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Presidential Succession and Inability

Committee for Economic Development. Research and Policy Committee

PRESIDENTIAL SUCCESSION AND INABILITY

CED

JANUARY 1965

A STATEMENT ON NATIONAL POLICY BY THE RESEARCH AND POLICY COMMITTEE OF THE COMMITTEE FOR ECONOMIC DEVELOPMENT

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Library of Congress Catalog Card Number: 65-15752

CONTENTS

1. Introduction 9

Importance of Smooth Transition 9
Need for Clarification 10
Senate Proposal 10
Criteria for Judgment of Proposals 11

2. Filling Vice Presidential Vacancies 13

Alternative Proposals for Filling Vice Presidential Vacancies 14
Special Vice Presidential Election 14
Selection by the Electoral College 15
Multiple Vice Presidents 15
Selection by Congress 15
Congressional Approval after Presidential Nomination 15

3. Changing the Line of Succession 17

4. Determining Presidential Inability 20

Devolution of "Office" or of "Powers and Duties" 20
The Meaning of "Inability" 24
Alternative Methods for Determining Inability 25
The Vice President on His Own Authority 25
Special Tribunal 26
The Cabinet on its Own Authority 26

5. Terminating Inability 30

Alternative Methods for Terminating Inability 30
The President Determines End of His Inability 30
The President and Vice President Jointly Determine End of Inability 30
The Vice President's Decision is Binding 31
Devolution is Irrevocable 32
Cabinet Decision By Majority Vote 32

6. Conclusions 34

Appendix

Table—Instances when the United States has been without a Vice President 36
Table—Occasions on which the President and the Speaker of the House of Representatives or the President *Pro Tempore* of the Senate were of opposite parties, 1864-1964 38

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This statement has been approved for publication by the members of the Research and Policy Committee and of the Committee for Improvement of Management in Government, subject to individual dissents or reservations noted herein. The individuals who are responsible for this statement are listed on the opposite page. Company or institutional associations are included for identification only; the companies or institutions do not share in the responsibility borne by the individual members of the two committees.

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"Initiate studies into the principles of business policy and of public policy which will foster the full contribution by industry and commerce to the attainment and maintenance of high and secure standards of living for people in all walks of life through maximum employment and high productivity in the domestic economy."

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Each Statement on National Policy is preceded by discussions, meetings, and exchanges of memoranda, often stretching over many months. The research is undertaken by a subcommittee, with its advisers. For this statement the Committee for Improvement of Management in Government acted as a subcommittee. It together with the full Research and Policy Committee participated in the drafting of findings and recommendations.

Except for the members of the Research and Policy Committee and the Committee for Improvement of Management in Government, the recommendations presented herein are not necessarily endorsed by other Trustees or by the advisers, contributors, staff members, or others associated with CED.

The Research and Policy Committee offers this Statement on National Policy as an aid to clearer understanding of steps to be taken in achieving improvement in the operations of the American economy. The Committee is not attempting to pass on any pending specific legislative proposals; its purpose is to urge careful consideration of the objectives set forth in the statement and of the best means of accomplishing those objectives.

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2. Voted to disapprove this statement. See pages 40 to 41.
3. Did not participate in the voting on this statement because of absence from the country.

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Foreword

This statement, prepared by the Committee for Improvement of Management in Government, is approved and issued by the Research and Policy Committee of the Committee for Economic Development.

Presidential succession and inability have been of recurring concern to the nation for more than a century. We need clearly determined means to transfer the duties and powers of the Presidency quickly, but in a legitimate and orderly way, when death or inability of the President occurs. Our proposals are directed to that effect. They also provide ways for filling any vacancy that may occur in the Vice Presidency.

Our consideration of these problems was assisted materially by the consensus reached by the American Bar Association, and published (1964) in the report, "Presidential Inability and Vice Presidential Vacancy." We acknowledge, also, the help of Demetrios Caraley of Barnard College; John Feerick of Skadden, Arps, Slate, Meagher & Flom, New York City; and Vincent Doyle of the Library of Congress. Their knowledge of American history, politics, and constitutional law served the Committee well. As consultants, however, they are not responsible for our conclusions or recommendations.

On behalf of the Research and Policy Committee I wish to express our gratitude to Mr. Marion B. Folsom as Chairman and Mr. John A. Perkins as Vice Chairman, and to the members of the Committee for Improvement of Management in Government, its advisors and consultants. I also wish to express our appreciation for the financial assistance received from the Carnegie Corporation, the Edgar Stern Family Fund, and other foundations in making this and additional statements possible.

Theodore O. Yntema, *Chairman*
Research and Policy Committee

1. Introduction

The office of President of the United States is the toughest and most important job in the world. It has a unique concentration of those powers and responsibilities that in most other nations are shared by two or three top officials. For this reason vacancies, inability, and transitions in this office are matters of gravest concern to our country and to the world.

As chief of state, the President symbolizes the sovereignty and unity of the American people. As chief executive of the government, he is in active charge of the affairs of the national administration. As Constitutional commander in chief of the military services, the President controls both the nuclear trigger and the use of all other military force. As chief initiator and implementer of foreign policy, he is expected to mold a world environment in which resort to nuclear weapons will not be necessary.

As the main source of proposals for major legislative action, the President's leadership is essential if Congress is to perform its own role properly. By custom, the President is responsible for the direction and management of his political party. Finally, the President is looked to as the all-around national problem-solver, who is expected to head off strikes and depressions, assist victims of flood and famine, and move immediately with some kind of solution in almost every large-scale emergency or crisis.

Importance of Smooth Transition

The President's active leadership is so essential to the effective operation of the government that his death or serious illness not only constitutes a personal tragedy but creates the risk of national disaster. When President Kennedy was assassinated in November of 1963, the American people were shocked and grieved by his loss, but, even more importantly, they felt grave concern for the safety of the Republic.

Fortunately, the Presidential powers and duties were quickly assumed by a new President who immediately sought to remove public anxiety. Less than two hours after President Kennedy's death, Vice President Johnson took the Presidential oath of office. In less than a week, in

an address to Congress, President Johnson made clear that the policies and programs of his predecessor would be continued under his administration.

There are potential situations, however, under which a smooth transition would not occur. There is no guarantee that virtually uninterrupted exercise of Presidential powers and duties would always be repeated. There are serious gaps and ambiguities in the Constitution concerning vacancy or inability in the Presidential office. The pertinent provision is found in Article II, Section 1.

> 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 the 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.

Although this arrangement has served reasonably well on most—though not all—past occasions, it leaves many open questions.

Need for Clarification

The United States has never experienced a case where both Presidential and Vice Presidential offices became vacant within a four-year term, and the succession statutes have never been tested.

More fundamentally, the Constitution is not clear about

- —What actually constitutes inability to discharge the powers and duties of the Presidential office;
- —Who determines that such inability exists;
- —Whether, in the event of Presidential inability, it is only the *powers and duties* of the Presidency that devolve on the Vice President, or the *office itself*.

Despite the urgent need for solution—demonstrated dramatically and repeatedly in recent years—neither corrective legislation nor constitutional amendment has been adopted.

Senate Proposal

In September of 1964 the Senate approved a proposed constitutional amendment by unanimous vote. It provides for keeping the office of Vice President filled, and also deals with the problem of Presidential inability. Although the House of Representatives has taken no action on

this proposal, Senate approval justifies its careful study. 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 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. If the President declares in writing that he is unable to discharge the powers and duties of his office, such powers and duties shall be discharged by the Vice President as Acting President.
>
> SECTION 4. If the President does not so declare, and the Vice President, with the written concurrence of a majority of the heads of the executive departments or such other body as Congress may by law provide, transmits to the Congress his written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.
>
> SECTION 5. Whenever the President transmits to the Congress his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President, with the written concurrence of a majority of the heads of the executive departments or such other body as Congress may by law provide, transmits within two days to the Congress his written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall immediately decide the issue. If the Congress determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of the 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.

Criteria for Judgment of Proposals

This Committee is convinced that the issues of succession and inability are vital and must be faced by the nation without further delay. We have sought to examine each alternative that has been seriously proposed, and to identify its advantages and disadvantages.

The Committee recognizes that no solution can be perfect. All alternative solutions have gaps. In analyzing the alternatives this Committee has judged their *pros* and *cons* against these basic criteria:

Continuity in the Presidential office:

In event of either death or inability of the President, there must be no break in the exercise of the powers and duties of the Presidency;

Legitimacy:

Any transfer of the Presidential office or its powers and duties must be fully acceptable to government officials and to the general public;

Certainty:

No question of doubt should be permitted to arise as to who is exercising the powers and duties of the Presidency at any time—two men competing for Presidential authority would be disastrous for the nation;

Stability in policy:

There should be no sharp shift in policy or change of party;

Speed and simplicity in procedures:

The procedures by which either the Presidential office or its powers and duties are transferred must be fast, efficient, and easily understood;

Preservation of the separation of powers:

Whatever corrective action may be taken, it must not weaken our traditional pattern of separation of powers, particularly between the Presidency and Congress.

The Committee is convinced that correct solutions must meet *all these tests.*

2. Filling Vice Presidential Vacancies

Eight of our 35 Presidents have died in office.[1] On sixteen different occasions, totaling more than 37 years, the Vice Presidential office has been vacant. Eight Vice Presidents succeeded to the Presidency, seven died during their terms of office, and one resigned. It is merely a fortunate chance that both Presidential and Vice Presidential offices have never been vacant simultaneously during a single four-year elective span.*

Of the four Presidents immediately preceding Lyndon B. Johnson, Franklin D. Roosevelt and John F. Kennedy did not live out their terms; Dwight D. Eisenhower suffered a serious heart attack; and Harry S. Truman was the object of an attempted assassination. These events prove the importance of having a potential Presidential successor available at all times. This person must be fully acquainted with current policy in domestic and foreign affairs, and be prepared to assume the Presidency on a moment's notice, with its corresponding powers and duties.

The Presidential successor should be basically sympathetic to the plans and aspirations of the incumbent President. Continuity and consistency require that he should not undertake abrupt shifts in governmental policy. To do so might disrupt public confidence in the aftermath of a succession crisis. We conclude that there must always be a full-time Vice President intimately associated with the President, if these criteria are to be met.

In line with this view, there has been an increasing tendency for Presidents to use their Vice Presidents for a variety of important assignments. Under President Roosevelt, Henry A. Wallace helped run important war agencies. Alben W. Barkley, President Truman's Vice President, was added as a statutory member of the National Security Council, and participated directly in making foreign and military policy decisions. Mr. Barkley also served President Truman as a link with Congress.

Especially after President Eisenhower's first illness, Vice President Richard M. Nixon took on more responsibilities. In the President's

[1] See table in the Appendix, p. 36.

*See Memorandum by MR. WILLIAM BENTON, page 39.

several absences he presided over meetings of the Cabinet and the National Security Council. Mr. Nixon served as chairman of the Committee on Government Contracts and of the Cabinet Committee on Price Stability and Economic Growth. Representing the President, he also undertook numerous missions to foreign countries.

Under President Kennedy, Lyndon B. Johnson was one of the most active Vice Presidents in history. He participated in meetings of the Cabinet and the National Security Council. He, too, made extensive trips abroad as a Presidential emissary, helping him to become acquainted with foreign leaders. Mr. Johnson also served as chairman of the Peace Corps Advisory Committee, of the National Aeronautics and Space Council and of the President's Committee on Equal Opportunity Employment.

1. We recommend that the Constitution be amended to provide for filling the Vice Presidential office whenever it becomes vacant.

Alternative Proposals for Filling Vice Presidential Vacancies

A number of alternative methods could be used to fill vacancies in the office of Vice President:

HOW TO AMEND

To be adopted as part of the Constitution, a proposed amendment normally must be approved by a two-thirds vote in each House of Congress and ratified by three-fourths of the fifty states. The provision for calling a constitutional convention, with its product to be ratified by three-fourths of the states, has not yet been used.

- Selection of a new Vice President in a special election;
- Selection of a new Vice President by the electoral college;
- Establishment of a "Second" or "Legislative Vice President" automatically to become the "First" or "Executive Vice President" in case of a vacancy;
- Selection of a new Vice President by Congress;
- Selection of a new Vice President through nomination by the President with some form of Congressional approval.

Special Vice Presidential Election. A special election to fill a vacancy in the Vice Presidency would appear to have a singular advantage in following an established democratic process. However, an extra nationwide election for either the Presidency or Vice Presidency, with the campaigning and other interruption of normal governmental pro-

cesses that it entails, would be highly disruptive.

An open, interim election might result in a Vice President of a different party from the President's, which would weaken the Presidency. However, mechanisms for limiting election to members of the President's party would be most difficult to devise.

Selection By the Electoral College. The proposal for having the electoral college select a new Vice President would avoid the disruption of a special popular election, while still seeming to rely on the regular electoral process. But the electoral college does not exist as a single body. It must assemble, in segments, in the 50 state capitols and the District of Columbia. Its attempted use would lead to selection of a potential President by some 538 virtually unknown individuals not realistically representative.

Multiple Vice Presidents. Having two or more Vice Presidents would provide greater probability that one would survive to be available as a full-time Presidential successor. To divide the limited Vice Presidential powers and duties, just when the importance of the office has come to be better recognized, however, might lower the quality of those who would seek even a "First Vice Presidency."

Having two or more Vice Presidencies would place the Presidential nominee under more pressure to give representation on the national ticket to factional, sectional, or ethnic wings within the party. This could result in a choice of potential successors unable to work closely with the President or with each other.*

Selection By Congress. Selection of a new Vice President solely by Congress has the advantage of appearing closest to a popular choice, without the delay and disruption of a special election.

One major disadvantage of this selection process is the possibility that a Vice President could be chosen with a policy outlook incompatible with that of the President. A more serious disadvantage is that Congress would acquire a measure of control over the selection of potential Presidents that it has never had. The traditional American pattern of separation of powers would be shifted toward legislative supremacy.

Congressional Approval After Presidential Nomination. The proposal for nomination of a candidate by the President with approval by one or both Houses of Congress has strongest general support. The restriction of choice to Presidential nominees would insure acceptability to the President. Congressional approval would serve as a check, symbolizing popular participation and establishing legitimacy.

*See Memorandum by MR. JOHN F. MERRIAM, page 40.

2. We recommend that the Constitution be amended to provide that any vacancy in the office of Vice President be filled through nomination by the President with approval by Congress.*

This Congressional approval of Presidential nominees to fill vacancies in the Vice Presidency might take one of three forms:

- Confirmation by the Senate alone;
- Approval by majorities of those present and voting in both Houses of Congress acting separately;
- Approval by a majority of those present and voting at a joint session of Congress.

Proponents of Congressional approval through simple Senatorial confirmation argue that, since the Senate confirms all other Presidential nominations, it is better equipped by reason of experience, structure, and procedures to perform this function. They also point out that the Constitution specifies that, when no Vice Presidential candidate receives a majority of electoral votes, the Senate shall select the Vice President from the candidates with the two highest numbers of such votes.

Those who want the House of Representatives to participate, either separately or in joint session, argue that this would tend to elevate the Vice Presidency above all other executive appointments. Prior approval by both Houses of Congress would strengthen legitimacy. The Senate does not reflect population differences, whereas the Senate and House together duplicate the allocation of electoral votes among the states.

For these reasons, the Committee believes the House should participate in the confirmation process. Whether the House and Senate should act separately or in joint session may be argued. Those who favor separate House approval point out that there are no precedents or established rules of procedure for Congress to act in joint session. Neither, of course, does the House presently confirm any appointments.

We suggest that rules of procedure could be adopted making action in joint session more expeditious than with the two Houses voting separately. We are impressed by the fact that a joint session would duplicate electoral vote allocation among the several states.

3. We recommend that the Constitution be amended to provide for filling any vacancy in the office of Vice President through nomination by the President with approval by a majority of Senators and Representatives present and voting in a joint session of Congress.*

*See Memorandum by MR. JOHN F. MERRIAM, page 40.

3. Changing the Line of Succession

If provision is made for keeping the Vice Presidency filled at all times, the further line of Presidential succession loses much of its importance. Nevertheless, it is conceivable that both Presidential and Vice Presidential offices could become vacant simultaneously. In that case some successor would have to take office.

The framers of the Constitution made provision for this eventuality in Article II, Section 1, which gives Congress authority to

> 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...

Congress passed a succession law in 1792, pursuant to this section. There was considerable Congressional debate at that time over whether the President *pro tempore* of the Senate and the Speaker of the House are Constitutional "officers" eligible for designation as Presidential successors under the terms of Article II, Section 1. Nevertheless, they were named as the potential successors, in that order.

The law of 1792 was changed in 1886, placing the heads of the several executive departments in line of succession directly after the Vice President. First in order of precedence was the Secretary of State.

Three shortcomings in the earlier system led to this change. At the time of President Andrew Johnson's impeachment, there was no Vice President. Hence, the Senate could have elevated its own presiding officer to the Presidency by convicting the incumbent President. No other Presi-

SUCCESSION ORDER

Under the statute of 1886, the succession followed this order: Secretary of State, Secretary of the Treasury, Secretary of War, Attorney General, Postmaster General, Secretary of the Navy, and Secretary of the Interior. It has been suggested that, with War and Navy Departments now combined in a single department, the Secretary of Defense should be brought up to second in the line, following the Secretary of State.

dent has had to face impeachment proceedings, but another serious shortcoming has also become evident over the years. Frequently, the President *pro tempore* or the Speaker, or both, have been members of a political party opposed to the President's. Parenthetically, during two periods of Vice Presidential vacancy—when President James A. Garfield died in 1881 and when Vice President Thomas A. Hendricks died in 1885—there was at the moment neither a Speaker nor a President *pro tempore*.

The most recent change in the succession law was made in 1947. It placed the Speaker first, followed by the President *pro tempore,* ahead of the Cabinet members in the line of succession. President Truman supported this reversion, on the ground that a President should not be required to choose his own potential successor in the process of naming a Secretary of State. He argued that the Speaker and the President *pro tempore* are elected to their posts by legislative bodies representing all the people. *This Committee does not concur with this reasoning, nor with the present statute based on it.*

The records of the Constitutional Convention, and the language of the Constitution itself, cast strong doubt on whether the Speaker and the President *pro tempore* are "officers" eligible for succession to executive authority as required in the Constitutional sense. Even if this doubt were resolved, the requirement that the Speaker—or the President *pro tempore*—must resign his Congressional position before acting as President would force him to sacrifice a long legislative career even for the briefest Presidential tour of duty. This objection has special weight in cases of temporary Presidential inability, when his powers and duties would be assumed by his "successor" for only a limited period of days or weeks.

One strange effect of the present statute is that it gives the House of Representatives a possible series of succession choices during a single four-year term. This occurs because, after a Speaker had succeeded to the Presidency, the House would choose a new Speaker, who would then be first in the line of succession.

However great may have been the personal abilities of incumbents who have held these offices, it is clear that their preparation for sudden elevation to the Presidency could not approach that of a Vice President, nor that of a leading Cabinet member. The demands of their important full-time jobs do not permit them to observe and to participate in day-to-day Presidential activities, as leading Cabinet officers do. The Speaker, for example, functions as chief leader of the majority party in

the House, and presides over a 435-member legislative body, in addition to performing the duties of a regular Congressman. Exercise of these legislative responsibilities requires his undivided attention.

During eight of the past eighteen years the House of Representatives has been controlled by the party opposing that of the President. Hence, succession to the Presidency by the Speaker oftentimes could change party control of the entire Executive Branch.

1. We recommend that the 1886 succession law be restored with the heads of executive departments taking their former positions in the line of succession.*

*See Memorandum by MR. JOHN F. MERRIAM, page 40.

4. Determining Presidential Inability

Problems concerning Presidential inability pose greater difficulties than vacancies in the Vice Presidency. They arise directly from the language of the Constitution.

> In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Power and Duties of the said Office, the Same shall devolve on the Vice President . . .

This brief passage raises questions on three important points:

—In case of Presidential inability, whether the Vice President assumes "the powers and duties" of the Presidency or the "office" itself;

—How commencement of Presidential inability is established;

—How termination of Presidential inability is decided.

Devolution of "Office" or of "Powers and Duties"

The Constitution does not distinguish between Presidential "inability" and vacancy in the Presidential office due to "removal," "death," or "resignation." In context, there is no ambiguity concerning removal, death, or resignation; but "inability" is not defined in the Constitution. Congress lacks final authority to define Constitutional terms. Clarification, making more specific dispositions concerning exercise of discretion in these matters, depends on adoption of a formal amendment.

The first situation contemplated in this clause of the Constitution occurred upon the death of President William Henry Harrison in April, 1841. Two days later, Vice President John Tyler took the oath of office as "President of the United States." A few newspapers—and some members of Congress—objected to Tyler's assumption of the Presidency, arguing that he was still only "Acting President." The objection was dismissed a few weeks later, when Congress overwhelmingly approved a resolution appointing a committee to wait on "the President of the United States" and to inform him that a quorum of the two Houses had assembled in special session.

The precedent set with Tyler has been confirmed seven times.

Upon the death of their predecessors, few questioned that Millard Fillmore, Andrew Johnson, Chester A. Arthur, Theodore Roosevelt, Calvin Coolidge, Harry S. Truman, or Lyndon B. Johnson had actually become President. This custom has served well, because the person permanently exercising Presidential powers and duties needs to hold the full dignity and prestige of the Presidential office. It is now the established rule of succession that when a President dies the Vice President becomes President.

Beneficial as this custom has been, it has had unexpected and unfortunate collateral effects. The Constitution does not distinguish between Presidential vacancy and inability, and it has been possible to claim that in the case of temporary Presidential inability the Vice President would assume not only the powers and duties of the office but the permanent office of President. President Garfield, shot by an assassin in 1881, did not die until 80 days later. Vice President Arthur refused to exercise the Presidential powers and duties, largely because both he and the Cabinet feared that by so doing he might displace Garfield permanently as President.

During the eight days President William McKinley lived after he was shot in 1901, governmental business came to a standstill. Another —far more prolonged—period of Presidential inability occurred when Woodrow Wilson suffered a stroke paralyzing his left side. For most of the eighteen months while the President was seriously ill, his wife, his personal physician, and the Cabinet struggled to conduct the affairs of state. Mrs. Wilson largely determined what papers the President might see, to whom he might talk, and for how long.

President Wilson did not meet with his Cabinet for eight months; he allowed 28 bills to become law by failure to act within the requisite ten days; and he did not even receive new foreign ambassadors, as required by the Constitution. Most important, at certain critical times in the negotiations, the President's physician refused to let Senate leaders of his own party talk to him about a possible compromise of issues involving the Versailles Treaty, which if accepted by opposing groups might have led to its ratification.

As in President Arthur's case, Vice President Thomas R. Marshall refused to exercise the President's "powers and duties." When the possibility was raised, President Wilson's White House advisers—and the Cabinet—refused to declare him disabled, fearing that Wilson would be permanently displaced.

The exercise of Presidential powers and duties was suspended

again—this time briefly—during President Harding's fatal illness. Still, no corrective measures were adopted, either statutory or amendatory.

The most recent instances of extended Presidential inability occurred in the Eisenhower administration. In September, 1955, President Eisenhower suffered a "moderate" coronary thrombosis, hospitalizing him for six weeks. The President was practically incommunicado for the first week, and only gradually resumed normal Presidential powers and duties. He attended no Cabinet meeting for two months after his attack.

During this period Vice President Nixon did not exercise Presidential powers and duties. The most important administrative decisions were made by Presidential Assistant Sherman Adams, by other members of the White House staff, and by members of the Cabinet. Fortunately, since Congress was not in session, no bills awaited signature. Even more fortunately, no major foreign or domestic emergencies developed.

In June of 1956, President Eisenhower suffered an ileitis attack and underwent an emergency operation. Again, he was hospitalized, this time for three weeks, but he was soon able to perform most of his duties. In November of 1957, President Eisenhower suffered a mild stroke which briefly impaired his speech.

Three months after his last illness President Eisenhower made public the text of an informal agreement with Vice President Nixon concerning the problem of Presidential inability. Dated March 3, 1958, it stated:

> 1. In the event of inability the President would—if possible—so inform the Vice President, and the Vice President would serve as acting President, exercising the powers and duties of the office until the inability had ended.
>
> 2. In the event of an inability which would prevent the President from so communicating with the Vice President, the Vice President, after such consultation as seems to him appropriate under the circumstances, would decide upon the devolution of the powers and duties of the office and would serve as acting President until the inability had ended.
>
> 3. The President, in either event, would determine when the inability had ended and at that time would resume the full exercise of the powers and duties of the office.

In August of 1961, President Kennedy announced an identical agreement between himself and Vice President Johnson. In December of 1963, it was announced that President Johnson and House Speaker John W. McCormack, then first in line to succeed to the Presidency,

had agreed upon the same formula.

These informal agreements are a significant advance, but uncertainty persists about who may be in charge of the government under certain circumstances. It is our view that any uncertainty in this matter is intolerable and must be resolved. The existence of nuclear weapons requires that there be a chief executive with clear authority to act at all times. Even the briefest delay in activating defense or retaliatory forces in a crisis could lead to national disaster.

When it was revealed, in the fall of 1962, that missile emplacements were being built in Cuba, prompt action had to be taken. Inaction would have resulted in a drastic and possibly irreversible shift in the balance of power between the United States and the Soviet Union. Once again, when our destroyers were attacked in the Gulf of Tonkin in the summer of 1964, a decision on retaliation had to be taken almost instantaneously. Only the President, or an official who is clearly authorized to act as President, can make such a decision.

Even in less crisis-laden domestic matters, many built-in deadlines require immediate Presidential decision. When Congress is in session, Presidential inaction on bills passed by Congress automatically makes them laws. Once Congress adjourns, Presidential inaction automatically kills bills by "pocket veto."

Annual budgets have to be submitted to Congress by certain calendar deadlines, and only the President can do so. Moreover, inability of the President may force other officials to determine matters within the President's prerogatives, and this in turn may cause conflicts among officials of the Executive Branch. Unquestioned Presidential authority is essential if the government is to function properly.

In the Garfield and Wilson illnesses, inaction by the Vice Presidents can be traced partly to their feeling that exercising Presidential powers might permanently displace temporarily incapacitated Presidents. Although the Eisenhower-Nixon, Kennedy-Johnson, and Johnson-McCormack agreements recognize the temporary nature of any devolution of Presidential powers because of inability, the Constitution itself should be clarified on this point.

1. We recommend that the Constitution be amended to require that in case of Presidential inability the Vice President shall act as President, assuming full Presidential powers and duties during the period of inability.

There is a two-fold problem in establishing Presidential inability. First, what constitutes an inability requiring devolution of Presidential

powers and duties to the Vice President or other officer in line of succession? Second, how is the beginning of such an inability to be determined?

The Meaning of "Inability"

Records of the Constitutional Convention give no evidence about what kinds of situations the framers intended to cover by the terms "inability" and "disability." The first extended discussion of the meaning of the term "inability" took place during President Garfield's illness.

One point of view was that the "inability" recognized by the Constitution was a mental or intellectual incapacity such as insanity. Others held that "inability" exists whenever the President is in fact unable to exercise his powers, whatever the cause.

An additional distinction has been made between "temporary" and "permanent" inability. It has been argued that temporary inability does not justify the exercise of Presidential powers by the Vice President, whereas permanent inability does. This distinction was considered especially important by those who assumed that an Acting Vice President would succeed to the "office" of President, permanently displacing the incumbent.

2. We recommend that the term Presidential "inability" be left undefined in the Constitution, and that it continue to be understood to mean any situation in which the President is unable to exercise the powers and duties of his office.

Acceptance of this meaning of "inability" should facilitate the continuous exercise of Presidential powers and duties. The controlling criteria then become the President's condition and the contingencies he must meet. Thus, in time of crisis or war even a brief illness would constitute inability. In an extended period of peace and tranquility a more prolonged illness might not be disabling.

Whether the cause of the inability be mental or physical is immaterial. It is equally irrelevant whether the President will or will not recover his full capacities; continuous, uninterrupted exercise of Presidential powers should not depend on anyone's ability as a prophet.

We believe that any attempt to define or to amplify the meaning of the term "inability" in the Constitution could be undesirably restrictive. It might provide a basis for new arguments about whether some particular kind of incapacity (for example, a President being held hostage while abroad) is included.

Alternative Methods for Determining Inability

No one has ever seriously questioned the right of the President to declare his own inability and request the Vice President to exercise the Presidential powers and duties until the inability ceases. When it is universally recognized that only the Presidential powers and duties—not the office—devolve in the case of inability, the President will be less reluctant to admit that he is temporarily unable to perform his responsibilities effectively.

The situation is more serious when the President is either unable or unwilling to declare his inability. In the absence of a Presidential declaration, who is to decide whether a President suffers such "inability" to perform his powers and duties that they should be exercised by the Vice President—or the person next in line of succession? There have been several widely suggested arrangements, some of which would require Constitutional amendment, among them:

> The Vice President declares the President's inability (a) on his own authority, or (b) with the concurrence of some other special constitutional or statutory tribunal;
>
> The Cabinet declares the President's inability on its own authority.

The Vice President on His Own Authority. Most Constitutional authorities agree that, under present language, the Vice President has the right to declare the President's inability if the latter should be incapable or unwilling to do so himself. Since Article II, Section 1, imposes on the Vice President the duty to act as President in such case, he alone is presumed to be the judge of the facts.

The seeming advantage of this interpretation is that determination of inability may be made simply, quickly, and clearly. Although it has never been used, this position could be established beyond question by amending the Constitution to specify the Vice President's *sole right* to decide Presidential inability. This places the decision in the hands of a visible public official responsible to a nationwide electorate.

A disadvantage of placing the decision solely with the Vice President lies in a conceivable usurpation of Presidential powers and duties by an unscrupulous Vice President. Needless to say, such an eventuality has never occurred. On the other hand, as borne out by past experience, the Vice President may refuse to assume Presidential powers and duties in order to avoid any appearance of self-seeking or usurpation.

Special Tribunal. Another proposed method for establishing Presidential inability is to place responsibility for the decision on some special tribunal, empowered to act either on its own or the Vice President's initiative. The advantages offered for such a tribunal are its apparent detachment and its great prestige – hopefully causing its decisions to be accepted without challenge. The disadvantages include its lack of political responsibility, the possibility of a split decision weakening its acceptability, and the inherent delay in reaching a decision because of a probable need for holding extensive hearings.

The Cabinet on Its Own Authority. Despite the weight of the argument for the Vice President's legal authority to determine the President's inability and to assume the Presidential powers and duties on his own discretion, no Vice President has ever acted accordingly. An instant capability for replacement of a disabled President has merit – in light of existing nuclear armaments – but historical precedents as well as our more normal expectations of future situations both suggest a different atmosphere in which action is more likely to be required. On this subject, the late President Hoover has said:

> In my view, the determination of inability and its termination should rest with the Cabinet, and the executive powers should be executed by the Vice President during any such period.
>
> My reasons for this view are as follows:
>
> 1. The Cabinet (members) are in intimate contact with the President during any illness.
> 2. They can appraise the national setting as to whether there is any emergency which requires any action beyond the President's abilities.

Since the Cabinet[1] is in a position to obtain firsthand information about the President's medical condition more quickly than any other group, it could act with dispatch. Because its members are appointed by the President – with the advice and consent of the Senate – it would not be inclined to exercise such power except in a proper case. If given Constitutional sanction the Cabinet's decision would most likely meet with public acceptance. Thus, the legitimacy of the Acting President would be fully recognized.

This proposal would overcome the serious problem of Vice Presi-

[1] As used here, and throughout this discussion, the "Cabinet" refers to the heads of the executive departments, now ten in number. Others attending Cabinet meetings—e.g., the Ambassador to the U.N.—would have no vote.

dential reluctance to assume the Presidential powers and duties, even when evident Presidential inability has extended over a long period of time, as in the Garfield and Wilson cases. Legal authority for the Cabinet to decide inability would absolve the Vice President of any accusation of usurpation of power. At the same time, the possibility of attempted usurpation by the Vice President would be eliminated.

The problems facing a Vice President called upon to assume the powers and duties of the Presidency – with an elected President still living – are so great and far-reaching that every effort should be made to ease his burden. Placing responsibility for accession upon the trusted political associates of the President would strengthen the Vice Presidential hand in a delicate and difficult situation.

Since the Cabinet might be factionalized, it has been said that giving the Cabinet a decisive role in this area would be dangerous. This is not in harmony with historical experience. It was the Cabinet – its members working in harmony – that administered the government during the Garfield, Wilson, and Eisenhower inabilities. The Cabinet was a stabilizing factor in each of the eight transitions when Vice Presidents were elevated to the Presidency.

Both the Garfield and Wilson Cabinets felt that there was need for an Acting President. Lack of Constitutional authority for the Cabinet to decide the issue and Constitutional ambiguity concerning the role of the Vice President prevented them from taking the action they believed to be in the national interest. Given authority through Constitutional clarification, it seems certain that these Cabinets would have declared their Presidents disabled.

An argument against Cabinet authority to declare a President disabled is that this would affect the power relationship between its members and the President. It is hard to see, however, how this would affect the President's relationship with his Cabinet any more than the impeachment power affects the Presidential relationship with Congress. If part of the Cabinet were to act in such a manner as to disrupt the relationship, the President could replace those out of sympathy with him.

The concern that the Cabinet might not be unanimous – indeed that it might be closely divided – adds weight to the need for its official judgment. To understand the importance of concurrence by the Cabinet we must conceive of a situation where the Vice President might try to assert his authority against the objections of a majority of the Cabinet. The resulting confusion and discord would present a threat to national

security — perhaps a greater threat than that caused by temporary Presidential disability without the assumption of his powers and duties by anyone.

This leads to another point. With the decisive role given to the Cabinet, the President would be less reluctant to declare his own inability. Conversely, if some other body were to have the power, the President might fear that it would tend to disagree with him when he declared the end of his inability.

Time permitting, the Cabinet might wish to seek the best available advice from whatever quarter. The late President Hoover suggested this to the Senate Standing Subcommittee on Constitutional Amendments in January of 1958.

> All of which leads me to the generalization that a President's inability to serve or his possible restoration to office should be determined by the leading officials in the executive branch, as they are of the party having the responsibilities determined by the election. I believe that a simple amendment to the Constitution (or possibly statutory law) could provide for a commission made up from the executive branch to make the determinations required. I do not suggest that the individual persons be named but that the departments or agencies be enumerated, whose chief official or head should be a member of such a commission. The number could well be limited to not less than 7 and not more than 15 such heads of departments or agencies. There could be a further provision that they should seek the advice of a panel of experienced physicians or surgeons.
>
> I cannot conceive of any circumstance when such a defined body of leaders from the executive branch would act in these circumstances otherwise than in the national interest.

To implement Cabinet authority any member or the Vice President, if he desires, could be empowered to initiate discussion of an issue concerning inability. A majority Cabinet vote would be required to decide the question. We believe that concurrence in a Cabinet finding that inability exists by the Vice President is desirable, since he is to bear the burdens of the office. Further, he is our only other nationally elected official, and his concurrence would strengthen public acceptance of the Cabinet's judgment. Joint action would provide maximum evidence of legitimacy.

It is conceivable that an emergency situation could arise requiring some Presidential action before the Cabinet is able to meet or

to otherwise determine whether Presidential inability exists. Because it is imperative that someone have power to act as President at all times the Vice President, in such a case, may have to assume responsibility on his own accord. Modern communications greatly diminish the probability of this necessity. In such event the Cabinet should then decide expeditiously whether Presidential inability requires the Vice President to continue to act as President.

3. We recommend that the beginning of Presidential inability be determined by a majority vote of the Cabinet, the Vice President concurring, and that discussions leading to such vote may be initiated by the Vice President or any member of the Cabinet.*

*See Memoranda by MR. JOHN F. MERRIAM and by MR. C. WREDE PETERSMEYER, page 40.

5. Terminating Inability

Once the President's inability is determined, the Vice President assumes the Presidential powers and duties. The next crucial problem involves the method of determining when the inability ends, so that the President may resume the functions of his office.

Alternative Methods for Terminating Inability

The following are the most seriously considered alternatives for placing authority to determine the end of a Presidential inability:

- —The President alone decides;
- —The President and the Vice President must agree, or in the event of disagreement either (a) the Vice President's decision is final or (b) the President's view prevails unless opposed by the Cabinet and at least two-thirds of both Houses of Congress;
- —The devolution of Presidential powers and duties is permanent and irrevocable;
- —The Cabinet decides the issue by majority vote.

The President Determines End of His Inability. One simple method of establishing termination of Presidential inability is to allow the President to do so by his own declaration. A responsible President, not mentally deranged or otherwise detached from reality, should know when he is able to exercise his powers and responsibilities. Final authority in the President places it beyond question who is exercising the Presidential powers at any time. The disadvantage is that the President may take back his powers and duties when, in reality, he cannot exercise them effectively.

The President and Vice President Jointly Determine End of Inability. Few would question seriously the right of the President to resume his powers and duties when the Vice President also agrees that he is able to do so. But, if the determination is placed in their hands, what happens when the President and Vice President disagree? For all practical purposes, the problem is the same whether raised while the President is still exercising his office or when attempting to recapture its powers and duties.

The proposed amendment approved by the Senate in 1964 provides that, if the President and Vice President disagree on termination of inability, the Vice President could retain the Presidential powers if supported by a majority of the Cabinet. The matter would then be immediately referred to Congress for a final decision, but, in the interim, the Vice President would act as President. It would take a two-thirds vote of each House to prevent the President from resuming his powers and duties. Such a high degree of unanimity would protect the President against possible usurpation. A decision supported by the Vice President, a majority of the Cabinet, and two-thirds of the members in both Houses of Congress would have the weight of legitimacy and acceptability.

A disadvantage of the Senate-approved arrangement is that it goes too far in protecting the President. By requiring such a high degree of unanimity to keep the President from exercising his powers, there would be great pressure to accede to the President's self-evaluation of his abilities without public challenge.

A more serious disadvantage is that by making Congress the body with ultimate authority to resolve any disagreement beween the President and Vice President, a change with possibly grave and unpredictable consequences would be made in the traditional distribution of power between the Legislative and Executive Branches. The Constitutional Convention gave Congress authority to displace the President only through the impeachment process. If this additional authority were given to a Congress with a hostile two-thirds majority, such as existed during the Presidency of Andrew Johnson, it could be used to deprive the President of his powers and duties without resorting to the carefully circumscribed impeachment procedure.

But the worst aspect of the Senate proposal is that, while Congress would be debating and deciding the issue, there could be two persons both attempting to exercise the powers and duties of the Presidency. Such a situation might lead to disastrous consequences, perhaps as severe as if the country had no one to act as President. *There must always be someone to exercise the powers and duties of the Presidency, but there must never be two.*

The Vice President's Decision Is Binding. A different method for dealing with disagreement is to make the Vice President's determination final. The major advantages and disadvantages of this arrangement are substantially those associated with allowing the Vice President to make the decision on the beginning of Presidential inability. Because the procedure is simple, fast, and completely clear, there would be no

ambiguity about who is rightfully exercising the Presidential powers and duties. But if the Vice President were given the ultimate authority on the question, he might be tempted to withhold the Presidential powers and duties from a President who has in fact recovered.

Devolution is Irrevocable. A narrowly held view proposes that, once the powers and duties of the President devolve on the Vice President, they should never be returned. The presumable advantage here is that the Vice President would be encouraged to exercise the Presidential powers and duties to the fullest extent without concern for what might happen after the President recovers.

But the concept of permament devolution of Presidential powers and duties — to protect the Vice President — could result in Presidential refusal to admit inability, however serious it might actually be. Under such circumstances the President would probably challenge any attempt by the Vice President or a special tribunal to establish inability.

Cabinet Decision By Majority Vote. Another alternative would place responsibility for deciding when Presidential inability has ceased in the hands of the Cabinet. The same considerations governing the establishment of disability would apply to its termination. In both instances, for example, the Cabinet is most likely to be intimately aware of the facts concerning the President's health. The Cabinet is in a position to act quickly and with minimal loss of public confidence. Since the President appoints the Cabinet, by and with the advice and consent of the Senate, its members would normally wish to restore to him the powers and duties of the Presidency as soon as practicable.

A compelling argument for placing final authority with the Cabinet is that it would avoid the possibility of two persons attempting to exercise the powers and duties of the President simultaneously. If the Cabinet had responsibility for reaching a decision, the Vice President would continue as Acting President until the Cabinet decided otherwise. The powers and duties of the Presidency must be placed squarely on one individual at all times — an objective not satisfactorily achieved by the proposed Senate Amendment.

In the unlikely event that an unscrupulous Vice President should seek to keep his hold on the Presidential office in the face of a Presidential claim of recovery, he would have to obtain support from a majority of the Cabinet. Moreover, the Congress could, in due time, use the impeachment process against him and the members of the Cabinet if the justification were clear. Impeachment is more appropriate in deal-

ing with potential usurpation than the method proposed in the Senate Amendment. The Constitutional provisions dealing with impeachment imply that the person acting as President (be he President or Vice President) continues to exercise the powers and duties of the office until Congress has decided the issue.

In light of these considerations, we regard this as the preferable alternative. On the same reasoning that led us to recommend Vice Presidential concurrence in a Cabinet finding that Presidential inability exists – on the ground that the person to bear the burden of the powers and duties should agree to assume them – restoration of his powers and duties should be clearly acceptable to the President.

1. We recommend that the ending of Presidential inability be determined by a majority vote of the Cabinet, the President concurring, and that discussions leading to such vote may be initiated by the President or any member of the Cabinet.*

*See Memorandum by MR. JOHN F. MERRIAM, page 41.

6. Conclusions

The urgency of national action to resolve the doubts and uncertainties clouding Presidential succession and inability cannot be overly stressed. Failure to correct the deficiencies will subject the nation to risks and hazards that are avoidable. Prompt action is imperative

This Committee has carefully measured the various alternatives for solution against certain criteria — continuity, legitimacy, certainty, stability, speed, simplicity, and preservation of the separation of powers fundamental to our Constitutional system.

The United States of America must have one person wielding the powers and duties of the Presidency at all times. Conversely, it cannot tolerate any period of confusion in which two men compete for the exercise of Presidential authority.

Our first major recommendation, therefore, is that the Constitution be amended to provide that any vacancy in the office of Vice President be filled. We suggest giving the President authority to nominate a Vice President, subject to approval by joint session of Congress.

Those persons in line of succession after the Vice President must be familiar with day-to-day Presidential activities. No other officers can match the preparation of the Vice President and leading Cabinet members for sudden elevation to the Presidency. This Committee, therefore, recommends that the line of succession beyond the Vice President be revised, placing the chief Cabinet officers next in line, as under the statute of 1886.

We recognize that solution of the problem of Presidential "inability" poses problems, but there is one point on which accepted interpretations of the present Constitution should remain unchallenged. The word "inability" should continue to be understood to include every situation where the President, for whatever reason, is unable to exercise the powers and duties of his office. The preponderance of legal authority now holds that the President would retain his title and "office" in case of an established disability, while the Vice President (or whoever may be first in line of succession) would automatically assume his powers and duties. Clear language on this should be placed in the Constitution.

We would not change these basic concepts as applicable to situations where the President, recognizing his own inability, calls upon the Vice President to exercise the Presidential powers and duties. Similarly, they apply to those situations where the President is unable to communicate his own obvious inability and where there may be need for instantaneous action in the national interest. Beyond these situations, however, there is need for clarification.

This Committee's second major recommendation is that authority to decide that Presidential inability exists should be placed in the hands of the Cabinet, in consultation with the Vice President or other successor. Any such decision should be by majority vote of the Cabinet, the Vice President concurring, upon the initiative of any member or of the Vice President. Termination of Presidential inability would follow the same procedure, except that Presidential—rather than Vice Presidential—concurrence would be required. This proposal would also require Constitutional revision; but a single amendment might include this provision with the other changes recommended.

When these two major proposals are adopted, the United States will always have one person — and only one person — exercising the powers and duties of the Presidency.

We regard these as the best choices among all proposed alternatives. We concede that some variations on these solutions would improve our present situation; but we are confident that no other alterations would meet the nation's basic needs as well.*

*See Memorandum by MR. JOHN F. MERRIAM, page 41.

Instances when the United States has been without a Vice President

Vice President	Termination of office	Term for which elected	Length of time office vacant	Yrs.	Mos.	Day	President
George Clinton	Died Apr. 20, 1812	Mar. 4, 1809 — Mar. 3, 1813	Apr. 20, 1812 — Mar. 3, 1813	0	10	12	James Madison
Elbridge Gerry	Died Nov. 23, 1814	Mar. 4, 1813 — Mar. 3, 1817	Nov. 23, 1814 — Mar. 3, 1817	2	3	9	Ditto
John C. Calhoun	Resigned Dec. 28, 1832, to take seat in Senate	Mar. 4, 1829 — Mar. 3, 1833	Dec. 28, 1832 — Mar. 3, 1833	0	2	4	Andrew Jackson
John Tyler	Took oath of office as President, Apr. 6, 1841	Mar. 4, 1841 — Mar. 3, 1845	Apr. 6, 1841 — Mar. 3, 1845	3	11	0	William H. Harrison, died Apr. 4, 1841
Millard Fillmore	Took oath of office as President, July 10, 1850	Mar. 5, 1849 — Mar. 3, 1853	July 10, 1850 — Mar. 3, 1853	2	7	23	Zachary Taylor, died July 9, 1850
William R. King	Died Apr. 18, 1853	Mar. 4, 1853 — Mar. 3, 1857	Apr. 18, 1853 — Mar. 3, 1857	3	10	14	Franklin Pierce
Andrew Johnson	Took oath of office as President, Apr. 15, 1865	Mar. 4, 1865 — Mar. 3, 1869	Apr. 15, 1865 — Mar. 3, 1869	3	10	17	Abraham Lincoln, died Apr. 15, 1865
Henry Wilson	Died Nov. 22, 1875	Mar. 4, 1873 — Mar. 3, 1877	Nov. 22, 1875 — Mar. 3, 1877	1	3	10	Ulysses S. Grant

Chester A. Arthur	Took oath of office as President, Sept. 20, 1881	Mar. 4, 1881 — Mar. 3, 1885	Sept. 20, 1881 — Mar. 3, 1885	3	5	13	James A. Garfield, died Sept. 19, 1881
Thomas A. Hendricks	Died Nov. 25, 1885	Mar. 4, 1885 — Mar. 3, 1889	Nov. 25, 1885 — Mar. 3, 1889	3	3	7	Grover Cleveland
Garret A. Hobart	Died Nov. 21, 1899	Mar. 4, 1897 — Mar. 3, 1901	Nov. 21, 1899 — Mar. 3, 1901	1	3	11	William McKinley
Theodore Roosevelt	Took oath of office as President, Sept. 14, 1901	Mar. 4, 1901 — Mar. 3, 1905	Sept. 14, 1901 — Mar. 3, 1905	3	5	18	William McKinley, died Sept. 14, 1901
James S. Sherman	Died Oct. 30, 1912	Mar. 4, 1909 — Mar. 3, 1913	Oct. 30, 1912 — Mar. 3, 1913	0	4	5	William H. Taft
Calvin Coolidge	Took oath of office as President, Aug. 3, 1923	Mar. 4, 1921 — Mar. 3, 1925	Aug. 3, 1923 — Mar. 3, 1925	1	7	2	Warren G. Harding, died Aug. 2, 1923
Harry S. Truman	Took oath of office as President, Apr. 12, 1945	Jan. 20, 1945 — Jan. 20, 1949	Apr. 12, 1945 — Jan. 20, 1949	3	9	8	Franklin D. Roosevelt, died Apr. 12, 1945
Lyndon B. Johnson	Took oath of office as President, Nov. 22, 1963	Jan. 20, 1961 — Jan. 20, 1965	Nov. 22, 1963 — Jan. 20, 1965	1	1	29	John F. Kennedy, died Nov. 22, 1963
			Total Period of Vacancy	37	3	12	

Source: Adapted from Table Prepared by History and General Research Division, Library of Congress

Occasions on which the President and the Speaker of the House of Representatives or the President *Pro Tempore* of the Senate were of opposite parties, 1864-1964

	President and Party	Speaker and Party	President Pro Tempore and Party
44th Cong. 1875-77	Ulysses S. Grant — R	Michael C. Kerr — D Samuel J. Randall — D	Thomas W. Ferry — R
45th Cong. 1877-79	Rutherford B. Hayes — R	Samuel J. Randall — D	Thomas W. Ferry — R
46th Cong. 1879-81	Rutherford B. Hayes — R	Samuel J. Randall — D	Allen G. Thurman — D
48th Cong. 1883-85	Chester A. Arthur — R	John G. Carlisle — D	George F. Edmunds — R
49th Cong. 1885-87	Grover Cleveland — D	John G. Carlisle — D	John Sherman — R
50th Cong. 1887-89	Grover Cleveland — D	John G. Carlisle — D	John J. Ingalls — R
52nd Cong. 1891-93	Benjamin Harrison — R	Charles F. Crisp — D	Charles F. Monderson — R
54th Cong. 1895-97	Grover Cleveland — D	Thomas B. Reed — R	William P. Frye — R
62nd Cong. 1911-13	William H. Taft — R	Champ Clark — D	William P. Frye — R Charles Curtis — R Augustus O. Bacon — R Jacob H. Gallinger — R Henry Cabot Lodge — R Frank B. Brandegee — R
66th Cong. 1919-21	Woodrow Wilson — D	Frederick H. Gillett — R	Albert B. Cummins — R
72nd Cong. 1931-33	Herbert C. Hoover — R	John Nance Garner — D	George H. Moses — R
80th Cong. 1947-49	Harry S. Truman — D	Joseph Martin, Jr. — R	Arthur Vandenberg — R
84th Cong. 1955-57	Dwight D. Eisenhower — R	Sam Rayburn — D	Walter F. George — D
85th Cong. 1957-59	Dwight D. Eisenhower — R	Sam Rayburn — D	Carl Hayden — D
86th Cong. 1959-61	Dwight D. Eisenhower — R	Sam Rayburn — D	Carl Hayden — D

Source: *Encyclopaedia Britannica*. Compiled from *Biographical Directory of the American Congress, 1774-1961*.

Memoranda of Comment, Reservation or Dissent

Page 13—By WILLIAM BENTON:

I regret that the Committee has not weighed the possibility of abolishing the Vice Presidency altogether. Some of the framers of the Constitution, I am told, shared my views. Some felt that special elections should be held in case of presidential vacancies; any Vice President was merely to be a caretaker until a special election could be held. (I would add that another officer of the government, such as the Speaker of the House, who is always an experienced politician, could serve equally well as the interim caretaker.)

The Committee has not explicitly considered the pros and cons of abolishing the Vice Presidency. Its principal "con", according to this report, is this: "An extra nationwide election with the campaigning and other interruption of the normal governmental process that it entails, particularly coming most of the time after a President's death, is much too disruptive for the benefits to be gained." This argument seems to me very weak. Why should a special election for the Presidency be any more disruptive than a regular election? Indeed, the reverse might be true. An election after the death of a President might be conducted in a more sober way — and in a shorter period — than is ordinarily the case — and that would be all to the good. Further, why shouldn't an election after a President's death or disability be for a full four-year term, and not merely for the balance of an unfilled term? Thus the word "extra" is misleading. There's nothing sacrosanct about the present rhythm. Any four-year rhythm on the even years would have the same impact; the even years maintain the identity of the presidential election with the Congressional elections. However, there may be good arguments for holding the election within 90 days or for the odd years, separating the two.

What are the benefits of abolishing the Vice Presidency? One of the standards set forth for evaluating proposals on presidential succession is "legitimacy of title." Surely a person elected President in his own right has a legitimacy no other person can have. Effective presidential leadership may suffer by the limited mandate even a man of high caliber may enjoy as a successor President rather than as an elected President. Even more limiting and dangerous is the succession of a mediocre Vice President. Need we risk Mr. Throttlebottom?

In this century — but not in the 19th — the U. S. has been lucky. Theodore Roosevelt, Harry Truman and Lyndon Johnson were gifts of fortune rather than careful, deliberate choices. Ironically enough, Teddy Roosevelt was singled out for the Vice Presidency not because his talents were esteemed but because they were feared. Boss Platt maneuvered him into the Vice Presidency in 1900 in order to prevent his re-election as Governor of New York — and to bring his booming political career to a dead end. Harry Truman went to the 1944 Convention as campaign manager for James Byrnes.

Thus too often vice presidential nominees are chosen in a careless or arbitrary manner, often to "balance the ticket." Nixon was picked in a smoke-filled room because it was felt a veteran from California — with an anti-communist record to embarrass Truman — would strengthen the ticket; Sparkman was chosen by a smaller

group in a smaller room to assuage the South; Wallace to butter up the west and the farmers.

Within the terms which the Committee set for itself — that of rationalizing and improving present practices — I concur with its recommendations. I am sorry, however, that the Committee did not seize its opportunity to analyze more deeply the political as well as Constitutional problems and ambiguities surrounding the presidential succession. Modest, pragmatic solutions are not always the best.

I am not sure a constitutional amendment would be required to meet my objective. I have no strong objection to the existence of a Vice Presidency, if it is understood that the incumbent would act as President for an interim period only. Indeed, there are reasonable arguments for two vice presidents. My principal objective is the consideration of the advisability of the special election.

Page 15—By JOHN F. MERRIAM:

I strongly favor amending the Constitution to provide for a second Vice President to be elected. This would eliminate almost all of the uncertainties involved when the first Vice President succeeds to the Presidency. It is absurd to say that there is not enough work for two Vice Presidents of stature when the policy statement states at the beginning that the Presidency is the toughest job in the world.

Page 16—By JOHN F. MERRIAM:

I believe that approval should be by the Senate only. This is a regular and publicly accepted method of approval of Presidential appointments for which established procedures exist. Cabinet members' appointments are not approved by both Houses, yet they are proposed to be included in the Presidential succession pattern.

(This also applies to recommendation 3 on same page.)

Page 19—By JOHN F. MERRIAM:

I agree except that the order of succession by Cabinet heads should be reviewed in the light of present circumstances.

Page 29—By JOHN F. MERRIAM:

I strongly disagree. The question of "inability" is one of fact or law, or both. It is essential that it not be a political matter. It should not be determined by those in the line of succession who are directly benefited regardless of their high characters. I recommend that the question of "inability" be determined by the Chief Justice of the United States. The decision should be made by one person as the definition of "inability" is not subject to a group decision nor is the anonymity of a group decision desirable. The Constitution can be amended and the determination as to the fact or law of "inability" does not interfere with the separation of powers provided in the Constitution.

Page 29—By C. WREDE PETERSMEYER:

I believe that Presidential inability should be determined only by a majority vote of the Cabinet and that discussions leading to such a vote should be initiated

only by a member of the Cabinet. Removing the Vice President from the opportunity to initiate discussions leading to such a vote or responsibility for concurring in the decision will act as a shield against possible public criticism of the Vice President influencing for personal reasons the vote of the Cabinet.

Page 33—By JOHN F. MERRIAM:

I oppose the recommendation. The reasoning applicable to the determination of "inability" applies here as expressed in an earlier footnote. Again it is recommended that the Chief Justice of the United States determine the fact or law of the ending of Presidential "inability."

Page 35—By JOHN F. MERRIAM:

All of the above footnotes are, of course, applicable to the conclusions set forth on pages 34 and 35.

An omission from the policy statement that should be cured is to provide for the "inability" of a Vice President in the same manner as the "inability" of the President.

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