Volume 61
Issue 4 *Dickinson Law Review - Volume 61, 1956-1957*

6-1-1957

Presidential Succession

Theodore Francis Green

PRESIDENTIAL SUCCESSION

BY THE HON. THEODORE FRANCIS GREEN

United States Senator from Rhode Island

INTRODUCTION

DURING the past few decades the importance of the Office of the President of the United States has greatly increased, paralleling the rise of our Nation to its current status as a leading world power.[1] Now, more than ever before in our history, it is imperative that transferral of the executive power of the United States from one individual to another be accomplished smoothly and with a minimum of disruption in the processes of government.

Experience has demonstrated that in many areas of the broad field of Presidential succession the law is uncertain, imperfect, or incomplete. For example, grave illnesses of certain Presidents in the past have threatened the orderly processes of government and caused serious international concern.[2] If tomorrow we suddenly find ourselves in an unprecedented situation involving Presidential succession the attendant crisis could jeopardize not only our own security but that of our neighbors in the Free World.

In order to discuss intelligibly the problems relating to Presidential succession and to consider proposed solutions of those problems, a definition of the term *Presidential succession* is the first step. The definition should be broad enough to include the normal succession which occurs when the incumbent President is replaced by a newly elected President and yet apply also to the unexpected or fortuitous circumstances of removal, death, or resignation of an incumbent President, or his inability to discharge the powers and duties of his Office. In its broadest aspects the term *Presidential succession* includes *the conditions under which, the order in which, and the extent to which one*

[1] The book "Mr. President" by William Hillman (Farrar, Straus and Young, 1952) is an excellent and intimate portrayal of the problems and responsibilities encountered by the Chief Executive of the United States in today's world. For a more objective appraisal of the burdens of the American Presidency see Senate Report No. 1960, 84th Cong., 2d Sess., entitled "Proposal to Create an Administrative Vice President."

[2] In 1881, President Garfield was incapacitated for 80 days preceding his death. During much of the time from September 1919 to March 1921 President Wilson was unable to give proper attention to his Presidential duties. In both instances the inability of the President was a well established fact, but friends and advisers counselled against transferring the powers and duties of the Presidency over to the Vice President in the fear that the President would be unable to regain the Office in the event his inability should cease. The recent illnesses of President Eisenhower, which fortunately were of comparatively short duration, serve to point up once again the momentous problems which could arise under obscure provisions for dealing with Presidential succession in such circumstances.

person after another succeeds to the Office and/or the powers and duties of the United States Presidency.

At the outset, any consideration of this phase of our system of government is replete with profound legal problems and grave Constitutional questions. Efforts to study the problems and suggest concrete solutions to them seem only to be made by the Congress at the times when situations become acute and public interest is high. Then as soon as the dangers have lessened, public interest, as well as that of Congress, subsides and affirmative action is postponed. This is understandable in view of the difficulties involved but is no excuse for tolerating further neglect.

For many years I have been acutely aware of the problems inherent in Presidential succession. Although I have opinions on some of the issues involved, I frankly admit that neither do I have all the answers, nor do I believe a sufficiently concentrated analysis of the current laws and authoritative recommendations has been made on which to predicate positive legislative reform. Several years ago I arrived at the conclusion that the most appropriate method of dealing with the situation would be the creation of a joint committee of the Congress charged with the responsibility of exploring the entire area of Presidential succession and arriving at sound, well considered proposals for appropriate consideration and action. As a member of the United States Senate, I have introduced legislation to establish such a joint committee in the last six sessions of Congress.[3] Three times my proposals received the approval of the Senate, but in each of those instances the particular enabling resolution died in the House of Representatives.[4] However, my enthusiasm for the project has not waned with these disappointments and I am continuing my crusade for the establishment of a joint committee which will lend the prestige and potency of both branches of the national Congress to this important project.

---

[3] *S. Con. Res. 50,* 79th Cong., 2d Sess. Submitted by Mr. Green Jan. 17, 1946. Agreed to by the Senate Mar. 14, 1946 (92 Cong. Rec. 2237 (1946)). Died in the House.

S. Con. Res. 1, 80th Cong., 1st Sess. Submitted by Mr. Green Jan. 6, 1947. Died in committee. See author's statement in support of S. Con. Res. 1 printed in *Hearings before the Senate Committee on Rules and Administration on S. Con. Res. 1, S. 139, S. 536, and S. 564, 80th Cong., 1st Sess., pp. 5-17 (1947).*

S. Con. Res. 14, 81st Cong., 1st Sess. Submitted by Mr. Green, Jan. 31, 1949. Agreed to by the Senate Oct. 17, 1949 (95 Cong. Rec. 14772 (1949)). Died in the House.

S. Con. Res. 23, 82d Cong., 1st Sess. Submitted by Mr. Green Apr. 9, 1951. Died in committee.

S. Con. Res. 2, 83d Cong., 1st Sess. Submitted by Mr. Green Jan. 7, 1953. Died in committee.

S. Con. Res. 65, 84th Cong., 2d Sess. Submitted by Mr. Green Jan. 23, 1956. Agreed to by the Senate Feb. 20, 1956 (102 Cong. Rec. 2499-2502 (1956)). Died in the House. (On March 8, 1956, the author appeared before the Committee on Rules of the House of Representatives and urged support of S. Con. Res. 65 and an identical resolution, H. Con. Res. 207, which had been introduced by Representative Charles E. Bennett of Florida.)

[4] S. Con. Res. 50, 79th Cong., 2d Sess.; S. Con. Res. 14, 81st Cong., 1st Sess.; S. Con. Res. 65, 84th Cong., 2d Sess.

My most recent endeavor is Senate Concurrent Resolution 2 of the Eighty-fifth Congress, which I introduced on last January 7th. It would create "a joint congressional committee to make a full and complete study and investigation of all matters connected with the election, succession, and duties of the President and Vice President." The Senate Committee on Rules and Administration in favorably reporting my last previous concurrent resolution to the Senate stated in part:

> The purpose of such contemplated study is to achieve a sound basis for the submission and promotion of remedial legislation necessary to make the statutes certain and complete concerning Presidential elections, successions and duties.
>
> All matters relating thereto present legal problems and constitutional questions involving the fundamental concepts of the Federal Government which may be resolved adequately by Congress only after a thorough examination of the whole subject. To this end, a joint committee . . . . would be established . . . .[5]

The questions which follow, in italics, are borrowed from S. Con. Res. 2, wherein they appear as suggested issues for study and recommendation. In this article I shall discuss them briefly and point out specific problems which they entail. I shall not presume to state the precise courses which remedial legislation should follow, because I believe such conclusions should await the completion of the study I propose. I shall, however, make reasoned observations where they seem appropriate.

Whether or not candidates for President and Vice President should be nominated by national conventions, as at present, and, if so, recommendations which should be made to the parties for improving the convention process, and, if not, a method which would be preferable.

I believe that our present method of nominating candidates for President and Vice President should be thoroughly reviewed by a joint committee of the Congress for the purpose of evaluating that method and recommending improvements therein or else the adoption of a preferable process.[6] At least two of my colleagues in the Senate have introduced specific legislation leading to the elimination or reform of nomination by national political conventions.

---

[5] Sen. Rept. No. 1462, 84th Cong., 2d Sess. (1956) 1. Six years earlier the same Committee, in favorably reporting a similar resolution, expressed the same objectives (Sen. Rept. No. 1096, 81st Cong., 1st Sess. (1949) 2).

[6] In the words of a popular periodical:

The search for a better way to nominate Presidential candidates is almost as old as the Presidency itself. In the early Presidential elections, candidates were selected by Members of Congress sitting in caucus. In 1824, Andrew Jackson and his followers rebelled against 'King Caucus', and paved the way for the convention system. In 1905, the Wisconsin Legislature passed a law for direct election of all delegates to national conventions. In 1910, Oregon adopted the first Presidential preference primary. In 1913, President Wilson urged virtually the same plan that Senator Smathers now proposes. (Time Magazine, Feb. 25, 1952, vol. 59, no. 8.)

During the Eighty-second Congress Senator Paul Douglas of Illinois introduced S. 2570, to authorize the Attorney-General to conduct preferential primaries for nomination of candidates for President and Vice President. Although the bill was the subject of a hearing by the Subcommittee on Rules, and was reported favorably to the Senate by the Committee on Rules and Administration,[7] it failed to pass. Mr. Douglas introduced similar measures during the Eighty-third and Eighty-fourth Congresses,[8] both of which died in committee. Senator George Smathers of Florida introduced legislation during the Eighty-second Congress providing for a constitutional amendment which would establish a presidential primary and eliminate nomination by national political conventions.[9]

Whether or not the President and Vice President should be elected by the electoral college, as at present, and if so, whether or not the members should be legally bound to vote in accordance with their instructions.

More than twenty states do not print the names of the candidates for electors on the general election ballots, but instead allow a vote for the Presidential candidate of a national convention to be counted as a vote for the nominees of that candidate's party for the electoral college.[10] Yet the Constitution contemplates that electors, once chosen, shall be absolutely free to vote

---

[7] Sen. Rept. No. 1858, 82d Cong., 2d Sess. (1952). See also *Hearing before Subcommittee on Rules of the Committee on Rules and Administration on S. 2570,* 82d Cong., 2d Sess. (1952).

[8] S. 1049, 83d Cong., 1st Sess.; S. 652, 84th Cong., 1st Sess.

[9] S. J. Res. 145, 82d Cong., 2d Sess., which died in committee. Twelve States presently require that voters be enabled to express their preference for Presidential candidates. Those States are California, Illinois, Maryland, Minnesota, Nebraska, New Hampshire, New Jersey, Ohio, Oregon, Pennsylvania, West Virginia, and Wisconsin.

Although political parties are not provided for by the Constitution or statute, such parties have the power to determine their own nominees by well established precedent. Under their usual practice at national conventions the major political parties even provide for the possible death of its Presidential candidate.

To establish a procedure to be followed in the event of the death, resignation, or disability of its nominees for President and Vice President, the Democratic National Convention of 1956 adopted the following rule:

In the event of the death, resignation, or disability of a nominee of the Party for President or Vice President, the Democratic National Committee is authorized to fill the vacancy or vacancies, by a majority vote of a total number of votes possessed by the States and Territories at the preceding National Convention; the full vote of each State and Territory shall be cast by its duly qualified member, or members, of the National Committee, and in the event of a disagreement between the two members, each shall cast one-half of the full vote of the State. (Democratic Manual for the Democratic National Convention, 1956, p. 8.)

A similar resolution to provide for the same contingencies in respect to the Republican nominees was adopted by the Republican National Convention of 1956. (See also H. Rept. 345, 72d Cong.)

[10] The present provisions of law relating to the electoral college (enacted by Congress pursuant to Article II, Section 1, of the Constitution, and Amendment XII) are contained in 62 Stat. 672-675 (3 U.S.C. 1-14). Title 3 of the United States Code, which contains said provisions, was enacted into positive law on June 25, 1948, by Public Law 771 of the 80th Congress. In 1957 the day set by the above law for the purpose of counting the electoral votes in Congress, January 6, falls on Sunday. Congress by the Act of March 24, 1956 (70 Stat. 54) designated Monday, January 7, as the day it shall meet in 1957 to count the electoral votes.

for any eligible person to be President or Vice President.[11] For example, as recently as December 18, 1956, an Alabama elector, Mr. W. F. Turner, who had been elected to vote for Adlai Stevenson and Estes Kefauver actually voted in the electoral college for Judge Walter B. Jones of Alabama for President and Senator-elect Herman Talmadge for Vice President. Mr. Turner is only the most recent of several electors who have chosen to flaunt the wishes of a majority of the voters in their districts, though actually conforming to the original intent of the Constitution: viz., that the electors, not the people, shall choose our Executive.

There are several other weaknesses in the electoral-college procedure. Possibly the chief adverse criticism of the system is that it permits the election of candidates who trail in the popular vote. That has occurred three times during our Nation's history.[12] Then it is contended by some that large portions of the electorate are in effect disfranchised by the "winner-take-all" system within the States. It is also contended that since the people of the United States really do not elect their President, the present system is flagrantly undemocratic. Many persons agree with the statement attributed to Senator John F. Kennedy (D., Mass.) that "the electoral college is an unnecessary, confusing, and potentially harmful anachronism." [13]

During the Eighty-fourth Congress a variety of proposals to revise or eliminate the electoral-college procedure were considered.[14] They can be conveniently categorized into those designed:

(a) To abolish the electoral college and elect the President and Vice President by direct popular vote;

(b) To keep the electoral college but to eliminate the discretionary power held —but rarely used—by the electors;

(c) To abolish the electoral college but retain the system of the electoral votes, and apportion them among candidates on the basis of number of votes received by each candidate; or

(d) To permit each State, in its discretion to adopt either of plans (b) or (c) above.

---

[11] According to custom electors usually vote for the candidate who is the choice of their political party. *McPherson* v. *Blacker,* 146 U.S. 1, 36 (1892). The United States Supreme Court has ruled that an elector may announce and pledge himself beforehand in support of such candidate. See *Ray* v. *Blair,* 343 U.S. 214 (1952).

[12] John Quincy Adams, in 1824; Rutherford B. Hayes, in 1876; and Benjamin Harrison, in 1888. A collateral problem develops from the failure of a candidate for President or Vice President to receive a majority of electoral votes. Then, under the Twelfth Amendment of the Constitution, it becomes the prerogative of the House of Representatives to choose a President. But since 1801, when Thomas Jefferson was thus chosen over Aaron Burr—after thirty-six ballots—there has been support for a further amendment to resolve such issues by popular vote.

[13] 42 A.B.A.J. 1037 (Nov. 1956).

[14] See *How We Elect Our President: an Electoral College Education in One Lesson* by Joseph F. Dolan. 42 A.B.A.J. 1037-1040 (Nov. 1956).

The debate on these proposals has revealed a wide disparity of opinion among members of Congress.[15] But it has established clearly that there is a general need for change in the electoral procedure accompanied by lack of sufficient agreement on the nature of the best substitute or reform. Since the elimination of the electoral college or any radical revision thereof would necessitate a constitutional amendment, the need is apparent for comprehensive Congressional action if the processes of Presidential succession—by election—are to be improved within the foreseeable future.

Whether the provisions of Public Law 199 of the Eightieth Congress, approved July 18, 1947, relating to Presidential succession, adequately provide for all possible contingencies occasioned by the removal, resignation, death, or inability of both the President and Vice President.

The Constitution delegates to Congress authority to provide by law for the succession of the Presidency in the event the Nation should at any time find itself without either a President or a Vice President.[16] Pursuant to that authority Congress has enacted three basic statutes over the years.

The first, the Act of March 1, 1792 (1 U.S. Stat. 240; Revised Stat. §§ 146, 147, 148, 149, 150), designated the President pro tempore of the Senate as third in succession (after President and Vice President). In the event there was no President pro tempore or he was unable to serve, the Speaker of the House was to act as President "until the disability be removed or a President shall be elected." During the debates on this bill the question was raised as to "Who is an *officer* in the Constitutional sense?",[17] since under the literal language of the Constitution [18] Congress can only declare what *officer* shall act as President. Although some Federal legislators doubted that the presiding officers of the respective Houses could qualify, they were notwithstanding designated as successors under the statute.

In 1886 Congress changed its mind and decided that the President pro tempore of the Senate and the Speaker of the House were not officers in the Constitutional sense and therefore not eligible to succeed to the Presidency. The Act of January 19, 1886 (24 U.S. Stat. 1), provided that the Secretary of State should be third in succession, followed in the stated order by the Sec-

---

[15] 102 Cong. Rec. 4937, 4939, 4941-4977, 4999, 5023, 5035, 5047, 5069, 7359 (1956).

[16] Article II, Section 1, Paragraph 6 of the Constitution reads:

In case of the removal of the President from office, or of his death, resignation or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall act accordingly until the disability be removed or a President shall be elected.

[17] 3 Annals of Cong. 281.

[18] *Supra* note 16.

retary of the Treasury, the Secretary of War, the Attorney General, the Postmaster General, the Secretary of the Navy, and the Secretary of the Interior. From time to time bills were introduced to add the heads of newly created departments to the line of succession, but none became law, probably because of lack of interest at those times.

The principal criticism of the Act of 1886 was that the President was in the unusual and undemocratic position of being able to select his potential successor through his prerogative of naming his Cabinet members. President Harry S. Truman in 1945 sent a special message to Congress asking that the succession law be changed to correct this anomaly. After much discussion in Congress the law was changed again, by the Act of July 18, 1947 (61 Stat. 380). That Act, which is still in effect,[19] provides as follows:

> The Speaker of the House, upon his resignation as Speaker and as a Representative shall act as President in the absence of a President and a Vice President. If there is no Speaker or he is disabled or fails to qualify, the President pro tempore of the Senate, upon resignation as President pro tempore and as Senator, shall act as President. In the event of the absence or inability of either of the above, the Secretary of State shall act as President. The other cabinet officers follow in the line of succession designated in the Act of 1886.

Although Congress has temporarily answered the doubts as to whether the President pro tempore and the Speaker are officers in the Constitutional sense, the question may arise again at any time. There are, in addition to this, many collateral questions which should be considered. Of these latter, I would like to touch briefly on one which is within the realm of current possibility.

Under present law the Speaker of the House and the President pro tempore of the Senate, both Democrats, are next in line after the President and Vice President, both Republicans, to serve as the Chief Executive. Should the top two offices fall vacant today, Speaker Sam Rayburn would become President of the United States. This raises the question of party responsibility. Would a Democratic Speaker be as representative of the electoral will expressed in the last election as a Republican Secretary of State? Should the Act of July 18, 1947, be modified to apply differently when the White House and the Congress are controlled by different political parties? That is the question which necessarily provokes the traditional arguments on the advantage of a pure parliamentary system.

How it shall be determined whether the President is unable to execute the powers and duties of the office; and how the extent and duration of such

[19] By section 202 (a) of Public Law 253 of the 80th Cong., 1st Sess., approved July 26, 1947, the Secretary of War and the Secretary of the Navy were eliminated from the line of succession and the Secretary of Defense (created by Pub. Law 253) was inserted therein.

inability shall be determined and defined; and how it shall be decided that the inability requires the Constitutional discharge by the Vice President of the powers and duties of the Office of President, or results in the succession of the Vice President to the Office of President.

During one of the sessions of the Continental Congress when the matter of Presidential succession was under discussion Mr. John Dickinson of Delaware posed the following question to his colleagues: "What is the extent of the term 'disability' and who is to be the judge of it?" [20] It is interesting to note that nowhere is it recorded that Mr. Dickinson received an answer to his pointed inquiry.

Fortunately we survived the instances in our history when the ability of the President to carry on the duties of his Office was highly questionable. The fact remains it is now more important than ever that we come to a definite understanding on the matter of what constitutes "inability" of a President in the Constitutional concept. As is evident from the above allusion it was the intent of the Framers of the Constitution that their successors in Government should meet the situation of inability to the President in the light of experience and pending circumstances.

The pertinent Constitutional passage provides merely that in case of the President's inability to discharge the powers and duties of the office the same shall devolve on the Vice President.[21] The terse language suggests such problems as:

1. How should Presidential inability be defined?
2. Who shall determine that a President is unable to discharge his powers and duties?
3. When such determination is made, what ought to devolve on the Vice President, the Office of the Presidency or only the powers and duties of that Office?

I do not think that Congress should try to legislate a definition of the term "inability". Rather it would seem advisable, as it evidently did to the Founding Fathers, to allow the term to be interpreted in the light of conditions which obtain at the time. Instead of a cumbersome statutory definition, it might be better to adopt a common-sense rule that the President himself should be the judge of his own ability. However, this assumes that he is able to exercise rational judgment and declare his own inability and its likely extent; so Congress perhaps should lay the groundwork by expressing its interpretation of the Constitutional provision and by establishing a positive procedure.

[20] Farrand, Max, ed. The records of the Federal Convention of 1787. (Yale Univ. Press—1911) v. 2, p. 427.
[21] *Supra* note 16.

If a President were physically or mentally unable to decide or declare his inability, the power to so declare the inability might be given, by appropriate statute, to the President's Cabinet. It has been suggested that the authority should be vested in the Supreme Court or some independent commission.[22] To vest the authority in the Supreme Court would probably require a Constitutional amendment because the Court's original jurisdiction is strictly limited. Provision to decide the issue could follow the pattern of the impeachment process; devoid, of course, of any of the opprobrious connotations sometimes read into that process. A parallel procedure—initiation of the question of the President's inability by the House; consideration of the question by the Senate with the Chief Justice presiding; and a two-thirds vote by the Senate required for a determination or finding of inability—should provide ample safeguards for so grave a responsibility.

In the typical circumstance of Presidential inability I am inclined to the opinion that it is only the powers and duties of the President and not the Office itself that devolves on the Vice President. The logical implication of the Constitution seems to be that the Vice President in such a situation is merely acting for the President and that the latter recovers his powers when his disability is removed. As we have seen, there is no precedent to guide us except by questionable analogy to those instances when Vice Presidents have succeeded deceased Presidents.

The records of the Constitutional Convention indicate that it was not the intention of the Framers of the Constitution that the Vice President or other officer in line of succession should become President in fact.[23] Yet we are faced with an unusual precedent in respect to Vice Presidents who succeeded to the powers and duties of the Presidency upon the death of a President. The precedent originated with Vice President John Tyler, who succeeded President William Henry Harrison, the first Chief Executive to die in Office. Despite the objections of many of his contemporaries in high office, Tyler took the position that he was not acting President but President in fact. The other six Vice Presidents who succeeded Presidents who had died entertained the same attitude relative to their status when they assumed the powers and duties of the

---

[22] There are of course the corollary problems of determining the duration and cessation of Presidential inability for which similar provision would have to be made.

For an indication of current Congressional interest in the problems of Presidential inability see the following bill and joint resolutions introduced during the Eighty-fourth Congress: S. 2763, S. J. Res. 30, H. J. Res. 97, H. J. Res. 175, H. J. Res. 176 and H. J. Res. 442. See also *Hearings before Special Subcommittee to Study Presidential Inability of the House Committee on the Judiciary on Problem of Presidential Inability,* 84th Cong., 2d Sess. (1956), and accompanying committee print entitled "Presidential Inability" (Jan. 31, 1956).

[23] Warren, Charles, THE MAKING OF THE CONSTITUTION (1928) 635.

Presidency.[24] These precedents could cause reluctance in a disabled President and his advisers to encourage a Vice President to "take over" through fear that pursuant to the established precedent the Vice President would usurp the Office and fail to return it if the President's inability should cease.[25]

Congressional study of this tangent of Presidential succession should have for its main objective the clarification of the status of one who succeeds to the Executive powers and duties. The present obscure situation should be rectified by statute or, if necessary, by Constitutional amendment. Proceeding on the theory that the Vice President (or other officer in line of succession) does not become President in fact when he succeeds to the powers and duties of the Presidency under any set of circumstances, the question naturally arises as to whether it might not be advisable to provide for a special Presidential election to coincide with the regular election of Members of the House of Representatives in those instances when two years or more of the Presidential term remain. The proposed joint committee should consider the desirability of a Constitutional amendment for that purpose.[26]

Whether the heavy responsibilities of the Presidency make it desirable to create an office of Executive Vice President.

While not strictly within the area of Presidential succession, I deem it advisable to include in the agenda for my proposed joint committee the consideration of the increasing responsibilities of the Presidency and the advisability and possibility of relieving the President of some of his administratve burdens. On January 16, 1956, former President Hoover, in an appearance before a Senate subcommittee, proposed that Congress create a statutory position of Administrative Vice President, to be assigned "such administrative and coordination duties" [27] as the President might be authorized under existing law to delegate to him. The former President emphasized that he was not proposing that the President be relieved of any of his Constitutional duties. Mr. Hoover's

[24] In this respect, it is worthy to note an amusing aspect of the impeachment of Andrew Johnson, the Vice President who succeeded President Abraham Lincoln. During the impeachment of Johnson, his opponents, many of whom entertained the view that a Vice President does not in fact succeed to the Presidency, were forced to concede that Johnson was in fact President of the United States in order to proceed with the impeachment process inasmuch as Johnson was arraigned as "President of the United States."

[25] Amendment XX has seemingly given acquiescence to precedent in part since it provides that if a President-elect dies, the Vice President-elect shall *become* President.

[26] H. J. Res. 441, introduced by Congressman Dodd, during the Eighty-fourth Congress, contained the following section:

Sec. 2. If any person shall succeed to the Office of President, not having been elected thereto, and more than one year remains of the regular four-year term, a special election shall be held within four months of the date of such succession to elect a President and Vice President to serve the remainder of such term.

[27] Sen. Rept. No. 1960, 84th Cong., 2d Sess. (1956) 3.

proposal and other similar proposals and related matters were given complete study by the Subcommittee on Reorganization of the Senate Committee on Government Operations.[28]

CONCLUSION

I have attempted in this short article to review briefly some of the problems inherent in Presidential succession and to emphasize those in dire need of early solution. The limitations of space have necessitated cursory treatment of the problems themselves, and my principal endeavor has been to stress the importance of their solution by the creation of a joint committee of Congress for that purpose.[29] All the items which I would include in the agenda of my proposed joint committee can best be considered together. While it is true that legislative remedies for them would have to be reported separately from several regular committees of the Senate and House, and that some of those remedies would be in the form of statutes and others in the form of Constitutional amendments, I believe the first step by the Congress should be a comprehensive joint study of Presidential succession in its broadest terms.

On Thursday, January 19, 1956, President Eisenhower held his first full-dress news conference following his unfortunate heart attack. At that conference, in discussing the laws of Presidential succession and, in particular, succession pursuant to the disability of a President, President Eisenhower is quoted in the *New York Times* as having said:

> "I think it is a subject that, in its broadest aspects, every phase of it should be carefully studied by the Congress, advised with by the Attorney General, and any kind of advice they want from the Executive Department, and some kind of a resolution of doubt reached. I think it would be good for the country."

---

[28] Hearings were held on this subject matter on January 16, 24, and 25, 1956; and on May 9, 1956, Senator John Kennedy, Chairman of the Subcommittee on Reorganization of the Committee on Government Operations, summarized the unanimous views of the members of the subcommittee and explained its decision to take no further action at that time. See 102 Cong. Rec. 6932 (May 9, 1956). Two proposals introduced in the House by Congressman Frelinghuysen during the Eighty-fourth Congress are worthy of note. H.R. 7900 would have established a Commission on the Office of President to look into the possibility of alleviating the heavy burdens of the Office of President and report its findings and recommendations to Congress. H.R. 7901, a more direct approach, would have amended Title 3 of the United States Code by inserting a new provision, to wit:

§ 106a. Administrative Vice President:

The President is authorized to appoint, by and with the advice of the Senate, an administrative assistant to be designated as "Administrative Vice President", and may fix the compensation of such assistant at a rate not exceeding $27,500 per annum. The Administrative Vice President shall perform such duties as the President may prescribe.

In reference to the above proposals it should be noted that Congress made an attempt to relieve the President of much administrative detail by its Act of October 31, 1951 (65 Stat. 712), which provides generally for the delegation of specified Presidential functions.

[29] In summarizing Congressional inaction and specific abortive attempts in clarification of succession law, one of the foremost authorities on the subject concluded her profound treatise as follows: "More to the point is Senator Theodore F. Green's resolution which would create a joint committee to investigate all matters relating to both presidential election and succession." Silva, Ruth C., "Presidential Succession". (Univ. of Mich. Press—1951) p. 166.

I thoroughly concur in this forthright proposal. Although joint committees do not—except in rare instances—have my favor, it seems to me that the problems attendant upon Presidential succession constitute a rare instance. In my opinion, it is far more important to have some solution to the questions involved than it is to have the best solution, though, naturally, I would like to have the best. We cannot afford to be complacent. We cannot afford to indulge further procrastination in the area of Presidential succession. We must not wait for the impetus of another crisis to drive us to the action I now propose.[30] Any solution we can determine now by cool, deliberate consideration will be far superior to that achieved under the pressure of a sudden emergency.

[30] The report of the Senate Committee on Rules and Administration in recommending the establishment of my proposed joint congressional committee, over seven years ago, read in part:

Many issues of the utmost importance and gravity will develop, no one of which can be adequately considered without a thorough examination of the entire subject. There also exists in this very important matter a definite interrelationship among the many far-reaching and fundamental questions which must be answered, so that this Nation will not be faced with a calamitous situation imperiling the succession of the Presidency without a legally established solution on which to rely. All uncertainties in a matter of such importance should be eliminated without hesitancy. This can be done by legislation which is based upon the findings of a complete investigation, and which is intelligently prepared and drafted so that all contingencies will be provided for in an adequate manner."

Sen. Rept. 1096, 81st Cong. 1st Sess. (1949) 2.