6-2009

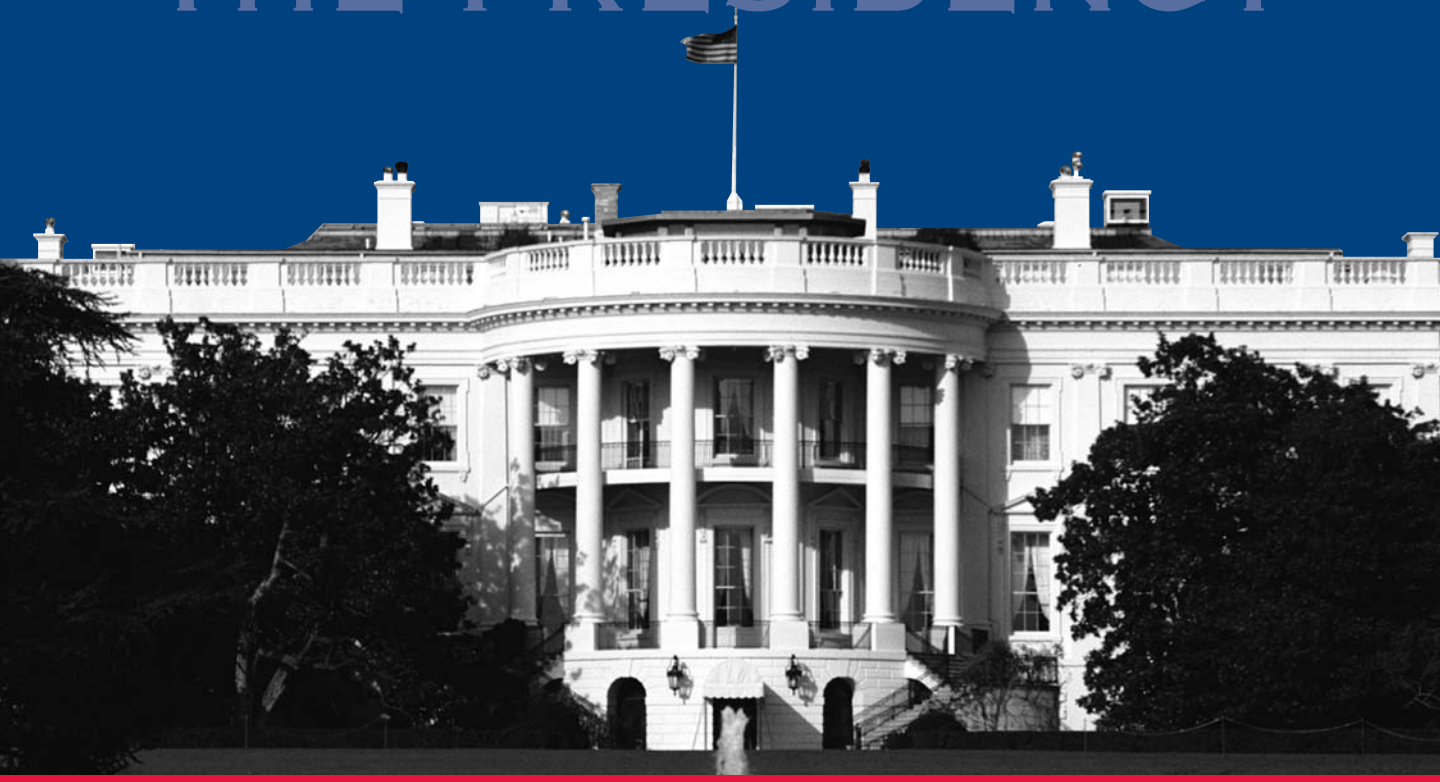
Preserving our Institutions: The Continuity of the Presidency (Second Report)

Continuity of Government Commission

The Brookings Institution

American Enterprise Institute

THE PRESIDENCY



PRESERVING OUR INSTITUTIONS

THE SECOND REPORT OF THE CONTINUITY OF GOVERNMENT COMMISSION

PRESIDENTIAL SUCCESSION

Preserving Our Institutions

The Continuity of the Presidency

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JUNE 2009

Continuity *of* Government Commission

Table of Contents

Preface: The Continuity of Government

The Continuity of the Three Branches of Government. September 11th dispelled the United States' naive attitude towards security of its homeland. The three airplanes that hit the World Trade Center towers and the Pentagon caused severe damage and a horrific loss of life. A fourth plane was downed in a field in Pennsylvania by brave passengers who stormed the cockpit. That fourth plane was headed toward Washington, likely towards the U.S. Capitol.

Al Qaeda targeted our top government leaders. A lesser-known fifth plane – probably headed for the White House – was likely prevented from its course by the arrest of Zacarias Moussaoui. Had this part of the plan been successfully executed, September 11th would have brought additional tragedy in loss of life and destruction of symbolic buildings. It would have hindered the ability of our government to respond to the attack. In short, Al Qaeda has shown interest in incapacitating the leadership of our government. And where Al Qaeda has failed in the past, such as in the 1993 World Trade Center bombing, it has returned to strike again.

The Commission. The Continuity of Government Commission is a private AEI-Brookings commission funded by the Carnegie, Hewlett, Packard, and MacArthur Foundations. It is comprised of members with experience in various branches of government and expertise in the daily functioning of our government. It was founded in the fall of 2002 to consider how each of our three branches of government might reconstitute themselves after a catastrophic attack on Washington, D.C. and to make recommendations for statutory and constitutional changes that would improve the continuity of our basic institutions. In June of 2003, the commission issued its first report on the Continuity of Congress.[1] In that report the commission unanimously recommended a constitutional amendment that would provide for filling mass vacancies or mass incapacitations in the U.S. House and Senate through temporary appointments until special elections could be held to fill the vacancies. Without such an amendment, an attack might cause Congress to fall below the quorum requirement for conducting business and potentially disable Congress for many months until the numerous vacancies could be filled. The report spawned much debate in Congress, including many hearings and the introduction of a variety of amendments to address this problem.

1 The Continuity of Government Commission. *The Congress: Preserving Our Institutions: The First Report of the Continuity of Government Commission*, May 2003

The Presidency. This is the second report of the Continuity of Government Commission. This report addresses our system of Presidential succession and how we would replace a president after a catastrophic terrorist attack to ensure the proper functioning of our government. Unlike the current provisions for congressional continuity which do not include any institutional protections in the case of an attack causing mass vacancies or mass incapacitations, there is a Presidential succession system in place. However, it is the finding of this commission that the current system would be inadequate in the face of a catastrophic attack that would kill or incapacitate multiple individuals in the line of succession. The current system must be corrected to ensure continuity in the executive branch.

Commissioner Biographies

Honorary Co-Chairman

President Jimmy Carter
President Gerald R. Ford*

Co-Chairmen°

Alan K. Simpson is a visiting lecturer at the University of Wyoming and a member of the Commission on Presidential Debates. Simpson served in the United States Senate from 1978 to 1997, acting as Minority Whip for ten of those years. He was an active force on the Judiciary Committee, Finance Committee, Environment and Public Works Committee, and the Special Committee on Aging. He also served as Chair of the Veteran Affairs Committee. Before his election to the U.S. Senate, Simpson was elected to the Wyoming House of Representatives in 1964 where he served as Majority Whip and later Majority Floor Leader. In 1977 he became Speaker of the Wyoming House of Representatives. Simpson served as Director of the Institute of Politics at Harvard University's John F. Kennedy School of Government from 1998 to 2000 and was a member of the Iraq Study Group in 2006.

*Original honorary Co-chair of the commission, deceased December 2006.

David Pryor is the founding Dean of the Clinton School of Public Service at the University of Arkansas and Managing Director of Herrington, Inc. in Little Rock. In June 2006, Pryor was appointed to the Board of the Corporation for Public Broadcasting for a six year term. Pryor served in the United States House of Representatives from 1966 to 1973 and in the United States Senate from 1975 to 1997. He chaired the Special Committee on Aging and served as United States Senate Democratic Conference Secretary from 1989 to 1995. Before his election to the U.S. House of Representatives, Pryor was a member of the Arkansas House of Representatives from 1960 to 1966. He also served as Governor of Arkansas from 1975 to 1979, was a fellow at the Institute of Politics at Harvard University's John F. Kennedy School of Government, and later became Director of the Institute, serving for 2 years. Pryor served as Interim Chairman of the Arkansas Democratic Party and was recently named by Governor Mike Beebe to the 10-member University of Arkansas Board of Trustees.*

° Lloyd Cutler was the original Co-chair and Co-founder of the commission, deceased May 2005.

Commission Members

Philip Chase Bobbitt is the Herbert Wechsler Professor of Jurisprudence and Director of the Center for National Security at Columbia Law School and senior fellow at the Robert S. Strauss Center for International Security and Law at the University of Texas. He is a fellow at the American Academy of Arts and Sciences, and serves on the Task Force on National Security and Law at the Hoover Institution, at Stanford University. Bobbitt served as Associate Counsel to the President from 1980 to 1981, Counselor on International Law at the State Department from 1990 to 1993, Legal Counsel to the Senate Iran-Contra Committee in 1987, and Director for Intelligence, Senior Director for Critical Infrastructure, and Senior Director for Strategic Planning at the National Security Council. His books include *Tragic Choices* (W.W. Norton and Company, 1978) co-authored with Guido Calabresi, *Constitutional Fate* (Oxford, 1982), *Democracy and Deterrence* (St Martin's, 1987), *U.S. Nuclear Strategy* (Macmillan's, 1989) with Freedman and Treverton, *Constitutional Interpretation* (Blackwell's, 1991), *The Shield of Achilles: War, Peace and the Course of History* (Knopf, 2002), and *Terror and Consent: The Wars for the Twenty-First Century* (Knopf, 2008).

Kenneth M. Duberstein is Chairman and CEO of The Duberstein Group, an independent strategic planning and consulting company located in Washington, D.C. Duberstein served as Chief of Staff to President Ronald Reagan from 1988 to 1989, and as Deputy Chief of Staff in 1987. From 1981 to 1983 he served as both an Assistant and the Deputy Assistant to the President for Legislative Affairs. Prior to joining the administration, he was Vice President and Director of Business-Government Relations of the Committee for Economic Development. His earlier government service included Deputy Undersecretary of Labor during the Ford Administration and Director of Congressional and Intergovernmental Affairs at the U.S. General Services Administration. He began his public service on Capitol Hill as an assistant to Senator Jacob K. Javits. President Reagan awarded Duberstein the President's Citizens Medal in January of 1989.

Thomas Foley, former Speaker of the House, is a partner at Akin Gump Strauss Hauer & Feld LLP. Foley advises clients on matters of legal and corporate strategy. Foley is currently Chairman of the Trilateral Commission. Prior to rejoining the firm in 2001, he served as the 25th U.S. Ambassador to Japan. Before taking up his diplomatic post in November 1997, Foley served as the 49th Speaker of the United States House of Representatives. He was elected to represent the State of Washington's Fifth Congressional District 15 times, serving his constituents for 30 years from January 1965 to December 1994. Foley served as Majority Leader from 1987 until his election as Speaker on June 6, 1989. From 1981 to 1987 he served as Majority Whip. He also served as Chairman of both the House Democratic Caucus and the Democratic Study Group. Foley has served on a number of private and public boards of directors, including the Japan-America Society of Washington. He also served on the Board of Advisors for the Center for Strategic and International Studies and on the Board of Directors for the Center for National Policy.

He was a member of the board of governors of the East-West Center and is currently a member of the Council on Foreign Relations. Before his appointment as Ambassador, he served as Chairman of the President's Foreign Intelligence Advisory Board.

Charles Fried is the Beneficial Professor of Law at Harvard Law School, where he has taught since 1961. From 1985 to 1989 he was Solicitor General of the United States and from 1995 to 1999 he was an Associate Justice of the Supreme Judicial Court of Massachusetts. He has taught courses on appellate advocacy, commercial law, constitutional law, contracts, criminal law, federal courts, labor law, torts, legal philosophy, and medical ethics. His major works include *Saying What The Law Is: The Constitution in the Supreme Court* (Harvard University Press, 2004), *Modern Liberty and The Limits of Government* (W.W. Norton and Company, 2006), *Order and Law: Arguing the Reagan Revolution* (New York: Simon & Schuster, 1991, which has appeared in over a dozen collections), and *Contract as Promise: A Theory of Contractual Obligation* (Harvard University Press, 1981). He is a member of the National Academy of Sciences Institute of Medicine, the American Academy of Arts and Sciences, and the American Law Institute.

Martin Frost, former United States Representative from Texas from 1979 to 2005, is a partner at Polsinelli, Shalton, Flanigan, Suelthaus, PC. While serving in the U.S. House of Representatives, Frost was the Ranking Member of the House Committee on Rules and previously had been Chairman of the Democratic Caucus from 1999 to 2003, the third highest leadership post. During the 1996 and 1998 election cycles, he was Chair of the Democratic Congressional Campaign Committee. An innovative lawmaker with the ability to craft bipartisan legislation, Frost is co-author of the 1992 Industrial Base and Defense Conversion Act which enabled communities and individuals to respond to the downsizing of the defense industry. He also authored the National Amber Alert Law that helps find children victimized by predators. From 1990 to 1995, Frost chaired a special House Task Force established to help Eastern and Central European nations transition to democracy after the fall of the Berlin Wall. He has continued democracy-building efforts through work with the National Democratic Institute. He was also co-chair of the Bipartisan Working Group on Youth Violence and co-chair of a bipartisan working group on continuity of government. Frost was a fellow at the Institute of Politics at the John F. Kennedy School of Government at Harvard for the fall 2005 semester and was named a Public Policy Scholar at the Woodrow Wilson International Center for Scholars in January of 2006.

Newt Gingrich, former Speaker of the U.S. House of Representatives, is a senior fellow at AEI and was a distinguished visiting fellow at the Hoover Institution at Stanford University. Gingrich is a member of the Terrorism Task Force for the Council on Foreign Relations and the U.S. Commission on National Security, an advisory board member of the Foundation for the Defense of Democracies, and a member of the Defense Policy Board. Gingrich also served as co-chair, along with former Senate majority leader George Mitchell, of the Task Force on United Nations Reform created by Congress

in December 2004. He is also an editorial board member of the journal Biosecurity and Bioterrorism and a contributor to Fox News Channel. He writes a weekly newsletter for *Human Events* and is a regular contributor to the *Church Report*. Gingrich is the author of seventeen books, including *Drill Here, Drill Now, Pay Less: A Handbook for Slashing Gas Prices and Solving Our Energy Crisis* (Regnery, 2008), and the New York Times bestsellers *Real Change: From the World That Fails to the World That Works* (Regnery, 2008), *Winning the Future: A 21st Century Contract with America* (Regnery, 2005), and *Rediscovering God in America* (Thomas Nelson, 2006). Gingrich is Chairman of the Gingrich Group, founder of the Center for Health Transformation, and General Chairman of American Solutions for Winning the Future.

Jamie S. Gorelick is a partner at WilmerHale, an international law firm, where she chairs both the National Security Practice and the Public Policy and Strategy Practice. Gorelick was a member of the 9/11 Commission and has served on many other boards and commissions involving the national security of the country, including the Central Intelligence Agency's National Security Advisory Panel. From 1994 to 1997, she was deputy Attorney General of the United States, the second most senior position in the department, and before that she was General Counsel of the Department of Defense. From 1979 to 1980 Gorelick was Assistant to the Secretary and Counselor to the Deputy Secretary of Energy, and was Vice Chair of Fannie Mae from 1997 to 2003. A highly recognized attorney, she served as President of the District of Columbia Bar from 1992 to 1993. Gorelick is a board member of United Technologies and Schlumberger, the John D. and Catherine T. MacArthur Foundation, the Carnegie Endowment for International Peace, the Washington Legal Clinic for the Homeless and other non-profit organizations. She is a member of the Council on Foreign Relations and the American Law Institute.

James C. Ho is the Solicitor General of Texas. He previously served in all three branches of the federal government as well as in private practice. He was Chief Counsel to Senator John Cornyn, who appointed him Chief Counsel of the Subcommittee on the Constitution, Civil Rights, and Property Rights for the 108th Congress, and Chief Counsel of the Subcommittee on Immigration, Border Security and Citizenship for the 109th Congress. He served as Special Assistant to the Assistant Attorney General for Civil Rights, and then as an attorney-adviser in the Office of Legal Counsel at the Justice Department from 2001 to 2003. He was a law clerk for Judge Jerry E. Smith of the U.S. Court of Appeals for the Fifth Circuit from 1999 to 2000, and Justice Clarence Thomas of the U.S. Supreme Court during October Term 2005. He is a member of the Federal Judicial Evaluation Committee which advises Texas's U.S. Senators on judicial and U.S. Attorney appointments, and previously served on the U.S. delegation to the U.N. Committee on the Elimination of Racial Discrimination. He is also an adjunct professor of law at the University of Texas School of Law and a contributing editor of The Green Bag.

Fred Iklé is a Distinguished Scholar at the Center for Strategic and International Studies and currently engaged in studies about the impact of technology on national security and the prospects for democracy. He is a member of the Defense Policy Board, a governor of the Smith Richardson Foundation, a Director of the U.S. Committee for Human Rights in North Korea, and an advisory board member of the Center for Security Policy. In 1988, Iklé was Undersecretary of Defense for Policy during the first and second Reagan Administrations. In 1987, he co-chaired the bipartisan Commission on Integrated Long-Term Strategy, which published *Discriminate Deterrence* (1988). From 1977 to 1978, he was Chairman of the Republican National Committee's Advisory Council on International Security and, from 1979 to 1980, Coordinator of Governor Ronald Reagan's foreign policy advisers. From 1973 to 1977, he served Presidents Nixon and Ford as Director of the U.S. Arms Control and Disarmament Agency. Since 1988, he has been Chairman of CMC Energy Services. He served for nine years as Director of the National Endowment for Democracy, and from 1999 to 2000 served as commissioner on the National Commission on Terrorism. He was Director and Chairman of Telos Corporation and Director of the Advisory Board of Zurich Financial Services. From 1964 to 1967, Iklé was a professor of political science at the Massachusetts Institute of Technology.

Max Kampelman is currently serving as Counsel to the law firm of Fried Frank Harris Shriver & Jacobson LLP. He was appointed by President Carter, and then reappointed by President Reagan, to serve as Ambassador and Head of the U.S. Delegation to the Conference on Security and Cooperation in Europe (CSCE). Kampelman served as Senior Advisor to the U.S. Delegation to the United Nations, and from 1949 to 1955, he served as Legislative Counsel to Senator Hubert H. Humphrey. From 1985 to 1989, Kampelman was Ambassador and Head of the United States Delegation to the Negotiations of the Soviet Union on Nuclear and Space Arms in Geneva, before serving as Counselor of the Department of State from 1987 to 1989. He was Vice Chairman of the Board of Governors of the United Nations Association, and is now Honorary Chairman of the Jerusalem Foundation and Honorary Governor of the Hebrew University of Jerusalem. His books include, *Entering New Worlds: The Memoirs of a Private Man in Public Life* (HarperCollins, 1991) and *The Communist Party vs. The C.I.O.: A Study in Power Politics* (Praeger Press, 1957).

Nicholas deB. Katzenbach served first as Deputy U.S. Attorney General under President John F. Kennedy, then as U.S. Attorney General from 1964 to 1966 and then as Undersecretary of State under President Lyndon B. Johnson. Following his government service, Katzenbach served as Senior Vice President and General Counsel of IBM Corporation. He left IBM in 1986 to become a partner in Riker Danzig Scherer Highland & Perretti until 1994. Prior to his government work, Katzenbach served in the U.S. Air Force from 1941 to 1945. He practiced law in New Jersey and New York, and taught law first at Yale Law School and then at the University of Chicago Law School. He has published *The Political Foundations of International Law* (with Morton A. Kaplan, 1961), as well as many articles for professional

journals. He is active in the American Bar Association and other legal organizations.

Robert A. Katzmann is a United States Circuit Judge for the U.S. Court of Appeals for the Second Circuit. After clerking on the U.S. Court of Appeals for the First Circuit, he joined the Brookings Institution's Governmental Studies Program, where from 1981 to 1999, he was a research associate, senior fellow, visiting fellow, and Acting Program Director. Katzmann is a founder of the Governance Institute, a nonprofit organization concerned with exploring, explaining, and easing problems associated with both the separation and division of powers in the American federal system. He served as Walsh Professor of Government, Professor of Law, and Professor of Public Policy at Georgetown University, and has served as a Director of the American Judicature Society, Vice Chair of the Committee on Government Organization and Separation of Powers of the ABA Section on Administrative Law and Regulatory Practice, and a public member of the Administrative Conference of the United States. He has also been a consultant to the Federal Courts Study Committee. He served as co-chair of the FTC transition team, and as special counsel to Senator Moynihan on the confirmation of Justice Ruth Bader Ginsburg. His scholarly work has resulted in numerous books and articles, including *Courts and Congress* (1997).*

Lynn Martin is Chair of Deloitte & Touche's Council on the Advancement of Women and is an advisor to the accounting firm. She was the Secretary of Labor under President George Bush. During her tenure as Secretary of Labor, one of her initiatives was to create a model workplace program at the Department of Labor. Department employees received sexual harassment training and diversity training. The department also underwent its own glass ceiling review. Prior to serving as Secretary of Labor, Martin represented the 16th District of Illinois in the U.S. House of Representatives from 1981 to 1991. She was the first woman to achieve an elected leadership post when she was chosen as Vice Chair of the House Republican Conference, a position she held for four years. During her 10-year tenure, Martin served on the House Rules committee, the House Armed Services Committee, the House Budget Committee, the Committee on Public Works and Transportation, and the Committee on the District of Columbia.

Kweisi Mfume currently serves on the Johns Hopkins University Board of Trustees, the Morgan State University Board of Regents, and the National Advisory Council of Boy Scouts of America. Mfume was President and Chief Executive officer of the National Associations for the Advancement of Colored People (NAACP) from 1996 to 2004. He was a representative to Maryland's 7th Congressional District from 1987 to 1996, serving on the Banking and Financial Services Committee, the Committee on Education, as a senior member of the Small Business Committee, and holding the ranking seat on the General Oversight and Investigations Subcommittee. Mfume was chosen to serve on the Ethics Committee and the Joint Economic Committee of the House and Senate where he later became Chair. Mfume served as Chairman of the Congressional Black Caucus, and later as the Caucus' Chair of the Task Force on Affirmative Action. During his last term in

*Participating as a commissioner on matters relating to the judiciary only

Congress, he was appointed Vice-Chairman for Communications by the House Democratic Caucus. He has served on the Board of Visitors of the U.S. Naval Academy in Annapolis, the Advisory Board of the Schomburg Commission for the Preservation of Black Culture, and the Senior Advisory Committee of the Harvard University John F. Kennedy School of Government. He is currently a member of the Gamma Boulé Sigma Pi Phi Fraternity; the Most Worshipful Prince Hall Masons, and Big Brothers and Big Sisters.

Robert H. Michel is Senior Advisor for Corporate and Governmental Affairs at Hogan & Hartson LLP. He joined the firm in 1995 after serving 38 years in Congress as the United States Representative from the 18th Congressional District of Illinois, including 14 years as House Minority Leader. He was elected to his first leadership position as Chairman of the Congressional Campaign Committee in 1972, then served as Republican Party Whip from 1974 until he was elected House Minority Leader in 1980. Prior to becoming House Minority Leader, Michel served from 1959 to 1980 as a member of the House Appropriations Committee, including 12 years as the ranking Republican on the Labor, Health, Education and Welfare Subcommittee. Michel serves on the Boards of the Chicago Board of Trade, BNFL, Inc., the Public Broadcasting System, the Dirksen Leadership Center, Bradley University, Watchdogs of Treasury, Inc., and the Capitol Hill Club. In 1994, President Clinton awarded Michel the Presidential Medal of Freedom - our nation's highest civilian honor. He was presented with the Citizens Medal, our nation's second highest Presidential Award, in 1989 by President Ronald Reagan.

Donna E. Shalala is President of the University of Miami, as well as a member of the faculty. She served as U.S. Secretary of Health and Human Services from 1993 to January 2001. She was the chancellor of the University of Wisconsin-Madison from 1987 to 1993. Shalala has also served as the President of Hunter College and as assistant secretary at the U.S. Department of Housing and Urban Development during the Carter administration. A distinguished political scientist, she has been a professor at Syracuse University, Columbia University, the City University of New York, and the University of Wisconsin. Shalala is a member of the Council on Foreign Relations, the National Academy of Public Administration, and the Institute of Medicine of the National Academy of Sciences.

Senior Counselors

Norman J. Ornstein is a resident scholar at the American Enterprise Institute. He serves as Senior Counselor to the Continuity of Government Commission and Co-director of the AEI-Brookings Election Reform Project. Ornstein is an election analyst for CBS News and writes a weekly column called "Congress Inside Out" for *Roll Call*. He has written for the *New York Times, Washington Post, Wall Street Journal, Foreign Affairs,* and other major publications and regularly appears on television programs such as ABC News' *Nightline*, PBS's *Charlie Rose* and *The NewsHour* with Jim Lehrer. He served for six years as a member of the Board of Directors of PBS and is currently on the boards of the

Campaign Legal Center, the U.S. Capitol Historical Society, the Center for U.S. Global Engagement, the Washington Tennis and Education Foundation, and UCB, a Belgium-based biopharmaceutical company. His many books include, *Debt and Taxes: How America Got Into Its Budget Mess and What to Do About It* (Crown Publishing Group, 1994) with John H. Makin, *Intensive Care: How Congress Shapes Health Care Policy* (Brookings Press, 1995), *The Permanent Campaign and Its Future* (AEI Press, 2000), and *The Broken Branch: How Congress Is Failing America and How to Get It Back on Track* (Oxford University Press, 2nd ed., 2008), all three with Thomas E. Mann.

Thomas E. Mann is the W. Averell Harriman Chair and Senior Fellow in Governance Studies at the Brookings Institution. He serves as a Senior Counselor to the Continuity of Government Commission and is Co-director of the AEI-Brookings Election Reform Project. Between 1987 and 1999, Mann was the Director of Governmental Studies at Brookings and before that was Executive Director of the American Political Science Association. He is a recipient of the American Political Science Association's Frank J. Goodnow and Charles E. Merriam Awards. His books include *Vital Statistics on Congress* with Norman J. Ornstein and Michael Malbin (Brookings Press, 2008), *The Broken Branch: How Congress is Failing America and How to Get It Back on Track* with Norman J. Ornstein (Oxford University Press, 2nd ed., 2008), and *Party Lines: Competition, Partisanship and Congressional Redistricting* edited with Bruce Cain (Brookings Press, 2005).

Executive Director

John C. Fortier is a research fellow at the American Enterprise Institute. He has served as Executive Director of the Continuity of Government Commission since its founding in 2002. Fortier is also the Principal Contributor to the AEI-Brookings Election Reform Project. He is Director of the Center for the Study of American Democracy at Kenyon College. A political scientist who has taught at the University of Pennsylvania, University of Delaware, Boston College, and Harvard University, Fortier has written numerous scholarly and popular articles. His books include *Absentee and Early Voting: Trends, Promises, and Perils* (AEI Press, 2006), *After the People Vote: A Guide to the Electoral College* (AEI Press, 2004), and *Second-Term Blues: How George W. Bush Has Governed* with Norman J. Ornstein (Brookings Press, 2007). Fortier writes a column for *Politico* and is a frequent radio and television commentator on the presidency, Congress, and elections.

Assistant Director

Jessica M. Leval is Assistant Director of the Continuity of Government Commission and a research assistant at the American Enterprise Institute. She graduated Phi Beta Kappa from

Cornell University with a degree in Government and a concentration in Law and Society. She has held internships in the offices of Senator Joseph I. Lieberman (D-CT) and William K. Suter, the Clerk of the U.S. Supreme Court. Leval has published articles in *Roll Call*, *The American*, *The Cornell Daily Sun*, on *Forbes.com*, *NewMajority.com*, and on the AEI-Brookings Election Reform Project website.

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Scenario: Confusion

The President begins his State of the Union address promptly at 9:15 p.m., with the Speaker of the House and the Vice President sitting behind him. Virtually the entire House and Senate are in attendance. Five Supreme Court justices sit in the front row. With the exception of the Secretary of Agriculture, the entire cabinet is present, since by custom, one cabinet member is designated by the President and sent away to another location. Twenty million Americans are watching the speech on television.

At 9:20 p.m., a passenger airliner takes off from Ronald Reagan Washington National Airport. The pilot, an Al Qaeda sympathizer, diverts the plane toward the Capitol Building, which is less than three miles away. There is no time to intercept the plane, and anti-aircraft devices fail to bring it down before it crashes into the Capitol.

Emergency personnel arrive quickly, but they have difficulty reaching the House chamber. First responders finally make their way to the site of the crash and find many dead. Many others must be buried beneath the rubble that has collapsed upon them.

At 9:45 p.m., the military informs the Secretary of Agriculture that there is no contact with anyone else in the line of Presidential succession. The President, Vice President, Speaker of the House, and President *pro tempore* of the Senate cannot be found. No one can locate any other members of the cabinet, all of whom were in the House chamber.

The Secretary faces a dilemma. If everyone is dead, then he is to act as president of the United States. There is no one else in the line of succession prescribed by the Presidential Succession Act of 1947.[2] Military aides are encouraging him to take the oath of office so that he can begin acting as Commander-in-Chief. But what if the President is still alive or what if someone else higher in the line of succession than the Secretary of Agriculture has survived this catastrophe after all? If the President were found alive and able,

2 Presidential Succession Act of 1947; See appendix II

he could immediately resume his duties. On the other hand, if he were found alive, but incapacitated, the Secretary of Agriculture would, by law, act as president until the President were to recover.

Exactly how and when power would be transferred from a disabled president to the Secretary of Agriculture is unclear. The Constitution, in the 25th Amendment, provides a detailed procedure for the Vice President to take over for a disabled president if he and a majority of the cabinet determine there to be a disability and Congress is notified.[3] But this constitutional amendment does not apply to a lower level official taking over for a disability, nor if a majority of the cabinet is not likely to be found alive. Neither does the Presidential Succession Act provide any details for taking over for such a disability.

The lack of clarity would grow if another higher ranking cabinet member were to be found alive after the Secretary of Agriculture assumes the presidency. If any one of the President, Vice President, Speaker or President *pro tempore* were to be found alive, it is clear that that person would assume the presidency. But if the Secretary of State, a cabinet member who comes before the Secretary of Agriculture in the line of succession, were to be found alive, there would be confusion in the law. The Presidential Succession Act suggests that the Secretary of Agriculture would remain president if a higher ranking cabinet member were to recover from incapacitation. The line of succession would pass by the Secretary of State, and the Secretary of Agriculture would continue to act as president.

3 Amendment XXV, United States Constitution; See appendix I

A more confusing scenario would arise if the Secretary of Agriculture were to assume the presidency and it turned out that the Secretary of State had been alive, but incommunicado. Who would be president – the Secretary of State who should have acted as president, or the Secretary of Agriculture, who had acted as president for possibly days, or maybe just hours, until the Secretary of State was found?

The Secretary of Agriculture hesitates. Perhaps, he thinks, this decision would be better made when the rescuers have had more time to search the rubble. But top military leaders encourage him to take the oath of office. America needs a president. Even a gap of several hours will not do. Foreign leaders are already calling to inquire. Foreign enemies might try to exploit the situation by acting against the United States or engaging in activities that the United States would not normally permit. Who would control the nuclear codes if they were to be needed? Who would be able to launch military action? "America must have a president," the military brass argue, "and it must have one now."

Despite this pressure, the Secretary waits, and America is without a president. Finally, at 11:00 p.m., after calls from two former presidents, the British Prime Minister and the Russian President, the Secretary agrees to resign from his current office, as required by the Presidential Succession Act, and take the Presidential oath of office. The country is now governed by a man with a narrow expertise who, until yesterday, only a small percentage of Americans could identify. After a short statement on television, the new Acting President promises to speak again the following morning.

Just after midnight, there is some good news. A cry for help is heard in the rubble. Apparently, a fallen section of the Capitol dome has trapped some survivors, but spared them from being crushed as most of their colleagues had been. Fifty people are found in this section, but some are dead, and almost all are severely injured. It is clear that everyone else in the other parts of the rubble has perished.

Rumors abound as to who is among the living. One network reports that the President was pronounced dead in the early morning. Another network interviews a hospital worker who claims to have seen him alive and speaking to his staff in a hospital bed. Similar rumors circle about the Vice President, the Speaker of the House and other members of Congress and the cabinet.

Over the course of the night, details emerge. Miraculously, the President has survived, although he is unconscious and fighting for his life. The Vice President is not so lucky. She succumbed to smoke inhalation shortly after the attack. Perhaps the most remarkable case is the Speaker of the House, who is injured, but is well enough to sit up in his hospital bed and hold conversations with his doctors. The President *pro tempore* of the Senate is dead. The others survivors include some staff, most of whom are severely injured, and twenty members of Congress in addition to the Speaker. Fifteen of those members of Congress are unconscious and in critical condition, but four, like the Speaker, have escaped with injuries that are not life threatening. All Senators are dead, as well as all of the cabinet members present and the five Justices of the Supreme Court who were in attendance.

While there is much rejoicing that the President is alive, he is unconscious, clearly not able to act as president, and it is doubtful that he will survive. But the condition of the Speaker of the House is more promising. He has painful injuries, but he is strong enough to act as president. The Presidential Succession Act provides that a Speaker of the House may "bump" out a cabinet member who has assumed the presidency. At noon, the Speaker of the House does just that. The Speaker resigns from Congress and from the Speakership, as the law requires, and takes the Presidential oath of office. The former Secretary of Agriculture, who served as president for thirteen hours, now holds no office, as he was required to resign from his cabinet post in order to assume the presidency. The Speaker of the House now acts as president. America has had three presidents within the past fifteen hours.

The Speaker is a more prominent figure than the Secretary of Agriculture, but still relatively unknown in the country. The most recent Gallup survey showed that only 30 percent of the American people had even heard his name, and fewer knew his position. The Speaker, now the Acting President, begins to respond to the horrific attack on America. He orders immediate covert action against targets in the Middle East and begins to plan for a major invasion of two countries that harbor terrorists.

The Speaker has little or no Congressional check on his actions. The Senate is completely wiped out; no senators have survived. The 17th Amendment allows state governors to make temporary appointments to fill Senate vacancies until special elections can be held.[4] In practice

4 Amendment XVII, United States Constitution; See appendix I

that means that most states will send replacement Senators to Washington within a few days. Preplanning by Congress also ensures that the Senate will have an alternate location to meet either in Washington or somewhere else, since the Capitol building has been destroyed.

The House of Representatives is another story, as the Constitution only allows vacancies to be filled by special elections, and these elections take on average four months to administer.[5] The Constitution provides that a majority of each house is required for a quorum to conduct business.[6] The twenty members of Congress who survived the attack are far short of the two hundred and eighteen member majority. Following the Constitution, there would be no Senate for several days, and no House of Representatives for several months, when special elections would fill the many vacant seats.

But some of the handful of living and able members of the House of Representatives have a different idea. They know that there is a line of precedents in the House of Representatives that defines the quorum as a majority of those living, sworn and chosen. This precedent was not established for emergency purposes, but merely to achieve a quorum when there were a couple of House vacancies and low attendance for a vote. Reading this precedent literally, if only twenty members of the House remained (which is the case) then only eleven of them would be needed to establish a quorum. In other words, a small number of members could function as the House.[7]

At first it seems that this precedent alone will not help the House, for though twenty members survive, only five are well enough to come to the chamber. But these House members know recent history. They know that the House codified the precedent in its rules and added a provision to allow for a quorum even with incapacitated members. According to this rule, which was viewed as extremely dubious by constitutional scholars, even the five remaining able members could act as the House of Representatives, as long as three of them came to the floor to form a "quorum."[8]

If this handful of House members chose to exercise such a course of action, the House of Representatives might exist in name, but it would be a strange, unrepresentative, and in the eyes of many, an illegitimate body. More troubling, it would also affect the line of succession, for this small handful of members could elect a new Speaker of the House, who would be in line to be president should a vacancy arise.

In all of this mess, the Supreme Court is also effectively disabled as five of its members are dead, and a federal statute requires that six members of the Court constitute a quorum for issuing a decision.[9] The circuit and district courts are intact, but there is no court of final resort and no body to resolve conflicts among the circuits.

So the former Speaker continues to act as president with no Congress and no Supreme Court as checks on his power. That evening, he declares martial law to restore order and

5 The Continuity of Government Commission. *The Congress: Preserving Our Institutions: The First Report of the Continuity of Government Commission,* May 2003
6 Article I, Section 5, United States Constitution; See appendix I
7 The Continuity of Government Commission. *The Congress: Preserving Our Institutions: The First Report of the Continuity of Government Commission,* May 2003

8 See Williams, John Bryan. "How to Survive a Terrorist Attack: The Constitution's Majority Quorum Requirement and the Continuity of Congress," *William and Mary Law Review*, Vol. 48:1025, pages 1066-1067
9 Title 28, Chapter 1, Section 1. Number of justices; quorum, United States Code; See appendix II

protect against subsequent attacks (although many constitutional experts doubt he has that power), and he puts the country on the highest level of emergency preparedness.

With the country still in shock from the attacks and from the subsequent confusion, two days later, the President of the United States regains consciousness. At first doctors are cautious about his condition, but after learning about the events of the past few days, the President insists that he will resume his office. After a day of recuperation, the President, noticeably frail, goes on national television to announce that he has recovered sufficiently to serve as president again.

The 25th Amendment provides clear guidance that the Vice President will take over when the President is incapacitated (either if the President declares himself incapacitated or with the Vice President securing a majority of votes of the cabinet), but that the President will return when he is able. Almost everyone agrees that the President is entitled to resume his office, even in this situation where there is no Vice President, but the Presidential Succession Act does not provide any guidelines as to how this will happen.[10]

To make matters worse, the former Speaker, who is acting as president, has serious doubts as to whether the President has sufficiently recovered to resume his office. Section 4 of the 25th Amendment would allow a vice president, with a majority of the cabinet, to challenge a president's declaration that he had recovered and was fit to resume the office, and the final dispute would be decided by Congress. But the amendment says nothing about these powers as they apply to a former Speaker serving as acting president.[11] Furthermore, there is no cabinet, and there is no functioning Congress. With these issues and the fragile state of the national psyche in mind, the former Speaker decides it would be too destabilizing to publicly raise the issue of the President's ability.

In order to resume his duties, the President issues a written declaration that he is recovered. He had considered addressing such a declaration to Congress, but again the law is vague and the Congress is not up and working. After the written declaration is issued, the former Speaker, who has been acting as president for three days, steps aside and he, like the Secretary of Agriculture before him, no longer holds any office due to his resignation from Congress and the Speakership.

The return of the President initially lifts the spirits of the American people. The markets, which had closed for two days after the attack, and had declined sharply after opening, rebound significantly with the news. But the initial euphoria starts to ebb when the President appears on television that evening to address the nation about his response to the attacks. Even the august setting of the Oval Office, perfect lighting and professional makeup cannot hide the fact that the President is not well. His frequent pauses, confusion over basic facts, and general demeanor frighten rather than reassure the American public. While few Americans are willing to publicly voice their concerns, there is growing sentiment that the nation might have been better off in the hands of the Speaker of the House or even the Secretary of Agriculture.

10 See appendix II

11 Amendment XXV, United States Constitution; See appendix I

But neither is eligible to return. They hold no official position, and they are no longer in the line of succession. In fact, it is not clear if there is anyone left in the line of succession.

The unspoken concerns of the American people prove to be warranted, as later that afternoon, the President appears at a photo opportunity with the Prime Minister of Denmark, who was in the United States on the day of the attack and who has not yet returned due to the paralysis of the transportation system. At the photo-op, the President turns pale, collapses, and is rushed to a nearby hospital. Hours later, news comes that the President has slipped into a coma and is in critical condition.

Now, chaos reigns. Constitutional scholars appear on television programs, and the initial commentary suggests the worst. There is no one left in the line of succession. There is no one who can act as president. The President is in a coma. The Vice President is dead. The Speaker already served as acting president, but does not hold that office anymore as he was displaced when the President recovered. The House of Representatives, by most constitutional scholars' views, should not meet with only four members, and it will likely take months to elect the two hundred and eighteen members that the Constitution prescribes for a quorum. Its four members, however, believe that they have a quorum, and that they can elect a new Speaker of the House, who by law would become the new President.

The Senate has not reconstituted itself yet to elect a president *pro tempore*, although it appears likely that gubernatorial appointments will fill vacancies in the very near term, and a new Senate will meet. At that time, a new president *pro tempore* could be elected who would be in the line of succession and who could then assume the presidency. But for now, it seems that there is no president, no Congress and no Court. Who governs America?

After this initial bleak assessment, a few constitutional commentators note that perhaps there is someone in the line of succession. Many read the Presidential Succession Act to mean that acting cabinet secretaries are in the line of succession, as long as they have been confirmed by the Senate for secondary posts in the department. Each department has had someone in charge since the attack as each has its own internal line of succession. Most of the departments are being run by the Undersecretary or other person in the capacity of "acting secretary." Many constitutional scholars believe acting secretaries are in the line of succession, but there is significant dispute on this point. If lower level cabinet members were unknown to the American people, surely acting secretaries rank even lower in their minds.

All agree that a more permanent solution is for the Senate to reconstitute itself and elect a new president *pro tempore*, who will then act as president. Pressure mounts on a number of governors who have not yet made appointments to do so, and for the newly appointed Senators to meet at an alternate location. It is likely that these concerns can be resolved within 24 hours, but what can we do now?

Intense interest centers on the Undersecretary of State, who is serving as acting Secretary of State. Again, the military makes the argument that it is essential to have a president at all times, even if it will likely only be for a day or

two. Bowing to this concern and public opinion, the Undersecretary resigns his position and takes the Presidential oath of office. Governors rush to make appointments to fill Senate vacancies. The new Acting President performs a significant function by invoking a 1794 law that allows the President to reconvene Congress in the case of an emergency that prevents it from meeting in its chambers.[12]

The five remaining members of the House of Representatives begin to suggest that they do not want the Senate to pick the new President. All of the senators will be appointed. The House is "the people's house" and the remaining members have been elected by the people, albeit their districts represent just over one percent of the nation. If the House were to act first in choosing a new Speaker, (before the Senate can elect its leader) then that speaker may act as president. But if the House waits until the Senate constitutes itself, then the President *pro tempor*e will become president.

Twenty-four hours later, eighty newly appointed Senators arrive at Fort McNair in Washington, a location Congress had earlier designated as a potential alternative meeting place. A few states have not yet made their appointments, but by the following day, there is a nearly full complement of over ninety senators. (Wisconsin, Oklahoma, Oregon, Massachusetts, and Alaska have not sent senators because their laws do not provide for temporary appointments, only elections, which will occur within a few months.)[13]

With ninety senators, the new Senate goes about its most important task, electing a new president *pro tempore*. In normal times, the President *pro tempore* is an honorific position given to the longest serving senator of the majority party. The criterion for choosing the President *pro tempore* always leads to the selection of someone with substantial experience, but sometimes also results in the selection of someone whose age and health would not allow him or her to serve as president. In 2001, ninety-eight year old Strom Thurmond served as president *pro tempore*. In this instance, the Senate knows that it must make a choice of the utmost importance. Fortunately, one of the Senators appointed to fill the vacancy is a distinguished former Secretary of State who commands the respect of both parties. The Senate quickly coalesces behind him and elects him president *pro tempore*. Immediately after he is elected, he resigns his office and his Senate seat and takes the Presidential oath of office, displacing the former Undersecretary of State, who is serving as acting president.

Finally, it seems that there is some clarity to the confusion of the past week, but there are a few remaining issues. First, the President is still alive, although in a coma and very ill. Were he to recover again, he could displace the Acting President again. Second, there is no functioning Congress. The Senate can operate, but the House will not have more than a few members for several months, and many are wary of the constitutional fiction that a handful of members might operate the body in the short term. Without a bicameral Congress, there can be no legislation passed, no declarations of war, no appropriations, no legislative response to the attacks as there was after 9/11. Third, the

12 CHAPT. XVII – An Act to authorize the President of the United States in certain cases to alter the place for holding a session of Congress. (Approved April 3, 1794); See appendix II
13 Article I, Section 3 United States Constitution; 2 U.S.C. Sec. 8. Vacancies; Amendment XXVII, United States Constitution; See appendix III

Supreme Court is decimated. The Acting President could make appointments to the Court and the Senate could confirm them, but there are some questions as to whether an unelected president should appoint five Justices—for terms of "good behavior"—who would shape the direction of the court for many years to come.

The President's condition does not improve. He dies two weeks later. Now the country knows that the Acting President will serve for the three years remaining in the presidential term. Four months later the House meets again, having filled its vacancies by special elections. America is finally on the road to recovering from the devastating attack on its leadership.

Presidential Succession:

Is Our Current System Adequate to Protect the Presidency Against Catastrophic Attacks?

Our system of Presidential succession is governed by a number of constitutional and statutory provisions. The original Constitution authorizes Congress to write a Presidential succession act, and we have had three in our history. There are also provisions of the 12th, 20th, and 25th Amendments that affect succession. We are fortunate as a nation never to have had a simultaneous vacancy in the presidency and vice presidency, but, unfortunately, 9/11 underlined the fact that such vacancies are a very real possibility. If such a scenario were to occur, we would have to test our various succession provisions laid out in the Constitution and the Presidential Succession Act. This section lays out the constitutional and statutory basis of Presidential succession and provides a brief history of how the current system developed.

The Original Constitution

Article II Section I of the Constitution

Article II, Section 1 of the Constitution contains the provision that undergirds most of our Presidential succession system. The relevant section reads:

> 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, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President,

> and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.[14]

This constitutional provision provides that the Vice President should assume the powers of the presidency if the presidency were to become vacant. But, it also delegates to Congress the power to specify a further line of succession if both offices were vacant.

The language in the constitutional provision is relatively clear, but a few details are worth noting.

First, the framers recognized that there were different ways that the office of the President could become vacant–through removal, death, resignation or inability. The first three involve the President permanently vacating the office, while the latter may involve a temporary vacancy. In all of these cases, the Vice President acts as president, and Congress may provide by law for further provisions related to each of these cases.

Second, the Constitution specifies that Congress may declare "what Officer shall then act as President." The key is word "Officer," capitalized in the Constitution. The term probably means "Officer of the United States," which would mean officials in the executive, but not the legislative, branch of government would be eligible to be in the line of succession. But the term has been controversial, and at various times in our history, including today, the Presidential succession act has included congressional leaders in the line. A line of thought running from James Madison to Akhil Amar holds that it is unconstitutional to have congressional leaders in the line of succession.[15]

Third, the constitutional provision allows for Congress to make a provision for a special election to fill the presidential vacancy. There was debate at the constitutional convention over this provision, and the final language was agreed upon that would allow a successor to the President to serve either until the next general election at the end of a term or until the completion of a special election provided for by law. In fact, the first Presidential Succession Act explicitly provided for a special presidential election if both the presidency and vice presidency were vacant and the vacancies occurred early in the term.

Congress's Presidential Succession Acts and the 20th Amendment

The First Presidential Succession Act (1792-1886)

The framers recognized the importance of passing a succession act, but they could not agree on a specific statute in the first Congress. It was the second Congress that passed the first Presidential Succession Act. The most divisive issue in the debate was the question of whether congressional leaders could be included in the line of succession. As a matter

14 Article II, Section 1, United States Constitution; See appendix I

15 See Amar, Akhil Reed and Amar, Vikram David. "Is the Presidential Succession Law Constitutional?" 48 Stan. L. Rev. 1995-1996. Pages 118-123

of principle, the debate broke down into two camps, one of which believed the word "Officer" clearly meant "Officer of the United States" and thus expressly forbade leaders of Congress. The other camp argued that the term was more expansive and included other "officers," and the President *pro tempore* of the Senate and Speaker of the House are clearly officers of the Congress. It was in this debate that James Madison made an impassioned argument that the Constitution did not allow Congress to include Congressional leaders in the line.[16]

But in truth, the real argument was not over principle but politics. An anti-Jefferson faction wanted to ensure that Jefferson would not be in the line of succession, while Jefferson's supporters wanted him to be in the line of succession. Ultimately, the Senate was controlled by pro-administration Senators and the first Presidential Succession Act was passed with no cabinet members, and only two Congressional officers. The law, which would remain in effect for the next ninety-four years, placed the President *pro tempore* of the Senate followed by the Speaker of the House.[17] In this debate, Madison protested bitterly, and his arguments were revived (and ultimately accepted) in the debate over the Second Presidential Succession Act in 1886.[18] America fortunately never needed to use its provisions, although in several instances it came close.

The period from 1792 to 1886 saw the death of four presidents, five vice presidents, the extended incapacitation and eventual death of President Garfield, the near removal of President Andrew Johnson, and an election controversy that was not resolved until two days before the inauguration. There was no provision to replace a vice president, as there is today with Section 2 of the 25th Amendment. If the Vice President died or the President died and the Vice President succeeded to the presidency, the President *pro tempore* of the Senate was next in line to be president. From 1792 to 1886 when the law was in operation, there was no vice president about a quarter of the time including a seven year period during which there was no vice president for all but one month.[19]

The President *pro tempore* of the Senate was not selected in the same manner as today. Today, the President *pro tempore* is an honorific position held by the longest serving Senator of the majority party. In the nineteenth century, the President *pro tempore* was as the literal meaning of the title, "President for a time" suggests, elected by the Senate to preside over the body when the Vice President, who also serves as president of the Senate, did not. This meant that sometimes there was no president *pro tempore* and that no elected president *pro tempore* would carry over to the next Congress. Today, the Senate considers itself a continuing body because terms of Senators are staggered and roughly two-thirds of its membership continues in office at the end of each two year election cycle. (The House, by contrast, ends after two years, and begins anew with the next Congress.)

16 See Feerick, John D. *From Failing Hands: The Story of Presidential Succession*. Fordham University Press, New York, 1965. Pages 57-58
17 Presidential Succession Act of 1792; See appendix II
18 United States Congress. "Public Acts of the Forty-Ninth Congress". *Statues of the United States of America*. First Session, 49th Congress. Washington: GPO, 1886; 1-2

19 See appendix V

Prior to the 20th Amendment, Congress was not in session frequently. The original Constitution called for the Congress to convene in December, after the President had been inaugurated in March. A new president might call the Senate into session briefly to confirm cabinet nominations, but the Vice President would likely preside over that session. It was common for long periods of time to pass during which there would be no president *pro tempore* and oftentimes the President *pro tempore* from one term would not serve in that capacity for the next term. After the assassination of President Garfield, there were significant periods when his successor, Chester A. Arthur, served with no one in line to succeed him. Consequently, in the 1880s, Congress changed the act because of the unstable potential for a change in party of the President, and for constitutional reasons.

Several incidents point out how close the United States came to invoking the Presidential Succession Act. James Madison served as president at a time of great uncertainty – during the War of 1812 when our country was invaded by the British and Washington burned – and in both of his terms Madison's vice presidents died in office.

The first president to die in office was William Henry Harrison, only thirty days into his term. John Tyler acted as president for three years without a vice president. Tyler himself was nearly killed on a boat on the Potomac. An explosion killed members of his cabinet – Secretary of the Navy, Thomas Gilmer, and Secretary of State, Abel P. Upshur.

Lincoln's assassination left Andrew Johnson in the presidency. Johnson was a Democrat, who had run with Lincoln on a unity ticket. Lincoln's death occurred only forty-two days into his second term, so Johnson would serve nearly four years. Johnson's presidency stirred up the Radical Republicans in Congress. He was impeached by the House and the Senate fell one vote short of the two-thirds needed to remove him from office. The Presidential succession system's flaws were evident in this instance. In the Senate, the President *pro tempore* was Republican Senator Ben Wade, who voted for Johnson's removal. Had one more Senator voted to remove Johnson, Wade would have not only voted for Johnson's removal, but he would have effectively voted to make himself president.[20]

Only eight years after the failed Johnson removal, the United States had perhaps its most disputed election. The 1876 election was the 2000 Florida election of its era, but it was more contentious and not decided until just before the inauguration. Ultimately, an election commission was appointed that gave all of the disputed electors to Rutherford B. Hayes giving him a majority of the Electoral College. The final outcome of the election was determined only two days before inauguration day. Had Democrats been able to delay the counting of the votes for two more days, there would have been no president-elect or vice president-elect to take office on inauguration day, and there would have been vacancies in the offices of President and Vice President. In that case, the President *pro tempore* of the Senate would have taken office, but there would be no president *pro tempore* for months to come as the Congress would not have

20 40th Congress 2nd Session Supplement Cong. Globe 410-415 (1868). Proceedings of the Senate Sitting for the Trial of Andrew Johnson; See appendix II

met until December. There might truly have been no president for a long period of time.

In 1880, James Garfield was elected president. The Republicans had been split into factions of "Stalwarts" and "Half-breeds." Garfield was a "Half-breed," but he selected the "Stalwart" Chester Arthur as his running mate to mend party differences. In September of 1881, after only six months in office, Garfield was shot in Buffalo by a disgruntled office seeker. The assassin yelled, "I did it and will go to jail for it. I am a Stalwart, and Arthur will be President."[21] After the shooting, Garfield was severely wounded, but lived for eighty days. For most of that time he was unable to exercise the duties of President, although for a short period of time, he did perform some minor official acts. At no time did Vice President Arthur consider taking over the presidency because of Garfield's inability.

The 25th Amendment, ratified in 1967, provides clear procedures as to how a vice president might take over and how the reins of power might be returned to a recovered president.[22] The constitutional language of Article II clearly allows for a temporary takeover of the presidency, but neither it, nor any of the Presidential Succession Acts that we have had, provide any guidance on how it might happen. There were some who mistakenly argued that a president who was incapacitated would never recover his office if the Vice President took over. Eventually Garfield died and Arthur took over as president. But at that time, there was no president *pro tempore* of the Senate or Speaker of the House. Arthur recognized this situation and called Congress into session a few weeks later so it could elect leaders to fill the line of succession. Nevertheless, there were several weeks during which the line of succession remained empty. And later scholarship has shown that Arthur was a sick man. He suffered from Bright's disease and died at the age of fifty-six only one and a half years after leaving the presidency.[23]

A similar situation arose four years later during the first administration of Grover Cleveland. Cleveland's Vice President died and Congress had not yet elected a president *pro tempore* or a Speaker of the House. Again, there was no one in the line of succession.

The Second Presidential Succession Act (1886-1947)

In 1886, Congress, shaken by recent instances when the line of succession seemed less than adequate, debated a new Presidential Succession Act. The main reasons cited for a change were: (1) the constitutional objection – raised by Madison – that only those who hold office in the executive branch could be in the line of succession and (2) the "party change" argument. Leaders of Congress could be of a different party than the President. This was the era of party parity, not unlike our own. From 1876 to 1892, no president was elected with a majority of the popular vote. In Congress, each chamber switched hands several times, and there were several instances where congressional leaders were of the opposite party of the President; (3)

21 Feerick, John D. *From Failing Hands: The Story of Presidential Succession*. Fordham University Press, New York, 1965. Page 118 and *The New York Times*, July 3, 1881

22 Amendment XXV, United States Constitution; See appendix I

23 Feerick, John D. *The Twenty-Fifth Amendment: Its Complete History and Applications*. Fordham University Press, New York, 1992, Pages 10-11

the realization that there might not be anyone in the line of succession at a given time.

Ultimately, the Congress decided to take congressional leaders out of the line of succession altogether and instead to rely solely on cabinet succession. The 1886 Presidential Succession Act turned the presidency over to cabinet members in the order of the creation of their respective departments, which were Secretary of State, Secretary of Treasury, Secretary of War, Attorney-General, Postmaster-General, Secretary of the Navy, and Secretary of the Interior.

The law included several other minor provisions. The 1886 Act did not require a special election when a statutory successor to the President takes office as did the first succession act. It did, however, require the statutory President (the Secretary of State or lower cabinet official who takes over as president) to call Congress into session within twenty days so that Congress would have the opportunity to provide for a special election by law if it so chose.[24]

The switch to cabinet succession also stipulated that a cabinet member would be eligible for the presidency only if he or she had been appointed by the President and confirmed by the Senate for the relevant position. (In other words, no recess appointments or acting secretaries were in the line of succession). The Cabinet member could also not be under impeachment by the House at the time of the vacancy. And finally, the Cabinet member must meet the constitutional qualifications to be president (to be a naturally born citizen, to be thirty-five years of age and to have resided for fourteen years in the United States) to succeed to the presidency.

The Second Presidential Succession Act remained in effect for over eighty years, until 1947, during which there were several succession crises. Grover Cleveland had major surgery to remove his cancerous jaw and, unbeknownst to the country, was temporarily disabled. William McKinley was shot, and Vice President Teddy Roosevelt took over. (This was months after one pundit said that "there is only an assassin's bullet between this madman and the presidency.")

The most troubling succession crisis, however, was that of the extended disability of President Woodrow Wilson at the end of his second term. Wilson had a stroke in October of 1919. For the remaining seventeen months of his term, he was hidden from view and, by most accounts, incapacitated. His wife and a close adviser effectively ran the government, as they were the only ones who would "communicate" with Wilson and report back on his wishes. Vice President Thomas Marshall clearly indicated that he would not challenge the capacity of the President. And thus America existed for seventeen months with a presidency that was effectively vacant.[25]

In subsequent years, Warren Harding died in office, leaving Calvin Coolidge acting as president. A number of scholars believe that Coolidge was incapacitated for significant periods of his second term due to serious bouts of depression.[26]

24 Presidential Succession Act of 1886; See appendix II

25 Feerick, John D. *The Twenty-Fifth Amendment: Its Complete History and Applications*. Fordham University Press, New York, 1992, Pages 12-15

26 See Feerick, John D. F*rom Failing Hands: The Story of Presidential Succession*. Fordham University Press, New York, 1965. Pages 184-189

The 20th Amendment (1933)

In 1933, just before Franklin D. Roosevelt's first inauguration, the 20th Amendment was ratified. The Amendment called for a new inauguration date and a new meeting date of Congress so that Congress would come into session to count electoral votes before the inauguration. The amendment also included two sections relating to Presidential succession.

Section 3 makes it clear that if the President-elect dies prior to the inauguration, then the Vice President-elect will be sworn in as president at the inauguration. It reads:

> Section 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Section 3 also stipulates that Congress might specify who will succeed to the presidency if the President-elect and the Vice President-elect shall not have qualified for office. This allows Congress to provide for scenarios whereby an election dispute prevents the election of either a president or vice president; the President-elect and Vice President-elect are killed before inauguration day; or, the more unlikely case, if both have some other disqualifying reason such as they are not yet thirty-five years old. In the Third Presidential Succession Act (1947), Congress added the case of "failure to qualify" as a possible condition for Presidential succession.

Section 4 of the 20th Amendment reads:

> The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Section 4 allows Congress to provide for the special case where Congress must select the President because no one has received a majority of the Electoral College.[27] Even though authorized to do so by the Amendment, Congress has never passed legislation to deal with such a scenario.

In an eerie coincidence, just days after the ratification of this amendment, President-elect Roosevelt was riding in a car in Miami with the Mayor of Chicago and others. An assassin shot at the car, killing the Mayor. Roosevelt was unhurt.[28] Had Roosevelt been killed, the 20th Amendment clarified that Vice President-elect

27 Amendment XX, United States Constitution; See appendix I
28 See Feerick, John D. *From Failing Hands: The Story of Presidential Succession*. Fordham University Press, New York, 1965. Page 190

John Nance Garner would have become president.

Third Presidential Succession Act (1947-present)

It is well known that Roosevelt was unable to walk unassisted after an attack of polio. This condition, however, did not limit him from vigorously carrying out the duties of the presidency. Towards the end of his presidency, however, Roosevelt was a very sick man, and there is dispute among scholars as to whether he was impaired in his judgments at Yalta and in the final months before his death.[29]

Roosevelt's death elevated Harry Truman to the presidency. Truman had served as vice president for only a few months when he became president, and he and Roosevelt were not close. It was only upon Roosevelt's death that Truman was informed of America's project to build an atomic weapon.[30]

Truman became vice president and then president after a long career in Congress. Shortly, after assuming the presidency, he gave a speech proposing changes to the Presidential Succession Act. He argued that congressional leaders should be higher than the cabinet in the line of succession because they are elected rather than appointed by the President and that a president should not appoint his own successor.[31]

The 79th Congress considered the matter, but there was opposition. When Republicans gained control in the 80th Congress, the Truman proposal gained favor. Truman still stood by a plan that would give the presidency to the other party if the President had been killed (there was at this time no vice president as Truman had become president and there was not yet a mechanism for appointing a new vice president.)[32]

Truman's proposal was for the Speaker of the House and then the President *pro tempore* of the Senate to be followed by the cabinet in the line of succession. He also favored a special election for president if the vacancy in the presidency and vice presidency occurred early in the term.[33]

Ultimately, most of Truman's proposal—but not the provision for a special election—was adopted in the Presidential Succession Act of 1947. This act, still in force today, establishes that, after the Vice President, the presidency will pass to the Speaker of the House, the President *pro tempore* of the Senate, and finally to the heads of Cabinet departments in their order of creation.[34]

The 1886 Presidential Succession Act similarly extended the presidency to Cabinet officers in the order of the creation of their departments. However, the 1886 Act was not updated to reflect the creation of new departments. The 1947 Presidential Succession Act included the

29 Feerick, John D. *The Twenty-Fifth Amendment: Its Complete History and Applications*. Fordham University Press, New York, 1992, Pages 15-17
30 See Feerick, John D. *From Failing Hands: The Story of Presidential Succession*. Fordham University Press, New York, 1965. Page 199
31 Special Message to the Congress on the Succession to the Presidency, June 19, 1945; See appendix III
32 See Feerick, John D. *From Failing Hands: The Story of Presidential Succession*. Fordham University Press, New York, 1965. Pages 208-209
33 Special Message to the Congress on the Succession to the Presidency, June 19, 1945; See appendix III
34 Presidential Succession Act of 1947; See appendix II

heads of cabinet departments that had been added since 1886. Subsequently, there has been a tradition of amending the Act each time that a new department is created to add the head of that department to the end of the line of succession. These small amendments to the 1947 Act are the only changes that have been made to it since its passage.

Bumping Procedures

In addition to preferring congressional leaders to cabinet members, Truman not only advocated that these leaders be placed above cabinet members in the line of succession, but also that newly elected congressional leaders be eligible to bump cabinet members from the presidency.

The Act makes it clear that a president or vice president who recovers from a disability or qualifies for office (say a president elected after a long election dispute with a Speaker of the House serving as president for a time) may "bump" out a congressional leader or cabinet member who is acting as president.

But the Act also provides for the case where a cabinet member acts as president because the congressional leaders are dead or unable to serve. Newly elected congressional leaders may bump cabinet members who are serving as president. For example, if the President, Vice President, Speaker, and President *pro tempore* are killed, the Secretary of State would act as president. But the Presidential Succession Act of 1947 provides that if the House of Representatives were to elect a new Speaker or the Senate a new president *pro tempore*, then one of those congressional leaders could bump the Secretary of State and become president.

There is no provision for bumping a cabinet member by another cabinet member, so if the Secretary of Defense becomes President, a newly appointed Secretary of State may not bump him. Also, there is no provision for a new Speaker to bump the President *pro tempore*.[35]

The bumping procedure is controversial. A number of constitutional scholars believe it is unconstitutional and others argue that it is an unwise policy.[36] As for its constitutionality, the scholars point out that the Constitution allows Congress to write a succession act "declaring what Officer shall then act as president, and *such Officer shall act accordingly, until the Disability be removed, or a President shall be elected*" (emphasis added).[37] Under the key constitutional provision, once selected to act as president, the officer will continue to act until the President's disability is removed, or, in the case of death or continuing disability, until a presidential election (either the next general election or a special election for president). The Constitution on its face seems to stipulate that once a person is deemed to be acting president by the Presidential Succession Act, he or she cannot be replaced by a different person. This interpretation makes some logical sense as the provision would presumably prevent the confusion that would arise if the presidency were transferred to several differ-

35 Ibid

36 See Amar, Akhil Reed and Amar, Vikram David. "Is the Presidential Succession Law Constitutional?" 48 Stan. L. Rev. 1995-1996 and Fortier, John C. and Ornstein, Norman J. "Presidential Succession and Presidential Leaders," *Catholic University Law Review*, Fall 2004

37 Article II, Section 1, United States Constitution; See appendix I

ent individuals in a short period of time. It would also seemingly prevent Congress from exercising influence on the executive branch by threatening to replace a cabinet member acting as president with a newly elected Speaker of the House.

Additional Minor Provisions of the Current Presidential Succession Act

Several other minor provisions of the Presidential succession act are worth noting.

- Speaker of the House or president *pro tempore* of the Senate must resign from his or her office and from Congress in order to act as president. This applies not only in the case of the death of a president, but also in the case of a short term incapacitation. The Constitution requires that congressional leaders step down from their posts in order to assume any office in the executive branch. The Presidential Succession Act reiterates this requirement. After acting as president, they cannot go back to their old congressional posts.

- Similarly, a cabinet member, in order to assume the presidency, must resign from office. This is not required by the Constitution, only by the statute. Under the Constitution, a member of the executive branch can hold two offices; a Secretary of State could also hold the office of Vice President. But the statute expressly requires a resignation by the Cabinet member.

- Any person in the line of succession must meet the constitutional eligibility requirements for president (e.g., natural born citizenship) to assume the presidency.

- Cabinet members in the line of succession must have been confirmed by the Senate. This means that recess appointees who head cabinet departments are not eligible to serve as president. The language in the current Presidential Succession Act is less clear than that of the 1886 Act with respect to Senate confirmation. The 1886 Act refers to "such officers as shall have been appointed by the advice and consent of the Senate to the officer therein named…."[38] The current act merely refers to "officers appointed, by and with the advice and consent of the Senate."[39] Read literally, this means that the current act allows for acting secretaries to be in the line of succession as long as they are confirmed by the Senate for a post (even for example, the second or third in command within a department). It is not uncommon for a second in command to become acting secretary when the secretary leaves office. Though there is some dispute over this provision, the language clearly permits acting secretaries to be placed in the line of succession. (We have spoken to acting secretaries who told us they had been placed in the line of succession.)

- No cabinet member under impeachment of the House of Representatives could serve as president.

38 Presidential Succession Act of 1886; See appendix II
39 Presidential Succession Act of 1947; See appendix II

Eisenhower's Illnesses, the Kennedy Assassination and the 25th Amendment

After the passage of the 1947 Succession Act, Eisenhower's illnesses and President Kennedy's assassination spurred the enactment of the 25th Amendment, which deals primarily with presidential incapacitation.

President Eisenhower's several serious illnesses sparked a renewed interest in the question of presidential disability and succession. In particular, after a heart attack, Eisenhower drafted a memorandum of understanding laying out in significant detail how Vice President Nixon should act, how power might be transferred to the Vice President and back to the President.[40] This practice of issuing such memos was continued under the Kennedy and Johnson presidency and had some effect on the language of the 25th Amendment, which was ratified in 1967, and which provided for Presidential succession.

Congress wrestled with the issue of a constitutional amendment for presidential incapacitation in the early 1960s. In particular, the issue became a serious one for Senator Estes Kefauver, and later Senator Birch Bayh, who chaired the Subcommittee on the Constitution, a division of the Senate Judiciary Committee which had constitutional amendments in its jurisdiction. The assassination of President Kennedy hastened work on the Amendment. In the immediate aftermath of Kennedy's assassination, there were rumors that Vice President Johnson had been killed or had suffered a heart attack. The death of Kennedy highlighted the problem that there was no way to appoint a new vice president in the case of the death of the President. And with Johnson's prior heart difficulties and Eisenhower's illnesses, the issue of how a president might transfer power in the case of an incapacitation was rightly understood as significant.[41]

Ultimately, after several attempts, Congress passed and the states ratified the 25th Amendment. It reads:

> Section 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.
>
> Section 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.
>
> Section 3. Whenever the President transmits to the President *pro tempore* of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.
>
> Section 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide,

40 Feerick, John D. *The Twenty-Fifth Amendment: Its Complete History and Applications*. Fordham University Press, New York, 1992, Page 53

41 Feerick, John D. The *Twenty-Fifth Amendment: Its Complete History and Applications*. Fordham University Press, New York, 1992, Pages 10-11

transmit to the President *pro tempore* of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President *pro tempore* of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President *pro tempore* of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.[42]

In a nutshell, the 25th Amendment achieves two major objectives: First, it provides a mechanism for appointing a vice president if the office is vacant. Second, it clarifies and provides specific procedures for the transfer of power relating to presidential incapacity.

The vacant vice presidency had been a major problem prior to 1967. Eight presidents and seven vice presidents died in office, in each case leaving a vacancy in the vice presidency. In the 178 years under the Constitution before the 25th Amendment was ratified, we had more than 37 years without a vice president.[43] Though the United States would have faced problems of Presidential succession had something happened to the President, during all of those years without vice presidents, the Presidents did not die, and the successors listed in the Presidential Succession Act were therefore not needed.

However, Congress saw that the United States might not always be so fortunate in the future. The 25th Amendment was for the President to appoint a new vice president, and for the Senate and the House of Representatives to confirm the selection. It is the only office that requires the confirmation of both Houses of Congress.

In the debate over the 25th Amendment, some proponents believed that there should be a timeframe for the appointment and confirmation. Six weeks from the date of the vacancy was commonly suggested as an appropriate amount of time to appoint and confirm a replacement. In the end, the authors did not include such a timeframe in the amendment, though many agreed that six weeks was reasonable, given the need for a robust line of succession.[44]

42 Amendment XXV, United States Constitution; See appendix I

43 See appendix VII

44 Feerick, John D. *The Twenty-Fifth Amendment: Its Complete History and Applications. Fordham University Press*, New York, 1992, Page 68-70

The vice presidential replacement provision was used twice shortly after the ratification of the Amendment. Richard Nixon nominated Gerald Ford for vice president when Spiro Agnew stepped aside. Not long after, when Richard Nixon resigned, Gerald Ford appointed Nelson Rockefeller to the vice presidency. In both cases the appointment and confirmation process took longer than the presumed six weeks – seven and a half weeks for Ford and more than four months for Rockefeller.

While this provision has not been used since the early 1970s, its initial use circumvented a problem the framers of the Amendment feared. Were it not for the 25th Amendment, when Agnew resigned the Democratic Congress could have been in a difficult position had they proceeded with the impeachment and removal of Richard Nixon. Carl Albert, the Speaker of the House, would have known that by voting to impeach Republican President Nixon he would also be voting to install himself, a Democrat, in the presidency. In fact, there were a few Democratic members of Congress who urged Albert not to confirm Gerald Ford so the Democrats could take the presidency after a Nixon impeachment. Albert declined to pursue this course of action, and Gerald Ford was confirmed and would soon succeed to the presidency.

The second issue addressed by the 25th Amendment is clarification of how the presidency is temporarily passed to the Vice President in cases of presidential incapacitation and how it is transferred back to a recovered president. The language of the original Constitution is clear when it provides that such a temporary transfer of power can occur. Article II section 1 contemplates that the Vice President shall act as president in the case of the President's "Inability to discharge the Powers and Duties of the said Office." And Congress may provide by law when such an "Inability" occurs and the Vice President cannot act. When Congress acts, the successor can act as president "until the disability be removed."[45]

Despite the Constitution's relatively clear language, some believe that a vice president who stepped in for an incapacitated president would not return the power to the President upon the removal of disability. Some believe that this contributed to the reluctance of presidents and vice presidents to transfer power for disability. Take for example, the cases of Vice President Marshall during Woodrow Wilson's incapacity and Chester Arthur during Garfield's.[46]

Sections 3 and 4 of the 25th Amendment describe the transfer of power. Section 3 is the most straightforward. A president may indicate inability in a written statement transmitted to both Houses of Congress. Upon this written statement, the Vice President becomes the Acting President. The President can then reclaim presidential authority by issuing another written statement to Congress explaining that his inability to perform the duties of the President has been removed.[47]

The circumstances under which section 3 might be invoked have arisen a number of times since the ratification of the 25th Amendment. Most

45 Article II, Section 1, United States Constitution; See appendix I
46 See Neustadt, Richard E. "The Twenty-Fifth Amendment and Its Achilles Heel," 30 Wake Forest L. Rev. 1995, Pages 430-432
47 Amendment XXV; See appendix I

commonly, this scenario arises when a president undergoes medical procedures that require general anesthesia. Interestingly, there was some reluctance on the part of several presidents to directly invoke section 3 of the 25th Amendment, although there was a written declaration of inability. The formal invocation of section 3, however, did occur in 2002 as George W. Bush underwent a colonoscopy.

Section 4, which provides for the difficult situation in which the Vice President doubts whether the President is able to carry out his duties, has never been invoked. Hypothetically, such situations could be divided into two categories. In one case, the Vice President, with the agreement of a majority of the cabinet, declares the President to be incapacitated, and the Vice President steps in to act as president. This might occur if a president were to have a sudden stroke, making him unable to transfer power on his own. The second, more contentious case would be a situation in which the Vice President and a majority of the cabinet believe that the President is incapacitated, but the President disagrees. In this case, Congress may have to resolve the issue, with a two thirds vote of both houses required to declare the President unable to perform his duties and to install the Vice President as president for the duration of the disability. The most likely scenario that would lead to such a procedure would be mental illness in the President.

Sections 3 and 4 of the 25th Amendment provide much more guidance than the original Constitution as to the specifics of the transfer of power relating to presidential incapacity. There are, however, two areas not covered that might arise, especially in the case of a catastrophic attack on our institutions.

First, if there were to be a temporary vacancy in the Vice Presidency or if a catastrophic attack were to create many holes in the line of succession, the process of transfer of power would encounter additional difficulties. The 25th Amendment only deals with the case of the transfer of power between the President and the Vice President. In cases where the Speaker and President *pro tempore* became acting president, it would not be possible to easily transfer power back and forth with the original President. As members of Congress, these figures would have to resign their congressional seats in order to serve as president, even on a temporary basis. They would not be able to go back to their positions after a president recovered. Cabinet members lower in the line of succession would face the same problem, not because the Constitution requires that they leave their posts to become president, but because the Presidential Succession Act does. Further, neither congressional leaders nor cabinet members in the line of succession could invoke the procedure that requires the assent of the majority of the cabinet to declare the President incapacitated.

A second problem under section 4 arises if a catastrophic attack decimates the cabinet. Then no majority of a cabinet could be assembled to assent to the Vice President's declaration that the President is incapacitated.

It should be noted that the original Constitution does allow for the transfer of power in the case of inability, so a transfer might be made, but without the specific procedures of the 25th Amendment. Also, the Succession Act itself could be amended to spell out procedures for figures in the line of succession other than the Vice President to take over from the President in the case of inability.

MAJOR PROBLEMS WITH OUR SUCCESSION SYSTEM

1. All the Figures in the Line of Succession Live and Work in Washington, D.C.

The line of succession was built primarily to deal with the death of a president, not a catastrophic attack on Washington. As such, with the possibility of nuclear, biological or chemical terrorist attacks, the whole line of succession may become vulnerable. While precautions are often taken to ensure that the President, Vice President and other members of the line of succession are not in the same place at the same time, most of the figures in the line of succession attend certain ceremonial occasions such as the State of the Union and the Inauguration.

2. Congressional Leaders in the Line of Succession

There are serious policy and constitutional objections to having Congressional leaders in the line of succession. The Constitution allows Congress to specify which "Officers"[48] shall be in the line of succession, a term that almost certainly refers to executive branch officials. More broadly, there are structural considerations that make it difficult for Congressional leaders to assume a position in the executive branch. Congressional leaders cannot easily step in for an incapacitated president, and they may have conflicts of interest in an impeachment and removal scenario.

On policy grounds, Congressional leaders may be of the opposite party as the President. A political zealot might seek to change the party in the executive branch with a single attack. A freak accident might lead to a sudden change in party; the death of President Reagan and Vice President Bush could have led to President Tip O'Neill. The death of President Clinton and Vice President Gore might have led to President Newt Gingrich. The situation becomes more tenuous if the vice presidency has been vacant for a time. Finally, in a catastrophic attack, the presidency could shift between branches and between parties, causing the makeup of the legislative and executive branches to change virtually overnight.

In addition, the so-called "bumping procedure" allowing congressional leaders elected after an attack to bump out a cabinet member who is serving as president is especially troublesome. As a result, the nation could potentially have

48 Article II, Section 1, United States Constitution; See appendix I

multiple presidents in a short period of time. And the problem of a party shift would only be magnified if the new Congressional leaders are of a different party than before the attack, and these leaders might be of a different party than the President.

In addition, the bumping procedure could allow Congress to have undue sway over the executive after an attack. For example, if the Secretary of State were to become president, Congress could threaten to replace him with its own leaders unless he complies with Congress's demands. This would essentially eviscerate the separation of powers.

3. The Order of Succession

The line of succession has a certain order to it, with the Cabinet officials from the oldest departments earlier in the line of succession, at least after Congressional leaders. But for years we have simply relied on this formula without critically analyzing the logic behind the order itself.

First, it makes little sense to include the President *pro tempore* of the Senate in the line of succession. While many figures in this position have been highly able, the criterion for selecting the President *pro tempore* (the longest serving senator in the majority party) ensures that he will be of considerable age (ninety-eight -year-old Strom Thurmond held the post in 2001). Aside from the age issue, the President *pro tempore* might not truly represent his or her party nor reflect the views of the majority of the Senate. The Majority Leader would be more comparable to the Speaker of the House (although there are some difficulties in defining this non-Constitutional figure) in the succession statute. Alternatively, the position of President *pro tempore* could be awarded on different criteria which would reflect the reality that this person is three heartbeats from the presidency.

As for the cabinet, the Secretary heads of cabinet departments lower in the line of succession are often picked with an eye towards special knowledge of their departments' policy areas, such as agriculture or veterans affairs, or to fill geographical, ideological or other criteria, but not with the thought in mind that they could become president.

Finally, even with respect to the heads of the Big Four – the departments of State, Treasury, Defense and the Attorney General, there is a legitimate question as to what order should prevail in the line of succession. Should the Secretary of the Treasury come before the Secretary of Defense and the Attorney General? Which secretary would be the most capable of leading our nation in the face of a catastrophic attack?

4. Acting Secretaries in the Line of Succession

The language of the current Presidential Succession Act allows an acting head of a department to be in the line of succession if that person has been confirmed by the Senate for any post whatsoever, not just for head of the department.[49] In ordinary times, this might lead to confusion in the line of succession. Would the acting Secretary of State really be ahead of the original Treasury and Defense Secretaries in the line of succession? In the case of a catastrophic

49 Presidential Succession Act of 1947; See appendix II

attack, this provision might cause even greater confusion as departments have their own internal lines of succession, and the death of the head of a department might result in the automatic ascension of an acting secretary. The acting secretary might then claim to be in the line of succession ahead of cabinet officers from other departments lower in the overall Presidential succession provisions.

Finally, the confusion over the status of acting secretaries as opposed to original secretaries would inevitably become an issue should an attack take place around a presidential inauguration. Traditionally, heads of departments resign just in advance of the inauguration of the incoming President, leaving their department in the hands of an acting secretary. In this case, an attack around the inauguration would leave the acting secretaries of the outgoing administration in place as the successors for the incoming President.

5. Incapacitation

The 25th Amendment covers many details of how an incapacitated president transfers power to a vice president. The amendment does not, however, cover the case of a transfer of power from an incapacitated president to other figures in the line of succession if the Vice President is not able to act. Though the Constitution gives Congress the authority to enact legislation dealing with these circumstances, Congress has not chosen to do so. The lack of guidelines could lead to great uncertainty if a catastrophic attack were to leave several figures in the line of succession dead or incapacitated.

The provision in the Presidential Succession Act requiring cabinet members to resign their posts to assume the presidency creates similar problems. Congressional leaders in the line must resign because the Constitution does not allow individuals to hold posts in the legislative and executive branches simultaneously. There is, however, no constitutional reason for cabinet members to resign; the requirement is purely statutory. In the case of an incapacitated president with a cabinet member next in the line of succession, the Cabinet member might take over for the President temporarily, but then would lose his or her post when the President recovers. If the President were to slip back into an incapacitated state, cabinet members who had already assumed the presidency would no longer be eligible to take over again because they would have resigned their cabinet positions and thus removed themselves from the line of succession. This requirement leads to unnecessary confusion with an incapacitated president.[50]

6. The Inauguration and Pre-inauguration Scenarios.

Perhaps the most dangerous time for Presidential succession is the inauguration of a new president, when the outgoing line of succession is gathered together and the incoming line is not yet in place.

Consider that both the outgoing and incoming presidents and vice presidents attend the ceremony along with the Speaker of the House and the President *pro tempore* of the Senate, proposed and announced, but not yet nominated cabinet members of the new President and most

50 Fortier, John and Ornstein, Norman. "Presidential Succession and Presidential Leaders," *Catholic University Law Review* (Fall 2004).

members of Congress. On January 20th at noon, the outgoing President and Vice President's terms end. They cannot constitutionally stay on past that date. The incoming President and Vice President will assume office at noon. The Speaker and the President *pro tempore* will have already assumed their positions when Congress convened on January 3rd. The cabinet members' terms do not end when the term of the President ends, but almost all cabinet members resign shortly before the administration ends. Acting secretaries are left in charge of the departments, and if they had been confirmed by the Senate to fill lower level positions earlier, might be considered part of the line of succession in their current capacities as acting secretaries.

The cabinet members of the new administration are typically selected before the inauguration—but not confirmed until afterward. By January 20th, the Senate will have held and completed hearings for most of them. And all but one or two controversial picks will likely be ready for an immediate vote on the Senate floor as soon as the new President takes office, officially sends their appointments to the Senate, and the Senate reconvenes and confirms them. This process can be completed expeditiously, but even in the best case scenario it still takes several hours. It is not until late in the afternoon that the new President has any of his cabinet confirmed. In 1989, the Senate did not meet to consider nominations until six days after the inauguration. So for a period of hours and perhaps days, the new President has none of his or her own cabinet members in the line of succession.

If an attack were to occur at the inauguration killing the incoming President, Vice President, Speaker and the President *pro tempore*, the country would be left in an undesirable situation. Those who remained in the line of Presidential succession would be the usually inexperienced acting cabinet members, rather than than the previous administration's cabinet secretaries who would have likely resigned on the evening of January 19th or early morning on January 20th. Alternatively, a handful of surviving members of Congress could convene, choose a new Speaker, and have that individual become president for the full four year term remaining.

Depending on the time period during which the dilemma occurred, the resolution would be left to a different entity: the electors, Congress, or the Presidential Succession Act. There are three periods of time to consider: (1) the period of time from Election Day until the Presidential electors cast their vote in December; (2) the period of time from the day that the Presidential electors cast their votes until the electors are counted; (3) the period of time between the counting of the electoral votes and the inauguration.

Resolution during the third period is the most straightforward as the President and Vice President would already have been elected. The 20th Amendment clarifies that if the president-elect dies, then the Vice President elect will become President on January 20th.[51] If both the President-elect and the Vice President-elect die before inauguration day, then the Presidential Succession Act would kick in, and the Speaker of the House would become president.

51 Amendment XX, United States Constitution; See appendix I

The first and second periods are more difficult to address because arguably there is no president-elect. In both the first and second periods, the electoral votes have not been certified. There is an official president-elect only when Congress counts and certifies the electoral votes.

In the first period, if the President-elect dies before the electors vote, the matter would likely fall into the hands of the winning political party. The Presidential electors tend to be obscure but loyal partisans appointed as rewards for their service to the political party. If the President-elect were to die, the political party would likely instruct its electors to vote for the Vice President-elect. Alternatively, the electors could vote for the deceased President-elect – and hope that Congress would count the votes and declare the deceased President-elect to be the winner with the Vice President-elect succeeding to the presidency. However, there is a possibility that Congress would not count votes cast for a deceased candidate, and the presidency could then end up in the hands of the other party that had actually lost the election.

If both the President-elect and the Vice President-elect were to die before the electors cast their votes, the political parties would likely have to instruct their electors to cast their votes for a new candidate. In this case, the Presidential electors would end up voting for someone who was not on the winning ticket in the November election. While constitutionally legitimate, the country would face the unpalatable reality that the President would be someone who was not on the ballot and who was picked by party insiders on a moment's notice.

The second period between the casting and counting of the electoral votes is the most confusing. The candidates are not yet formally the President-elect and Vice President-elect, because Congress could choose to challenge or discard votes or to find a result other than expected. Yet since the electors have already voted, the electors cannot revote for a party-determined replacement for the deceased President-elect. Congress might be faced with a difficult choice. If it counts votes for the deceased candidates, then it might be effectively electing its Speaker of the House to be president, as the Presidential Succession Act would kick in. Alternatively, if they chose not to count votes cast for the winning, but now deceased ticket, then the House would have to choose the new president, only choosing from the losing party candidates.

Recommendations

1. The Presidential Line of Succession Should Extend Outside of Washington, D.C.

Given the possibility of an attack with weapons of mass destruction, it is essential that the line of Presidential succession include at least some individuals who live and work outside of the Washington, D.C. area.

There are several ways to achieve this objective. For instance, federal officials such as ambassadors and governors, perhaps in the order of the size of their state or the creation of the states, could be included in the line of succession as a last resort. The Commission's preferred solution, however, is to create four or five new federal offices. The President would appoint important figures to these offices, and they would be confirmed by the Senate. The Commission envisions these individuals would largely be former high government officials that the President felt comfortable appointing such as former presidents, former secretaries of state, former members of Congress, or even sitting governors all located outside of Washington, D.C. Though the Constitution prevents presidents from seeking third terms in office, former presidents are, indeed, eligible to be selected in the Presidential line of succession. Some states prohibit state officeholders from holding federal office, but other states allow it. Sitting governors from the states that allow dual office-holding could also be considered by the President and the Senate. These new offices would sit at the end of the line of succession as a failsafe if a catastrophic attack on Washington wiped out others in the line of succession.

The Commission also recommends that only the top four cabinet members be included in the line of succession [See recommendation 4], with the officers outside of Washington as last in the line of succession instead of the lower profile cabinet members under the current law.

It is important to keep these new officers informed of matters that would be relevant if they were suddenly thrust into the presidency following a catastrophic attack. Lower profile cabinet members are not as a matter of course briefed regularly and thoroughly on national security matters. However, these newly created officers would presumably have high levels of past experience that would help them in the position of President. But in addition, the White House should strive to include these officers in regular (at least monthly) national security briefings, as a part of their duties as Officers of the United States.

2. Remove Congressional Leaders from the Line of Succession

There is reason to believe that including congressional leaders in the line of succession may be unconstitutional. If a Congressional leader not from the President's party were to assume the presidency, it could lead to a destabilizing change of party for the federal government. Additionally, as outlined above, the inclusion of Congressional leaders could lead to multiple successors in a short period of time. American constitutional structure makes the most sense if Article I gives Congress the power to specify which *executive* branch figures should be in the line of succession.

Harry Truman felt that successors should be elected officials and that a president should not be able to appoint his own successors. While it is true that Congressional leaders are elected, they are elected only by their state or district. The election criterion, powerful as it is, is simply not compelling enough to outweigh the drawbacks, constitutional and otherwise, from having congressional leaders in the line. For reasons of stability, it is preferable that a president select successors who are sympathetic to the party or standing agenda of the White House and that the selection not be made just by the President, but also with the advice and consent of the Senate.

Excluding Congressional leaders would eliminate the possibility that the presidency would shift to the other party if a catastrophic attack killed both the President and Vice President. It would eliminate the possibility of a rump group of a handful of lawmakers choosing a Speaker of the House who would then become president. It would also eliminate the provision in the current law whereby a subsequently elected Speaker bumps out a cabinet member who has taken over for the President. This provision could lead to three presidents in a short period of time.

Finally, the exclusion of Congressional leaders would improve succession during incapacitation. If the presidency must pass to a Congressional leader because of a temporary incapacitation, then it would be very difficult for Congressional leaders to step in for the President. Unless the Congressional leaders were willing to resign their congressional seats, they could not take over the presidency. And once they resigned, they could not reclaim their seats unless they ran for the seat and won in the next scheduled election.

The commission recognizes the political difficulty of removing Congressional leaders from the line of succession. Short of excluding the Congressional leaders altogether, four smaller steps might be taken. First, Congress should remove the "bumping procedure," by which a subsequent Speaker could claim the presidency from a cabinet successor. Instead, the law should allow a living Speaker or Senate leader to take the presidency if the President and Vice President are killed, but if the Speaker and Senate leader are also killed, then the Cabinet member who becomes president should remain president for the remainder of the term, as the Constitution prescribes, and as would increase the legitimacy of the succession in the eyes of the American people. (See recommendation 3 on special elections.)

Second, if Congressional leaders remain, the current system of selecting the President *pro tempore* should be changed. The most sensible system would be for the Majority Leader to take this place in the line. But the Leader is not an officer of Congress the way a Speaker is. Nonetheless, Congress could give its Majority Leader the title of president *pro tempore*. Or it could choose the President *pro tempore* on some basis other than seniority in the majority party, with an eye to who would be the best successor to the President in a crisis.

Third, short of removing the leaders, Congress should change the line of succession so that the congressional leaders will only be in the line of succession for the death of a president, but not for the incapacitation, a scenario in which their assumption would cause much confusion. Congress could also choose to prevent congressional leaders from taking charge in the case of impeachment of the President, a situation in which some leaders might stand to gain.

Finally, Congress should fix congressional continuity. As outlined in our earlier report, Congress would face its own formidable problems in the event of an attack that killed a large number of its members. In this context, the reconstitution of Congress is also important because the congressional leaders chosen after the attack might succeed the presidency. Congress should allow the appointment of temporary officials to fill vacancies in the House of Representative so that Congress can continue functioning after an attack. Also, the House should clarify the processes through which vacancies in the speakership are filled, keeping in mind that a new speaker could automatically assume the presidency. If the speakership were to automatically devolve onto minor members of the House, America could see a relatively insignificant political figure elevated to the presidency. The House should ensure that no individual will assume the presidency without a vote in the full House of Representatives, not by fiat or by the vote of an unrepresentative handful of surviving lawmakers.

3. Special Election for President

The Constitution allows for a special presidential election if the President and the Vice President are killed. Similarly, the first Presidential Succession Act allowed for such an election. But subsequent succession acts have not included such a provision. Congress should reform our current law to provide for a special election within five months if a simultaneous vacancy of the presidency and vice presidency occurs in the first two years of a presidential term. Were such an election not to occur, the interim successor should serve until the end of the term.

4. Reorder the Line of Succession.

The order of the line of succession should be reconsidered. Since the line of succession was established by the 1947 Presidential Succession Act, the only changes have been to add the secretaries of the newly created departments to the end of the line. In fact, all of the Cabinet officers are arranged in the order of the creation of their departments. While the chronology of the creation of the departments might be a rough guide to their relative importance, Congress should not follow this formula blindly. It should think again from scratch what the best

order of succession is, especially considering the emergence of the real possibility of a catastrophic attack on Washington.

The "Big Four" departments should then be examined and reordered to best address a catastrophic attack. It is unlikely that both the President and the Vice President would die simultaneously except in the event of an outside attack. The commission therefore recommends that the order of succession start with the Secretary of State to be followed by the Secretary of Defense, Attorney General and the Secretary of Treasury.

The commission also recommends that the lower profile cabinet members be replaced by the offices created for figures outside of Washington [see recommendation #1]. The lower profile cabinet officials are often picked for their expertise in a particular policy area, are less well known than the "Big Four" cabinet members, and are less intimately involved in matters of national security that would be paramount at the time of an attack.

5. Congress Should Remove Acting Secretaries from the Line of Succession

The Second Presidential Succession Act (in place from 1877 to 1947) explicitly stated that only department heads confirmed by the Senate for the position of department head were in the line of succession. The current act, however, can easily cause confusion as it allows for acting secretaries who were confirmed by the Senate for lower level posts to be in the line of succession. The current line of succession is also particularly ambiguous around the inauguration when a number of departments are briefly headed by acting secretaries pending the confirmation of cabinet secretaries in the new administration.

6. Clarify Procedures for Incapacitation, Especially for Lower Profile Officials in the Line of Succession

A catastrophic attack may involve serious injury to the President and the deaths of others in the line of succession. While procedures for a vice president taking over for an incapacitated president are well laid out by the 25th Amendment, procedures for succession by lower officials are not. Congress has the authority to legally prescribe the exact procedure for a lesser cabinet official taking over for an incapacitated president. The law probably could not require the lower level official to obtain the consent of other cabinet members, as this is a constitutional provision of the 25th Amendment provided for the Vice President. But it could provide guidance as to how the transfer might take place and how Congress is to be notified.

Further, Congress should clarify what would happen if a majority of the cabinet were unavailable for the Vice President to consult with when a president is incapacitated. Under a provision of the 25th Amendment, Congress could specify an alternative body with which the Vice President could consult and obtain a majority in order to take over the presidency. For example, Congress could indicate that in case the Vice President is unable to secure a majority of the cabinet due to death or incapacity, the Vice President shall secure a majority of governors or another body outside of Washington.[52]

52 Fortier, John C. "President Michael Armacost?: The Continuity of Government after September 11," The Brookings Institution, Fall 2003 and Fortier, John C. and Ornstein, Norman J. "If Terrorists Attacked Our Presidential Elections," *Election Law Journal*, Winter 2004, 3(4): 597-612.

7. Fix Inaugural and Pre-inaugural Scenarios

Congress and the political parties should take preventative measures to secure the line of succession in the very dangerous times both during and before the inauguration. Congress must not allow a gap of even several hours during which the line of succession for an incoming president has not yet been established and the outgoing president's cabinet has resigned.

This could be accomplished simply through cooperation between the outgoing president and the incoming president – representing a mere change in custom, rather than a change in law. The outgoing president could submit the names of several of the incoming president's cabinet nominees to the Senate and the Senate could then convene and confirm these nominees on the day before the inauguration or the morning of January 20th. This way there would be an established line of succession at the inaugural ceremony. Additionally, several members of the line might be sent out of town for the ceremony. If recommendation #1, the appointment of officers in the line of succession who would live outside of Washington were adopted, the Senate could also confirm these figures before the inauguration, as the congressional hearings presumably would have been completed in early January.

The commission also recommends shortening as much as possible the period between the casting of electoral votes and their counting by Congress. These dates are relics of an earlier era when communications were slower and less reliable than they are today. Congress should move the date on which the electors meet to cast their votes closer to January 6th, leaving at most a gap of one or two days. This interim period breeds confusion because there is no formal president-elect, even though the electors' choices are now obvious.

Finally, political parties should plan for the possibility of the death of their president-elect and vice president-elect. They should reexamine their procedures for selecting a new nominee to send to the electors in the event of the death of a nominee. Such procedures should be designed so as to make the selection of nominees as broadly acceptable as possible to prepare for the extreme possibility that both nominees are killed.

Conclusion

It is our earnest hope that events never transpire that would put the presidency to the extreme tests considered above. But, however unlikely some of the scenarios we outline may be, the paramount importance of the American chief executive makes it incumbent upon us to ensure the office's functionality even in the most dire of circumstances. Leaving the American government vulnerable in the face of a catastrophic attack – no matter how improbable a scenario – is irresponsible. We hope our recommendations will be weighed with care.

Appendix I

Constitutional Provisions

Article I Section V of the United States Constitution

Section 5. Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide.

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one fifth of those present, be entered on the journal.

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Article II Section 1 of the United States Constitution

Section 1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected, as follows:

Each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in

the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty five years, and been fourteen years a resident within the United States.

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, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice President, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation - "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

Amendment XII

The electors shall meet in their respective states and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the

number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate - The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted - the person having the greatest number of votes for president, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as president, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as president, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as vice-president, shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States.

Amendment XVII

The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Amendment XX

Section 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Section 2. The Congress shall assemble at least once in every year, and such meeting shall

begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Section 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become president. If a president shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as president until a president shall have qualified; and the Congress may by law provide for the case wherein neither a president elect nor a vice president elect shall have qualified, declaring who shall then act as president, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a president or vice president shall have qualified.

Section 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a president whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a vice president whenever the right of choice shall have devolved upon them.

Section 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Section 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several states within seven years from the date of its submission.

Amendment XXV

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

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

Section 3. Whenever the President transmits to the President *pro tempore* of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as acting president.

Section 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President *pro tempore* of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as acting president.

Thereafter, when the President transmits to the President *pro tempore* of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority

of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President *pro tempore* of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as acting President; otherwise, the President shall resume the powers and duties of his office.

Appendix II

Congressional Provisions

United States Code, Title 28, Chapter 1, Section 1. Number of justices; quorum

The Supreme Court of the United States shall consist of a Chief Justice of the United States and eight associate justices, any six of whom shall constitute a quorum.

Presidential Succession Act of 1792

1) Vice President
2) President of the Senate *pro tempore*
3) Speaker of the House of Representatives
4) [Special Election for President]

CHAP. VIII. An act relative to the Election of a President and Vice President of the United States, and declaring the Officer who shall act as President in case if Vacancies in the offices both of President and Vice President. (March 1, 1792)

SECTION 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That except in case of an election of a President and Vice President of the United States, prior to the ordinary period as herein after specified, electors shall be appointed in each state for the election of a President and Vice President of the United States, within thirty-four days preceding the first Wednesday in December, one thousand seven hundred and ninety-two, and within thirty-four days preceding the first Wednesday in December in every fourth year succeeding the last election, which electors shall be equal to the number of Senators and Representatives, to which the several states may by law be entitled at the time, when the President and Vice President, thus to be chosen, should come into office: Provided always, That where no apportionment of Representatives shall have been made after any enumeration, at the time of choosing electors, then the number of electors shall be according to the existing apportionment of Senators and Representatives.

SEC. 2. And be it further enacted, That the electors shall meet and give their votes on the said first Wednesday in December, at such place in each state as shall be directed, by the legislature thereof; and the electors in each state shall make and sign three certificates of all the votes by them given, and shall seal up the same certifying on each that a list of the votes of such state for President and Vice President is contained therein, and shall by writing under their hands, or under the hands of a majority of them, appoint a person to take charge of and

deliver to the President of the Senate, at the seat of government, before the first Wednesday in January then next ensuing, one of the said certificates, and the said electors shall forthwith forward by the post-office to the President of the Senate, at the seat of government, one other of the said certificates, and shall forthwith cause the other of the said certificates to be delivered to the judge of that district in which the said electors shall assemble.

SEC. 3. And be it further enacted, That the executive authority of each state shall cause three lists of the names of the electors of such state to be made and certified and to be delivered to the electors on or before the said first Wednesday in December, and the said electors shall annex one of the said lists to each of the lists of their votes.

SEC. 4. And be it further enacted, That if a list of votes, from any state, shall not have been received at the seat of government on the said first Wednesday in January, that then the Secretary of State shall send a special messenger to the district judge in whose custody such list shall have been lodged, who shall forthwith transmit the same to the seat of government.

SEC. 5. And be it further enacted, That Congress shall be in session on the second Wednesday in February, one thousand seven hundred and ninety-three, and on the second Wednesday in February succeeding every meeting of the electors, and the said certificates, or so many of them as shall have been received, shall then be opened, the votes counted, and the persons who shall fill the offices of President and Vice President ascertained and declared, agreeably to the constitution.

SEC. 6. And be it further enacted, That in case there shall be no President of the Senate at the seat of government on the arrival of the persons entrusted with the lists of the votes of the electors, then such persons shall deliver the lists of votes in their custody into the office of the Secretary of State, to be safely kept and delivered over as soon as may be, to the President of the Senate.

SEC. 7. And be it further enacted, That the persons appointed by the electors to deliver the lists of votes to the President of the Senate, shall be allowed on the delivery of the said lists twenty-five cents for every mile of the estimated distance by the most usual road, from the place of meeting of the electors, to the seat of government of the United States.

SEC. 8. And be it further enacted, That if any person appointed to deliver the votes of the electors to the President of the Senate, shall after accepting of his appointment neglect to perform the services required of him by this act, he shall forfeit the sum of one thousand dollars.

SEC. 9. And be it further enacted, That in case of removal, death, resignation or inability both of the President and Vice President of the United States, the President of the Senate pro tempore, and in case there shall be no President of the Senate, then the Speaker of the House of Representatives, for the time being shall act as President of the United States until the disability be removed or a President shall be elected.

SEC. 10. And be it further enacted, That whenever the offices of President and Vice President shall both become vacant, the Secretary of State shall forthwith cause a notification thereof to be made to the executive of every state, and shall also

cause the same to be published in at least one of the newspapers printed in each state, specifying that electors of the President of the United States shall be appointed or chosen in the several states within thirty-four days preceding the first Wednesday in December then next ensuing: Provided, There shall be the space of two months between the date of such notification and the said first Wednesday in December, but if there shall not be the space of two months between the date of such notification and the first Wednesday in December; and if the term for which the President and Vice President last in office were elected shall not expire on the third day of March next ensuing, then the Secretary of State shall specify in the notification that the electors shall be appointed or chosen within thirty-four days preceding the first Wednesday in December in the year next ensuing, within which time the electors shall accordingly be appointed or chosen, and the electors shall meet and give their votes on the said first Wednesday in December, and the proceedings and duties of the said electors and others shall be pursuant to the directions prescribed in this act.

SEC. 11. And be it further enacted, That the only evidence of refusal to accept or of a resignations of the Office of President and Vice President, shall be an instrument in writing declaring the same, and sub-scribed by the person refusing to accept or resigning, as the case may be, and delivered into the office of the Secretary of State.

SEC. 12. And be it further enacted, That the term of four years for which a President and Vice President shall be elected shall in all cases commence on the fourth day of March next succeeding the day on which the votes of the electors shall have been given.

CHAPT. XVII – An Act to authorize the President of the United States in certain cases to alter the place for holding a session of Congress. (Approved April 3, 1794)

Be it enacted by the Senate and House of Representatives of the United States of America in congress assembled, That whenever the Congress shall be about to convene, and, from the prevalence of contagious sickness, or the existence of other circumstances, it would in the opinion of the President of the United States, be hazardous to the lives or health of the members to meet at the place to which the Congress shall then stand adjourned, or at which it shall be next by law to meet, the President shall be, and he hereby is authorized, by proclamation, to convene the Congress at such other place as he may judge proper.

Presidential Succession Act of 1886

1) Vice President
2) Secretary of State
3) Secretary of Treasury
4) Secretary of War
5) Attorney-General
6) Postmaster-General
7) Secretary of the Navy
8) Secretary of the Interior

CHAP. 4.- An act to provide for the performance of the duties of tie office of President in case of the removal, death, resignation, or inability both of the President and Vice-President. - Jan 19, 1886.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in case of removal, death, resignation, or inability of both the President and Vice-President of the United States, the Secretary of State, or if there be none, or in case of

his removal, death, resignation, or inability, then the Secretary of Treasury, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of War, or if there be none, or in case of his removal, death, resignation, or inability, then the Attorney-General, or if there be none, or in case of his removal, death, resignation, or inability, then the Postmaster-General, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Navy, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Interior, shall act as President until the disability of the President or Vice-President is removed or a President shall be elected: Provided, That whenever the powers and duties of the office of President of the United States shall devolve upon any of the persons named herein, if Congress be not then in session, or if it would not meet in accordance with law within twenty days thereafter, it shall be the duty of the person upon whom said powers and duties shall devolve to issue a proclamation convening Congress 'in extraordinary session, giving twenty days' notice of the time of meeting.

SEC. 2. That the preceding section shall only be held to describe and apply to such officers as shall have been appointed by the advice and consent of the Senate to the offices therein named, and such as are eligible to the office of President under the Constitution and not under impeachment by the House of Representatives of the United States at the time the powers and duties of the office shall devolve upon them respectively.

SEC. 3. That sections one hundred and forty-six, one hundred and forty-seven, one hundred and forty-eight, one hundred and forty-nine and one hundred and fifty of the Revised Statutes are hereby repealed.

Presidential Succession Act of 1947 (as amended through 2002)

1) Vice President
2) Speaker of the House
3) President *pro tempore*
4) Secretary of State
5) Secretary of the Treasury
6) Secretary of Defense
7) Attorney General
8) Secretary of the Interior
9) Secretary of Agriculture
10) Secretary of Commerce
11) Secretary of Labor
12) Secretary of Health and Human Services
13) Secretary of Housing and Urban Development
14) Secretary of Transportation
15) Secretary of Energy
16) Secretary of Education
17) Secretary of Veterans Affairs
18) Secretary of Homeland Security

SEC 19. Vacancy in offices of both President and Vice President; officers eligible to act

(a)(1) If, by reason of death, resignation, removal from office, inability, or failure to qualify, there is neither a President nor Vice President to discharge the powers and duties of the office of President, then the Speaker of the House of Representatives shall, upon his resignation as Speaker and as Representative in Congress, act as President.

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

(b) If, at the time when under subsection (a) of this section a Speaker is to begin the discharge of the powers and duties of the office of President, there is no Speaker, or the Speaker fails to qualify as Acting President, then the President *pro tempore* of the Senate shall, upon his resignation as President pro tempore and as Senator, act as President.

(c) An individual acting as President under subsection (a) or subsection (b) of this section shall continue to act until the expiration of the then current Presidential term, except that-

(1) if his discharge of the powers and duties of the office is founded in whole or in part on the failure of both the President-elect and the Vice-President-elect to qualify, then he shall act only until a President or Vice President qualifies; and

(2) if his discharge of the powers and duties of the office is founded in whole or in part on the inability of the President or Vice President, then he shall act only until the removal of the disability of one of such individuals.

(d)(1) If, by reason of death, resignation, removal from office, inability, or failure to qualify, there is no President *pro tempore* to act as President under subsection (b) of this section, then the officer of the United States who is highest on the following list, and who is not under disability to discharge the powers and duties of the office of President shall act as President: Secretary of State, Secretary of the Treasury, Secretary of Defense, Attorney General, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, Secretary of Labor, Secretary of Health and Human Services, Secretary of Housing and Urban Development, Secretary of Transportation, Secretary of Energy, Secretary of Education, Secretary of Veterans Affairs, Secretary of Homeland Security.

(2) An individual acting as President under this subsection shall continue so to do until the expiration of the then current Presidential term, but not after a qualified and prior-entitled individual is able to act, except that the removal of the disability of an individual higher on the list contained in paragraph (1) of this subsection or the ability to qualify on the part of an individual higher on such list shall not terminate his service.

(3) The taking of the oath of office by an individual specified in the list in paragraph (1) of this subsection shall be held to constitute his resignation from the office by virtue of the holding of which he qualifies to act as President.

(e) Subsections (a), (b), and (d) of this section shall apply only to such officers as are eligible to the office of President under the Constitution. Subsection (d) of this section shall apply only to officers appointed, by and with the advice and consent of the Senate, prior to the time of the death, resignation, removal from office, inability, or failure to qualify, of the President *pro tempore*, and only to officers not under impeachment by the House of Representatives at the time the powers and duties of the office of President devolve upon them.

(f) During the period that any individual acts as President under this section, his compensation shall be at the rate then provided by law in the case of the President.

Appendix III

Federal Provisions for Filling Senate Vacancies

U.S. Constitution, Article I Section 3

…if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

U.S. Constitution, 17th Amendment

When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

2 U.S.C. Sec. 8. Vacancies

The time for holding elections in any State, district, or territory for a Representative or Delegate to fill a vacancy, whether such vacancy is caused by a failure to elect at the time prescribed by law, or by the death, resignation, or incapacity of a person elected, may be prescribed by the laws of the several States and territories respectively.

Appendix IV

President Truman's Special Message to the Congress on the Succession to the Presidency, June 19, 1945

To the Congress of the United States:

I think that this is an appropriate time for the Congress to reexamine the question of the Presidential succession.

The question is of great importance now because there will be no elected Vice President for almost four years.

The existing statute governing the succession to the office of President was enacted in 1886. Under it, in the event of the death of the elected President and Vice President, members of the Cabinet successively fill the office.

Each of these Cabinet members is appointed by the President with the advice and consent of the Senate. In effect, therefore, by reason of the tragic death of the late President, it now lies within my power to nominate the person who would be my immediate successor in the event of my own death or inability to act.

I do not believe that in a democracy this power should rest with the Chief Executive.

In so far as possible, the office of the President should be filled by an elective officer. There is no officer in our system of government, besides the President and Vice President, who has been elected by all the voters of the country.

The Speaker of the House of Representatives, who is elected in his own district, is also elected to be the presiding officer of the House by a vote of all the Representatives of all the people of the country. As a result, I believe that the Speaker is the official in the Federal Government, whose selection next to that of the President and Vice President, can be most accurately said to stem from the people themselves.

Under the law of 1792, the President Pro Tempore of the Senate followed the Vice President in the order of succession.

The President Pro Tempore is elected as a Senator by his State and then as presiding officer by the Senate. But the members of the Senate are not as closely tied in by the elective process to the people as are the members of the House of Representatives. A completely new House is elected every two years, and always at

the same time as the President and Vice President. Usually it is in agreement politically with the Chief Executive.

Only one third of the Senate, however, is elected with the President and Vice President. The Senate might, therefore, have a majority hostile to the policies of the President, and might conceivably fill the Presidential office with one not in sympathy with the will of the majority of the people.

Some of the events in the impeachment proceedings of President Johnson suggested the possibility of a hostile Congress in the future seeking to oust a Vice President who had become President, in order to have the President Pro Tempore of the Senate become the President. This was one of the considerations, among several others, which led to the change in 1886.

No matter who succeeds to the Presidency after the death of the elected President and Vice President, it is my opinion he should not serve any longer than until the next Congressional election or until a special election called for the purpose of electing a new President and Vice President. This period the Congress should fix. The individuals elected at such general or special election should then serve only to fill the unexpired term of the deceased President and Vice President. In this way there would be no interference with the normal four-year interval of general national elections.

I recommend, therefore, that the Congress enact legislation placing the Speaker of the House of Representatives first in order of succession in case of the removal, death, resignation or inability to act of the President and Vice President. Of course, the Speaker should resign as a Representative in the Congress as well as Speaker of the House before he assumes the office of President.

If there is no qualified Speaker, or if the Speaker fails to qualify, then I recommend that the succession pass to the President Pro Tempore of the Senate, who should hold office until a duly qualified Speaker is elected.

If there be neither Speaker nor President Pro Tempore qualified to succeed on the creation of the vacancy, then the succession might pass to the members of the Cabinet as now provided, until a duly qualified Speaker is elected.

If the Congress decides that a special election should be held, then I recommend that it provide for such election to be held as soon after the death or disqualification of the President and Vice President as practicable. The method and procedure for holding such special election should be provided now by law, so that the election can be held as expeditiously as possible should the contingency arise.

In the interest of orderly, democratic government, I urge the Congress to give its early consideration to this most important subject.

HARRY S. TRUMAN

Appendix V

Presidential Deaths in Office

President	Term for Which Elected	Death	Vice Presidential Successor	Date Presidential Oath Taken	Remaining Term
William H. Harrison	March 4, 1841-1845	April 4, 1841	John Tyler	April 6, 1841	3 years, 11 months
Zachary Taylor	March 4, 1849-1853	July 9, 1850	Millard Fillmore	July 10, 1850	2 years, 7 months, 23 days
Abraham Lincoln	March 4, 1865-1869	April 15, 1865	Andrew Johnson	April 15, 1865	3 years, 10 months, 17 days
James A. Garfield	March 4, 1881-1885	September 19, 1881	Chester A. Arthur	September 20 and 22, 1881	3 years, 5 months, 13 days
William McKinley	March 4, 1901-1905	September 14, 1901	Theodore Roosevelt	September 14, 1901	3 years, 5 months, 18 days
Warren G. Harding	March 4, 1921-1925	August 2, 1923	Calvin Coolidge	August 3 and 21, 1923	1 year, 7 months, 2 days
Franklin D. Roosevelt	January 20, 1945-1949	April 12, 1945	Harry S. Truman	April 15, 1945	3 years, 9 months, 29 days
John F. Kennedy	January 20, 1961-1965	November 22, 1963	Lyndon B. Johnson	November 22, 1963	1 year, 1 month, 29 days

Source: Feerick, John D. *From Failing Hands: The Story of Presidential Succession*, Fordham University Press, New York, 1965 (Reprinted with slight modifications with permission from the author).

Appendix VI

Vice Presidential Vacancies

Vice President	Period For Which Elected	Termination of Service	Reason for Termination	Length of Vice-Presidential Vacancy
George Clinton	March 4, 1809-1813	April 20, 1812	Death	0 years, 10 months, 12 days
Elbridge Gerry	March 4, 1813-1817	November 23, 1814	Death	2 years, 3 months, 9 days
John C. Calhoun	March 4, 1829-1833	December 28, 1832	Resignation	0 years, 2 months, 4 days
John Tyler	March 4, 1841-1845	April 4, 1841	Succession	3 years, 11 months, 0 days
Millard Fillmore	March 4, 1849-1853	July 9, 1850	Succession	2 years, 7 months, 23 days
William R. King	March 4, 1853-1857	April 18, 1853	Death	3 years, 10 months, 14 days
Andrew Johnson	March 4, 1865-1869	April 15, 1865	Succession	3 years, 10 months, 17 days
Henry Wilson	March 4, 1873-1877	November 22, 1875	Death	1 year, 3 months, 10 days
Chester A. Arthur	March 4, 1881-1885	September 19, 1881	Succession	3 years, 5 months, 13 days
Thomas A. Hendricks	March 4, 1885-1889	November 25, 1885	Death	3 years, 3 months, 7 days
Garret A. Hobart	March 4, 1897-1901	November 21, 1889	Death	1 year, 3 months, 11 days
Theodore Roosevelt	March 4, 1901-1905	September 14, 1901	Succession	3 years, 5 months, 18 days
James S. Sherman	March 4, 1909-1913	October 30, 1912	Death	0 years, 4 months, 5 days
Calvin Coolidge	March 4, 1921-1925	August 2, 1923	Succession	1 year, 7 months, 2 days
Harry S. Truman	January 20, 1945-1949	April 12, 1945	Succession	3 years, 9 months, 8 days
Lyndon B. Johnson	January 20, 1961-1965	November 22, 1963	Succession	1 year, 1 month, 29 days
*Spiro Agnew	January 20, 1969-1977	October 10, 1973	Resignation	0 years, 1 month, 26 days
*Gerald Ford	October 12, 1973-January 20, 1977	August 9, 1974	Succession	0 years, 4 months, 10 days

Source: Feerick, John D. *From Failing Hands: The Story of Presidential Succession*, Fordham University Press, New York, 1965. (*addition; please note: Gerald Ford was never elected. He assumed the presidency upon Richard Nixon's resignation. There was an additional 2 day vacancy between Spiro Agnew's resignation and Gerald Ford's assumption of the powers of the Vice Presidency on October 12, 1973). [original and additions reprinted with permission from the author].

Summary of Central Recommendation

PROBLEM: The current constitutional and legal provisions fail to take into account the possibility of a catastrophic attack on Washington, D.C. Since all individuals included in the Presidential line of succession are based in our nation's capital, a catastrophic attack on the city could potentially kill or incapacitate many if not all of these individuals and cause significant confusion about who can assume the powers of the presidency. With the inclusion of members of Congress and acting cabinet secretaries in the line of succession, all of whom must resign from their current positions before assuming the presidency and can then be "bumped" from the presidency by an individual ranking higher in the line of succession, it is possible to have no one remaining in the line of succession. Current procedures leave our nation especially vulnerable at presidential inaugurations and State of the Union Addresses.

RECOMMENDATION: A reordering of the Presidential line of succession to: Vice President, Secretary of State, Secretary of the Treasury, Secretary of Defense, Attorney General, followed by four or five newly appointed individuals residing outside of Washington, D.C. A dual vacancy in the presidency and vice presidency during the first two years of a term should trigger a special election within five months. The winner of the election would serve the remainder of the term and would displace the temporary successor.

The commission recommends removing Congressional leaders and acting secretaries from the line of succession to limit confusion over who can assume power. It also recommends reducing the time between the casting and counting of electoral votes as well as for Congress to clarify procedures for incapacitation and create guidelines for continuity in the event of an attack at the presidential inauguration or during the time period before the inauguration. If possible, the outgoing president should appoint some or all of the incoming president's cabinet nominees prior to the inauguration to ensure individuals will remain in the line of succession. The commission believes these changes to the current provisions are necessary to ensure continuity of the United States' Presidency when our nation is most vulnerable.

The Continuity of Government Commission is
an American Enterprise Institute and Brookings Institution project.

The Commission is funded by:
The Carnegie Corporation of New York
The William and Flora Hewlett Foundation
The David and Lucille Packard Foundation
The John D. and Catherine T. MacArthur Foundation

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