Adams left the capital when Congress was not in session and spent as much as two-thirds of every year at his home in Quincy, Massachusetts. This provoked sharp criticism that he was neglecting his duties. Researchers have ascribed his erratic behavior to likely hyperthyroidism, a malady often related to stress.³¹

President James Madison suffered a high fever, probably from malaria, in June 1813, that lasted for almost a month and led to long periods of delirium. His lengthy absence from the scene resulted in the Senate's rejection of one of his diplomatic appointments.³² His Secretary of State, James Monroe, wrote that the fever had "perhaps never left him, even for an hour, and occasionally symptoms have been unfavorable."³³ This

24. JOSEPH J. ELLIS, *HIS EXCELLENCY: GEORGE WASHINGTON* 190 (2004).

25. JOHN E. FERLING, *THE FIRST OF MEN: A LIFE OF GEORGE WASHINGTON* 378 (1988).

26. ELLIS, *supra* note 24, at 190–91.

27. FERLING, *supra* note 25, at 411.

28. JAMES MACGREGOR BURNS & SUSAN DUNN, *GEORGE WASHINGTON* 94 (2004).

29. JAMES THOMAS FLEXNER, *WASHINGTON: THE INDISPENSABLE MAN* 261 (1969).

30. ELLIS, *supra* note 24, at 221–22.

31. *See, e.g.*, John Ferling & Lewis E. Braverman, *John Adams's Health Reconsidered*, 55 *WM. & MARY Q.* 83, 98, 104 (1998) (quoting letters from Adams to his wife, Abigail).

32. Michael P. Riccards, *The Presidency: In Sickness and in Health*, 7 *PRESIDENTIAL STUD. Q.* 215, 219 (1977).

33. RALPH KETCHAM, *JAMES MADISON: A BIOGRAPHY* 561 (1971).

illness was so severe and prolonged that it provoked discussions of presidential succession.³⁴

President James Monroe, in the winter of 1818, was bedridden with a fever and remained in a weakened condition for several weeks. He did not receive visitors during this period and did not respond to messages.³⁵ In August 1823, he suffered from an affliction of the central nervous system and experienced such severe convulsions that he was thought to be dying. For a period of time, he lapsed into unconsciousness.³⁶

President Andrew Jackson suffered throughout his presidency from excruciating headaches, shortness of breath, kidney disease, pulmonary hemorrhages, recurrent episodes of dysentery, and frequent stomachaches.³⁷ His feet and legs were badly swollen, leading to severe debility.³⁸ He also suffered from the effects of bullets lodged in his body as a result of duels. One was deep in his left arm, causing persistent pain; another was located close to his heart and had infected his lungs. He coughed continually, often spitting up blood.³⁹

President William Henry Harrison delivered an inaugural address that lasted an hour and forty minutes on a raw day and in a driving rainstorm.⁴⁰ He caught a cold that developed into pneumonia. After a week, he seemed to improve but then suffered a relapse. His condition was diagnosed as “bilious pleurisy, with symptoms of pneumonia and intestinal inflammation.”⁴¹ Harrison gradually fell into a stupor, muttering helplessly in delirium.⁴² On April 4, only thirty days after taking the oath of office, he succumbed to his ailments.⁴³ He was the first President to die in office, and his term thus far has been the shortest presidential term in American history.

President Zachary Taylor experienced severe dizziness and headache on July 4, 1850 after attending several public ceremonies in the blazing heat of a Washington, D.C. summer. Throughout the day, he had consumed large quantities of cherries, green apples, and ice-cold milk. He developed symptoms of severe gastroenteritis, which initially did not cause alarm to the President, his aides, or the nation.⁴⁴ Two days later, he was even able to

34. FEERICK, *supra* note 7, at 4–5.

35. HARRY AMMON, JAMES MONROE: THE QUEST FOR NATIONAL IDENTITY 416 (1971); NOBLE E. CUNNINGHAM, JR., THE PRESIDENCY OF JAMES MONROE 142 (1996).

36. RUDOLPH MARX, THE HEALTH OF THE PRESIDENTS 85–86 (1960).

37. *See id.* at 103, 108–09, 114.

38. JON MEACHAM, AMERICAN LION: ANDREW JACKSON IN THE WHITE HOUSE 123 (2008).

39. DONALD B. COLE, THE PRESIDENCY OF ANDREW JACKSON 5 (1993).

40. MICHAEL A. GENOVESE, THE POWER OF THE AMERICAN PRESIDENCY: 1789–2000, at 66 (2001).

41. NORMA LOIS PETERSON, THE PRESIDENCIES OF WILLIAM HENRY HARRISON & JOHN TYLER 41 (1989).

42. FREEMAN CLEAVES, OLD TIPPECANOE: WILLIAM HENRY HARRISON AND HIS TIME 342 (1939).

43. PETERSON, *supra* note 41, at 41.

44. K. JACK BAUER, ZACHARY TAYLOR: SOLDIER, PLANTER, STATESMAN OF THE OLD SOUTHWEST 314–15 (1985).

go to his desk and sign several documents. However, a severe infection—a malady referred to at the time as “cholera morbus”—was spreading rapidly through his body and his condition dramatically deteriorated. After five days of general incapacitation, he was dead.⁴⁵

President Abraham Lincoln suffered from smallpox, scarlet fever, intermittent fevers and intense headaches during his presidency as well as having problems with digestion and poor blood circulation.⁴⁶ Before his first term was even half over, one observer remarked that he had become a “grizzled, stooped figure, with ‘a sunken deathly look about the large, cavernous eyes.’” As he began his second term, Lincoln was weary “beyond description” and took to his bed for several days. He was so depleted that observers saw him as another “casualty of the war, ‘thin and in bad health.’”⁴⁷ He admitted to associates that he was alarmed about his general health since his hands felt “cold and clammy.”⁴⁸ Some believe that he suffered from Marfan’s Syndrome, an unusual affliction of the bones, but doctors and scholars have yet to reach a conclusive diagnosis.⁴⁹

President James A. Garfield was shot by an assassin on July 2, 1881. A bullet had entered Garfield’s body to the right of his spine and shattered his eleventh rib. In an effort to locate the bullet, doctors probed the wound with their unwashed fingers, causing serious infection.⁵⁰ Garfield underwent “numerous surgical drainages of abscesses; one was so extensive that it necessitated general anesthesia.”⁵¹ Unable to eat solid food, he hovered between life and death for eighty days, at times seeming to improve but then suffering relapses.⁵² During much of this period, he was unable to carry out his presidential responsibilities even though his physicians persisted in issuing optimistic bulletins about his condition.⁵³ Garfield died on September 19, 1881.

President Chester A. Arthur—who succeeded Garfield in 1881—was diagnosed in 1882 as suffering from Bright’s disease, a serious and often fatal kidney ailment. Arthur denied all rumors that he was seriously ill, despite the fact that the disease provoked spasmodic nausea, mental depression and fatigue. Associates noticed that the President was often exhausted, irritable and physically ill.⁵⁴ Within a year, the President had reduced his schedule sharply and his workday would begin as late as noon

45. BRAINERD DYER, ZACHARY TAYLOR 405–06 (1946).

46. DANIEL MARK EPSTEIN, THE LINCOLNS: PORTRAIT OF A MARRIAGE 341, 461 (2008); MARX, *supra* note 36, at 181, 185; RONALD C. WHITE, JR., A. LINCOLN: A BIOGRAPHY 609 (2009).

47. RICHARD CARWARDINE, LINCOLN: A LIFE OF PURPOSE AND POWER 223, 285 (2006).

48. DAVID HERBERT DONALD, LINCOLN 568 (1995).

49. MERRILL D. PETERSON, LINCOLN IN AMERICAN MEMORY 377 (1994).

50. ALLAN PESKIN, GARFIELD 595–97, 602–03 (1978).

51. IRA RUTKOW, JAMES A. GARFIELD 119 (2006).

52. *See id.* at 116–27 (describing the progress of President Garfield’s surgery and subsequent illness between July 26 and September 19, 1881).

53. JOHN M. TAYLOR, GARFIELD OF OHIO: THE AVAILABLE MAN 273 (1970).

54. JUSTUS D. DOENECKE, THE PRESIDENCIES OF JAMES A. GARFIELD & CHESTER A. ARTHUR 80 (1981).

or one o'clock.⁵⁵ At one point, he told his son that "I have been so ill . . . that I have hardly been able to dispose of the accumulation of business still before me."⁵⁶ In 1884, he did not make a serious bid to win his party's nomination for another term and, quite ill, played no role in the ensuing campaign of the Republican presidential nominee, James Blaine.⁵⁷ Less than two years after leaving office, Arthur died at the age of 56.

President Grover Cleveland, in 1889, underwent two surgeries for cancer of the jaw, a condition possibly caused by his use of chewing tobacco. Because he wanted to keep his illness secret, the operations were performed not in a hospital but on board a yacht that traveled slowly up the East River. Despite severe hemorrhaging, Cleveland's upper jaw was removed during an hour-long operation performed wholly within his mouth, a procedure that avoided any external scarring.⁵⁸ Several weeks later and again on board the yacht, surgeons removed additional tissue and fitted him with an artificial rubber jaw to fill up the cavity created by the surgery and to improve his speech.⁵⁹ Although Cleveland found the artificial jaw to be painful and uncomfortable, he learned to use it in order to speak clearly and forcefully.⁶⁰ The White House announced only that the President had had a tooth extracted and denied anything more serious. We did not learn of these procedures until 1917, twenty years after Cleveland left office and nine years after his death, when one of his surgeons revealed details in a newsmagazine article.⁶¹

President William McKinley was shot by an anarchist on September 6, 1901. The bullet that struck him passed through his stomach, pancreas and a kidney and then buried itself in the muscles of his back. An operation was performed quickly in order to suture the wounds in the President's stomach and cleanse the peritoneal cavity. Although the bullet was not located, McKinley seemed at first to improve and doctors reported that his status was "satisfactory."⁶² After a week, however, his condition deteriorated and he became unable to take nourishment. Also, his temperature rose ominously as a result of the gangrene that had spread along the bullet's track.⁶³ Drugs to control infection did not then exist and McKinley died in the early morning hours of September 14.

President Woodrow Wilson, in the Fall of 1919, suffered two strokes, one massive, after campaigning vigorously for the League of Nations in the southwest. The White House announced initially that the President was

55. FEERICK, *supra* note 7, at 10.

56. THOMAS C. REEVES, GENTLEMAN BOSS: THE LIFE OF CHESTER ALAN ARTHUR 318 (1991).

57. *Id.* at 387–88.

58. ALYN BRODSKY, GROVER CLEVELAND: A STUDY IN CHARACTER 311–13 (2000).

59. JERROLD M. POST & ROBERT S. ROBINS, WHEN ILLNESS STRIKES THE LEADER: THE DILEMMA OF THE CAPTIVE KING 7–9 (1993).

60. RICHARD E. WELCH, JR., THE PRESIDENCIES OF GROVER CLEVELAND 121 (1988).

61. W.W. Keen, *The Surgical Operations on President Cleveland in 1893*, SATURDAY EVENING POST, Sept. 22, 1917, at 24.

62. MARGARET LEECH, IN THE DAYS OF MCKINLEY 595–600 (1959).

63. H. WAYNE MORGAN, WILLIAM MCKINLEY AND HIS AMERICA 401–02 (2003).

suffering from “nervous exhaustion” and that his condition was “not alarming.”⁶⁴ In truth, Wilson was completely paralyzed on his left side, his vision was permanently impaired and his speech was labored and indistinct.⁶⁵ At first he was so ill that death seemed inevitable, but then he began to regain his strength—but very slowly.⁶⁶ Too ill to meet with his Cabinet for seven months,⁶⁷ Wilson served out his term as an incapacitated and broken man. During this period, both the President of the United States and the government of the United States were paralyzed.

President Warren G. Harding, in late July 1923, suffered a heart attack while traveling from Seattle to San Francisco. One of his physicians feared for his life, certain that Harding had suffered a massive cardiovascular collapse. The senior White House physician, however, announced to the press that the President was suffering from copper poisoning and that his condition was not serious.⁶⁸ After Harding was put to bed in a San Francisco hotel room, medical personnel admitted that he was suffering from pneumonia, at the time a deadly malady.⁶⁹ The President seemed to rally but then died suddenly four days later. According to one of his White House physicians, the cause was a coronary occlusion.⁷⁰

President Franklin D. Roosevelt in March 1944 was diagnosed as suffering from moderately severe and advanced hypertension, obstructive pulmonary disease, and congestive heart failure. His heart was grossly enlarged, the mitral valve was not closing properly and excessive pressure was being exerted on the aortic valve.⁷¹ His cardiologist believed that he might die at any moment, but with proper care he might live a year or two.⁷² The White House physician announced simply to the press that “the check up [was] satisfactory. When we got through we decided that for a man of sixty-two we had very little to argue about.”⁷³ Thirteen months later, Roosevelt was dead.

64. AUGUST HECKSCHER, *WOODROW WILSON* 610 (1991) (reporting statements made by Joseph P. Tumulty, President Wilson's private secretary).

65. CRISPELL & GOMEZ, *supra* note 12, at 68.

66. ARTHUR S. LINK, *WOODROW WILSON: A BRIEF BIOGRAPHY* 166 (1963).

67. HERBERT HOOVER, *THE ORDEAL OF WOODROW WILSON* 271–78 (1958).

68. ROBERT H. FERRELL, *THE STRANGE DEATHS OF PRESIDENT HARDING* 15–16 (1996).

69. ROBERT K. MURRAY, *THE HARDING ERA: WARREN G. HARDING AND HIS ADMINISTRATION* 449 (1969).

70. Joel Thompson Boone, *Joel Thompson Boone Papers: Memoirs* 56 (1963) (on file with the Library of Congress, Box 45); CARL SFERRAZZA ANTHONY, *FLORENCE HARDING: THE FIRST LADY, THE JAZZ AGE, AND THE DEATH OF AMERICA'S MOST SCANDALOUS PRESIDENT* 470 (1998).

71. Howard G. Bruenn, *Clinical Notes on the Illness and Death of President Franklin D. Roosevelt*, 72 *ANNALS OF INTERNAL MED.* 579, 580 (1970); *see also* Robert E. Gilbert, *Disability, Illness, and the Presidency: The Case of Franklin D. Roosevelt*, 7 *POL. & LIFE SCI.* 33, 38–40 (1988) (interpreting Dr. Bruenn's medical diagnosis into layman's terms).

72. *See* Gilbert, *supra* note 71, at 39.

73. ROSS T. MCINTIRE, *WHITE HOUSE PHYSICIAN* 183–84 (1946).

President Dwight D. Eisenhower likely suffered a mild heart attack in April 1953, but the country was told that he had food poisoning.⁷⁴ In 1955, he suffered another heart attack; the country was told initially that he had indigestion, that it “‘wasn’t serious; it is the kind of 24 hour stuff that many people have had.’”⁷⁵ Later, it was announced that he had had a “mild” heart attack, then that it had been “moderate.”⁷⁶ In fact, it had been massive and at least one of his cardiologists had doubts that he would survive.⁷⁷ In 1956, Eisenhower underwent abdominal surgery for ileitis, and in 1957, suffered a stroke. In 1960, while campaigning for Nixon in Detroit, he experienced a severe case of ventricular fibrillation. Instead of pumping blood, his heart simply vibrated. Eisenhower’s White House physician saw his condition as “very dangerous” and the President cancelled plans to campaign further.⁷⁸ No public announcement was ever made of this particular cardiac episode.⁷⁹

President John F. Kennedy experienced back problems that, according to one of his White House physicians, often resulted in almost unbearable pain.⁸⁰ He also suffered from Addison’s disease, a failure of the adrenal glands.⁸¹ This condition required continuous medications but its very existence was denied by Kennedy and his associates.⁸² However, as early as 1953, a Lahey Clinic physician had described it “as the most serious of Kennedy’s many ailments.”⁸³ One scholar has written, “Three prominent issues deserve consideration in any investigation into Kennedy’s life, health, and political behavior: his debilitating back problems; his Addison’s disease; and, perhaps in response to the first two, his heavy reliance on medication, including steroids and amphetamines.”⁸⁴

President Lyndon Johnson, in 1965, underwent gallbladder surgery. His doctors announced afterwards that he had come through the operation “beautifully as expected” and with no complications. Thirty years later, one of Johnson’s White House physicians revealed to this author that during

74. REPORT OF THOMAS W. MATTINGLY *in* OFFICE OF THE SURGEON GEN. DEP’T, A COMPILATION OF THE GENERAL HEALTH STATUS OF DWIGHT D. EISENHOWER 91–92 (1986–1987) (on file with the Dwight D. Eisenhower Library, Box 1, General Health).

75. ROBERT E. GILBERT, *THE MORTAL PRESIDENCY: ILLNESS AND ANGUISH IN THE WHITE HOUSE* 89 (2d ed. 1998) (quoting Eisenhower’s press aide).

76. *Id.*

77. *Id.* at 89–91.

78. HOWARD MCCRUM SNYDER, *MEDICAL DIARY RE DWIGHT D. EISENHOWER: 1 SEPTEMBER–31 DECEMBER 1960*, Oct. 17–18, 1960 (on file with the Dwight D. Eisenhower Library, Box 10).

79. GILBERT, *supra* note 75, at 114–15 (noting that Eisenhower had serious health crises that were unpublicized and that occurred in 1960, as Nixon campaigned for the Presidency).

80. Interview by Theodore C. Sorensen with Dr. Janet Travell, Physician to President John F. Kennedy, in Wash., D.C. (Jan. 20, 1966) (on file with the John F. Kennedy Library); *see also* JANET TRAVELL, *OFFICE HOURS: DAY AND NIGHT; THE AUTOBIOGRAPHY OF JANET TRAVELL*, M.D. 4–6, 309, 320, 327–28 (1968).

81. GILBERT, *supra* note 75, at 154–55.

82. *Id.* at 155, 157.

83. *Id.* at 159.

84. ROSE McDERMOTT, *PRESIDENTIAL LEADERSHIP, ILLNESS, AND DECISION MAKING* 118 (2008).

surgery, the President suffered a potentially serious cardiac complication—supraventricular tachycardia—which was detected and brought under control by attending physicians.⁸⁵ No public announcement was ever made of this complication. A year later, surgeons removed a sessile polyp from his right vocal cord and repaired a protrusion in his gallbladder incision by means of additional surgery.⁸⁶ Recovery was slow and the President was unable to return to the White House for several weeks.⁸⁷

President Ronald Reagan was shot in 1981 by a would-be assassin. When he arrived at the George Washington University Medical Center, he had no recordable blood pressure, his left lung had collapsed and he had lost half of his body's blood supply.⁸⁸ According to his physicians, he was within five minutes of death.⁸⁹ The White House emphasized that the President was telling jokes to his doctors, not that his condition was critical or that he was wholly incapable of exercising his powers.⁹⁰ In 1985, Reagan underwent surgery for colon cancer in which a large cancerous growth was removed along with two feet of his intestines.⁹¹ In 1987, he underwent prostate surgery for the second time, did not bounce back quickly and had to follow a sharply reduced schedule, working only a few hours each day.⁹² His Chief of Staff saw him as being "in the grip of lassitude."⁹³ Reagan was so depleted that there was discussion of another invocation of the Twenty-Fifth Amendment.⁹⁴

The foregoing Presidents suffered from *physiological* illnesses, many of which were severe. Other Presidents have suffered from *psychological* illnesses that were perhaps even more debilitating. Although these latter ailments went undiagnosed at the time, they inflicted serious, if not devastating, damage to the presidencies of at least two men, Franklin Pierce (1853–1857) and Calvin Coolidge (1923–1929). Pierce served just before the advent of the Civil War, a time of national agony. Coolidge served just before the arrival of the Great Depression, a time of economic catastrophe.

85. Interview with Dr. James M. Young, former White House Physician, Johnson Administration, in Wash., D.C. (Dec. 2, 1996).

86. Gilbert, *supra* note 75, at 197–98.

87. *Id.* at 198.

88. Telephone Interview with Dr. Benjamin Aaron, former Chief of Cardiovascular and Thoracic Surgery, George Washington University Hospital (June 20, 1991).

89. Telephone Interview with Dr. Eric Louie, former Assistant White House Physician, Reagan Administration (July 2, 1991).

90. Birch Bayh, *The Twenty-Fifth Amendment: Dealing with Presidential Disability*, 30 WAKE FOREST L. REV. 437, 441 (1995); Lawrence K. Altman, *When the President Becomes a Patient*, N.Y. TIMES, July 21, 1985, at E2.

91. Altman, *supra* note 90, at E2; Gerald M. Boyd, *Reagan's Surgery Finds a 2d Polyp; Operation Today*, N.Y. TIMES, July 13, 1985, at 1.

92. DONALD T. REGAN, FOR THE RECORD: FROM WALL STREET TO WASHINGTON 67–71 (1988).

93. *Id.* at 71.

94. PETER J. WALLISON, RONALD REAGAN: THE POWER OF CONVICTION AND THE SUCCESS OF HIS PRESIDENCY 105 (2003).

Both men won decisive popular and electoral college victories.⁹⁵ Neither man was able to respond to the crisis confronting him.

III. THE PRESIDENCY IN MOURNING: FRANKLIN PIERCE

The beginning of Franklin Pierce's presidency was marked by personal and almost unimaginable tragedy. Shortly before his inauguration, the President-elect and his wife were traveling by railroad with their eleven-year-old son, Benny, from Andover to Concord, New Hampshire, Pierce's home state. Benny was the only surviving child of the three born to the couple. Their first boy, Franklin, had died in infancy; their second, Frank Robert, had succumbed to typhus at the age of four.⁹⁶ When that child had died, a newspaperman who was close to Pierce wrote that the boy's death "was the greatest affliction that his father ha[d] experienced."⁹⁷ The tragedy that overwhelmed Benny was even more devastating to Pierce and his wife because he was their last child.⁹⁸ Benny was the center of his parents' lives and they doted on him. Unfortunately, the train in which they were riding that winter day was derailed and plunged down a steep, twenty-foot embankment, coming to rest on its roof. When the slightly injured President-elect found Benny in the mangled wreckage, he discovered in horror that the back of his head had been torn off and that he was dead.⁹⁹

Pierce suffered deep feelings of guilt in the aftermath of his son's death. Neither Benny nor Jane, the President-elect's wife, had wanted him to become President. When Pierce was nominated for that office, Benny had written to his mother, saying that "I hope he won't be elected for I should not like to live at Washington and I know you would not either."¹⁰⁰ Jane Pierce surely did not. She was opposed to her husband's political ambitions, particularly when it meant living outside of New England. When she learned that he had been nominated for President, she was so upset that she fainted.¹⁰¹

For his part, Pierce was prone to gloomy moods and to depression even before Benny's death. In his earlier political career, his moodiness had led him to succumb to alcoholism. Excessive alcohol consumption leads to impaired judgment, blackouts and amnesia.¹⁰² Often Pierce would awaken from an alcoholic stupor "with a hangover of physical misery and mental

95. CLAUDE M. FUESS, CALVIN COOLIDGE: THE MAN FROM VERMONT 276, 354-55 (1940) (describing Coolidge's election as Vice President and his presidential election results in 1924); LARRY GARA, THE PRESIDENCY OF FRANKLIN PIERCE 39 (1991) (reporting the results of the 1852 presidential election, which sent Pierce to Washington).

96. GARA, *supra* note 95, at 32.

97. NATHANIEL HAWTHORNE, LIFE OF FRANKLIN PIERCE 65 (1852).

98. *See id.*

99. PETER A. WALLNER, FRANKLIN PIERCE: NEW HAMPSHIRE'S FAVORITE SON 241 (2004).

100. *Id.* at 202.

101. GARA, *supra* note 95, at 34.

102. Norman J. Knorr & Daniel Harrington, *Psychological Considerations, in PAPERS ON PRESIDENTIAL DISABILITY AND THE TWENTY-FIFTH AMENDMENT* 109 (Kenneth W. Thompson ed., 1988).

agony” while his wife would glare at him “with sad and reproachful eyes.”¹⁰³ She finally convinced him to resign from the Senate in order to avoid the temptation of drinking to excess with colleagues and supporters. With his unexpected election to the presidency, she was convinced that he had betrayed her. Much worse, with Benny’s death, she became deeply embittered that her husband’s presidency had been gained at the price of Benny’s life, and she could never fully forgive him for the boy’s sad fate.

The death of his last child was a devastating blow to Pierce since it led to despondency, fears of personal inadequacy, and renewed drinking. According to Nichols:

It is difficult to express adequately the effect . . . [that] the tragedy worked upon the President-elect. It became the fact of greatest importance in his life, troubling his conscience, unsettling him almost completely, and weakening his self-confidence for many months to come. At a time when he required peace and self-control for summoning all his powers to the big tasks awaiting him, he was distracted and worn by heart-searchings. Burdened with a dead weight of hopeless sorrow, he entered his office fearfully. He could not undertake its duties with that buoyant and confident assurance which so often in itself invites success. . . . [H]e was to work under a permanent handicap. His was not a frame of mind to command success or to invite inspiration. Much of the difficulty which he experienced in administration during the next four years may be attributed to this terrible tragedy and its long-continued after effects.¹⁰⁴

During his entire tenure, Pierce confronted this “permanent handicap.” His latent sense of depression was dramatically heightened by the sudden loss of his son. Just before the boy’s funeral, he wrote his wife—who was too upset to attend—that he was ““overwhelmed with sorrow and a sense of loss which admits of no increase.””¹⁰⁵ He cancelled the Inaugural Ball and added a baleful introductory sentence to his Inaugural Address, proclaiming to the nation that: “[I]t is a relief to feel that no heart but my own can know the personal regret and bitter sorrow over which I have been borne to a position so suitable for others rather than desirable for myself.”¹⁰⁶ Those who saw him even commented on his altered appearance and on his subdued behavior, very different from his earlier affability and charm. His mood is perhaps best reflected in a letter that he wrote to an associate shortly after Benny’s death. He told him:

‘I presume you may already have heard of the terrible catastrophe upon the rail road, which took from us our only child, a fine boy 11 years old. I am recovering rapidly from my bodily injuries, and Mrs. Pierce is more composed to day, tho’ very feeble and crushed to the earth by the fearful

103. Jonathan R. T. Davidson & Kathryn M. Connor, *The Impairment of Presidents Pierce and Coolidge After Traumatic Bereavement*, 49 *COMPREHENSIVE PSYCHIATRY* 413, 415 (2008).

104. ROY FRANKLIN NICHOLS, *FRANKLIN PIERCE* 225–26 (2d ed. 1958).

105. WALLNER, *supra* note 99, at 243.

106. NICHOLS, *supra* note 104, at 233.

bereavement. . . . How I shall be able to summon my manhood and gather up my energies for all the duties before me it is hard to see.¹⁰⁷

Virtually at no time during his presidency was Pierce's wife able to provide him with comfort since she, too, was overwhelmed by grief. A shy, retiring woman, she had never enjoyed—and frequently refused to participate in—social events.¹⁰⁸ But the death of her third child “virtually destroyed what was left of Jane's health and mental stability.”¹⁰⁹ On the day that Benny was killed, a fellow passenger on the ill-fated train had commented that Mrs. Pierce's “agony passes beyond any description.”¹¹⁰ Time did not much heal her pain and she did little more than reinforce her husband's deep despondency. After refusing to attend his Inauguration, she resided for many months in bitter mourning as a recluse in New Hampshire. At social events in Washington, she was replaced at her husband's side by the wives and daughters of Cabinet members. Even after she finally moved into the White House in 1855, she remained morose and withdrawn. One commentator suggests that she “was never seen to smile again” and that she remained secluded in her room, “scribbling pitiful little notes to her dead boy.”¹¹¹ When she did agree to put in appearances on social occasions, her demeanor would be grim. After one such occasion, an observer wrote in his diary, “[e]verything in that mansion seems cold and cheerless. I have seen hundreds of log cabins which contained more happiness.”¹¹²

The Pierce Administration was affected greatly by the President's grief. Professors Jonathan R.T. Davidson and Kathryn M. Connor write that it is likely that Pierce's “mental anguish influenced the manner in which he chose his inner cabinet and his style of leadership.”¹¹³ Essentially, he decided to institute cabinet government, with the President serving as a member of the governing body but not as its leader. This was problematic since the members of Pierce's Cabinet were weak. None had much political expertise, and they were unable to provide the sound advice so badly needed. Cabinet members saw their role largely as being cheerleaders for the President and trying to boost his depleted spirits. To make matters worse, Pierce himself was so depressed and dejected that he was unable to provide firm direction and guidance to the group. The sense of malaise that suffused the executive branch was overpowering.¹¹⁴

Moreover, Pierce so deeply needed human sympathy that he found it very difficult to alienate visitors by refusing whatever it was that they wanted. Therefore, either he offered immediate agreement with their

107. Letter from Franklin Pierce to Jefferson Davis (Jan. 12, 1853), *reprinted in 2 JEFFERSON DAVIS, CONSTITUTIONALIST: HIS LETTERS, PAPERS AND SPEECHES* 178–79 (Dunbar Rowland ed., 1923).

108. MARX, *supra* note 36, at 162.

109. GARA, *supra* note 95, at 32.

110. WALLNER, *supra* note 99, at 242.

111. MARX, *supra* note 36, at 165.

112. *Id.* (describing a diary entry made by Hon. Charles Mason, who was the Commissioner of Patents during Pierce's presidency).

113. Davidson & Connor, *supra* note 103, at 414.

114. *See id.*

requests or else “took refuge in a cordial indefiniteness that was frequently interpreted as an affirmative. When his decision finally was made in the negative, he was accused of lying and hated as a deceiver.”¹¹⁵ Although this troubled the President, he was unable to change his behavior.

Much more serious, Pierce was absorbed by the minutiae of his Administration while the more serious and pressing problems confronting him were largely ignored. He met with his Cabinet for two hours every day, essentially to discuss patronage issues. He encouraged his assistants to bring him a great number of minor matters, investigated complaints coming to him in the mail, and often kept his door open to the public. At the same time, “[t]he larger problems slid by little touched by Presidential power: trouble in Cuba, Mexico, and Central America; ailing relations with England; Kansas torn and bleeding.”¹¹⁶

Not surprisingly, newspapers gave Pierce very bad press, unleashing a constant stream of vituperation against him. He was often attacked for being weak, vacillating, and naïve. The *New York Herald*, for example, carried a series of condescending articles repeatedly describing the President to its readers as “poor pierce.”¹¹⁷ The *London Times*, an influential British newspaper, raised questions about “the sobriety and good sense” of the President soon after his inauguration and later criticized him for his “moral prostration.”¹¹⁸ As antagonism between northern and southern states intensified, many southern newspapers saw Pierce as duplicitous and untrustworthy while many northern newspapers regarded him as something of a traitor.

Professor Michael A. Genovese suggests that “Pierce was probably the last president who might have been able to prevent the Civil War.”¹¹⁹ But the rising sectional animosities called for decisive leadership from the White House, and Pierce was unable to provide it. He largely sought to defuse, rather than confront, slavery as a political issue.¹²⁰ Consequently, he was seen by the northern states as having surrendered abjectly to the South.¹²¹ Confronted by Pierce’s weakness, an ascendant Congress took on the primary responsibility for attempting to resolve this emotional and divisive national problem.¹²² Within a short time, the nation was plunged into a civil war in which over 600,000 perished.¹²³

The fact that Pierce was distracted by his grief and anesthetized by the alcohol consumed to cope with it created a leadership vacuum at a time of

115. NICHOLS, *supra* note 104, at 538.

116. LOUIS KOENIG, *THE CHIEF EXECUTIVE* 343–44 (3d ed. 1975).

117. NICHOLS, *supra* note 104, at 542.

118. *Id.* at 276, 288.

119. GENOVESE, *supra* note 40, at 75.

120. SIDNEY M. MILKIS & MICHAEL NELSON, *THE AMERICAN PRESIDENCY: ORIGINS AND DEVELOPMENT* 138 (3d ed. 1999).

121. SAM W. HAYNES, *JAMES K. POLK AND THE EXPANSIONIST IMPULSE* 213 (3d ed. 2006).

122. ROBERT J. SPITZER, *PRESIDENT AND CONGRESS* 31 (1993).

123. *See, e.g.*, GEORGE MCGOVERN, *ABRAHAM LINCOLN* 130–31 (2009); WILLIAM LEE MILLER, *LINCOLN’S VIRTUES: AN ETHICAL BIOGRAPHY* 456 (2002); PHILLIP SHAW PALUDAN, *THE PRESIDENCY OF ABRAHAM LINCOLN* 66 (1994).

great national crisis. John Forney, the clerk of the House of Representatives, wrote in a letter to James Buchanan, who would succeed Pierce in the Presidency: “The place overshadows him. He is crushed by its great duties and he seeks refuge in [alcohol]. His experience convinces me that a great mistake was made in putting him in at all.”¹²⁴

Although he had initially promised not to seek a second term,¹²⁵ Pierce changed his mind after consulting his Cabinet on the issue. He was certain that he would win the nomination but after fourteen unsuccessful ballots, withdrew his name from further consideration. This rejection by his party added to his depressed mood since he saw it as a personal repudiation. From beginning to end, his presidency was an unhappy one.

It cannot be said with certainty, however, that Pierce’s depression was wholly responsible for his indecisive and lackadaisical presidency. Even before his son’s death, he had been an undistinguished leader. Pierce had achieved little as a member of the Senate where his work was negatively affected by his alcoholism. However, Benny’s death seems to have exacerbated all of his deficiencies. It remained always as a looming presence in his life, “troubling his conscience, unsettling him almost completely, and weakening his self-confidence.”¹²⁶ It also led to renewed and excessive drinking. After he left office, he was asked what he would then do. He allegedly replied, “there’s nothing left . . . but to get drunk.”¹²⁷

Professor Roy Franklin Nichols, however, offers a more favorable assessment of what might have come about in the Pierce Administration if young Benny had not been killed. He writes:

Had he entered the White House with the confidence which his great victory should have supplied, and been able to live a happy, normal family life, with his nervous system unshaken and, as hitherto, resilient, it may at least be wondered whether he might not have risen to the challenge of the Presidency. He was only forty-eight, in the prime of life, enjoying a zenith which should have still afforded much capacity for further development and maturing of power.¹²⁸

Whether or not Nichols’s positive view is justified, the fact remains that Benny’s death was a devastating blow to Pierce’s somewhat unstable personality. As President, he was almost guaranteed to fail. Not surprisingly, contemporary scholars view him as having been among the worst of Presidents. The historians and political scientists who participated in the 1995 Ridings-McIver survey, for example, ranked Pierce 35th out of the thirty-nine Presidents evaluated.¹²⁹ He had had little influence on Congress, his foreign policy had often been determined by his Cabinet

124. NICHOLS, *supra* note 104, at 284.

125. JEAN H. BAKER, *JAMES BUCHANAN* 69 (2004).

126. NICHOLS, *supra* note 104, at 225.

127. Davidson & Connor, *supra* note 103, at 415.

128. NICHOLS, *supra* note 104, at 536.

129. *1990’s Presidential Poll* by William J. Ridings, Jr. and Stuart B. McIver, 25 *PRESIDENTIAL STUD.* Q. 375, 376 (1995) [hereinafter *Presidential Poll*].

without any leadership from him, and his presidential vacillation had paved the way to the Civil War. As one scholar has written, “[i]n light of subsequent events, the Pierce administration can be seen only as a disaster for the nation.”¹³⁰

IV. THE PRESIDENCY IN MOURNING: CALVIN COOLIDGE

The case of Calvin Coolidge is equally tragic but at the same time, quite different. Despite his image now as a lazy and negligent president, Coolidge had always been seen earlier as industrious and reliable. As a Mayor, a state legislator, President of the Massachusetts Senate, Governor of the Commonwealth, and Vice President of the United States, he impressed others with his diligence, conscientiousness and competence. When he became President in August 1923 following the death of Warren Harding, he showed these same qualities, moving quickly and strongly to take charge of the executive office and stamp it with his own personality.¹³¹

Although he had been known informally for years as “Silent Cal,” Coolidge quickly succeeded in mastering the “new politics of public opinion.”¹³² He instituted regular meetings with the press and his impressive facility at answering questions at his first press conference—showing that he was fully informed and involved—elicited an ovation from reporters.¹³³ Also, the new President invited Congressmen and Senators of all political predispositions to breakfasts and dinners at the White House so that he could develop a congenial relationship with them and build support for his programs. Showing clear boldness, he pardoned thirty individuals who had been convicted and imprisoned for violating the Sedition Act during World War I because he wanted to please the members of Congress who supported clemency.¹³⁴ This action was taken over the strong opposition of the American Legion, which did not favor forgiveness. He summoned the governors of all the states to the White House so that he could get their thinking on the narcotics, immigration and prohibition laws and acquaint them with his own views.¹³⁵ He appointed a two-person committee to investigate the scandals associated with the Harding Administration and announced forthrightly that “if there is any guilt it will be punished; if there is any civil liability, it will be enforced; if there is any fraud, it will be revealed; if there are any contracts which are illegal, they

130. GARA, *supra* note 95, at 183–84.

131. For a fuller discussion of Coolidge’s early days as President, see ROBERT E. GILBERT, *THE TORMENTED PRESIDENT: CALVIN COOLIDGE, DEATH AND CLINICAL DEPRESSION* 115–37 (2003).

132. DAVID GREENBERG, *CALVIN COOLIDGE* 46 (2006).

133. CALVIN COOLIDGE, *THE AUTOBIOGRAPHY OF CALVIN COOLIDGE* 183 (5th trade ed. 1931).

134. DONALD R. MCCOY, *CALVIN COOLIDGE: THE QUIET PRESIDENT* 197 (1967).

135. GILBERT, *supra* note 131, at 123; *see, e.g.*, Letter from President Calvin Coolidge to Gov. Cameron Morrison of N.C. (Oct. 2, 1923), *available at* <http://ncrec.dcr.state.nc.us/cat/catserver.asp?WCI=MainEp&WCE=CatV1&WCU=510.36>.

will be canceled.”¹³⁶ He then demanded and received the resignation of Harry Daugherty, Harding’s controversial attorney general, who was suspected of wrongdoing.

In the international realm, Coolidge impressed the world shortly after becoming President by dispatching the Pacific fleet to Japan in order to help that nation recover from a catastrophic earthquake that had killed some 130,000 people. In taking this step, he had acted so quickly that the U.S. fleet had arrived on the scene even before the Japanese ships did.¹³⁷ Closer to home, he moved aggressively to improve diplomatic relations with Mexico, a neighboring nation he described with great respect as “our sister Republic.” In an act pleasing to the Mexicans, he requested that Congress provide funds to resolve claims flowing from the U.S. invasion in 1914.¹³⁸

Above all, the most striking thing that Coolidge did during his early days as President was to deliver a powerful State of the Union address to Congress in December 1923. Contrary to most Presidents of his era, he did not send his speech to be read to legislators by clerks but rather delivered it in person to a joint session. In this important address, he made some forty specific requests in very direct language, beginning with a warning to Congress that “[o]ur National Government is not doing as much as it legitimately can do to promote the welfare of the people.”¹³⁹ He then proceeded to recommend a tax cut and a litany of other measures that were designed to reverse this situation. Among these, he requested the creation of a separate cabinet-level department of education and welfare, the expansion of health benefits for veterans, the enactment of environmental legislation, a broadening of the civil service system, the passage of a constitutional amendment limiting child labor, the creation of a new reforestation policy, the establishment of reformatories for women and young men serving their first prison sentence, the funding of medical courses at Howard University, the reorganization of the U.S. Foreign Service and the establishment of a permanent Court of International Justice.¹⁴⁰ He also proclaimed that the rights of black people were “just as sacred as those of any other citizen” and called on Congress to “exercise all its powers . . . against the hideous crime of lynching.”¹⁴¹

By the end of the legislative session in June 1924, many of Coolidge’s proposals had largely been enacted. Taxes were reduced, veterans’ benefits were increased, an oil slick law was passed, reformatories for women and young men were authorized, a new reforestation policy was established and

136. MCCOY, *supra* note 134, at 208 (citing *Coolidge Orders Inquiry Into Ending Oil Leases; Says Guilty Must Suffer*, N.Y. HERALD TRIB., Jan. 27, 1924, at 1).

137. JOHN K. FAIRBANK, EDWIN O. REISCHAUER & ALBERT M. CRAIG, *EAST ASIA: TRADITION & TRANSFORMATION* 653 (1978); GILBERT, *supra* note 131, at 131–32.

138. GILBERT, *supra* note 131, at 131; ROBERT SOBEL, *COOLIDGE: AN AMERICAN ENIGMA* 344–50 (1998).

139. Calvin Coolidge, U.S. President, First Annual Message, Address Before the Joint Session of Congress (Dec. 6, 1923), in 3 *THE STATE OF THE UNION MESSAGES OF THE PRESIDENTS 1790–1966*, at 2650 (Fred L. Israel ed., 1966).

140. *Id.* at 2642–55.

141. *Id.* at 2648.

the Foreign Service was reorganized. Coolidge's legislative record in his first year as President, then, was clearly impressive.¹⁴²

It is not surprising that Calvin Coolidge was overwhelmingly nominated for President of the United States at the Republican National Convention in June 1924. In addition to his strong performance as a leader in his first year in the White House, he had conducted an adept pre-Convention campaign that saw him easily outmaneuver and overwhelm his several intra-party challengers. This was the greatest political triumph he had ever experienced. Within days, however, his world—and his life—would fall apart.¹⁴³

On June 30, Coolidge's two sons, eighteen-year-old John and sixteen-year-old Calvin Jr., played tennis on the South Grounds of the White House. The younger boy, Coolidge's favorite, had been so anxious to play that he wore sneakers but no socks. A blister developed on one of his toes but he continued to play and played for several hours on the next day as well. On July 2, the boy did not feel well. When White House physician Joel Boone examined him, he became alarmed. The blister on the third toe of his right foot was about the size of the doctor's thumbnail and much darker in color than normal. Boone became even more alarmed when he saw red streaks extending up the boy's leg.¹⁴⁴ A series of laboratory tests soon disclosed that Calvin Jr. had a serious staph infection and was stricken with pathogenic blood poisoning.¹⁴⁵

Doctors fought for several days to save the boy's life. He was hospitalized and the President and First Lady moved into the hospital to be close to his bedside. On the evening of July 7, Dr. Albert Kolmer, one of the boy's physicians, told Coolidge that his son was rapidly dying. Kolmer later reported that the President became hysterical, taking his son into his arms and shouting that he would soon join him and the President's mother in death. Kolmer described this episode as "the most touching and heart-rending experience of my whole professional career."¹⁴⁶

Calvin Jr. died at 10:20 that night. The boy's body was taken to the White House where it lay in state and where crowds of Washington officialdom paid their last respects. Dr. Boone later reported that after young Calvin's wake had ended, the President came downstairs from the White House living quarters dressed in a bathrobe and stood beside his son's open casket, gazing at his face and gently stroking his hair.¹⁴⁷

142. See Memorandum on Recommendations from Calvin Coolidge's First Annual Message (1923) and Actions Taken (on file with the Calvin Coolidge Presidential Library and Museum, MS/5/1-1B/36).

143. See generally Gilbert, *supra* note 131, at 175–207 (further describing President Coolidge's reaction following the death of his son).

144. Joel Thompson Boone, Joel Thompson Boone Papers: Memoirs XXI-199 to XXI-201 (on file with the Library of Congress, Box 46).

145. *Id.* at XXI-211a, XXI-219a.

146. GILBERT, *supra* note 131, at 156; see also *A President's Grief*, TIME, July 18, 1955, at 55.

147. Boone, *supra* note 144, at XXI-212.

In 1997, John Coolidge, Calvin Coolidge's surviving son, provided this author with some personal observations about his father. He told me that on the day following his brother's wake, when the casket had been closed in preparation for funeral services in Northampton and then Vermont, the President had broken down in tears, sobbing, "They're taking our boy away."¹⁴⁸ He said that this was the only time in his life that he had seen his father cry. He also shared with me that the long-term impact of Calvin Jr.'s death on his father was enormous. His overall assessment was that "my father was never the same again."¹⁴⁹

After the funeral, the First Lady, aides, friends, and his own father tried to console the President but to no avail. Visitors to his office reported that he wept openly as he spoke of his son, saying again and again that he couldn't believe what had happened. He indicated that every time he looked out the window, he saw his son playing tennis on the courts outside. One of Coolidge's friends described his face as having "the bleak desolation of cold November rain beating on gray Vermont granite."¹⁵⁰ Although Grace Coolidge told her friends that her son was at rest and that she had emerged from his funeral with a "peace which passeth understanding," the President clearly was not at peace, and the buoyant First Lady was unable to extricate him from his personal anguish.¹⁵¹

The American Psychiatric Association (APA) and the National Institutes of Health have specified symptoms of a major depressive episode. These include hypersomnia or insomnia, changes in appetite, feelings of guilt, indecisiveness, recurrent thoughts of death, the loss of interest in nearly all activities, increased irritability, decreased energy, complaints of bodily indispositions, spitefulness, suspiciousness, and deterioration in work performance.¹⁵² An analysis of Calvin Coolidge's behavior patterns after his son's death reveals distinctly the presence of all of these symptoms. As a result, he and his presidency changed profoundly.

He began to eat compulsively and suffered frequent abdominal pain. He complained often of exhaustion and began to sleep fifteen hours out of every twenty-four. He experienced feelings of severe guilt, writing pointedly that "if I had not been President he would not have raised a blister on his toe . . . playing lawn tennis in the South Grounds."¹⁵³ Coolidge also

148. Interview with John Coolidge, in Plymouth, Vt. (Aug. 1, 1997); *see also* GILBERT, *supra* note 75, at 159.

149. Interview with John Coolidge, in Plymouth, Vt. (Aug. 1, 1997); *see also* GILBERT, *supra* note 75, at 267.

150. ISHBEL ROSS, *GRACE COOLIDGE AND HER ERA* 123 (1962) (quoting Alfred Pearce Dennis, who had known Coolidge since his days in Northampton); *see also* John T. Lambert, *When the President Wept*, in *MEET CALVIN COOLIDGE: THE MAN BEHIND THE MYTH* 140 (Edward C. Lathem ed., 1960).

151. Letter from First Lady Grace Coolidge to Mrs. Reuben B. Hills (Aug. 3, 1924) (on file with the Calvin Coolidge Presidential Library and Museum, MS/16/1-MS/18/17, Roll 45).

152. AM. PSYCHIATRIC ASS'N, *DIAGNOSIS AND STATISTICAL MANUAL OF MENTAL DISORDERS* 349-50, 356 (4th ed. 2000).

153. CALVIN COOLIDGE, *THE AUTOBIOGRAPHY OF CALVIN COOLIDGE* 190 (5th trade ed. 1931).

began to speak about his own death despite the fact that he was only fifty-two years old at the time. In December 1925, for example, he wrote his father and told him that soon they would both be reunited in death with deceased relatives, including his mother and young Calvin,¹⁵⁴ both of whom he had idolized.

Often he complained of feeling ill, of having severe indigestion and being unable to breathe. Intensely irritable, he would fly into rages, frequently for reasons that were insignificant or inconsequential. His wife—whom he once suspected of becoming romantically involved with a Secret Service agent—was often the victim of his severe temper tantrums and was deeply embarrassed at his explosive tirades, occasionally in the presence of others.¹⁵⁵ To John Coolidge, his only surviving child, he was argumentative, rude, and mean-spirited, leading the offended young man to complain to his mother that he did not understand how she could possibly tolerate the President's bad behavior.¹⁵⁶

Of greater importance was that Coolidge largely abandoned his presidential responsibilities after his beloved son died. He reduced greatly his interactions with Congress, made few and comparatively minor legislative requests and suggested that Congress, in light of its closeness to the people, should determine the legislative agenda for the country. After his memorable 1923 Address, he did not deliver his Annual Messages to Congress in person but rather allowed them to be read to the two Houses by clerks. Moreover, the content of these post-1923 Messages was wholly inconsequential when compared with that of his first Annual Address.¹⁵⁷ Further, he drew back from interactions with his own Cabinet, telling Cabinet members to handle the affairs of their own departments without help or guidance from him. If they failed to do so, he threatened to dismiss them.¹⁵⁸

Although he had previously established an unmistakable record for hard work, his presidential workday now shrank to about four hours. No longer was he seen as a "hog for work" or a "workhorse" as he had often been described before.¹⁵⁹ Also, his interest in foreign policy waned dramatically; on one occasion, he informed his secretary of state that "I don't know anything about this . . . and you're in charge. You settle the problem, and I'll back you up."¹⁶⁰ His press conferences, once so impressive and informative that they provoked applause, now showcased his neglectful and lackadaisical leadership style. In November 1924, for example, he was asked a question about Nicaragua where American troops had long been stationed in an effort to maintain peace. He replied:

154. Letter from Calvin Coolidge to John Coolidge (Dec. 9, 1925), in *YOUR SON, CALVIN COOLIDGE: A SELECTION OF LETTERS FROM CALVIN COOLIDGE TO HIS FATHER* 216 (Edward Connery Lathem ed., 1968).

155. GILBERT, *supra* note 131, at 215–18.

156. *Id.* at 219.

157. *Id.*, at 185–86.

158. EDMUND W. STARLING, *STARLING OF THE WHITE HOUSE* 209 (1946).

159. GILBERT, *supra* note 131, at 40, 64.

160. CLAUDE FUESS, *CALVIN COOLIDGE* 406 (1940).

I haven't any very great detailed and precise information about [Nicaragua]. I knew that there had been some trouble and it was my impression that we had sent some Marines in to guard the Legation, and that the difficulty was in relation to a presidential election. As I have heard nothing about it from the State Department for some time I had taken it for granted that the situation was cleared up. I think that is the case, but I haven't any definite information.¹⁶¹

On another occasion, he was questioned about agriculture bills being considered in Congress. His answer was frank but at the same time thoroughly revealing of an absentee President: "I don't know as I can make any particular comment about the rejection of the Conference agricultural bill. I don't know enough about the details of these bills to discuss the details with any intelligence."¹⁶²

More catastrophic, as the economy became increasingly unstable, Coolidge took no action to stem the disturbing tide. Instead, his press conference remarks revealed a shocking degree of disinterest and ignorance about the tumultuous stock speculation that was reverberating throughout the economy. As an example, when Congress, in 1928, was considering legislation intended to rein in and tame such speculation, Coolidge expressed his great disinterest in the matter, announcing to the press that "I have no information relative to proposed legislation about loans on securities. I saw by the press there was a bill pending in the House or the Senate. I don't know what it is or what the provisions of it are, or what the discussion about it has been."¹⁶³ When Commerce Secretary Herbert Hoover personally begged him to intervene in order to cool down the overheated economy, Coolidge summarily rejected his entreaties. The President was simply impervious to the nation's economic problems and unable to see the dangers that they posed.¹⁶⁴ This was tragic since even "words from the president might have helped check the practice of [speculative credit]."¹⁶⁵ But instead, the words Coolidge spoke were indefinite, indifferent, or even counterproductive.

Such behavior has long been seen as the sign of an incompetent and negligent Chief Executive. But considering his first successful year as President and his impressive earlier political career, and noting the other behavioral changes that engulfed his life after July 7, 1924, what really had emerged here was a disabled President, one suffering from a paralyzing and persistent clinical depression. This illness was little understood in the 1920s but those closest to Coolidge noticed a major change in his behavior

161. Calvin Coolidge, U.S. President, Press Conference Before the White House Press Corps (Nov. 21, 1924), in *THE TALKATIVE PRESIDENT: THE OFF-THE-RECORD PRESS CONFERENCES OF CALVIN COOLIDGE* 231 (Howard H. Quint & Robert H. Ferrell eds., 1964) [hereinafter *TALKATIVE PRESIDENT*].

162. Calvin Coolidge, U.S. President, Press Conference Before the White House Press Corps (Feb. 27, 1925), in *TALKATIVE PRESIDENT*, *supra* note 161, at 125.

163. Calvin Coolidge, U.S. President, Press Conference Before the White House Press Corps (May 1, 1928), in *TALKATIVE PRESIDENT*, *supra* note 161, at 142.

164. ROBERT H. FERRELL, *THE PRESIDENCY OF CALVIN COOLIDGE* 184 (1998).

165. GREENBERG, *supra* note 132, at 148.

after young Calvin died. His surviving son described him as having been decimated by the loss. His wife indicated that the President had lost his “zest for living” as a result of the boy’s death.¹⁶⁶ Coolidge’s White House physician described him as showing many signs of “a little disturbance” and of “temperamental derangement.” His secretary told his doctors that the president was definitely showing signs of “mental sickness.” The chief usher at the White House reported that White House employees who came in contact with the president noticed that he was “highly disturbed.”¹⁶⁷ Coolidge himself explained the change in his presidency perhaps best of all when he wrote in his autobiography that “when [Calvin Jr.] went, the power and the glory of the Presidency went with him.”¹⁶⁸ In a very real sense, then, a personal loss had become a national tragedy.

Back in Coolidge’s day, prominent journalists debunked his presidency. One complained that Coolidge “was ‘distinguishable from the furniture only when he moved’”; another suggested that his “‘chief feat during five years and seven months’ in the White House ‘was to sleep more than any other president’”; another claimed that Coolidge “had ‘cut the umbilical cord between thought and speech.’”¹⁶⁹ In addition, when one illustrious writer was told in January 1933 that Coolidge had died, she replied, “‘How could they tell?’”¹⁷⁰

Contemporary scholars are similarly negative. One complains that “Coolidge voluntarily abdicated the leadership which the Constitution intended that the chief executive should exercise.”¹⁷¹ Another writes that he is “the weakest of modern day weak Presidents,”¹⁷² and still another jokes that he “succeeded in his ambition to be ‘the least President’ the United States ever had.”¹⁷³ In published scholarly works, Coolidge is referred to as a “figurehead,”¹⁷⁴ as having had no drive,¹⁷⁵ as having presided over a “do-nothing Presidency,”¹⁷⁶ as having been a President

166. See ROSS, *supra* note 150, at 286; SOBEL, *supra* note 138, at 296; Interview with John Coolidge, in Plymouth, Vt. (Aug. 2, 1997).

167. Joel Thompson Boone, Joel Thompson Boone Papers: Memoirs 1106 (on file with the Library of Congress, Box 47).

168. COOLIDGE, *supra* note 133, at 190.

169. See Daniel J. Leab, *Coolidge, Hays, and 1920s Movies: Some Aspects of Image and Reality*, in CALVIN COOLIDGE AND THE COOLIDGE ERA: ESSAYS ON THE HISTORY OF THE 1920S, at 98 (John Earl Haynes ed., 1998) (aggregating observations made by the contemporaries of President Coolidge).

170. GREENBERG, *supra* note 132, at 9.

171. SIDNEY WARREN, *THE PRESIDENT AS WORLD LEADER* 146 (1964).

172. Elmer E. Cornwell, Jr., *Coolidge and Presidential Leadership*, 21 PUB. OPINION Q. 265, 266 (1957).

173. MARCUS CUNLIFFE, *THE PRESIDENCY* 271 (3d ed. 1987).

174. ROBERT K. MURRAY, *THE POLITICS OF NORMALCY: GOVERNMENTAL THEORY AND PRACTICE IN THE HARDING-COOLIDGE ERA* 143 (1973).

175. RICHARD E. NEUSTADT, *PRESIDENTIAL POWER AND THE MODERN PRESIDENTS* 204 (1990).

176. RICHARD ROSE, *THE POSTMODERN PRESIDENT: THE WHITE HOUSE MEETS THE WORLD* 22 (1988).

“almost totally deficient in powers of leadership,”¹⁷⁷ and as “lackadaisical.”¹⁷⁸ Overall, the Ridings-McIver Survey ranked Coolidge 31st out of thirty-nine Presidents evaluated, just two places above William Henry Harrison who had died after only thirty days in office.¹⁷⁹

V. THE CHALLENGES OF PSYCHOLOGICAL ILLNESS

Coolidge’s psychological breakdown was an intractable problem in his time—just as it was in Pierce’s—and would continue to pose great stress for the political system today. In part, this is because mental illness is so often misunderstood. Surveys taken in the 1990s disclosed that some sixty-five percent of respondents saw “a lot of stigma” surrounding mental illness while only six percent did not.¹⁸⁰ Other studies have shown that many people are convinced that serious psychiatric disorders are brought about “by sin or weakness of character.”¹⁸¹ Although attitudes may have softened somewhat in more recent years, the public still remains quite unsettled with regard to psychological afflictions. This would make it very difficult for a President to admit that he or she was suffering from such an illness. Consonant with Professor Richard E. Neustadt’s innovative theory, such an admission would incalculably diminish the President’s “professional reputation” and “public prestige,” thereby damaging his overall “presidential power.”¹⁸²

The public is disconcerted by the thought that its leader might be psychologically impaired. In 1957, for example, after President Eisenhower suffered a *mild* stroke, several newspapers—fearing cognitive impairment—urged that he resign the presidency.¹⁸³ They had made no such recommendation after he suffered a *massive* heart attack in 1955. Thirty years later, Michael Dukakis’ presidential campaign was badly injured when rumors circulated that he had received treatment for an alleged psychological disorder. President Ronald Reagan further damaged Dukakis’ standing by referring to him publicly as “an invalid.”¹⁸⁴ Although the rumors were wholly false and Reagan’s remark quite unfair, Dukakis

177. THOMAS A. BAILEY, *PRESIDENTIAL GREATNESS: THE IMAGE AND THE MAN FROM GEORGE WASHINGTON TO THE PRESENT* 316 (3d prtg. 1966).

178. Milton Plesur, *The Health of Presidents*, in *THE PRESIDENCY REAPPRAISED* 187, 188 (Rexford G. Tugwell & Thomas E. Cronin eds., 1974).

179. *Presidential Poll*, *supra* note 129, at 375–76.

180. Andrew B. Borinstein, *Public Attitudes Towards Persons with Mental Illness*, 11 *HEALTH AFF.*, Fall 1992, at 186, 191.

181. E. FULLER TORREY, *SURVIVING SCHIZOPHRENIA: A MANUAL FOR FAMILIES, CONSUMERS, AND PROVIDERS* 387 (4th ed. 2001).

182. See NEUSTADT, *supra* note 175, at 4, 50–90 (defining these qualities).

183. RICHARD M. NIXON, *SIX CRISES* 174 (Touchstone 1990) (1962) (“A considerable segment of the press, including a cross section of political persuasion, called on the President to resign. Even the *New York Post*, the most anti-Nixon of all newspapers, said editorially: ‘The issue is whether the U. S. is to have Richard Nixon as President or no President. We choose Nixon.’”).

184. Andrew Rosenthal, *Dukakis Releases Medical Details To Stop Rumors on Mental Health*, *N.Y. TIMES*, Aug. 4, 1988, at A1.

dropped sharply in the polls since many voters were unwilling to entrust the Presidency to a candidate who might be psychologically unsound.¹⁸⁵

Even if the Twenty-Fifth Amendment had been ratified prior to the Pierce and Coolidge eras, it is highly unlikely that either Sections 3 or 4 of the Amendment would have been invoked in the case of either President. Clinical depression is often difficult to diagnose and some of its symptoms might well suggest a *physiological* rather than *psychological* illness. For example, sufferers often experience pains of various kinds and complain of physical discomfort. It is unlikely that either Pierce or Coolidge would have recognized the existence of a psychological disorder. Close associates of the two men might have suspected presidential impairment of some sort—Coolidge's certainly did—but would not likely have gone public with their suspicions since, outwardly at least, the President seemed to be well and capable of functioning. After all, reporters in each instance had commented on the President's passivity, weakness, or incompetence but they did not suspect psychological illness and never suggested that it may have existed.

Whether Pierce's physician would have diagnosed depression in his case rather than a simple continuation of previous poor performance cannot now be known. If, however, the physicians of either Pierce or Coolidge had *privately* advised key officials (e.g., those next in the line of succession) that the Chief Executive in question was suffering from a severe depressive episode and, therefore, was disabled, it would have been very difficult for those officials to go public with such a diagnosis because the illness was not well understood and it would have been very difficult to demonstrate its existence. If the Cabinet of either President had been approached about the diagnosis, its likely reactions would have been confusion and uncertainty. Rather than taking steps to invoke Section 4 of the Twenty-Fifth Amendment, it might well have rebuked high-ranking officials for disloyalty to the President or for excessive ambition. The political careers of these officials might have come to an end, particularly if the President was made aware of their perceived treachery.

Even at the present time, it is frequently difficult to diagnose clinical depression and to differentiate this disorder from other types of depressive illness. Trained clinicians regularly fail to recognize depressive syndromes. Moreover, deeply bereaved persons are often unwilling to discuss their grief and resent any suggestions that they are ill or suffering from a psychological disorder. As Fran Schumer writes, "Grief, after all, is noble—emblematic of the deep love between parents and children, spouses and even friends. Our sorrows, the poets tell us, make us human."¹⁸⁶ Therefore, the bereaved may well—and may easily—conceal their true feelings or even their symptoms and may put on a deceptively happy face. Larry E. Beutler and Mary L. Malik point out that "[a]s few as 10% of

185. Interview with Michael S. Dukakis, 1988 Democratic Presidential Candidate, in Bos., Mass. (Aug. 31, 1998).

186. Fran Schumer, *After a Death, The Pain that Doesn't Go Away*, N.Y. TIMES, Sept. 29, 2009, at D1.

syndromally depressed patients may be detected by primary care providers, and as few as 30% of such patients are detected by psychiatrists, even after they are systematically trained to recognize it.”¹⁸⁷

The problem of diagnosis is further compounded by the fact that “new” psychiatric conditions occasionally appear and take their place in the psychiatric firmament. As an example, “prolonged grief disorder” is currently being studied by the American Psychiatric Association and may be added to its handbook for diagnosing mental disorders, *Diagnostic and Statistical Manual V*,¹⁸⁸ now scheduled to be published in 2013. If declared a mental illness, prolonged grief disorder will differ somewhat from clinical depression in its etiology, symptoms, and effects but the differences between the two conditions will not be easy for laymen to understand. Even among mental health practitioners, serious disagreements will almost certainly occur. When determining presidential disability, such disagreement among “the experts” would be likely to immobilize rather than expedite the process.

In this respect, it may be useful to recall that in addition to Franklin Pierce and Calvin Coolidge, still another President suffered the loss of a child during his presidency. In February 1862, Abraham Lincoln saw his beloved son, eleven-year old Willie, die of typhoid fever. The boy’s brief illness had been a time of agony for the President, and the ensuing death plunged him into deep depression. This was the second child that Lincoln had lost; in 1850, his son Eddie had died and he had taken the loss badly. Willie’s death, coming in the midst of the Civil War, simply overwhelmed him with grief. When he told his secretary that young Willie had died, Lincoln was choked with emotion and burst into tears, sobbing that his son was “gone—actually gone!” To a visitor, Lincoln lamented, “[m]y poor boy. He was too good for this earth . . . but then we loved him so.”¹⁸⁹ “It is hard, hard to have him die,” he said as he “buried his head in his hands . . . and his tall frame was convulsed with emotion.”¹⁹⁰

This was no temporary sadness; Lincoln’s despondency was persistent and enduring. On many occasions, he referred to Willie’s death, saying, “This is the hardest trial of my life.”¹⁹¹ One observer remarked that “I never saw a man so bowed down with grief.”¹⁹² Speaking to an associate, Lincoln confided “That blow overwhelmed me; it showed me my weakness

187. Larry E. Beutler & Mary L. Malik, *Diagnosis and Treatment Guidelines: The Example of Depression*, in *RETHINKING THE DSM: A PSYCHOLOGICAL PERSPECTIVE* 251, 255 (Larry E. Beutler & Mary L. Malik eds., 2002) (internal citations omitted).

188. Holly G. Prigerson et al., *Prolonged Grief Disorder: Psychometric Validation of Criteria Proposed for DSM-V and ICD-11*, 6 *PLoS MED.* 1, 9 (2009); see also Todd Neale, *Prolonged Grief Disorder Validated for Diagnosis*, *MEDPAGE TODAY*, Aug. 6, 2009, available at <http://www.medpagetoday.com/Psychiatry/GeneralPsychiatry/15427>.

189. WHITE, *supra* note 46, at 474–77.

190. JOSHUA WOLF SHENK, *LINCOLN’S MELANCHOLY: HOW DEPRESSION CHALLENGED A PRESIDENT AND FUELED HIS GREATNESS* 178 (2005) (quoting President Lincoln and Elizabeth Keckley, dressmaker to the First Lady).

191. MICHAEL BURLINGAME, *THE INNER WORLD OF ABRAHAM LINCOLN* 103 (1994).

192. *Id.* (quoting Keckley).

as I had never felt it before.”¹⁹³ Long after the boy died, the President would occasionally begin to weep. At the war’s end, he told his wife, “We must both be more cheerful in the future; between the war and the loss of our darling Willie, we have been very miserable.”¹⁹⁴

The First Lady had indeed been deeply distressed by her young son’s death. Immediately after the event, she had taken to her bed and remained there for several weeks, although largely unable to sleep. Never again did she enter the room where the boy had succumbed to his illness or the Green Room at the White House where his body had reposed before burial. For many months, she remained in deep mourning and even was regarded as hovering on the brink of a nervous breakdown. Because she was so distraught, she was unable to provide her husband with much encouragement or support.¹⁹⁵ Both the President and First Lady were emotionally stricken and emotionally isolated for a lengthy period.

Like Pierce, Lincoln had been subject to bouts of depression in his earlier life. In fact, several of his biographers write that he suffered on a long-term basis from a depressive melancholy, a condition that is “an aspect of temperament, perhaps genetically based.” The condition was observed by many of his associates, including his law partner who once remarked that “his melancholy dript from him as he walked.”¹⁹⁶ As President, Lincoln showed the same somber and downcast demeanor, but after February 1862, it was intensified as he mourned for his son.

Some commentators suggest that one source of strength for Lincoln throughout this ordeal was his faith in God. Arthur Schlesinger, Jr. maintains that “[o]f all our American presidents, Lincoln had the most acute religious insight. Though not enrolled in any denomination, he brooded over the infinite mystery of the Almighty.”¹⁹⁷ The bond between Lincoln and the Almighty fortified his resolve and gave him confidence that he could continue to take on the great challenges of his office. In a very real sense, he saw himself “as an instrument of God’s will.”¹⁹⁸ The death of his young son was always with him but his sense of God-given responsibility remained with him as well.

Despite suffering the same terrible loss that had afflicted both Pierce and Coolidge, Lincoln’s overall performance as President of the United States was outstanding, and he is now ranked as being among the greatest of all Presidents. Today’s scholars are overwhelmingly positive about him in their judgments. One, for example, writes that Lincoln’s “great accomplishment was to energize and mobilize the nation by affirming its better angels, by showing the nation at its best.”¹⁹⁹ Another suggests that

193. DORIS KEARNS GOODWIN, *TEAM OF RIVALS: THE POLITICAL GENIUS OF ABRAHAM LINCOLN* 422–23 (2005).

194. BURLINGAME, *supra* note 191, at 104.

195. CARWARDINE, *supra* note 47, at 222.

196. GOODWIN, *supra* note 193, at 102–03.

197. ARTHUR M. SCHLESINGER, JR., *WAR AND THE AMERICAN PRESIDENCY* 164 (2005).

198. MCGOVERN, *supra* note 123, at 132.

199. PALUDAN, *supra* note 123, at 319.

Lincoln was “neither a revolutionary nor a dictator, but a constitutionalist who used the executive power to preserve and extend the liberty of the American Founding.”²⁰⁰ Still another explained that Lincoln’s greatness sprang from the fact that he “insisted that the Union was, and should remain, unbroken.”²⁰¹ Perhaps the most perceptive comment of all about Lincoln is that he was a figure “in whom intense suffering coexisted with great achievement,” showing that “illness can coexist with marvelous well-being.”²⁰² The Ridings-McIver Survey, so harsh to Pierce and Coolidge, places Lincoln 1st among the thirty-nine Presidents evaluated.²⁰³

One can easily imagine how difficult it would have been for both physicians and public officials to examine the Pierce, Coolidge, and Lincoln experiences *in private* and then try to decide in which cases, if any, Section 4 of the Twenty-Fifth Amendment should be invoked. Depression of some sort seems to have been present in all three men. Section 4 might well have been invoked in Coolidge’s case because his political behavior seems *clearly* to have changed for the worse in response to his young son’s death. Invocation in Pierce’s case *might* have been justified, but the underlying cause of his poor performance in the White House may well have been incompetence and ineptitude rather than depressive illness. Invocation of Section 4 in Lincoln’s case would have been wholly unjustified and extraordinarily unwise; Lincoln led brilliantly. Despite his grief and depression, he emerged as one of the most effective leaders in our history. It would have been foolhardy to cut Lincoln’s term short and thrust Vice President Hannibal Hamlin onto the nation in 1862. Yet diagnostic imprecision and erroneous prognoses might well have produced this tragic outcome. They might well do so even today.

Diagnostic difficulties extend far beyond interpreting various types of *depressive* illness. The same difficulty exists, for example, in differentiating *schizoaffective disorders* not only from each other but also from other psychological disturbances. Psychiatrist Michael Green comments that “one of the hardest aspects of making a diagnosis of schizophrenia is making sure it’s not something else.”²⁰⁴ He explains that “schizophrenia can look like (1) mania in its active phase, (2) depression with psychotic features, (3) certain forms of drug abuse, (4) extreme obsessive compulsive disorder, and (5) posttraumatic stress disorder, just to name a few.”²⁰⁵ Donald W. Goodwin and his colleague, Samuel B. Guze, agree that the process for differentiating mental illnesses is highly complex, writing that “such labels as schizophrenia . . . and nonremitting schizophrenia are used to refer to the poor-prognosis cases, whereas schizopreniform, acute schizophrenia, reactive schizophrenia,

200. HERMAN BELZ, ABRAHAM LINCOLN, CONSTITUTIONALISM, AND EQUAL RIGHTS IN THE CIVIL RIGHTS ERA 43 (1998).

201. MILLER, *supra* note 123, at 456.

202. SHENK, *supra* note 190, at 165–66.

203. *Presidential Poll*, *supra* note 129, at 376.

204. MICHAEL FOSTER GREEN, SCHIZOPHRENIA REVEALED: FROM NEURONS TO SOCIAL INTERACTIONS 20 (2001).

205. *Id.*

schizoaffective, and remitting schizophrenia are used for the good-prognosis cases.”²⁰⁶ Significantly, these various illnesses affect patients to varying degrees and in quite different ways.

Schizophrenia (a poor-prognosis case) is a serious mental illness that persists for at least half a year and is characterized by *marked* social and occupational impairment. It is one of the leading causes of disability throughout the world. However, schizophreniform disorder (a good-prognosis case) is a milder illness characterized by schizophrenia-type symptoms of shorter duration. It does not necessarily entail *any* decline in social and occupational functioning.²⁰⁷ This is an important distinction, especially since the level of impairment is a key consideration when invocations of the Twenty-Fifth Amendment are being considered. Whether diagnosticians would always be able to differentiate accurately between these conditions, even if they recognize that one of them surely exists, is doubtful.

Professor Rose McDermott writes, “Coping with the effects of mental illness in a leader can prove extremely challenging, especially as it is often insidious in onset and intermittent or cyclical in its manifestation.”²⁰⁸ More specifically, the signs of such illness may be affected by such factors as season of the year, typically worse in the fall and winter and better in the spring, and even by the time of day at which a person is observed. Persons suffering a major depression, for example, are often subject to sharp mood fluctuations, generally being “down” in the early morning after awakening, better in mid-morning, “down” again in the early afternoon, and better again in late afternoon.²⁰⁹ Because of these variations, diagnosis can be quite difficult. When the patient is President of the United States, it would be even more difficult, since access to the President would be limited and his or her status is so high.

It is also worth remembering that the line between mental illness and normalcy tends to be indefinite. Many mental health practitioners insist that mental health should be viewed not as an absolute but as a continuum. Manfred Kets de Vries and Danny Miller, for example, point out that “[w]e all have certain mildly dysfunctional neurotic traits. These might involve shyness, depression, irrational fears, suspicion and so on. Everyone shows some of these characteristics sometimes. Indeed, ‘normality’ entails many quite different neurotic traits.”²¹⁰ This is not problematic since most people with mild or relatively mild neurotic traits function quite well in their day-to-day activities. However, *gradations* of mental health or illness present significant problems for psychiatrists under the most favorable of diagnostic

206. DONALD W. GOODWIN & SAMUEL B. GUZE, *PSYCHIATRIC DIAGNOSIS* 42 (5th ed. 1996) (internal citations omitted).

207. See DANIEL E. HARMON, *SCHIZOPHRENIA: LOSING TOUCH WITH REALITY* 40 (2000).

208. MCDERMOTT, *supra* note 84, at 25.

209. Interview with Aubrey Immanuel, Associate Professor, Dep’t of Psychology, Saint John’s Univ., in Berlin, Ger. (July 16, 2002).

210. MANFRED F.R. KETS DE VRIES & DANNY MILLER, *THE NEUROTIC ORGANIZATION: DIAGNOSING AND CHANGING COUNTERPRODUCTIVE STYLES OF MANAGEMENT* 19 (1984).

conditions. Even given a diagnosis of depression, schizophrenia, or paranoia, for example, how depressed, schizophrenic, or paranoid must a President be before Section 4 of the Twenty-Fifth Amendment should be invoked? How high the level of impairment? Would the President's physicians (or the medical community in general) be able to reach consensus on these questions, or would its judgments likely be divided? Would political actors put their trust in the judgments of physicians or the medical community, particularly if, as seems likely, disagreements existed? Would it be prudent for them to do so?

Further, the mental health community differs sharply over the diagnostic criteria that have been established by the American Psychiatric Association for diagnosing the symptoms of mental illness. Many consider the APA's *Diagnostic and Statistical Manual of Mental Disorders (DSM)* as notably imperfect.²¹¹ This is the guidebook that heavily determines where "society draws the line between normal and not normal, between eccentricity and illness, between self-indulgence and self-destruction and, by extension, when and how patients should be treated."²¹² Dr. Michael First, one of the developers of the *Diagnostic and Statistical Manual of Mental Disorders IV (DSM-IV)*, argues:

'Anything you put in that book, any little change you make, has huge implications not only for psychiatry but for pharmaceutical marketing, research, for the legal system, for who's considered to be normal or not, for who's considered disabled

And it has huge implications for stigma . . . because the more disorders you put in, the more people get labels, and the higher the risk that some get inappropriate treatment.'²¹³

Herb Kutchins and Stuart A. Kirk point out that "[a]t the center of many controversies is the faulty core of the DSM enterprise, the definition of mental disorder."²¹⁴ They later note "that mental disorders constitute a small part of what is described in the current *Diagnostic and Statistical Manual of Mental Disorders*. Clearly . . . psychiatrists and other mental health professionals benefit from DSM's unrelenting expansion of domain."²¹⁵ They also warn that the process by which diagnostic categories are constructed has "become much more . . . *political*," illustrating this latter point by writing that "proposals are made, alternatives are suggested, and compromises are hammered out and that final decisions are made by committee vote."²¹⁶ The process tends to be more "political" than "medical" and "newly minted proposals for [new categories of mental

211. See AM. PSYCHIATRIC ASS'N, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: DSM-IV* (1994).

212. Benedict Carey, *Revising Book on Disorders of the Mind*, N.Y. TIMES, Feb. 10, 2010, at A1.

213. *Id.*

214. HERB KUTCHINS & STUART A. KIRK, *MAKING US CRAZY: DSM—THE PSYCHIATRIC BIBLE AND THE CREATION OF MENTAL DISORDERS* 240 (1997).

215. *Id.* at 264.

216. *Id.* at 240 (emphasis added).

disorder] can rapidly be pressed into *political* service.”²¹⁷ The mere possibility that the identification and diagnosis of mental disorders could be affected by *political* factors is highly disturbing, particularly within the parameters of determining presidential disability.

Dr. Lawrence C. Mohr, White House Physician from 1987 to 1993, has suggested that:

The development of mental illness in any world leader would create a difficult and challenging situation. It is important to understand that the term mental illness encompasses a wide variety of medical conditions from minor and transient, to serious and potentially harmful. The presence of a major psychotic disorder in which a president is clearly out of touch with reality would certainly be a reason to initiate the process of presidential disability. On the other hand, minor mental illnesses such as mild situational depression or anxiety, can have very subtle manifestations and may or may not impair the ability of a president to perform his or her constitutional duties. In such situations, the extent of impairment should be assessed on the basis of adverse effects on alertness, cognitive function, judgment, appropriate behavior, the ability to choose among options and the ability to communicate clearly. If any of these are impaired, it is my opinion that the powers of the president should be transferred to the vice president until the impairment resolves.²¹⁸

Dr. Mohr’s comments reinforce the point that psychological illness is extraordinarily complex and affects people in profoundly different ways. This means that the process of determining presidential disability in such instances will be very difficult since it will entail the measurement of the extent and effects of illness. The Pierce, Coolidge, and Lincoln presidencies help illuminate this same point. Although these occurred many years ago, contemporary psychiatric techniques have not succeeded in eliminating the problems highlighted here. They may never be able to do so.

CONCLUSION

Having discussed several issues related to the Twenty-Fifth Amendment, I would like to offer three recommendations that might be helpful in the area of presidential disability and succession.

First, a suggestion that I have made before is that a mental health specialist, whatever his or her formal assigned title (e.g., stress management consultant, relaxation specialist), should be added as a regular member of the White House Medical Unit. There are some eighteen medical employees in that office.²¹⁹ Surely a mental health specialist could be

217. *Id.* at 17 (emphasis added).

218. Telephone Interview with Dr. Lawrence C. Mohr, former White House Physician (1987–1993) (Mar. 17, 2010).

219. E. Connie Mariano, *In Sickness and in Health: Medical Care for the President of the United States*, in *MANAGING CRISIS: PRESIDENTIAL DISABILITY AND THE 25TH AMENDMENT 90–91* (Robert E. Gilbert ed., 2000) [hereinafter *MANAGING CRISIS*].

added to that number without fanfare and without exciting too much, if any, public notice or concern. It is important to note that the personnel associated with the White House Medical Unit are available to assist all White House employees who become ill at work. Therefore, the mental health specialist would not be publicly attached to the President in any particular way but rather with the health unit itself. Operating inside the White House, a mental health specialist would be able to see the President often and at close range and might be able to detect signs of psychological dysfunction or behavior modification. The specialist might well assist the President in developing coping mechanisms for stress and could also assist in treating substance abuse, whether drugs or alcohol, by the President or members of his family and staff. Such arrangements would become routine and would make a consultation with a mental health specialist easier for the President and unlikely to excite public furor.

Second, as a former member of the Working Group on Presidential Disability, I endorse strongly its recommendation that in the transition period before each new President is inaugurated, the President-elect, the Vice President-elect, their key aides, and even members of their families should develop a detailed, written contingency plan that specifies conditions under which a transfer of power should be considered and that this plan be ready to go into effect at the time of the inauguration. The plan should delineate

alterations of function, including cognitive, judgmental, behavioral, and communicative capacities, which should cause consideration of a transfer of power. It must define precise lines of authority and communication and specify exact procedures for its execution. It should also include detailed instructions for specific procedures and lines of communication to be followed for implementing the provisions of Sections 3 and 4, respectively.²²⁰

The President's prior approval of the plan would allow personal physicians to release medical information without fear of violating doctor-patient confidentiality.²²¹ It would also signify explicit presidential approval for the transition being instituted, thereby lessening public uneasiness.

The George H. W. Bush Administration conducted a meeting to evaluate the procedures involved in any invocation of the Twenty-Fifth Amendment in April 1989, three months *after* Bush's Inauguration.²²² It would have been preferable, however, for such contingency planning to have begun and been completed *prior to* the President's inauguration. Likewise, had the Reagan transition team confronted this issue prior to January 20, 1981, Section 3 of the Amendment would almost certainly have been invoked after the near fatal assassination attempt against the President that occurred two months later. This would have eliminated, or at least reduced greatly,

220. DISABILITY IN U.S. PRESIDENTS: REPORT, RECOMMENDATIONS, AND COMMENTARIES BY THE WORKING GROUP 13 (1997).

221. *See id.*

222. John D. Feerick, *The Twenty-Fifth Amendment: Its Origins and History*, in *MANAGING CRISIS* *supra* note 219, at 1, 19.

the confusion and disorder that ensued after the shooting, particularly when Secretary of State Alexander Haig announced—quite incorrectly—on national television that he was “in control here at the White House.”²²³ Reagan himself later complained about Haig’s behavior, writing in his autobiography that “[o]n the day I was shot, George Bush was out of town and Haig immediately came to the White House and claimed he was in charge of the country.”²²⁴ If there had been contingency planning prior to the Reagan inauguration, however, the disorder would have been minimized since the Vice President almost certainly would have assumed the powers (but not the office) of the presidency and would have become the acknowledged Acting President.

In contemporary times, conditions relative to terrorist attacks must also be included in contingency planning. If, for example, the President is missing or unaccounted for after a terrorist attack for a specified period of time, the plan approved should indicate that the Vice President must move to take the reins of power as Acting President *and* that the President has specifically instructed the Vice President to do so. If the President and Vice President are both missing or unaccounted for after such an attack for a specified period of time, the official next in the line of succession should move into the breach as Acting President, exactly as the President, Vice President, and key aides had agreed beforehand. The clear existence of prior consent should greatly facilitate the process of succession during such a traumatic event.

Third, I would recommend rejection of those proposals made periodically that Congress should establish, by statute or by concurrent resolution, a Standing Medical Panel composed of physicians who would examine the President annually and then issue a report containing their medical findings to the Vice President, Cabinet, and public. The several proposals for such panels that have been made differ in terms of their details.²²⁵ Rather than direct my present comments to any one of them in particular, I prefer to offer several general observations that might well be applicable to all such plans since the problems presented here with regard psychological illnesses seem relevant to all.

The Pierce, Coolidge, and Lincoln case studies presented earlier should make clear that there are subtle but important variations among psychiatric illnesses. Some illnesses tend to be debilitating; others are not. Some

223. Stuart W. Taylor, Jr., *Disabling of Reagan Provokes a Debate over Nuclear Authority in Such Cases*, N.Y. TIMES, Apr. 4, 1981, at 9.

224. RONALD REAGAN, AN AMERICAN LIFE 271 (1990).

225. See, e.g., Herbert L. Abrams, *Can the Twenty-Fifth Amendment Deal with a Disabled President? Preventing Future White House Cover Ups*, 29 PRESIDENTIAL STUD. Q. 115, 118–19 (1999) (recommending a medical advisory committee whose twin purposes would consist of regular evaluations of the President’s health, with those findings disseminated to the Vice President and the public, and, if a President’s ability was called into question, special assessments of condition); Bert Park, *Resuscitating the 25th Amendment: A Second Opinion Regarding Presidential Disability*, 16 POL. PSYCHOL. 821, 823 (1995) (proposing and defending a Presidential Impairment Panel, a medical fact-finding group that would be staffed by physicians from both political parties, monitor the President’s health, and report to the Vice President in a purely advisory capacity).

persist for lengthy periods of time; others do not. As has been shown, it can be extraordinarily difficult for mental health professionals to diagnose accurately *specific* mental illnesses since their symptoms can be so similar while their effects are so dramatically different. These variations help determine whether the patient will be able to carry out his or her responsibilities adequately or will lapse into massive disengagement. Given the great difficulty in diagnosing specific psychological illnesses and the varying impairment levels that attach to each, it would be unwise to establish any system in which physicians would “examine” the psychological health of the President on a periodic basis and then make their findings public.

If the so-called “experts” on the Medical Panel were unanimous in a negative diagnosis, the President would almost certainly respond by presenting contrary evaluations by a different group of eminent “experts.” The Vice President and Cabinet would then have two differing medical judgments from which to choose, and their tendency would likely be to support the panel favoring the President. They might well be seen as overly ambitious or disloyal if they did not. Even though likely to “win” in such a situation, the President would be badly damaged in the interchange because he or she would be seen by the public and the political elite as being medically compromised.

If the panel of “experts” disagreed with each other with regard to their diagnoses, the political system would likely be paralyzed since political decision-makers would be justifiably confused and reluctant to act. Moreover, the President would once again be grievously compromised. In fact, the President would be compromised even if a majority of the experts found him or her competent to exercise the powers and duties of office while a minority, perhaps even one member, disagreed. In short, a divided vote even in favor of the President would be politically debilitating. It would be used against the President in various venues by political enemies, political pundits, talk show hosts, comedians, etc.—despite the fact that the negative “judge” or “judges” on the panel might have been wholly incorrect in assessing his or her health status.

Let us not forget that physicians often disagree with each other in their diagnoses and prognoses. In civil trials, this leaves jurors in great confusion and also allows lawyers to latch on to whatever psychiatric theories they choose.²²⁶ Let us also not forget that physicians—even presidential physicians—are at least occasionally *incorrect* when they offer diagnoses and prognoses. In the mid-1950s, for example, after President Eisenhower’s massive heart attack, two of his physicians, both eminent cardiologists, recommended privately to Eisenhower that he not seek another term as President. One of them went so far as to warn Eisenhower that his heart had developed a dangerous aneurysm of the left ventricle, which he thought would produce serious complications, such as congestive

226. See, e.g., Robert E. Gilbert, *Coping with Presidential Disability: The Proposal for a Standing Medical Commission*, 22 POL. & LIFE SCI. 1, 7–8 (2003).

heart failure, stroke, and sudden death.²²⁷ The third member of Eisenhower's medical team, a general practitioner rather than a cardiologist, recommended privately to Eisenhower that he should indeed run, but he was the only one of the Eisenhower medical team to do so.

Despite the fact that the weight of medical opinion clearly stood against another candidacy, Eisenhower ignored his cardiologists' advice and threw his hat into the ring. As we all know, he was re-elected, served out the four years of his second term and lived eight *additional* years, dying in March 1969 at the age of seventy-eight. Interestingly, he managed to outlive both the presidential and vice presidential candidates on the Democratic Party ticket that had opposed him in the 1956 re-election battle. If the three medical "experts" had sat on a Medical Panel and had gone public in early 1956 with their various opinions concerning the President's cardiac status, would the national interest have been served? Two of these "experts" clearly were wrong in their judgments; should Eisenhower have deferred to them by stepping aside? If he had done so, or if he had been defeated at the polls due to voters' fears of his likely demise, the presidency would have passed on to other hands, specifically because two eminent cardiologists were incorrect in their public prognoses concerning a sitting President's health.

Psychiatry, perhaps, is even more daunting a challenge than cardiology. This fact has not changed with time. Therefore, it would seem extraordinarily unwise to thrust the vicissitudes of psychiatric diagnosis and the various divisions in the psychiatric community onto the national public stage. Yet this is precisely what recommendations for "Standing Medical Panels" would do.²²⁸ If such panels—as well as the Twenty-Fifth Amendment—had existed at the time of their presidencies and if psychiatrists had *publicly* diagnosed their respective ailments, Pierce and Coolidge might well have been relieved of their powers and duties under Section 4 of the Amendment. Perhaps this would have been appropriate in each case. But Lincoln might have been relieved of *his* powers and duties under these circumstances as well—even though we now know that he survived his depression and continued to lead the country with skill and dedication. This would have been highly unfair to Lincoln and extraordinarily tragic for the country.

All of this means that medical evaluations must be handled sensitively rather than publicly; that physicians must play an important advisory role in determining presidential disability but must do so in a way that does not deprive political actors of the opportunity to exercise their own independent judgment on such issues, rejecting negative or uncertain medical advice if

227. THOMAS W. MATTINGLY, DISEASES OF THE CARDIOVASCULAR SYSTEM: PROBLEMS EXPERIENCED IN THE DIAGNOSIS AND MANAGEMENT OF LEFT VENTRICULAR ANEURYSM, A COMPLICATION OF THE 1955 MYOCARDIAL INFARCTION 15 (1986–1987) (on file with the Dwight D. Eisenhower Library, Box 3, Cardiovascular System, part 8).

228. For a further discussion, see Robert E. Gilbert, *Psychological Illness in Presidents: A Medical Advisory Commission and Disability Determinations*, 27 POL. PSYCHOL. 55, 56–66 (2006).

they see fit to do so. It also means that the role played by the medical advisors involved in the disability process must not damage either the President or the presidency itself. Since presidential power consists in large measure of the ability to persuade, processes that compromise inappropriately a President's persuasive abilities must be avoided. After all, it would be difficult for a President to persuade when he or she is seen as standing on the threshold of eternity or on the precipice of a serious mental breakdown. Finally, with great respect to the medical community, it means that physicians must be seen as human beings, not as infallible gods. Since they are not gods, they should not speak *ex cathedra* on any "Standing Medical Panels."

The Twenty-Fifth Amendment is an important and valuable addition to the Constitution. This is not to say, however, that it can resolve all instances of presidential disability. Particularly perhaps in the case of psychological illness, difficulties in diagnosis pose formidable problems. The illnesses are so many, the symptoms so similar, the effects so different, the treatments so varied, that psychological dysfunction will likely challenge the political process for a long time to come, if not for all time. No addition of constitutional provisions, no matter how detailed or brilliantly crafted, is likely to remedy the situation since no conceivable language could cover all possible psychiatric scenarios. The law cannot codify that which medicine has yet to definitively resolve. Hence, the problem lies not with the law but with the medicine and the inherent difficulties associated with a field whose subjects—from pauper to President—are ever-changing, often complicated, and rather unpredictable human beings.