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THE WHITE HOUSE

WASHINGTON

25<sup>th</sup>  
Amendment  
file

July 16, 1985

MEMORANDUM FOR COUNSEL'S STAFF

FROM: HUGH HEWITT ..

SUBJECT: Draft Op-Ed on Twenty-Fifth Amendment

Attached is the draft we discussed this morning. I welcome all comments, attacks, asides and motions to quash.

Attachment

# DRAFT

## OP-ED ON TWENTY-FIFTH AMENDMENT

"Full disclosure" is more than the title of a novel that Bill Safire enjoys citing as evidence of his constitutional expertise. It is also a concept of public accountability, one that grows in importance at a time when the President is ailing.

NOT  
IN  
LEGAL  
AREA

It is also a demand that fairly rolls off the collective tongue of the nation's press corps when a President enters the hospital. Because the press demands the information, the White House staff dutifully produces every detail of the President's medical treatment. I doubt the public cares about these details. The vast majority probably agree with me that they are an unseemly intrusion into the President's privacy. But once the media has made the demand for full disclosure, anything less than the complete drill would arouse suspicion and possibly panic. So full, indeed, overflowing disclosure of the details of the President's health, schedule, attitude and thoughts has become the rule.

NO:  
PATIENCE  
REPORT

I was surprised then when so many in the media took issue with the President's letter invoking the Twenty-Fifth Amendment prior to his recent surgery. The letter was a carefully written document that fully reflected the President's thinking concerning the procedures he was employing.

Mr. Safire was quick to label this effort to be candid as a "legalistic flimflam." George Will suggested that the President acted with "an obvious reluctance." The New York Times labelled it a "curious reluctance," and Time remarked that the letter was "a deliberately vague attempt to accomplish the purpose of the amendment without formally invoking it." What we have here is not a failure to communicate, but a new twist on the media's demand for a story. These commentators did not want full disclosure of the President's view of the ambiguities surrounding the intended applications of this Amendment. They preferred drama. They wanted terse statements and oral declarations. They wanted "film at eleven."

What they got was a thoughtful letter on a difficult subject of constitutional law. The President volunteered this discussion. There was no requirement that he disclose the transfer prior to his surgery. Indeed, from a standpoint of national security which the commentators are currently huddled around, there are good arguments never to reveal when a transfer has been effected.

But the President chose to level with the public. What he told them was completely accurate: "I am mindful of the provisions of Section 3 of the 25th Amendment to the Constitution, and of the uncertainties of its application to such brief and temporary periods of incapacity. I do not believe that the drafters of this

Amendment intended its application to situations such as the instant one." Nevertheless, Section 3 of the Amendment vests total discretion in the President and, despite the ambiguity of the legislative history, he chose to use the transfer provisions. That was full disclosure of the President's view. The legislative history is vague. That was his conclusion then, and it remains my conclusion now.

Former Senator Birch Bayh made the talk-show rounds following Saturday's temporary transfer. He was of the opinion that the Amendment was designed for this kind of event. Two decades ago, when the Amendment was being framed, he was not so sure: "The President may," he said in 1963, "be about to undergo surgery and the domestic and the world situation at that time may demand no interruption --even for a day or two --of Executive leadership." Notice reliance on the word "may" and on the state of the world. When drawing up the Amendment the Senator was very cautious about suggesting when its invocation would be appropriate. That caution was laudatory. It is unfortunate that it is being quickly abandoned today.

The President wrote the letter he did because he is aware of how every day of every Presidency is unique. Having just presided over the successful resolution of a hostage situation, he was keenly aware of how shallow are comparisons between events present and those past. He realized that while the Twenty-Fifth Amendment was appropriate on Saturday, July 13, 1985, it may not ever again be appropriate and he wished to extend a little assistance to his successors who may be confronted by the accusation: "But Reagan did it."

Those who write words that are assured of no immediate consequence casually disregarded the President's assertion of non-precedent. "A conscious President, before a major operation, must declare his Vice President to be Acting President" wrote Mr. Safire. "[Reagan's] example was in the national interest and should be the standard observed by all who hold the office" opined The Washington Post. The New York Times agreed: "[T]he procedure should become routine on similar occasions." These are quite simply wildly irresponsible statements that purport to know a rule of policy for all ages. Even the self-appointed panjandrum of constitutional pundits, Mr. Safire, ought to see the danger in purporting to bind all Presidents to a particular course of action. Folks can be excused some silly arguments, especially columnists, but not when they have set themselves up as experts.

Representative Dick Cheney was the most astute of the observers when he recognized in the President's letter the historical "tendency in the Oval Office and among the staff to try to preserve options for future Presidents. You want to avoid taking steps that in the future might in fact place constraints that would be unwise or unnecessary on future Presidents."

What do we know? First, that those who framed the language of this Amendment did not devote much time to the question of the Amendment's applicability to periods of unconsciousness during surgery. Some, like then former Vice President Nixon, testified that seven minutes was too long a period of inability. Others, like Senator Bayh, argued that no rules could be laid down and that it would inevitably be a question the answer to which depended on the circumstances. The great majority of those who testified on the law did not speak to the question and focused instead on Wilson and Garfield-like periods of extended disability, a focus that itself discounts the notion that brief periods of anesthesia were covered by Article 3.

We know as well that this President and this Vice President are an extraordinarily well-matched team and that no one doubted the wisdom of the Vice President serving as Acting President. But we also know that a Jefferson considering a Burr, or FDR viewing Henry Wallace or John Nance Garner, might not have been comfortable with such an amendment, or that a President may someday arrive at the hospital with the Vice-Presidency vacant and the Speaker of the House of the opposite party. Can anyone presume to argue the correct response in all these cases?

Many have indulged that presumption. Unhappily, this may be the first level of casual journalism that over the years hardens into accepted wisdom. It is said that bad journalism like a bad haircut will disappear with time unless you try to fix it yourself. That is excellent advice for controversies that are of a kind that recur regularly. It is the fortunate infrequency of occurrences like the President's surgery that argues for a full discussion of the event at the time it occurs. When and if it comes to pass that a future President is under pressure to invoke the Amendment and the scribes are clutching the conclusions of their ancestral editors, I hope someone will at least consult the record of what President Reagan did on July 13, 1985. He used the Twenty-Fifth Amendment on one occasion, and did not demand its use at any time in the future. He doubted that those who wrote the Amendment and the states that ratified it attempted to decide the issue of a few hours worth of anesthesia. And he was certain that the only person capable of deciding the issue, should it arise again, will be the incumbent.

THE WHITE HOUSE

WASHINGTON

July 17, 1985

MEMORANDUM FOR HUGH HEWITT

FROM: JOHN G. ROBERTS   
SUBJECT: Draft Op-ed on the  
Twenty-Fifth Amendment

Your well-written draft has not dissuaded me from my view that we should not respond to Safire's intemperate essay. The "full disclosure" theme is a clever effort to hoist Safire and other journalistic critics on their own petard, but I do not think we can embrace the principle in defense of our actions. The core of our profession is the privileged nature of attorney-client communications, and we spend much of our time protecting from disclosure the advice given the President by his advisers. We did not in fact draft the letter simply because we thought there should be full disclosure of the legal ambiguities, but because we wanted to take advantage of those ambiguities to minimize prece-dential impact. Safire and most others would recognize that the full disclosure argument is simply a post hoc rationalization. (The second sentence of the second paragraph is not quite correct. Among other things, we have not disclosed and do not intend to disclose the actual pathology report.)

The arguments that are sound are that (1) it is not clear that the 25th Amendment applies in cases such as this, and (2) the President did not want to bind his successors. Those points are made in the letter itself, which will of course be of some help to any future President (or even this one) confronted with a similar situation in the future.

I have a technical concern with respect to the scenario in the penultimate paragraph "that a President may someday arrive at the hospital with the Vice-Presidency vacant and the Speaker of the House of the opposite party." I do not think the 25th Amendment would be available in such a situation. The Amendment authorizes transfer of authority only to a Vice President. There is no means by which a Speaker succeeds to the office of Vice President. Section 2 specifies the manner in which a vacancy in the office of Vice President is filled -- not by succession of the Speaker, but my nomination and confirmation by a majority of both Houses. Pursuant to 3 U.S.C. § 19, the Speaker acts as President when "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" (emphasis supplied).

In the scenario you describe, the President could not transfer authority to the Speaker under the 25th Amendment. If any constitutionally authorized transfer is to take place, the Speaker would have to resign his seat and take the oath to act as President under 3 U.S.C. § 19. His authority would terminate with the removal of the President's inability, 3 U.S.C. § 19(c)(2).

If your point is not that the President may be in a position to transfer authority to the Speaker, but that the Speaker may feel obligated to assume Presidential power because "inability" in 3 U.S.C. § 19 and "unable to discharge the powers and duties" of the Presidency in the 25th Amendment should be interpreted identically, I disagree with the assumption, and think the argument is too elaborate in this context in any event.

Again, I think the draft is very well written, but would prefer to let the letter speak for itself.

cc: Richard A. Hauser

# History in the Making as Quietly as Possible . . .

Sometimes historic moments are less than momentous for those who act them out. For three hours or so, Vice President George Bush and three members of his staff sat around in the study of his Washington residence drinking Cokes, eating popcorn and chatting. Later, three friends came over and joined Bush in a Saturday afternoon game of tennis. Soon afterwards, the phone rang and a precedent-shattering interlude in U.S. history had ended.

During eight hours of utterly mundane activity—for which he had flown back from his summer home in Kennebunkport, Maine—Bush was empowered by a letter signed by President Reagan to discharge the “constitutional duties and powers of the office of the President of the United States.” He was the first Vice President ever to receive such a temporary transfer of authority.

“I don’t think the subject of its being a precedent ever came up,” said Bush’s press secretary, Marlin M. Fitzwater, one of those who munched popcorn and made small talk with the Vice President during the hours that Reagan was undergoing surgery for the removal of an intestinal growth that subsequently was determined to be cancerous.

Instead, the conversation centered on the President’s operation, with Bush’s staff physician, Air Force Maj. Robert A. Gasser Jr., explaining what was going on. When word came shortly before 3 P.M. that the surgery had been completed, Fitzwater, Gasser and vice presidential chief of staff Craig L. Fuller left the Bush residence. At about 7:30, White House chief of staff Donald T. Regan telephoned Bush to inform him that the President, eight minutes earlier, had signed a letter resuming the full powers of his office that he had temporarily relinquished as of the time he went under anesthesia—about 11:30 A.M. In the intervening time, according to Fitzwater, Bush had performed no official duties.

The Bush vignette illustrates the sometimes surrealistic atmosphere that surrounds the highest office of a nation as mighty as the United States. The potential power of the office—right up to fateful control of the nuclear button—is truly awesome. The implications of holding that power are of enormous significance worldwide, and the news media treat them accordingly.

However, for the custodians of that authority, prudence dictates that a great effort be made to exude calmness, continuity and certainty. From the White House point of view, it is of exceeding importance to play down news that could create negative speculation about the steadiness of the hand at the helm.

The Reagan cancer operation thus presented almost a classic collision between the objectives of those who cover the presidency and those who manage it. The news of the President’s malignancy is a story of the first magnitude, both domestically and internationally, and the press quite justifiably has pulled out all the stops by covering it in detail.

With equal justification, however, Reagan’s aides have made every effort to assure that as nearly as possible, the routine of the White House continues uninterrupted and to convince the public that the President’s prognosis is favor-

*White House  
Notebook*

BY DICK KIRSCHTEN

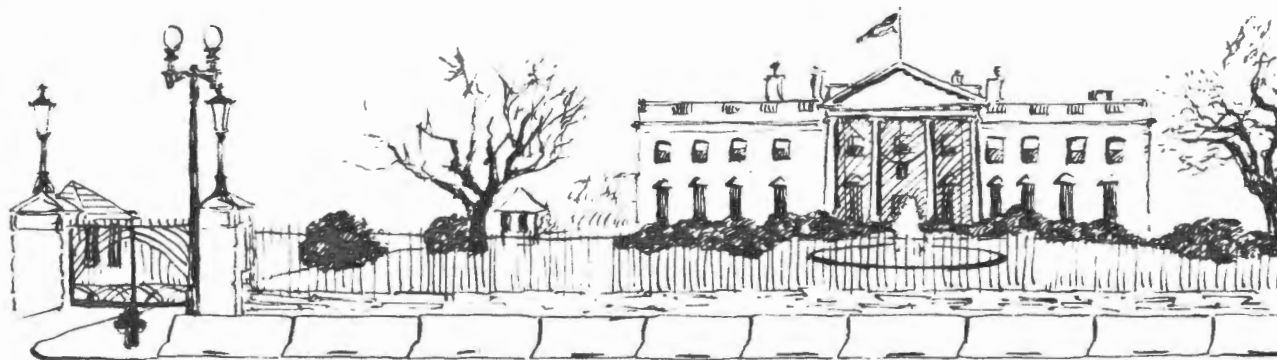
able and that he is in full control of his faculties and his job.

To minimize public concern, for example, the White House did not mention in advance the plans for voluntarily transferring power to Bush on a temporary basis. The Vice President’s return to Washington was initially announced as a matter of personal concern. Copies of the historic transfer letter were made available to the press at 12:19 P.M. Saturday, almost an hour after Reagan’s surgery had begun and Bush had arrived back in Washington and been notified that the President was under anesthesia.

And chief of staff Regan was on hand in the recovery room at 7:22 P.M. to get the President’s signature on the letter resuming the powers of his office at the earliest possible time. This time there was no hesitation in letting the news media know that the shift of authority had quickly ended.

At times like this, the “larger than life” grandeur of the office—which often assists a President in swaying public opinion—becomes an absolute encumbrance. Mere rumors, let alone hard news, of a presidential disability can spook stock markets and currency speculators. Accordingly, the Reagan White House was adhering to standard operating procedure when it waited until 4 P.M., after the markets had closed, to begin the July 15 press conference disclosing that the growth removed from the President was cancerous.

It also becomes important to deglamorize the President’s role just a bit, to shift gears and place a bit more stress on the role of staffers in the day-to-day decision-making process. In this way, it can be argued that the management of White House affairs is preceding apace, even though the President may have held but a single half-hour staff meeting.



## ... As Aides Stage-Manage Postoperative News

Thus, on the day following the announcement that cancer had been found in the tissue removed from the President, White House press spokesman Larry Speakes began his mid-day briefing with a "presidentially approved" statement commenting in great detail about the lack of progress to date in U.S.-Soviet arms reductions talks and expressing hope that the Soviets will be "more forthcoming" as a new round in the talks gets under way. He also announced the dispatching of a 10-man White House advance team to begin the logistical planning for Reagan's scheduled meeting with Soviet leader Mikhail Gorbachev in November. And he said that Reagan had relayed a strong exhortation from the President to congressional leaders to reach a budget agreement.

The go-ahead for these announcements, Speakes said, had been given by the President to Reagan during a 25-minute meeting from 10:55-11:20 that morning at the Bethesda Naval Hospital. Under questioning, Speakes said that the text of the statement on arms control progress was drafted after Reagan's meeting at the hospital and that the President hadn't seen or needed to see the actual wording.

Speakes also worked hard to lightly brush aside questions probing the extent of the President's discomfort, disability and most of all his emotional reaction to the news that he had had a cancerous growth. The gist of the press spokesman's responses was that the President does not share the news media's morbid preoccupation with such subjects. To those who questioned a report that Reagan discussed the cancer finding with his doctors for only five minutes, Speakes replied: "Ronald Reagan is not one to dwell upon anything like that. He has an optimistic and enthusiastic attitude. ... His approach is, 'Let's get back to the business at hand.'"

But there will be few admissions from the White House during the week to 10 days of Reagan's expected convalescence that the business at hand was ever set back by the President's absence from the Oval Office. And while the news media remain preoccupied with the President's medical condition, the business of the White House staff will be to minimize the gravity of their boss's illness and emphasize the relatively mundane nature of the ongoing White House routine.

Although nothing of note happened during Bush's eight-hour reign with presidential authority, the question of what a Vice President might do has been a bothersome one throughout American history.

In his book, *Straight Stuff* (William Morrow and Co., 1984), James Deakin, a longtime White House reporter for the *St. Louis Post-Dispatch* who now teaches journalism at George Washington University, chronicled the three episodes during the Eisenhower presidency in which the President was unconscious and incapacitated and the failure to transfer power, in effect, left nobody in charge of the country's affairs for brief periods.

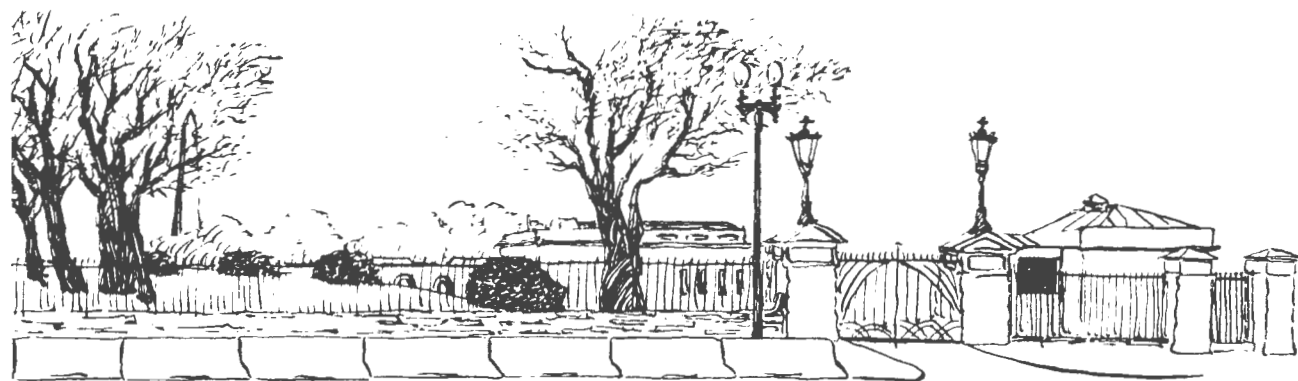
In an interview, Deakin pointed out that it never has been easy for Vice Presidents to take charge. In 1841, John Tyler became the first Vice President to succeed to the Oval Office upon the death of a President (William Henry Harrison). But even he had trouble exercising power at first because powerful congressional leaders attempted to limit his authority by referring to him as "acting President." Tyler eventually won the war of nerves with Congress by refusing to accept any communications addressed to him as acting President, Deakin noted.

With that issue resolved, the next problem arose when the nation experienced incidents in which incapacitated Presidents remained in office for long periods of time. President Garfield lived for 80 days after he was shot in 1881. President Wilson was struck down by illness in 1919 and never fully recovered. Until 1921, Wilson's wife exercised considerable presidential power. And, as Deakin points out, Wilson's Vice President, Thomas R. Marshall, resolutely resisted all urgings that he assert authority.

After his heart attack in 1955 and ileitis operation in 1956, President Eisenhower entered into an unofficial understanding with his Vice President, Richard M. Nixon, regarding presidential powers. But that agreement was not acted on when Eisenhower suffered a stroke in 1957. The same was true when President Johnson underwent gall bladder surgery in 1965 and throat polyp surgery in 1966.

Ratification of the 25th Amendment to the Constitution in 1967 presumably resolved the problem. It spells out procedures whereby a President can voluntarily transfer power temporarily and also establishes procedures for certifying that a President is incapacitated in case of instances where he refuses or is unable to act.

Reagan and his aides, however, refused to invoke the 25th Amendment in executing the brief transfer of authority to Bush. The letter signed by Reagan "carefully avoids setting a precedent," said a top White House official who briefed reporters on the subject. "So you would just have to say this involves a 25th Amendment-like turnover of powers."



THE WHITE HOUSE

WASHINGTON

July 29, 1985

MEMORANDUM FOR DONALD T. REGAN  
ROBERT C. MCFARLANE  
LARRY M. SPEAKES  
DAVID L. CHEW  
RICHARD A. HAUSER  
ALFRED H. KINGON  
CRAIG L. FULLER  
MATTHEW P. CAULFIELD  
BOYDEN C. GRAY  
DONALD GREGG  
PAUL B. THOMPSON

FROM: FRED F. FIELDING Orig. signed by FFF  
COUNSEL TO THE PRESIDENT

SUBJECT: Review of Twenty-Fifth Amendment Procedures

The President's use of Section 3 of the Twenty-Fifth Amendment was accomplished without any unanticipated difficulties. Despite the long-range planning that preceded use of Section 3, however, some questions arose before, during, and following the temporary transfer of power. I believe that while events are still fresh in everyone's mind, it would be useful to review these questions and to discuss all aspects of the transfer. I invite you and/or an appropriate member of your staff to join me in the Roosevelt Room on Friday, August 2, at 10:00 a.m., for what I anticipate will be no longer than an hour-long discussion and review.

In anticipation of this meeting, if you had any particular questions/issues that arose, it would be helpful to have them in advance to frame the agenda for this meeting.

Thank you.

FFF/HH:jmk  
cc: FFFielding  
✓HHewitt  
subject  
chron.



Douglas Florian

While the banks earn market interest rates on the held funds, their policies impose unfair and inconvenient restrictions on all consumers. Not only is access denied, but consumers are subjected to overdraft charges ranging as high as \$30 per check for checks written on held funds.

The large percentage of Americans who live from paycheck to paycheck bear an even heavier burden. With no cushion of funds to meet their living expenses and protect them from overdraft charges, they may be precluded from using checking accounts entirely.

Public outrage has been swelling for years, and yet no penalties or prohibitions have been imposed on the banks. Despite Congressional prodding, neither the banking industry nor Federal Government regulators have taken any action. In fact, the Federal regulators of financial institutions have pre-empted attempts by state governments to solve this problem. Federally chartered banks can simply ignore state consumer protection, and state-chartered banks need only switch to the Federal charter.

Various bills have been introduced in Congress this year to limit these practices. The one offering the most protection would shorten the maximum time that a financial institution may hold a check to one to three days, depending upon the category of check, with exceptions for checks that present a high risk of loss to the institution of deposit. The fact that many banks already meet these limits demonstrates that these ceilings are not unreasonable.

Only through federally mandated ceilings will all consumers be assured of fair treatment. We're told that people listen when E.F. Hutton talks. It's time that Congress listened as attentively.

## ESSAY | William Safire

# Taking the 25th

WASHINGTON

**T**he opportunity to strengthen one of the glories of the American constitutional system — that sense of stability that comes from strict adherence to the law in times of peril — was botched again by Fred Fielding, the White House counsel, and Attorney General Ed Meese.

The 25th Amendment to the Constitution, dealing with a President's inability to function, was ratified by the states 20 years ago. The main purpose of its third section, setting forth the method a President should use to devolve his power temporarily upon the Vice President, is plain: to provide the nation with unbroken decision-making power, so that nobody will be tempted by the prospect of retaliatory paralysis to launch a nuclear strike.

Every other decision can be postponed a day or a week; no need exists for a formal transfer of power in an emergency. In practical terms, the main reason for that addition to our nation's fundamental law is to advertise our ability to respond immediately.

This section was tailor-made for the situation that confronted the President and his legal advisers last week. A President, in full possession of mental and physical faculties, decided to go ahead with a major operation. The whole world knew, as it should, the time of the operation and the approximate length of time the President would be unconscious. That was the time of danger to the nation that Section 3 was created to avert.

What did this President do? In a moment calling for absolute clarity, he acted with deliberate fuzziness; rather than clothe the nation in the newest armor of the Constitution, he chose to begrudge the transmission of his responsibilities and in the process confused everyone.

He followed the law's procedures but challenged its premises. In the letter to Congress prepared for him by his uncertain legal trumpeters, he properly declared his anticipated inability to discharge his powers and duties, but then wrote of "the uncertainties of its application to such brief and temporary periods of incapacity" and concluded: "I do not believe that the drafters of this amendment intended its application to situations such as the instant one."

Protesting that he was not setting a precedent (which of course he was), Mr. Reagan then obeyed the law. His spokesman, asked if the Vice President had become Acting President, the title used in the amendment, was left twisting in the wind. He would not answer, thus refusing on behalf of the President and his legal advisers to admit that the law was being carried out.

## Why the legalistic flimflam?

Why this legalistic flimflam? One reason that will be put forward is that he did not want to unduly alarm anyone (as if cutting out a third of your large intestine to avert cancer was not alarming, or that following the Constitution would be alarming).

Another specious excuse for this constitutional myopia is that any brief transfer of power during a major operation would lead to trivial demands for such transfers during dental work or afternoon naps. That is pure nonsense; the Kremlin need not be notified when the President plans to have a tooth pulled.

Underlying the President's fear of admitting his requirement to obey Section 3 in an emergency, I think, is the fear of having to deal with its pressure to declare inability for a longer period. Someday a President will be faced with a debilitating physical or mental ailment, and will find tempting an option that is short of resignation.

Digging one layer below that, in seeking the motive for last week's curious refusal to admit precedent, we find the inherent threat to Presidents of Section 4: the involuntary removal of an incapacitated executive by his Cabinet, possibly even over his objections, with the matter of authority left for Congress to decide. (I wrote a novel a few years ago about usurpation under the 25th Amendment, and suddenly the prospect seems less remote.)

The Reagan staff had a brush with the need to consider Section 4 after his shooting, and responded wrongly by not even considering the matter in formal Cabinet session; one would think that previous failure in that case would have readied them for proper response in "the instant one."

But Mr. Reagan was ready only to be ambivalent, obeying the law while pretending he did not have to. He confused yesterday's executive prerogative with today's constitutional requirement.

A conscious President, before a major operation, must declare his Vice President to be Acting President. When he comes to, the elected Chief Executive can reassume power by invoking the immortal words of the Reagan Precedent: "Gimme that pen."

8/5 FFF, RAH, JCR, P Thompson, Fuller, Cross, McFarlane,  
Terry Mackay, Borden Gray, [Clar, Kiger] [Speakeer]  
FFF into: in out difficulties for future.

Original plans for planned Fids procedure.

POTS + Vesp scheduling, if anything was up, Vesp out as if  
POTS told him to do it.

Fids afternoon news → POTS desire to go forward immediately.  
Notified Cabinet, discussion w/ Fuller, deferred 25th  
decision to next day. Met next AM, FFF 2 letters  
(standard draft from back, alternate eventually  
revised). Went in to POTS, w/ no reference, just  
options. POTS chose 2d option, wanted to limit  
presidential input.

Was intended transfer of power.

Was under 25th Amendment.

Planned for noon to go when doctor signed gun.

C. 6:30 talked to Doctor re: transfer back, ran several  
"tests" by POTS, clear to now capable of resuming  
authority.

Only 53, leave 54 for another day.

C.O. took check w/ FFF, for every contingency.

LS: communications not good, particularly secure.

FFF: test for Vesp communications system. Baylen:  
real probe w/ lives.

CF news: briefing on week in Fids procedure. Decided  
to continue Vesp trip. Difficultly because Vesp  
not in controlled situation. Vesp desire to return.  
Did discuss communications w/ WHCA to Kennedyport.  
No problem w/ communications.

FFF: any difficulty when Bush Act; President about who  
was speaking for W.H.

Boschen: CF said "something about the 25th." Should  
not be doubt, because of possibility of something  
going wrong on operating table.

FFF: was some initial confusion.

AK: Regan said will admit fairly afternoon. Only  
able to eat 1/13 on scene. No food w/ anything  
any w/ W.H.

FFF: should we have used FEMA system?

McF: need sound communication at all times - will take care  
of that.

Chen: need to know when to deliver letters on 10th.

FFF: just need to inform minute, delivery not pertinent  
to effectiveness.

Chen: homeless matters

FFF: letter addressed.

Fuller: Was staff working w/ W.H, some of who were  
Chin, etc, didn't come up.

Exenba: I spoke for Prez, Fitz for Vero, but  
nothing other than hospital came up.

FFF: no sense to change for short term. Act; Prez can  
do whatever he wants. Assume continuation of  
existing structure, until Act; Prez directs otherwise.

THE WHITE HOUSE

WASHINGTON

August 14, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Meador Correspondence

Professor Meador has written asking for any public documents on the transfer of authority pursuant to the 25th Amendment, and any suggestions you might have concerning the White Burkett Miller Center study on Presidential disability. The study commences this fall.

Attached is a brief reply, transmitting the transfer and resumption letters, the only public documents on the invocation of the 25th Amendment. The letter also takes issue with the assertion in the Charlottesville Daily Progress article on the disability study that the Amendment "was not invoked" when the President underwent surgery for cancer.

THE WHITE HOUSE

WASHINGTON

August 30, 1985

Dear Dan:

Thank you for your letter of August 8 requesting copies of the President's letters and any other public documents prepared in connection with the recent transfer of authority during the President's surgery. The only public documents are the letters, copies of which are enclosed.

As you and I discussed previously, my office had undertaken a review of the legislative history of the 25th Amendment some time prior to the President's surgery. Despite uncertainties as to its applicability, the Amendment is always available at the discretion of the President; in light of all the circumstances, the President decided that a transfer of authority to Vice President Bush was appropriate in this instance. The letter transferring authority pursuant to Section 3 was drafted in such a manner as to avoid establishing (or at least questioning) a precedent with respect to any future brief periods of disability, when the surrounding circumstances may compel this or future Presidents to reach a different conclusion on invocation of the Amendment.

In any event, the Miller Center now has considerably more grist for its mill on this question. I certainly hope not to be compelled to confront these issues again, but I am confident that the work of the Center will be of value to whomever must do so in the future.

I will be pleased to provide any information or recollection to the Project's participants, if it is deemed to be helpful to its work.

Sincerely,

Fred F. Fielding  
Counsel to the President

The Honorable Daniel J. Meador  
James Monroe Professor of Law  
University of Virginia School of Law  
Charlottesville, Virginia 22901

FFF:JGR:aea 8/30/85

bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

August 27, 1985

Dear Dan:

Thank you for your letter of August 8 requesting copies of the President's letters and any other public documents prepared in connection with the recent transfer of authority during the President's surgery. The only public documents are the letters, copies of which are enclosed.

As you and I discussed previously, my office had undertaken a review of the legislative history of the 25th Amendment some time prior to the President's surgery. Despite uncertainties as to its applicability, the Amendment is always available at the discretion of the President; in light of all the circumstances, the President decided that a transfer of authority to Vice President Bush was appropriate in this instance. The letter transferring authority pursuant to Section 3 was drafted in such a manner as to avoid establishing (or at least questioning a precedent) with respect to any future brief periods of disability, when the surrounding circumstances may compel this or future Presidents to reach a different conclusion on invocation of the Amendment.

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Sincerely,

Fred F. Fielding  
Counsel to the President

The Honorable Daniel J. Meador  
James Monroe Professor of Law  
University of Virginia School of Law  
Charlottesville, Virginia 22901

FFF:JGR:aea 8/27/85

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

August 30, 1985

Dear Dan:

Thank you for your letter of August 8 requesting copies of the President's letters and any other public documents prepared in connection with the recent transfer of authority during the President's surgery. The only public documents are the letters, copies of which are enclosed.

As you and I discussed previously, my office had undertaken a review of the legislative history of the 25th Amendment some time prior to the President's surgery. Despite uncertainties as to its applicability, the Amendment is always available at the discretion of the President; in light of all the circumstances, the President decided that a transfer of authority to Vice President Bush was appropriate in this instance. The letter transferring authority pursuant to Section 3 was drafted in such a manner as to avoid establishing (or at least questioning) a precedent with respect to any future brief periods of disability, when the surrounding circumstances may compel this or future Presidents to reach a different conclusion on invocation of the Amendment.

In any event, the Miller Center now has considerably more grist for its mill on this question. I certainly hope not to be compelled to confront these issues again, but I am confident that the work of the Center will be of value to whomever must do so in the future.

I will be pleased to provide any information or recollection to the Project's participants, if it is deemed to be helpful to its work.

Sincerely,

Fred F. Fielding  
Counsel to the President

The Honorable Daniel J. Meador  
James Monroe Professor of Law  
University of Virginia School of Law  
Charlottesville, Virginia 22901

FFF:JGR:aea 8/30/85

bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

August 14, 1985

Dear Dan:

Thank you for your letter of August 8 requesting copies of the President's letters and any other public documents prepared in connection with the recent transfer of authority during the President's surgery. The only public documents are the letters, copies of which are attached.

*As you and I discussed previously,*  
~~Our views on the issues are explained in the transfer letter itself. My office had undertaken a review of the legislative history of the 25th Amendment some time prior to the President's surgery, and I concluded on the basis of that review that the Amendment was not intended to cover brief periods of disability, in the sense that the drafters expected the Amendment to be routinely invoked in such instances.~~ *Definitely, legislative history is not to be consulted,*  
The Amendment is always available at the discretion of the President; however, and in light of all the circumstances, the President decided that a transfer of authority to Vice President Bush was appropriate. *in this situation*  
The letter transferring authority pursuant to Section 3 was drafted in such a manner as to avoid establishing *an official precedent* with respect to any future brief periods of disability, when the surrounding circumstances may compel this or future Presidents to reach a different conclusion on invocation of the Amendment.

I remember the Daily Progress from my student days, and so should not be surprised, but I do not see how it can report, in the article you enclosed, that the 25th Amendment "was not invoked when Reagan underwent surgery . . . for cancer."

In any event, the Miller Center now has considerably more grist for its mill on this question. I certainly hope not to be compelled to confront these issues again, but I am confident that the work of the Center will be of value to whomever must do so in the future. *I would be pleased to provide any information or assistance to the People's Party.*  
Sincerely,

Fred F. Fielding  
Counsel to the President

The Honorable Daniel J. Meador  
James Monroe Professor of Law  
University of Virginia School of Law  
Charlottesville, Virginia 22901

THE WHITE HOUSE

Office of the Press Secretary  
(Bethesda, Maryland)

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For Immediate Release

July 13, 1985

TEXT OF A LETTER FROM THE PRESIDENT  
TO THE  
PRESIDENT PRO TEMPORE OF THE SENATE  
AND  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

Dear Mr. President (Mr. Speaker):

I am about to undergo surgery during which time I will be briefly and temporarily incapable of discharging the Constitutional powers and duties of the Office of the President of the United States.

After consultation with my Counsel and the Attorney General, I am mindful of the provisions of Section 3 of the 25th Amendment to the Constitution and of the uncertainties of its application to such brief and temporary periods of incapacity. I do not believe that the drafters of this Amendment intended its application to situations such as the instant one.

Nevertheless, consistent with my long-standing arrangement with Vice President George Bush, and not intending to set a precedent binding anyone privileged to hold this Office in the future, I have determined and it is my intention and direction that Vice President George Bush shall discharge those powers and duties in my stead commencing with the administration of anesthesia to me in this instance.

I shall advise you and the Vice President when I determine that I am able to resume the discharge of the Constitutional powers and duties of this Office.

May God bless this Nation and us all.

Sincerely,

/S/ Ronald Reagan

# # #

25th Amendment

THE WHITE HOUSE  
Office of the Press Secretary  
(Bethesda, Maryland)

For Immediate Release

July 13, 1985

TEXT OF A LETTER FROM THE PRESIDENT  
TO THE  
PRESIDENT PRO TEMPORE OF THE SENATE  
AND  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

Dear Mr. President (Mr. Speaker):

Following up on my letter to you of this date, please be advised I am able to resume the discharge of the Constitutional powers and duties of the Office of the President of the United States. I have informed the Vice President of my determination and my resumption of those powers and duties.

Sincerely,

/S/ Ronald Reagan

# # #

# **WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET**

FB001

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence  
Received (YY/MM/DD) 1/1Name of Correspondent: Daniel Meadows☐ MI Mail Report

User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: Request for information re draft letter  
to 95th amendment such as  
to be given as letter reworking  
to help with project

**ROUTE TO:****ACTION****DISPOSITION**

| Office/Agency  | (Staff Name) | Action Code             | Tracking Date<br>YY/MM/DD | Type of Response  | Code | Completion Date<br>YY/MM/DD |
|----------------|--------------|-------------------------|---------------------------|-------------------|------|-----------------------------|
| <u>White</u>   |              | ORIGINATOR              | <u>8510812</u>            |                   |      | <u>1/1</u>                  |
| <u>Unit 18</u> |              | Referral Note: <u>D</u> | <u>8510812</u>            | <u>cont. copy</u> |      | <u>58510812</u>             |
|                |              | Referral Note:          | <u>1/1</u>                |                   |      | <u>1/1</u>                  |
|                |              | Referral Note:          | <u>1/1</u>                |                   |      | <u>1/1</u>                  |
|                |              | Referral Note:          | <u>1/1</u>                |                   |      | <u>1/1</u>                  |
|                |              | Referral Note:          | <u>1/1</u>                |                   |      | <u>1/1</u>                  |

**ACTION CODES:**

A - Appropriate Action  
 C - Comment/Recommendation  
 D - Draft Response  
 F - Furnish Fact Sheet  
 to be used as Enclosure

I - Info Copy Only/No Action Necessary  
 R - Direct Reply w/Copy  
 S - For Signature  
 X - Interim Reply

**DISPOSITION CODES:**

A - Answered  
 B - Non-Special Referral  
 C - Completed  
 S - Suspended

**FOR OUTGOING CORRESPONDENCE:**

Type of Response = Initials of Signer  
 Code = "A"  
 Completion Date = Date of Outgoing

Comments: \_\_\_\_\_

Keep this worksheet attached to the original incoming letter.

Send all routing updates to Central Reference (Room 75, OEOB).

Always return completed correspondence record to Central Files.

Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

UNIVERSITY OF VIRGINIA

CHARLOTTESVILLE - VIRGINIA - 22901

SCHOOL OF LAW

DANIEL J. MEADOR  
JAMES MONROE PROFESSOR OF LAW  
804/924-3947

August 8, 1985

Fred Fielding, Esq.  
Counsel to the President  
The White House  
Washington, D.C. 20004

Dear Fred:

You may be interested in the enclosed newspaper clipping which is the first public announcement of the Miller Center's Project on the 25th Amendment.

The plan is to continue with conversations with informed persons over the next few months, with the objective of selecting and convening a commission that would then focus on the questions that have been developed through these informal conversations. This is an opportune time to suggest persons who should be talked to and to suggest persons who would make good members of the commission that will ultimately write the report on this subject. We would indeed welcome suggestions from you.

When the President went into the hospital for his surgery I was on the high seas en route to England for the ABA meeting. This put me in something of a news void, and I'm still trying to learn the details of that episode, especially the particulars about the letter that I understand he wrote to Vice President Bush. If you have any memos or documents that are not classified relating to this, they would be quite helpful. In particular, if it is possible to send me a copy of the President's letter, I would greatly appreciate that. In any event, any suggestions you have about this project will be welcomed.

Sincerely,



Daniel J. Meador

DJM/dm  
Enclosure

# Presidential Disability Study Set

By STEVEN JOHNSON  
of The Progress Staff

When then-Secretary of State Alexander Haig stepped before the television cameras after the March 1981 assassination attempt on President Reagan and declared, "I am in charge," he stepped into one of the thorniest of all constitutional thickets.

The issue of who is in charge in the case of presidential disability has arisen for the second time in five years with President Reagan's temporary incapacitation during cancer surgery last month.

A national commission sponsored by the White Burkett Miller Center of Public Affairs at the University of Virginia hopes to finally clear the thicket.

Funded by a grant from the W. Alton Jones Foundation, the commission is investigating the medical, legal and political problems that result when a president's ability to discharge the responsibilities of office is threatened by his health. Much of the commission's emphasis will be centered on the problems of presidential disability not recognized or treated by the 25th Amendment.

Miller Center director Kenneth W. Thompson said the project will be staffed primarily by himself, UVa law professors Daniel Meador and Paul B. Stephan, and Dr. Kenneth Crispell, University Professor of Medicine and Law and former vice president for health sciences.

Crispell's contribution is particularly interesting because he has been working on a study of presidential health for several years, studying presidential medical records and finding, for example, that Woodrow Wilson had several strokes as president and had to teach himself to write with his left

Please See STUDY, Page B13

## ★ Study

Continued From Page B1

hand before suffering his more publicized debilitating stroke in 1919.

The Miller Center will sponsor a series of forums and public lectures on the 25th Amendment and presidential disability with such authorities as former U.S. Sen. Birch Bayh, D-Indiana, chief legislative architect of the 25th Amendment, who will speak Oct. 21.

Although the commission's charge appears to be drawn out of current headlines, Thompson said the concept has been in the developing stages for more than a year and has been in the back of his mind for even longer.

Thompson said he and former Secretary of State Dean Rusk have been interested in the issue of disability for many years, "and although we kept looking for some

group to explore the problem of presidential health, we never found one willing to undertake it."

Although the 25th Amendment, ratified in 1967, was thought to provide a definitive legal method for handling presidential disabilities, it was not invoked when Reagan underwent surgery after the assassination attempt and for cancer.

Consequently, the Miller Center has pointed to several unresolved issues for the commission to examine, such as procedures if the vice-presidency is vacant, or the vice-president is incapacitated as well as the president.

Also to be looked at is who would be in control of the government, and the aide who carries the codes necessary to initiate a nuclear attack, if the president challenges a decision by the cabinet to remove him from office, thus

prompting a 21-day period during which the vice president would be the acting president while the incumbent still held claim to the title of president.

Charlottesville Daily Progress  
Friday, August 2, 1985  
Page B1

THE WHITE HOUSE

WASHINGTON

August 16, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS, JR.

SUBJECT: Minutes of Follow-up Meeting  
on 25th Amendment

The meeting convened at 2:00 p.m., August 5. Fielding, McFarlane, Gregg, Fuller, Hauser, Thompson, Gray, Mosley, and Roberts were present at the outset; Chew, Kingon, and Speakes arrived shortly after the meeting began.

Fielding began the meeting by announcing its purpose as being to discuss any problems that arose and iron out any difficulties that were experienced so there would be no problems in the future, should a similar situation arise. He then reviewed the facts: the President made the decision Friday afternoon to proceed with surgery Saturday, since he was already "prepped" for it, rather than deferring the operation. The Cabinet was notified, and Fielding discussed the situation with Fuller. A 25th Amendment decision was deferred until Saturday. Fielding prepared two drafts transferring authority, a "barebones" alternative and the letter the President eventually signed. It was decided to present the letters to the President, with no recommendation, just a listing of options. The President chose to sign the letter transferring authority but limiting the precedential impact of the transfer. A transfer of authority under the 25th Amendment was intended by the President.

Some confusion over the timing of the transfer, and the notification of those involved, developed because the physician, who told the staff that the President would go under anesthesia at noon, "jumped the gun" out of concern to complete the surgery in the time he had predicted.

Around 6:30 p.m. Fielding and others discussed with the physician the possibility of the President being sufficiently cognizant to reassume the authorities of the office. The staff ran several informal "tests" by the President to be certain he was prepared to knowingly reassume his powers. The President then signed the appropriate letters.

After this review of the facts, Fielding opened the meeting for comments. He noted that discussion should be limited to Section 3, leaving Section 4 aside, and should not concern command authority issues, which would be independently reviewed.

Speakes began by noting that communications -- particularly secure communications -- were a serious problem. Gray agreed that there were problems with communication with the Vice President's staff. Later in the discussion Kingon recounted his difficulty in reaching the Cabinet through signal (only able to reach one number), noting he had greater success with the regular White House operators. Fielding suggested that the FEMA system may be an option, but was uncertain if that was reserved solely for succession communications. McFarlane stated that adequate communications were necessary at all times, and that he would ensure that any problems in the system were cured.

Fuller then recounted the episode from the Vice President's perspective. Fuller was briefed on Wednesday on the planned Friday procedure, and a decision was made to go forward with the Vice President's trip to Maine. It was the Vice President's decision to return when news of the surgery developed.

Fielding asked if there were any problems when Bush was Acting President over who was speaking for the White House. Gray noted Fuller told him "something short of the 25th" was done, and Gray stressed that there should not be any doubt whenever a transfer is made, in the event something goes wrong on the operating table.

Chew said it needed to be clarified where the letters to the Hill should be delivered. Fielding replied that transmittal of the letters, not receipt, was the critical point for effectiveness.

Fuller noted that the issue of who was the Chief of Staff, etc., when Bush was Acting President did not come up. After some discussion, Fielding expressed the consensus that staffing questions and White House procedures were entirely under the control of the Acting President, who was free to do whatever he desired. Everyone should assume continuation of the existing White House structure, however, unless and until the Acting President directs otherwise. It would make no sense to assume a shifting of responsibilities to the Vice President's staff, with the attendant confusion, whenever the Vice President becomes Acting President.

THE WHITE HOUSE

WASHINGTON

August 28, 1985

MEMORANDUM FOR DIANNA G. HOLLAND

FROM: JOHN G. ROBERTS   
SUBJECT: Previous Meador Correspondence  
on 25th Amendment

This should be closed out. As indicated in Peter's note to Mr. Fielding, the correspondence was acknowledged last spring. It was restaffed to me for my thoughts. I discussed it with Mr. Fielding some time ago, when we first revised the 25th Amendment binder, and at Mr. Fielding's suggestion I called Professor Meador to obtain an update on pending work on Presidential disability. All this took place last spring. We recently had additional correspondence from Meador on 25th Amendment issues in the wake of the President's surgery, to which Mr. Fielding has responded. No further action is required or appropriate on this file.

Attachment

FE001

# WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence  
Received (YY/MM/DD) 85/01/15Name of Correspondent: Denise J. Meadows☐ MI Mail Report

User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: Presidential disability and succession  
under the 25<sup>th</sup> Amendment

## ROUTE TO:

## ACTION

## DISPOSITION

| Office/Agency (Staff Name) | Action Code             | Tracking Date YY/MM/DD | Type of Response | Completion Date YY/MM/DD |
|----------------------------|-------------------------|------------------------|------------------|--------------------------|
| <u>W/Holland</u>           | ORIGINATOR              | <u>85/01/15</u>        | <u>WS</u>        | <u>1/1</u>               |
| <u>CUAT09</u>              | Referral Note: <u>A</u> | <u>85/01/17</u>        | <u>WS</u>        | <u>C 85/03/05</u>        |
| <u>CUAT18</u>              | Referral Note: <u>A</u> | <u>85/03/07</u>        |                  | <u>S 85/03/17</u>        |
|                            | Referral Note: _____    |                        |                  |                          |

Comments:

FFF -

JR - Dwyer?

3/5/85

I've mentioned this in Staff Meetings, and we acknowledged receipt of this letter in separate response to Meadows letter about "six-year term," but you said I have not discussed attached -

Thanks, [Signature]

DES:

Referral

C - Completed  
S - Suspended

CORRESPONDENCE:

ie = Initials of Signer  
ie = "A"  
ie = Date of Outgoing

Keep this worksheet attached to the original incoming letter.

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