

disability, President Wilson's almost 16-month disability, as well as President Eisenhower's three individual disabilities.

We are honored this morning to have first-hand information from a man who served in the Nation's No. 2 Office.

Vice President Nixon, we are honored to have you with us, sir, and you proceed as you desire by making a statement or remarks or question and answer, anything you prefer, and we will follow your lead.

**STATEMENT OF HON. RICHARD M. NIXON, FORMER VICE
PRESIDENT OF THE UNITED STATES**

Mr. Nixon. Thank you very much, Mr. Chairman.

I appreciate the opportunity to appear before this committee and having been a member of Senate investigating committees as well as committees conducting hearings as this committee in terms of legislation, I know that at about this time in your proceedings witnesses begin to repeat as far as the various statements that they make. I have taken the liberty of reading summaries of the testimony that has been given to this committee to date, and consequently, I will try not to bore you by repeating those particular ideas that have already been expressed by others.

I think perhaps the best service I could render to the committee in the hearings is to present to you those areas where I might disagree with proposals that might be considered by the committee and any new proposals that I might have that have not already been presented to you.

I would like to begin by stating that in my opinion the hearings being conducted by this committee are the most important hearings from the standpoint of the country that are being conducted in Washington today.

Others are more sensational, others may have greater, shall we say, political effect, but these hearings involve the future of the United States as no other hearings perhaps in recent years have.

It involves the Office of the Presidency and the powers of the Presidency, and as I will point out in my remarks with regard to disability, it involves the defense of the United States of America.

As I appear before you, I want to make it clear that I don't have any pet idea here to sell. I naturally have strong convictions that the proposals I have made with regard to succession and disability are perhaps the best approach.

But what is important is not that this committee adopt my proposals, what is important is that this committee make a recommendation to the Congress, to the Senate, and to the Nation which will get action on these two problems, the problem of succession and the problem of disability.

I say that because when we look at the American Constitution, a very remarkable document, it has very few weaknesses or flaws in it. The major weakness was that with regard to disability, which, as the chairman has pointed out in his opening statement, has caused concern in this country several times since the Constitution was adopted.

With regard to succession, we all know that there has been a shifting idea as to how that problem should be handled. But now it seems to me that, as I am sure it does to the members of this committee who

have been participating in the constitutional flaw will self in respect both to success

I say the time has come of the assassination of to that time of President of the problem. They I it but the more time that less urgency for it will be by the Congress to get act So, the time is now, an effectively as possible in getting action on it.

I would say further in deal with succession and in the papers and the attract the most attention major problem, and the not succession but disability.

We do have a succession other hand, as far as President Johnson and Speaker session, the same agree and that President Keating, I understand.

So, I would agree in Keating, I understand, of which he is a member two problems.

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have been participating in these hearings, the time has come to remedy the constitutional flaw with regard to the Office of the Presidency itself in respect both to succession and to disability.

I say the time has come because the American people, as a result of the assassination of President Kennedy, and as a result prior to that time of President Eisenhower's illnesses, I think are aware of the problem. They believe that something should be done about it but the more time that is allowed to elapse between those events the less urgency for it will be felt by the American people and, of course, by the Congress to get action to deal with these problems.

So, the time is now, and I would urge the committee to proceed as effectively as possible in getting a united proposal, backing it and getting action on it.

I would say further in the general sense, that while these hearings deal with succession and while succession, as I note from the reports in the papers and the reports of the committee's hearing, seems to attract the most attention and the most interest, in my opinion, the major problem, and the problem that needs most urgent attention is not succession but disability.

We do have a succession law at the present time. There is, on the other hand, as far as disability is concerned only an informal agreement which has no standing as far as law is concerned between President Johnson and Speaker McCormack who is the next in line in succession, the same agreement that President Eisenhower had with me and that President Kennedy had with Vice President Johnson.

So, I would agree in this instance with the position that Senator Keating, I understand, has taken very strongly before this committee of which he is a member, that disability is the more urgent of the two problems.

However, I would say that this is the time to deal with both problems, succession and disability, and to strike, in effect, while the iron is hot.

Now, turning to specific proposals, I would like to discuss first the problem of succession.

I have set forth my views on succession in an article which I wrote for a magazine and, with the chairman's permission, I would like to submit that article for the record and thereby save the time of the committee by reading it into the record.

Senator BAYH. Without objection we will include it at this point in the record and the Chair would like to compliment the author for his very incisive argument which I read with a great deal of interest. (The magazine article referred to follows:)

[From Saturday Evening Post, Jan. 1, 1964]

WE NEED A VICE PRESIDENT NOW

(By Richard M. Nixon)

We must fill the office of Vice President immediately, says a man who held the job 8 years. Here is his compelling proposal.

The 8 weeks that have passed since the assassination of President Kennedy have been a period of great soul searching for the American people. We have asked ourselves how this tragic act of violence could have happened in our country. We have urged that steps be taken to provide better protection for our Presidents in the future.

We have also a new, hard look at the question of Presidential succession. And we have concluded that there is a serious deficiency in an otherwise remarkable constitutional process.

While everyone knows that eight Vice Presidents have succeeded to the Presidency upon the death of an incumbent, it is not so well known that another seven Vice Presidents of the United States have died in office, and one has even resigned. The Office of the Vice President has been vacant 16 times. In other words, during over 40 years of our history, this Nation has not had a Vice President and there has been no constitutionally elected successor to the President.

Three times the Congress has dealt with this problem.

The first law, passed in 1792, made the President pro tempore of the Senate and then the Speaker of the House of Representatives the next in the line of Presidential succession after the Vice President. These congressional officers were put ahead of the President's Cabinet because Hamilton, the Federalist Party leader, wished to block the path of Secretary of State Jefferson.

This law was changed in 1836, during the Democratic administration of Grover Cleveland. His Vice President had died the year before, and the Senate was controlled by the Republicans. To prevent the possible elevation of a member of the opposition party to the White House, the line of succession was given to the Cabinet, starting with the Secretary of State.

The last change was proposed by President Truman in 1945. He requested Congress to make the Speaker of the House his successor. Some observers at the time suggested that he was motivated by the belief that Speaker Rayburn would make a better President than Secretary of State Stettinius. And so, since 1947, when this law was enacted, the line of succession to the Presidency has run: Vice President, Speaker of the House of Representatives, President pro tempore of the Senate, the Secretary of State, and finally the other members of the Cabinet.

Assuming that a law should be written for all time and not just to deal with a temporary situation, the conclusion is inescapable that the laws of Presidential succession have in the past been enacted for the wrong reasons.

Now is the time to make a change for the right reason.

The right reason is not that a Speaker of the House is always less qualified to be President than a Secretary of State. Sam Rayburn, for example, would have been a better President than Edward Stettinius. And the present Speaker, John W. McCormack, is a man with a distinguished record of 40 years' service to our Nation, who has always stood in the forefront of the fight against communism both at home and abroad.

Yet, as recent Presidents have rightly given more and more responsibilities to their Vice Presidents, the present system now raises to what has truly become the second office in the land a man who already holds one of the most burdensome offices of government—the Speaker of the House. Moreover, it is not unlikely that a Speaker could be of a different party from the President's. This was the case during the 80th Congress when President Truman would have been succeeded by Republican Speaker Joseph Martin.

So, putting present personalities aside, we must write a new law of Presidential succession. And as did the framers of our Constitution, we must write for posterity, not merely for the moment.

There have been three serious proposals recently made for changing the law of Presidential succession.

First. It has been proposed that we go back to the old system of putting the Secretary of State and the Cabinet ahead of the Speaker of the House in the line of succession. But a good Secretary of State doesn't necessarily make a good President. While a particular Secretary of State might be an excellent choice, just as a particular Speaker might be, this proposal offers us no such guarantee. It is significant to note that no one who has held the office of Secretary of State has been elected to the Presidency since James Buchanan. And, as President Truman suggested in 1945, I believe, there are advantages in elevating a man to the Presidency through the elective, rather than the appointive, office.

Second. It has been proposed that the Congress elect a new Vice President. A similar plan would have the President appoint a Vice President with the consent of the Congress. Both of these proposals, however, could create grave difficulties if the Congress happened to be controlled by the opposition party, which has been the case during the terms of 16 Presidents.

Third. Senator Kenneth Keating, of New York, has introduced a constitutional amendment to provide for the election of two Vice Presidents. First in the line of succession would be an Executive Vice President who would have no other

constitutional duties. The second would then follow in the line of duties of presiding over the Senate. The advantage of this novel proposal is of the office, we would be down; it is imperative that we add to its p

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constitutional duties. The second Vice President, or Legislative Vice President, would then follow in the line of succession, and would have the constitutional duties of presiding over the Senate and breaking tie votes. The major disadvantage of this novel proposal is that by dividing the already limited functions of the office, we would be downgrading the Vice-Presidency at a time when it is imperative that we add to its prestige and importance.

How can we best design a new law which will not have these objections? I believe the trouble in the past was that changes in the law of succession have been made to deal with an immediate, personal situation. Because it was thought that a particular individual should not be President, the plan was changed to block that man. Instead of trying to devise a plan which will promote or block a particular man, what we need to do is to direct our thoughts generally to the question of the kind of man who would be best fitted to succeed to the Presidency of the United States and then design a plan which will find that man.

What qualifications should a Vice President have?

He should be a man qualified to be President.

He should be a full-time Vice President with no other official duties.

He should be a member of the same political party as the President.

He should have a political philosophy which is close to that of the President, particularly in the field of foreign affairs.

He should be personally acceptable to the President, but since he may potentially hold the highest office in the land, his selection should reflect the elective, rather than the appointive, process.

What kind of plan will allow the selection of such a man?

I believe there is one proposal that has not been given adequate consideration to date and that would best accomplish this purpose. It would take the form of an amendment to article II, section 1, of the Constitution and would read as follows:

"Within thirty days after a vacancy occurs in the office of Vice President, either because of death, removal, or the elevation of the incumbent to the Presidency, the President shall reconvene the electoral college for the purpose of electing a Vice President of the United States."

This proposal, as is the case with Senator Keating's, recognizes that merely changing the law of succession does not necessarily fill the office of the Vice President. And the office of Vice President itself, apart from the question of succession, has become necessary to the country.

By using the electoral college as the instrument for selecting a new Vice President, we would be relying on a popularly elected constitutional body which in contrast to the Congress always reflects the will of the people as of the last presidential election. While it is true that the electoral college is now a constitutional anachronism, this important new function would upgrade the body and would bring about the selection of more responsible persons to serve on it.

Besides filling the Vice Presidency and reflecting the will of the electorate, this plan assures continuity of programs and the selection of a Vice President who can work with the President. For, as in the case of the nominating conventions, where the presidential candidate has the greatest voice in selecting his running mate, so too could we expect the President to have the greatest influence in the deliberations of the electoral college. He would probably recommend the man most acceptable to him as the new Vice President.

But the fact that the electoral college would have the final authority to make the decision would be a safeguard against arbitrary action on his part. Most important, it would mean that whoever held the office of President or Vice President would always be a man selected by the people directly or by their elected representatives, rather than a man who gained the office by appointment.

We now come to the most critical question of all—how do we get action on this or one of the other proposals which have been made to deal with the problem of presidential succession?

The failure of the Congress to act on the equally important question of Presidential disability is a case in point. The Constitution does not set forth a procedure as to how and when the Vice President shall assume the duties of President when the President is unable to serve because of illness. Fifty years ago the country could afford to "muddle along" until the disabled President either got well or died. But today when only the President can make the decision to use atomic weapons in the defense of the Nation, there could be a critical period when "no finger is on the trigger" because of the illness of the Chief Executive.

After his heart attack in 1955, President Eisenhower asked the Congress to correct this situation. When the Congress failed to act, he took matters in his own hands and in 1958 wrote me a letter the key paragraphs of which follow:

"The President and the Vice President have agreed that the following procedures are in accord with the purposes and provisions of Article 2, Section 1, of the Constitution, dealing with Presidential inability. They believe that these procedures, which are intended to apply to themselves only, are in no sense outside or contrary to the Constitution but are consistent with its present provisions and implement its clear intent.

"1. In the event of inability the President would—if possible—so inform the Vice President, and the Vice President would serve as Acting President, exercising the powers and duties of the office until the inability had ended.

"2. In the event of an inability which would prevent the President from so communicating with the Vice President, the Vice President, after such consultation as seems to him appropriate under the circumstances, would decide upon the devolution of the powers and duties of the office and would serve as Acting President until the inability had ended.

"3. The President, in either event, would determine when the inability had ended and at that time would resume the full exercise of the powers and duties of the office."

This historic document was later adopted by President Kennedy, and most recently by President Johnson. But it must be remembered that this procedure is merely a stopgap. It does not have the force of law. I strongly believe that either legislation or a constitutional amendment should be enacted to solve this problem on a permanent basis.

The time has come to give top priority to the consideration of proposals to deal with both Presidential succession and Presidential disability. The most effective way to get action is to set up a bipartisan Presidential Commission, such as the famed Hoover Commission on the Reorganization of the Executive Branch of Government. President Johnson might appoint to the commission to serve as public members our three former Presidents, Hoover, Truman and Eisenhower. The Speaker and the President pro tempore of the Senate would appoint the six other Members from the House and Senate. The recommendations of such a distinguished, blue-ribbon panel would not only be of great merit; they would, with the backing of the President, be almost sure to become the law of the land.

It is a tragic fact that it took a terrible crime in Dallas to remind us of a serious defect in our constitutional process. The murder of our President has forced us to reassess our law of succession and the office of the Vice President.

Both Presidents Eisenhower and Kennedy recognized the importance of the Vice Presidency as no other Presidents had done before them. The extensive duties assigned to Vice President Johnson and myself, at home and abroad, were unprecedented in our history. The country now feels safer and more confident because of the experience that Mr. Johnson gained while serving under President Kennedy. Clearly there can be no reversal of this trend toward greater duties and responsibilities for the Vice President.

When a President dies in office, the man in his party who has been best trained for the Presidency should succeed him. The Vice Presidency today, as a result of the way both President Eisenhower and President Kennedy upgraded the position, is the only office which provides complete on-the-job training for the duties of the Presidency.

We have swiftly and dramatically been reminded again that when we choose a man for Vice President we may also be choosing a man who will become President. This means that our Presidential nominating conventions can no longer fall back on the politically cynical formulas of "balancing the ticket"—of choosing a Western for Vice President only because the Presidential candidate is an Easterner, or a conservative because the standard-bearer is a liberal.

From now on it is absolutely essential that both political-party conventions nominate two Presidents—candidates for both national offices, President and Vice President—who have the ability and experience to lead the United States of America in these perilous times.

Mr. NIXON. With regard to the article I have written and the proposals I have made, I again emphasize that I do not insist that this is the only way to handle the problem.

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In my opinion as far as succession is concerned there are several general principles that this committee, the Congress, and the Nation should have in mind.

First, the new law or the constitutional amendment, whichever the committee decides is appropriate, should be written not for the problem of the moment, but for posterity. The great difficulty in the past has been that every time the problem of succession has come up, the law has been changed because a particular administration or a particular President didn't like the situation as far as his own successor might be concerned.

Therefore, this committee, I am sure, is looking at that from the long-range standpoint.

Now, the second point I would make is the considerations that the committee should attempt to deal with in writing either a law or a constitutional amendment, are these:

First, we should be looking for the qualifications that the Nation needs in a President of the United States. Now, those qualifications sometimes may exist in a man who currently may be Speaker of the House. They may sometimes exist in a man who may be currently the Secretary of State. But other times there might be some other individual whom the President of the United States, the people of the country generally, would feel was better qualified at a particular time to be the second in the line of succession.

The second point I would make is that the man that I think who generally is best qualified to succeed to the Presidency in the event that something happens to the President is the Vice President of the United States.

I say this particularly in view of the record with regard to the transition from President Kennedy to Vice President Johnson. It was a smooth transition. This was a credit, of course, to President Johnson, and his handling of that situation. But it is also a credit to the system. The Vice President, particularly in recent years, is cut in, in effect, on all of the major decisions and, therefore, he is prepared to take over as President as no one else, not the Speaker, not the Secretary of State, no one else in the country, is prepared to take over.

Therefore, I believe that this committee should adopt a proposal which will fill the office of Vice President.

A second reason I believe this is important is that this country now, I think, needs a Vice President. This could not have been said perhaps even 25 years ago. But it can be said today, and clearly apart from the fact that the Vice President is the man that I think is best qualified to be President in the event the President became incapacitated. I think that the Vice President serves a very useful function in Government.

I think President Johnson, for example, today, could well use the services of a Vice President to handle some of the many problems that he handled as Vice President before he succeeded to the Presidency.

Now, we come, of course, to the critical point: how do we find a new Vice President, having in mind the fact that that office has been vacant not only eight times as a result of the Vice President succeeding to the Presidency, but eight other times when the Vice President either died in office and one, of course, resigned the office.

Now, on this score my proposal is that the electoral college be reconvened and that the electoral college, with the recommendation of the President, select a new Vice President.

From reading these hearings, I find that there are many who find objections to that proposal, and like any proposal it has its weaknesses.

I think its merits are, first, that the electoral college as distinguished from the Congress will always be made up of a membership a majority of which is of the President's own party.

The Congress 20 percent of the time during the history of our country has been under the control of a party other than that of the President of the United States. It seems to me then that the electoral college has that advantage over the Congress as the elective body which will select or approve the selection of the new Vice President.

A second point that I should make, however, in this respect, is that I feel that it is most important that the new Vice President come from the elective rather than the appointive process.

I do not mean by that that I would oppose or that this committee should oppose a proposal whereby the President of the United States recommends to either the electoral college or the Congress a name for approval as Vice President, but in the final analysis whoever is to hold the Executive power in this Nation should be one who represents and has come from and has been approved by the electoral process rather than the appointive process.

Now, going to the problem with regard to the selection of a Vice President and his approval by the Congress, I would say that in this instance, that it should be made clear either in the hearings or perhaps even in the law, that the President of the United States has a right to have as his Vice President a member of his own party; that he has a right also to have as Vice President a man who is compatible with his views.

Now, naturally, those objectives will be reached if the committee adopts a proposal of having the President recommend the man that he wants for Vice President, either to an electoral college or the Congress.

I feel very strongly that should be, therefore, the proper procedure.

Rather than having the Congress, if it is to be given the authority, consider several names, I think it is much better to have the President of the United States make the recommendation of one name and the Congress either accept it or reject it.

This is the way, of course, in practice that our Vice Presidents are selected now, and I believe that that way, while it has some weaknesses, is the best way in view of the factors that I have mentioned.

Now, turning from the question of succession and turning to the question of disability, I mentioned a moment ago that I considered the question of disability more important, more urgent at the present time than the question of succession.

Looking at the problem of succession, I would like to say I think it has been most unfortunate that so much of the discussion with regard to succession has been with regard to personalities; the article downgrading Speaker McCormack, for example, I heartily disapprove of.

The articles suggesting, well, a Secretary of State is always better qualified to be President than a Speaker or vice versa, I think those

articles make no sense at all appropriate ones.

I think the moment that you are talking about is the moment rather than the moment.

Looking at disability, which is a letter, a letter whose content is with, written by the President of succession, indicating what would go into effect in the event of a disability.

But that letter has no force until it is developed, and if you will recall, it comes out with regard to those in the White House, such as the President's official family, a letter should develop between the President and the next in line of succession in the event of a disability.

Therefore, it is imperative that we deal with now. That brings us back to how this problem should be handled. I think we should approve generally of the proposal of Attorney General Brownell, as President Eisenhower, would do.

Those proposals represent a considered conclusion of those who have studied disability periods, and I believe that is the proper procedure.

I will not elaborate on the details of the proposal.

This is one area, however, which is a position which differs from an opinion.

The critical point arises when the President's powers and duties, not the President's position, has been disabled, and the President believes he has recovered sufficiently. The argument occurs as to whether the President is able to do so.

In that particular case it is necessary for the Cabinet, together with the approval of the President, determine that the President's powers and the duties of the President declares that he is able to perform his duties. This should be decided by the Commission.

I take a very dim view of this type of commission. They do not have to, of course, but they should be that the Congress, with its powers, is in a better position than a commission to handle this situation.

Let's suppose, for example, that the President is unable to perform his duties and was or was not able to assume the duties.

articles make no sense at all, and those arguments I do not think are appropriate ones.

I think the moment that you get into the personalities you are writing for the moment rather than writing law for the ages.

Looking at disability, which is a problem that has not been dealt with, let me point up the difficulties with the present situation. There is a letter, a letter whose contents this committee, of course, is familiar with, written by the President of the United States to the next in line of succession, indicating what would happen and what procedures would go into effect in the event of disability.

But that letter has no force in law whatever, and if an argument developed, and if you will read some of the books that presently have come out with regard to those tragic last moments of Woodrow Wilson in the White House, such arguments can develop, if an argument should develop between the President's personal family and the President's official family, a letter that the President may have written to the next in line of succession wouldn't mean anything at all, in my opinion.

Therefore, it is imperative that this problem be dealt with and dealt with now. That brings me then to the one point at issue with regard to how this problem should be dealt with. Let me say that I approve generally of the proposals that have been made by former Attorney General Brownell, former Attorney General Rogers, as well as President Eisenhower, with regard to disability.

Those proposals represent, as this committee is aware, the considered conclusions of those of us who went through the Eisenhower disability periods, and I believe that those proposals are sound.

I will not elaborate on them at this time.

This is one area, however, of disagreement in which I will take a position which differs to an extent from that taken, I understand, by President Eisenhower in his letter to this committee.

The critical point arises when a Vice President has taken over the powers and duties, not the office of the Presidency, because the President has been disabled, and then at the point where the President believes he has recovered sufficiently to take the duties back, and an argument occurs as to whether he is able to do so or whether he is not able to do so.

In that particular case it is my belief that where the Vice President, together with the approval of the majority of the members of the Cabinet, determine that the President is not able to take over the powers and the duties of the office, to regain them again, and where the President declares that he is able to do so, that then that conflict should be decided by the Congress of the United States, and not by a commission.

I take a very dim view of referring major constitutional problems of this type to commissions. Commissions are not responsive, and they do not have to, of course, account to the electorate, and I believe that the Congress, with its committee system, could much better handle this situation than a commission.

Let's suppose, for example, that a commission of seven were to consider this problem, and the vote were 4 to 3 or 5 to 2 that a President was or was not able to assume the duties of the office.

Certainly whoever held the office after that kind of a commission hearing, men who were not elected by the people, certainly whoever held that office would hold it under a cloud, whereas, if that decision were made by the Congress, after a hearing set up under the proper circumstances, then at least even if the vote were close in the Congress, it would represent a vote of the people's representatives.

I think, in other words, that the commission approach should not be adopted by the committee. I think it would simply confuse the situation.

With regard to the whole problem of disability, it seems to me that we have to have in mind one fundamental new fact. The chairman recounted the history of disability, and that history itself is a warning of what can happen when we have a man in the office of the Presidency who is unable to carry on the powers and the duties.

But looking back to the period of Woodrow Wilson, I would like to say that I happen to be, despite my difference in partisan affiliation, always been one who was a great admirer of Woodrow Wilson. I think he was one of the great Presidents of this country, and yet in that critical period after he went to the Peace Conference and returned to the United States, I think it could probably be said today that the peace was lost after his leadership had helped to win the war.

For 17 months we had no President of the United States in the real sense.

Now, let's look at the situation today. Today only one man in this world, in the free world, can defend the security of the free world in the event of attack. Only one man's finger is on the trigger.

The United States and the free world can't afford 17 months or 17 weeks or 17 minutes in which there is any doubt about whether there is a finger on the trigger, and that brings me to my last point.

I know there is argument, as there always is, between constitutional lawyers as to whether this should be handled by a constitutional amendment or by legislation.

I, personally, favor a constitutional amendment dealing with both succession and disability.

On the other hand, I would suggest that because a constitutional amendment may take 2, 3, 4 years for enactment, that this committee might well adopt legislation dealing with disability, interim legislation, the same proposal, as a matter of fact, that you might eventually include in the constitutional amendment because the legislation can then be passed and the legislation would be effective in the interim period in the event there was a disability problem.

That, Mr. Chairman, concludes all of the remarks that I think have not previously been covered by other witnesses before the committee, and I would simply say at the conclusion, reemphasize what I said at the beginning: Having been in many sensational hearings in this room as a Senate investigator and in the House caucus room as a House investigator, I can imagine that members of this committee sometimes wonder whether these hearings will ever produce anything, whether there is enough public interest, whether they are worthwhile.

I emphasize what I said before, the country may not be interested enough in what is going on in these hearings, but there is no decision that is more vital to the future of this country than the decision this

committee, and this Congress, first, of disability, and, second

Senator BAYH. Thank you. I would like to note at this from Hawaii, Senator Fong, need to ask you a few questions.

Mr. NIXON. Certainly. Senator BAYH. To close the

who is a coauthor of one of the Mr. Vice President, one of said it was his opinion that ability that is presently in effect initiated, would, in fact, with precedent and would have to much simpler than involving seem to think should be brought

Would you care to comment on a law-precedent approach would

Mr. NIXON. I do not believe for the President of the United States affect not only the foreign relationships of immense consequence day this would be for lawyers common-law-practice argument

Speaking as a lawyer, and recognizing its great skill in technical constitutional problems that argument and, at the time, written into law. I would prefer

Senator BAYH. Could I ask if it is suggested by the two speakers before this committee. One speaker from New York, Senator statement in the record prior very sorry he was unable to Wagner which required him

The other approach is that I have espoused and which has American Bar Association want to argue about the specific approach to constitutional amendment. One approach is a very out any specifics whatever "You have the authority to

The other approach specifically by point what would be the or disability.

The feeling is, on the one hand, ing no specific points at a three-fourths of the legislation

The other argument for the amendment is that really the leg-

committee, and this Congress, will make to deal now with the problem, first, of disability, and, second, of succession.

Senator BAYH. Thank you very much, Mr. Vice President.

I would like to note at this time the presence of the senior Senator from Hawaii, Senator Fong, and if there is no objection, we will proceed to ask you a few questions, if you do not object.

Mr. NIXON. Certainly.

Senator BAYH. To close the session, I am going to ask Senator Fong, who is a coauthor of one of the proposals, to make a statement.

Mr. Vice President, one of the witnesses before the committee earlier said it was his opinion that although the informal agreement on inability that is presently in effect, which you and President Eisenhower initiated, would, in fact, with the passage of time, become common law precedent and would have the force and effect of law and would be much simpler than involving the other bodies which both you and I seem to think should be brought into this picture.

Would you care to comment, sir, as to whether you think a common-law-precedent approach would be sufficient?

Mr. NIXON. I do not believe it is sufficient, and I would suggest that for the President of the United States making decisions, decisions that affect not only the foreign policy of this country but affect business relationships of immense complexity, that I can imagine what a field day this would be for lawyers if this common-law-decision or this common-law-practice argument were to be made.

Speaking as a lawyer, and not downgrading the profession but recognizing its great skill in raising questions whenever there is any technical constitutional problem, I would urge the committee to reject that argument and, at the very least, see that that or its essence be written into law. I would prefer a constitutional amendment.

Senator BAYH. Could I ask you, sir, to compare the approach which is suggested by the two specific amendments which are presently before this committee. One has been offered by the distinguished Senator from New York, Senator Keating, from whom we read a statement in the record prior to your presence, specifying that he was very sorry he was unable to be here because of the tragic death of Mrs. Wagner which required him to be in New York.

The other approach is the approach which Senator Fong and I have espoused and which has been suggested as an approach by the American Bar Association and some other organizations. I don't want to argue about the specific proposals but rather the general approach to constitutional amendments which you would deem preferable. One approach is a very simple approach which would not spell out any specifics whatever but would merely say to the Congress, "You have the authority to act."

The other approach specifies specifically chapter and verse point by point what would be the actual law in the event of a tragedy or disability.

The feeling is, on the one hand, that only a simple solution giving no specific points at all would be adopted by the majority or three-fourths of the legislatures.

The other argument for the more complicated and specific amendment is that really the legislatures would rather have a point-by-

point specification of what would be the law rather than a blank check given to Congress to act in this area.

Could you give us your opinion as to which approach you would prefer in the constitutional amendment form?

Mr. NIXON. The approach I would prefer is the one that this committee finally concludes has the best chance to success. I think either approach insofar as workability is concerned in handling the problem would be effective.

In other words, I emphasize again that all of the nit-picking arguments as to whether it should be this way or that way make very little impression on me. What I think is—I think our major concern must be—is to find a solution that will be least controversial but will get at the major problem.

Now, as far as I personally am concerned, looking at it as a lawyer, I would say that I would prefer the simpler approach rather than the one spelling out the procedure. I find that, I am just thinking now, of what I think might get across and what would be explained to the State legislatures that have to approve a constitutional amendment?

My own evaluation of that political problem would be that the simpler approach would raise less questions.

The more you spell out the proposal, the more chance you raise for arguments and disagreements with regard to it.

The other thing I would say is this: That by not—when you are writing the Constitution, you are, of course, dealing with a document in which changes cannot be made very easily. I would say that with a simple approach then, the Congress, as it developed its procedures to deal with this particular problem might then have more flexibility to change those procedures where it found that one was too rigid.

Senator BAYH. In the simple approach which you describe would you have us write the basic fundamental of procedure? That the President would, in writing, specify his disability, that the Vice President would, in fact, be Acting President and would assume the powers and duties but not the office, that the Vice President would assume these duties if the President were unable himself to make this declaration? Would these be specifics that you would include?

Mr. NIXON. By all means. Of course, I assume that all of those particular items would be included in the constitutional amendment. But what I was referring to was the procedure that the Congress would go through in the event there were an argument between the President and the Vice President as to whether or not a President had recovered from disability.

In that respect I would not attempt to spell out the procedure that the Congress should follow.

Senator BAYH. You pointed out, if I may change directions just a bit, the importance of the Vice Presidency today. The Vice President is one heartbeat away from the Chief Executive authority of this land, and the best successor to the President is indeed the Vice President.

You pointed out also that the Vice President does have a job to do today. There has been some conflict as to whether we actually need a Vice President to perform duties to relieve the burdens presently

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resting on the shoulders of the President. Could we call on your experience, sir, to give us a general idea of what these duties are? How this constitutes an active, vigorous, working office today?

Mr. NIXON. Well, it is rather difficult to summarize the duties of the Vice President because, of course, those duties vary with everyone who holds the office. I would say that the least burdensome duty is, of course, the one that is included in the Constitution, of presiding over the Senate, and breaking tie votes.

For example, in the 8 years that I was Vice President, I cast a tie vote on only eight occasions, one a year, on an average.

I think that the important duties of the Vice President are: first, his participation in the deliberations of the National Security Council; his participations in the deliberations of the Cabinet; and then the increasingly great use of the Vice President as a troubleshooter and as a representative of the President abroad in the field of foreign policy.

Apart from those duties, we, of course, have those specific commissions that the President has on occasion called upon the Vice President to perform. For example, the Committee on Government Contracts in President Johnson's case, the Space Committee and others.

What I would like to suggest here is perhaps a little different approach. I believe that now that the pattern has begun of a President giving more functions to the Vice President, I see that that pattern can be very greatly expanded in the years ahead, because the burden of the Presidency, particularly with the foreign policy problems becoming more acute than they had been previously, are so great that the Vice President can and should be used more even than he has been in either the Kennedy or the Eisenhower administration.

That brings me, of course, to the other key point: the fundamental reason why the President should in effect name or have a veto power on who holds the office of Vice President is that a Vice President can only be as useful as a President has confidence in him, and only when a Vice President is compatible with the President's views can that be the case. That is why, for example, that I oppose in these modern times, as the Vice Presidency has assumed these new proportions, the so-called ticket balancing theory in national conventions.

I would hope, for example, that both national conventions this year, both the Republican and the Democratic Conventions would think in terms of nominating two Presidents, in effect, having in mind that either of the men nominated for Vice President on either ticket could be President, but more than that, having in mind the fact that it is most essential to nominate for the second spot a man who as nearly as possible represents the views of the President, so that he can carry out the functions of the Presidency in the event he succeeds to that office, but more than that so that as Vice President the President can trust him in foreign policy and domestic policy to take very important assignments.

Let me say in that connection, I know that Senator Keating has a proposal for setting up the two Vice Presidents. I would prefer that proposal incidentally over those that would change the succession law back to the Speaker of the House or something like that. But one of the reasons I oppose that proposal, and I have great respect for Senator Keating—we came to the Congress together and I consider him one of the top constitutional lawyers in the country—but one of the

reasons I oppose it, right at this period, when the office of Vice President has come to mean something, we shouldn't downgrade it.

I had a little amusing incident on that in New York a couple of nights ago. There is an organization which is somewhat like the Gridiron Club in Washington, was giving a party in honor of a former Vice President, and the speaker or the chairman of the meeting said that this organization in previous years had honored many former Presidents of the United States and Secretaries of State but this is the first time they had ever honored a Vice President.

Everybody cheered, of course, at that particular reference and then the next speaker who was—who had the duty of getting up to introduce me, who was, of course, the guest of honor said—well, he happened to be the president of a major New York bank, and he said, "Well, I can't say that I am a bit impressed about the fact we are honoring a Vice President today."

He said, "After all, I head an organization that has 243 vice presidents. [Laughter.]

Now, I know that in traveling abroad, for example, the United Arab Republic has four Vice Presidents. Several Latin American republics have two, and the moment that you have more than one Vice President, the usefulness of the Vice President to the Nation has been greatly reduced.

Senator BAYH. May I ask you one other question in this regard? I personally share your feeling about the importance of not decreasing the significance which has been attached to the Vice Presidency.

Do you see a possibility of decreasing the significance of the Vice President? Is there a possibility, with human beings being what they are, and conflicts being what they are, of a conflict between two Vice Presidents? And is there a possibility of a conflict arising between the President and his Vice Presidents?

Mr. NIXON. Well, as a matter of fact, that is not only the reason I oppose the proposal for two Vice Presidents but I also do not approve of the proposal that I understand has been made by Governor Rockefeller for setting up the First Secretary, a position of First Secretary of the Cabinet.

The trouble with the position of First Secretary of the Cabinet who would be next in line in succession to the Vice President is that first his would be an appointive office, and I do not like the idea of an appointive office succeeding to the Presidency, but the second point that I would make is this: the moment you set up a First Secretary of Cabinet you are going to downgrade, in the field of foreign affairs particularly, the Secretary of State, and at the present time, for example, I feel strongly that the Office of Secretary of State rather than being downgraded ought to be upgraded.

A strong Secretary of State in these times is very important to the country and particularly to the President of the United States, and the moment that nations abroad, diplomats abroad, get the impression that the Secretary of State is not a strong member of the administration, and close to the President, and the President's top foreign policy adviser, his effectiveness is greatly reduced.

Senator BAYH. I don't mean to monopolize this question-and-answer session.

Senator Fong, do you have any questions to ask the Vice President?

Senator Fong. Mr. Nixon, I was here again in Washington. You have a committee. You have this morning. You are of the enactment of the

I want to congratulate you, definite, and come this morning.

I want to say that you and honor by your presence great competence.

I have no questions and I want to thank you in Washington will be

Mr. NIXON. Thank you for your position in this respect. I have been on this side of the street and not under subpoena.

Senator BAYH. Mr. Nixon, another question or two?

Mr. NIXON. Yes, sir. Senator BAYH. Are you the powers and duties?

Mr. NIXON. Exactly. That is the proposal of General, former Attorney General Brownell and it is

The office of the President duties only should. I think it is vitally important. The President was not completely competent. The illness was so serious that, for, say, a short time, the President could not undertake the position.

The President then would be able to come back to the duties to the Vice-President.

I think it would be better to have the powers and duties.

Senator BAYH. On the President, was primarily made. He went one day into a kind of illness, a certain

Mr. NIXON. Yes. Senator BAYH (continued) longer than he acting as the President.

His argument was that it is a benefit to be derived from when a decision is made. Do you see a time when it will be so severe that the President rather than just become

Senator FONG. Mr. Vice President, I am very happy to get you again in Washington. I want to thank you for appearing before this committee. You have given us great prestige by your presence here this morning. You certainly have shown us the necessity for urgency of the enactment of this type of legislation.

I want to congratulate you and commend you for the very clear, positive, definite, and comprehensive statement you have made to us this morning.

I want to say that you have given to this committee a lot of prestige and honor by your presence, and you have given to this proceeding great competence.

I have no questions of you. You have given us a very clear picture and I want to thank you for coming here today. I hope your stay in Washington will be permanent.

Mr. NIXON. Thank you, Senator. I want to say I am in a very new position in this respect. This is the first time in this room I have ever been on this side of the table and I am glad that I am here voluntarily and not under subpoena. [Laughter.]

Senator BAYH. Mr. Vice President, may I hold you long enough for another question or two?

Mr. NIXON. Yes, sir.

Senator BAYH. Are we agreed that in the event of disability that the powers and duties only would fall upon the Vice President?

Mr. NIXON. Exactly. I am glad the chairman raised this point. That is the proposal that has been made as I understand it by Attorney General, former Attorney General Rogers and former Attorney General Brownell and it is my position.

The office of the Presidency cannot devolve and the powers and the duties only should. Let me give one other reason why that, I think, is vitally important. Let us suppose that at a particular time a President was not completely disabled, but that he himself felt that his illness was so serious that it would be in the best interests of the country that, for, say, a short period of time, a week or so, that the Vice President undertake the powers and duties of the Presidency.

The President then would feel free to turn over those powers and duties to the Vice-Presidency if he knew at the end of that period he would be able to come back and assume the office.

I think it would be a great mistake to have the office devolve; only the powers and duties should.

Senator BAYH. One witness we had earlier in the hearings, Mr. Vice President, was primarily in agreement with the statement you just made. He went one step further to say that in the event of a certain kind of illness, a certain severity of illness—

Mr. NIXON. Yes.

Senator BAYH (continuing). That the Vice President would no longer then be acting President but would in fact assume the duties of the President.

His argument was that foreign policy being what it is, there is some benefit to be derived from the fact that there is an ultimate authority when a decision is made, and that uncertainty would be avoided.

Do you see a time in light of your experience when the illness would be so severe that the Vice President should in fact assume the office rather than just become acting President?

Mr. NIXON. Well, let's look back, I think we can only look to history to know. I would say that in President Wilson's period had Vice President Marshall assumed the powers and duties of the Presidency at that time, that he would have been recognized, perhaps, as the President in the full sense of the word.

But I don't believe that this still changes the attitude that I feel the committee should take with regard to whether the office or the powers and duties should devolve upon the Vice President.

Because of the uncertain nature of illnesses it will always depend on each case, and I think that by precisely pointing out that only the powers and duties devolve on the Vice President that gives the flexibility in each instance to handle the situation to deal with the particular problem.

There might be, I see possibilities, for example, like this, that the degree of powers and duties that devolve might vary depending upon the nature of the illness and I think that should be left open as well.

Senator BAYH. From your testimony as to the procedure and the safeguards and the checks and balances that you feel should be attendant in any legislation such as this, I trust that you agree that this business of removing even temporarily, the President of the United States is something not to be taken lightly and this is a serious matter.

Mr. NIXON. You can't treat the relationship of the United States like the relationship between the Governor and Lieutenant Governor of a State. As the committee knows, when a Governor leaves the State the Lieutenant Governor then has the power to commute sentences and do a lot of other things of that sort and then when the Governor comes back in the situation reverts to the previous state.

I believe that where the Presidency is concerned, this power is so awesome, and particularly where foreign policy is involved so decisive and critical that you naturally cannot move lightly from the position where a Vice President steps in and steps out. It can't be musical chairs, in other words, and I would say, I would suggest, too, this, that no Vice President is going to get the approval of the members of the Cabinet for this momentous step unless it is a very serious situation, and no President, for example, is going to turn over the powers and duties of the Presidency. A man, for example, who is immersed in all the problems of our foreign relations and our domestic problems is not going to, every time he gets a stomach ache, say, "Well, I am going to resign for a week," or "Resign the powers and duties and let the Vice President take over."

What I visualize here is that this proposal would only come into effect as a practical matter when the President's condition was desperately serious, and when because of that condition he honestly concluded or if he was unable to do so, the Vice President and the members of the Cabinet concluded that the country required a new hand on the wheel for a period of time.

Senator BAYH. Let me ask you one final question.

Mr. NIXON. Yes, sir.

Senator BAYH. Permit me to think out loud just a bit. On none of these questions do I take any issue with what you have said, but I think Senator Fong will agree that we are trying to get a solution when we come up with a final bill.

We would like to get more detail about some of the arguments which have been advanced.

Mr. NIXON. Yes.
Senator BAYH.

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Mr. NIXON. Yes.

Senator BAYH. You mentioned two ideas for ratifying bodies to ratify or confirm the nomination of a new Vice President.

Would you care to discuss very briefly the two main stumbling blocks that seem to be in the minds of most people as far as both of these alternatives are concerned? First, 20 percent of the time we have had a divided Congress, divided in political authority and responsibility from the President.

Do you feel that tradition has shown that even in these incidents that the Congress has not been reluctant, by and large, to confirm nominations that have been made by the Executive? That public pressure would be great and certainly it would be difficult for even a President of the United States to become involved or the Congress to become involved in political interparty play?

If you feel it would still be more desirable to use the electoral college, how would you go about upgrading the electoral college in the eyes of the people? If this were upgraded in the immediate future, would it again be downgraded if, as we hope, we did not need it for this purpose for a long time? How would you fill vacancies which might exist in the electoral college?

These are things which you might just touch on briefly. This would be the final question.

Mr. NIXON. Yes. Briefly, I would say as far as the Congress is concerned, and this is the reason that I made the electoral college suggestion, there have been 16 administrations in which a President has had an opposition Congress.

Now, being quite specific, let's think of what might have happened in 1946 when the 80th Congress, with an overwhelming Republican majority, came in, when Mr. Truman was President of the United States. It would seem that there could have been problems there particularly where the Congress and the President were at odds.

Now, I will have to, however, also take into account more recent history, I think of the very proper but also outstanding manner in which the Congress, both Republicans and Democrats, accepted the transition from President Kennedy to President Johnson.

What we have to have in mind here is that when this appointment is made, when the Presidency, when the office of Vice President, becomes vacant, it is made in one of two circumstances. It is made when a Vice President dies or when a President dies. Now, when a President dies, I would say that the feeling in the country, the immense emotional impact at the death of a President, certainly by assassination and even by normal causes, is such that his successor would probably get broad support even from an opposition Congress.

Being a lawyer, of course, what I was trying to do was to find another electoral device where there was no problem at all, and, of course, we know the electoral college is always, a majority of the electoral college is, of the President's own party.

But looking more closely at more recent events, I would say that the likelihood of a Congress bucking a President, a new President of the United States, even if it were an opposition Congress, probably is not as great as many of us would have feared. Now, the second point, however, it might be a little more difficult. Let's suppose a Vice President died in office, then there isn't the emotional impact on the country that there would be if the President dies.

In this instance, I would say that the opposition Congress factor might be a more real one, a more serious one. But going a step further, I still believe that the important thing here is not whether it is the electoral college or the Congress, but the important thing is to get one or the other, which is the consensus of the members of this committee and which this committee thinks will get the broadest public approval. Either solution is a great improvement over what we have at the present time and either, I think, over a period of time would work.

I happen to believe the electoral college system would work better.

How about vacancies in the electoral college? Those would be filled by State law, the United States Code so provides today and, for example, we have that situation today.

The members of the electoral college, of course, are selected months before the time when the electoral college convenes in the various States, and they would be filled in the event of vacancies by State law now, and if, for example, they were called upon for this extraordinary function, State law would again provide, would again prevail.

As far as what would happen on the electoral colleges' approval of the choice of a President, I have already indicated that there is a certainty in this instance, because of the very nature of the electoral college which you do not have with regard to the Congress.

But all in all, in summary, I get back to my original proposition that the electoral college, the Congress, the two Vice President proposals, all of these are before this committee. The important function of this committee, as I see it, is to get action, to consider the recommendations and the pet ideas of the many witnesses you have heard, and to seize the idea that in your opinion, is to get the best idea in your opinion, and to get the public support and go forward with it.

And speaking as one individual, whatever this committee recommends I will support because I believe the important thing is to get action and to get it fast.

Senator BAYH. Mr. Vice President, we are indeed grateful to you for taking the time to come before our committee. We have gathered, as we had anticipated and hoped, much valuable information and insight from the practical first-hand experience that you have had in this area.

Senator FONG. do you care to make closing remarks?

Senator FONG. Mr. Chairman, I wish to make a brief statement in support of Senate Joint Resolution 139 proposing a constitutional amendment on the related problems of presidential succession and presidential disability.

The tragic assassination of President Kennedy has pointed up once again the urgent need to resolve these critical gaps in the U.S. Constitution.

First, the Constitution does not say anything about what should be done when there is no Vice President. No one in America today doubts that the Vice-Presidency is an office of paramount importance. The Vice President of the United States today carries very vital functions of our Government. Besides his many duties, he is the only man who is only a heartbeat away from the world's most powerful office. Yet, on 17 different occasions in our history the Nation has been without a Vice President.

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