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WITHDRAWAL SHEET

Ronald Reagan Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. case file (180889)	re events of March 1981 (50 pp)	4/1/81- 8/1/83	B3,B5, B6,B7
COLLECTION:			
WHORM: Subject File			If
FILE LOCATION:			
FG 017 Department of Justice (177000-180999)			3/23/93

RESTRICTION CODES

- | | |
|---|--|
| <p>A. National security classified information.</p> <p>B. Presidential Records Act</p> <p>B1. Release would violate a Federal statute.</p> <p>B2. Release would disclose trade secrets or confidential commercial or financial information.</p> <p>B3. Release would constitute a clearly unwarranted invasion of personal privacy.</p> <p>B4. Relating to appointment to Federal office.</p> <p>B5. Release would disclose confidential advice between the President and his advisors, or between such advisors.</p> | <p>B6. Release could disclose internal personnel rules and practices of an agency.</p> <p>B7. Release would disclose information compiled for law enforcement purposes.</p> <p>B8. Release would disclose information concerning the regulation of financial institutions.</p> <p>B9. Release would disclose geological or geophysical information concerning wells.</p> <p>C. Closed in accordance with restrictions contained in donor's deed of gift.</p> |
|---|--|

WITHDRAWAL SHEET

Ronald Reagan Library

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1. case file (180889)	re events of March 1981 (50 pp) 17p	4/1/81- 8/1/83	B3, B5 B6, B7 M-27 12/4/80
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|---|--|

OK-SE-11/11-83
17737655
FBI
PE002-01

BN

THE WHITE HOUSE
WASHINGTON
November 8, 1983

MEMORANDUM FOR RONALD GEISLER

FROM: BECKY NORTON DUNLOP *BN*

SUBJECT: PAS Nomination

The President has approved the nomination of:

Frank Henry Habicht, II, of Washington, D.C.,
to be an Assistant Attorney General
(Land and Natural Resources), vice Carol E.
Dinkins, resigned.

All necessary clearances have been completed.
Please prepare the nomination papers.

Announced: 11/8/83 (aboard AFL + Press Plane)
To Senate. 11/8/83

*NOTED
dwy*

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

November 7, 1983

MEMORANDUM FOR FLO TAUSSIG

FROM: Claire O'Donnell
SUBJECT: Personnel Announcement

Please announce the President's intent to appoint the following individual below.

→ FRANK HENRY HABICHT, II, OF THE D.C.

To be an Assistant Attorney General (Land and Natural Resources) vice Carol E. Dinkins, resigned. (PAS)
DIVISION)

cc: Dunlop/Tharp
Kennedy
Holland
Geisler
Bullock

Announced: 11/8/83 (AFL + Ben Ploue)

rrf

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

November 8, 1983

The President today announced his intention to nominate Frank Henry Habicht, II to be an Assistant Attorney General (Land and Natural Resources Division). He would succeed Carol E. Dinkins.

Mr. Habicht is currently Deputy Assistant Attorney General (Land and Natural Resources Division). Previously, he was Special Assistant to the Attorney General of the United States (1981-82); a member of the Presidential Transition Team for the U.S. Department of Justice (1980); and was with the law firm of Kirkland & Ellis (1978-81).

Mr. Habicht graduated from Princeton University (A.B., 1975) and the University of Virginia Law School (J.D., 1978). He is married, has one child and resides in Washington, D.C. He was born April 10, 1953 in Oak Park, Illinois.

#

FB117

WHITE HOUSE
COUNSELLOR'S OFFICE TRACKING WORKSHEET

- O - OUTGOING
- H - INTERNAL
- I - INCOMING

Date Correspondence Received (YY/MM/DD) 83110113

Name of Correspondent: Dennis L. Bark

CN Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: Recommendation of Will Richmond for appointment as Deputy Associate Attorney General.

ROUTE TO: ACTION DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response Code	Completion Date YY/MM/DD
<u>CNHAMM</u>	<u>0 DD</u>	<u>83110113</u>	<u>EM A</u>	<u>831017</u>

- ACTION CODES:**
- A - Appropriate Action
 - C - Comment/Recommendation
 - D - Draft Response
 - F - Furnish Fact Sheet to be used as Enclosure
 - I - Info Copy Only/No Action Necessary
 - R - Direct Reply w/Copy
 - S - For Signature
 - X - Interim Reply

- DISPOSITION CODES:**
- A - Answered
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 - C - Completed
 - S - Suspended

FOR OUTGOING CORRESPONDENCE:
 Type of Response = Initials of Signer
 Code = "A"
 Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
 Send all routing updates to Central Reference (Room 75, OEOB).
 Always return completed correspondence record to Central Files.
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

RECORDS MANAGEMENT ONLY

CLASSIFICATION SECTION

No. of Additional Correspondents: _____ Media: L Individual Codes: 4610 _____

Prime Subject Code: 16 017 Secondary Subject Codes: _____

PRESIDENTIAL REPLY

Code	Date	Comment	Form
C	_____	Time: _____	P- _____
DSP	_____	Time: _____	Media: _____

SIGNATURE CODES:

CPn - Presidential Correspondence

- n - 0 - Unknown
- n - 1 - Ronald Wilson Reagan
- n - 2 - Ronald Reagan
- n - 3 - Ron
- n - 4 - Dutch
- n - 5 - Ron Reagan
- n - 6 - Ronald
- n - 7 - Ronnie

CLn - First Lady's Correspondence

- n - 0 - Unknown
- n - 1 - Nancy Reagan
- n - 2 - Nancy
- n - 3 - Mrs. Ronald Reagan

CBn - Presidential & First Lady's Correspondence

- n - 1 - Ronald Reagan - Nancy Reagan
- n - 2 - Ron - Nancy

MEDIA CODES:

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- H - Handcarried
- L - Letter
- M - Mailgram
- O - Memo
- P - Photo
- R - Report
- S - Sealed
- T - Telegram
- V - Telephone
- X - Miscellaneous
- Y - Study

17 October 1983

Dear Dennis:

Thank you for your letter of 7 October recommending Will Richmond for appointment as Deputy Associate Attorney General under Lowell Jensen.

I have forwarded a copy of your letter to the other members of the Personnel Committee, as well as to Lowell for his information. Please be assured that Mr. Richmond will be given careful consideration when the recommendations are developed for the President.

With appreciation and best personal regards,

Sincerely,

Edwin Meese III

Mr. Dennis L. Bark
Associate Director and
Senior Fellow
Hoover Institution
on War, Revolution and Peace
Stanford, California 94305

cc w/copy of incoming to: John Herrington ✓
Lowell Jensen/DOJ ✓ FYI

EM/NH/nm/10EM

HOOVER INSTITUTION

ON WAR, REVOLUTION AND PEACE

Stanford, California 94305



179010

The Honorable Edwin Meese, III
Counsellor to the President
The White House
Washington, D. C. 20500

October 7, 1983

Dear Ed:

I understand that Will Richmond is a candidate for the position of Deputy Associate Attorney General under Lowell Jensen, and that he had an interview with Lowell on Wednesday, October 5.

I am taking the liberty of writing this letter to you because Will Richmond and I grew up together in Palo Alto, and I know him very well. His credentials are impeccable, and I think he would be ideal for the position.

If you think it appropriate I hope you will please pass this letter on to Lowell for his information (I was Lowell's host for dinner at the Hoover Institution in June 1981, but I do not know him well enough to write him an unsolicited letter).

Will Richmond and I graduated from Stanford in 1964, and we have remained in regular contact since then. He is a registered Republican, and is now serving his second term as District Attorney of Tulare County. I hold his abilities and integrity in the highest regard. His values and views concerning our country and our society coincide entirely with my own, and he is a strong supporter of the President.

I really give him the strongest recommendation. If he is the kind of individual for whom Lowell is looking, Will Richmond would serve the administration extremely well.

With very good wishes.

Yours sincerely,

Dennis L. Bark
Associate Director and
Senior Fellow

cc: Congressman
Charles Pashayan
129 Cannon House Office Building



U.S. Department of Justice

Pardon Attorney

179541 *cu*

1130

Washington, D.C. 20530

October 11, 1983

CF FG017
JR001
RS

MEMORANDUM TO:

D. Lowell Jensen
Associate Attorney General

FROM:

David C. Stephenson
Acting Pardon Attorney

Transmitted herewith is the monthly report for the Office
of the Pardon Attorney for September 1983.

cc: William McGuinness
Deputy Associate Attorney General

William French Smith
Attorney General
Att'n: Roger B. Clegg
Special Assistant to the A.G.

bcc: Fred F. Fielding
Counsel to the President

OFFICE OF THE PARDON ATTORNEY

Monthly Report

for

September 1983

On September 1, 1983 there were 532 petitions pending for various forms of Executive clemency. Thirty-two new cases were filed during the month. The total for consideration was 564.

During the month no action was taken by the President in clemency matters. Eight cases were closed administratively in accordance with clemency procedures, leaving a total of 556 cases pending.

Broken down the above figures appear as follows:

	<u>Pardons</u>	<u>Commutations</u>	<u>Total</u>
Brought forward.....	396	136	532
Plus new cases.....	<u>17</u>	<u>15</u>	<u>32</u>
Total considered.....	413	151	564
Less cases granted.....
Less cases denied.....
Less cases no actioned.....	<u>5</u>	<u>3</u>	<u>8</u>
Total pending.....	408	148	556

As of the close of business September 30, 1983 petitions are pending in the following categories:

At the White House:	
With a recommendation of clemency.....	2
With a recommendation of denial.....	...
Signed by the Associate Attorney General:	
Recommending clemency.....	...
Recommending denial.....	...
At the Associate Attorney General:	
With a recommendation of clemency.....	42
With a recommendation of denial.....	60
Ready to go to the Associate Attorney General:	
For favorable consideration.....	...
For denial consideration.....	...
Before the Pardon Attorney:	
For favorable consideration.....	49
For denial consideration.....	158
To be administratively closed.....	6
Awaiting further reports.....	<u>239</u>
	Total..... 556

During the month of September there were:

5	FOIA/PA requests answered
12	Congressional inquiries answered
56	White House and special referrals answered
712	Items pertaining to cases sent out
144	Miscellaneous items sent out
856	Total items sent out
840	Total items received

FCB017

**WHITE HOUSE
COUNSELLOR'S OFFICE TRACKING WORKSHEET**

- O - OUTGOING
- H - INTERNAL
- I - INCOMING

Date Correspondence Received (YY/MM/DD) 83/10/20

Name of Correspondent: Melvin J. Duvall, Jr.

CN Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: Writer would like to get a position in the Antitrust Division of DOT and would appreciate Mr. Meese's help in meeting with appropriate DOT officials.

ROUTE TO: Office/Agency (Staff Name)	ACTION		DISPOSITION	
	Action Code	Tracking Date YY/MM/DD	Type of Response Code	Completion Date YY/MM/DD
<u>CNHAMM</u>	<u>O-D</u>	<u>83/10/21</u>	<u>EM A</u>	<u>83/10/26</u>
		<u>1 1</u>		<u>1 1</u>
		<u>1 1</u>		<u>1 1</u>
		<u>1 1</u>		<u>1 1</u>
		<u>1 1</u>		<u>1 1</u>

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 - C - Comment/Recommendation
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 L - Letter
 M - Mailgram
 O - Memo
 P - Photo
 R - Report
 S - Sealed
 T - Telegram
 V - Telephone
 X - Miscellaneous
 Y - Study

26 October 1983

Dear Mel:

Thank you for your letter of 17 October regarding your interest in a position with the Antitrust Division of the Department of Justice.

I have forwarded your letter and resume to Assistant Attorney General William F. Baxter, and have asked that your background information be reviewed, should there be a vacancy for which you can be given consideration.

It's good to hear from you, and I appreciate your interest in returning to the Federal government.

With best personal regards,

Sincerely,

Edwin Meese III

Mr. Malvin J. Duvall, Jr.
Clasouhos and Brashares
1801 Avenue of the Stars
Suite 1101
Los Angeles, CA 90067

cc w/covering memo, copy of incoming & attachments to Assistant
Attorney General Baxter/DOJ

EM:NH



THE COUNSELLOR TO THE PRESIDENT

26 October 1983

Dear Mel:

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It's good to hear from you, and I appreciate your interest in returning to the Federal government.

With best personal regards,

Sincerely,

Edwin Meese III

P.S. Please keep me posted on the progress.

EW

Mr. Melvin J. Duvall, Jr.
Cladouhos and Brashares
1801 Avenue of the Stars
Suite 1101
Los Angeles, CA 90067

*Original copy
of resume sent
to WM F. BAXTER
ASST. ATTY GEN.
DOJ*

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

26 October 1983

MEMORANDUM FOR WILLIAM F. BAXTER

FROM: EDWIN MEESE III *EM*
SUBJECT: Melvin J. Duvall, Jr.

Mr. Melvin J. Duvall, Jr. served in your Division as a trial attorney for 15 years and has expressed an interest in returning to the Justice Department. I am forwarding a letter and resume I received from Mel for whatever action you may wish to take.

Thank you very much.

CLADOUHOS & BRASHARES

ATTORNEYS AT LAW
1801 AVENUE OF THE STARS
SUITE 1101
LOS ANGELES, CALIFORNIA 90067

180564

(213) 556-2295

RAPIFAX (213) 552-2834

October 17, 1983

HARRY W. CLADOUHOS
WILLIAM C. BRASHARES *
MELVIN J. DUVALL, JR. *
TERRY A. BARNETT
GERARD C. FALLON
JOHN H. KORNS
PAUL M. LAURENZA
FREDERICK B. UTLEY, III
RICHARD W. BOWE
LAWRENCE J. BOGARD
CHARLES A. SAMUELS
ELLEN J. GLEBERMAN
T. SPENCE CHUBB *
MARI-ANNE PISARRI

* ADMITTED IN CALIFORNIA

WASHINGTON OFFICE
1750 NEW YORK AVENUE, NORTHWEST
WASHINGTON, D. C. 20006

(202) 783-6111

RAPIFAX (202) 783-2006

CABLE-HWCB

TELEX 89-2662

NEW YORK OFFICE
500 PARK AVENUE
NEW YORK, NEW YORK 10022

(212) 838-6655

Edwin Meese, III
Counselor to the President
The White House
1600 Pennsylvania Avenue
Washington, D.C.

Dear Ed:

The Los Angeles office of Cladouhos & Brashares, where I have been the resident partner for the last 10 years, is expected to close around the end of this year. I am therefore seeking other professional opportunities. My first choice is to return to the Antitrust Division of the Department of Justice, where I served as a senior trial attorney for 15 years. I am enclosing my resume and a list of references. I enjoy antitrust work, have been successful at it both with the Government and in private practice, and should have many years of productive effort ahead of me since I am in excellent health. I do not expect any rules to be bent on my behalf, but I and my family would greatly appreciate anything you can do to get me an audience with the appropriate Department of Justice officials. I have young children to support, and I will do a good job if given a chance.

I hope to see you at the Class of 1958 reunion in Berkeley on October 29 if you are able to get away from your duties. Thanks for any assistance you can render.

Sincerely yours,

Mel Duvall

Melvin J. Duvall, Jr.

MJD:ply

CLADOUHOS & BRASHARES

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1801 AVENUE OF THE STARS
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October 17, 1983

WASHINGTON OFFICE
1750 NEW YORK AVENUE, NORTHWEST
WASHINGTON, D.C. 20006

(202) 783-6111

RAPIFAX (202) 783-2006

CABLE-HWCB

TELEX 89-2662

NEW YORK OFFICE
500 PARK AVENUE
NEW YORK, NEW YORK 10022

(212) 838-6655

* ADMITTED IN CALIFORNIA

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Counselor to the President
The White House
1600 Pennsylvania Avenue
Washington, D.C.

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Sincerely yours,

Mel Duvall

Melvin J. Duvall, Jr.

MJD:oly



Office of the Attorney General
Washington, D. C. 20530

TR

August 1, 1983

MEMORANDUM FOR CRAIG L. FULLER

FROM: Kenneth W. Starr
Counselor to the Attorney General

Rather belatedly, we prepared a history, from the Attorney General's perspective, of the unhappy events of late March 1981. Here is a copy for your bedtime reading and files!

Enclosure

10/23/81
R&D
Do you want
to add this
to your 3/30/81
files?
CR

→ central
files
180889
1140
FG017
RS
FG006-01
JL003-01



United States Department of Justice
Washington, D.C. 20530

ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL COUNSEL

3 APR 1981

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Documents Relevant to Presidential
Succession in Time of Disability

We transmit herewith three documents prepared by this Office discussing the law and the practice relevant to presidential succession in time of presidential disability.

The first document (Tab A) is a Memorandum for the Attorney General, with appendices, describing in summary fashion the relevant constitutional and statutory provisions, the major questions of interpretation presented by them, and the practical and procedural considerations that must be taken into account in their implementation.

The second document (Tab B) is a Memorandum for the Attorney General, with attachment, containing a full legal analysis of the succession question, as well as an analysis of the delegability of presidential power in circumstances in which formal succession to power by the Vice President or his successors is inappropriate.

The third document (Tab C) is a Memorandum for the Attorney General containing a detailed historical discussion of the disabilities of former Presidents and of the arrangements that were made to deal with their disabilities.

Theodore B. Olson
Office of Legal Counsel

TAB: -- A

DISABILITY OF THE PRESIDENT AND SUCCESSION TO HIS DUTIES



United States Department of Justice
Washington, D.C. 20530

2 APR 1991

ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL COUNSEL

MEMORANDUM FOR THE ATTORNEY GENERAL

DISABILITY OF THE PRESIDENT AND SUCCESSION TO HIS DUTIES

PURSUANT TO THE PROVISIONS OF ART. II, SEC. 1, CL. 5, OF THE CONSTITUTION, IN CASE OF THE "INABILITY" OF THE PRESIDENT "TO DISCHARGE THE POWERS AND DUTIES OF [HIS] OFFICE," THOSE POWERS SHALL DEVOLVE ON THE VICE PRESIDENT. [THE FULL TEXT OF THIS PROVISION IS ATTACHED HERETO AS APPENDIX 1.]

PURSUANT TO THE PROVISIONS OF SECTION 1 OF THE 25TH AMENDMENT, "IN CASE OF THE REMOVAL OF THE PRESIDENT FROM OFFICE OR OF HIS DEATH OR RESIGNATION, THE VICE PRESIDENT SHALL BECOME PRESIDENT." [THE FULL TEXT OF THE 25TH AMENDMENT IS ATTACHED HERETO AS APPENDIX 2].

PURSUANT TO SECTION 3 OF THE 25TH AMENDMENT, "WHENEVER THE PRESIDENT TRANSMITS TO THE PRESIDENT PRO TEMPORE OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES HIS WRITTEN DECLARATION THAT HE IS UNABLE TO DISCHARGE THE POWERS AND DUTIES OF HIS OFFICE, AND UNTIL HE TRANSMITS TO THEM A WRITTEN DECLARATION TO THE CONTRARY, SUCH POWERS AND DUTIES SHALL BE DISCHARGED BY THE VICE PRESIDENT AS ACTING PRESIDENT." [THE PROVISIONS OF SECTION 3 HAVE NEVER BEEN IMPLEMENTED.]

PURSUANT TO SECTION 4 OF THE 25TH AMENDMENT, "WHENEVER THE VICE PRESIDENT AND A MAJORITY OF EITHER THE PRINCIPAL OFFICERS OF THE EXECUTIVE DEPARTMENTS OR OF SUCH OTHER BODY AS CONGRESS MAY BY LAW PROVIDE, TRANSMIT TO THE PRESIDENT PRO TEMPORE OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES THEIR WRITTEN DECLARATION THAT THE PRESIDENT IS UNABLE TO DISCHARGE THE POWERS AND DUTIES OF HIS OFFICE, THE VICE PRESIDENT SHALL IMMEDIATELY ASSUME THE POWERS AND DUTIES OF THE OFFICE AS ACTING PRESIDENT." [THE PROVISIONS OF SECTION 4 HAVE NEVER BEEN IMPLEMENTED.] CONGRESS HAS NOT DESIGNATED ANY "OTHER BODY" TO EXERCISE THE AUTHORITY SPECIFIED IN SECTION 4. THEREFORE, THE OPERABLE LANGUAGE WOULD BE "THE VICE PRESIDENT AND A MAJORITY OF . . . THE PRINCIPAL OFFICERS OF THE EXECUTIVE DEPARTMENTS."

IF THE POWERS AND DUTIES OF THE PRESIDENCY ARE ASSUMED BY THE VICE PRESIDENT UNDER SECTION 3, THE PRESIDENT RESUMES HIS FULL POWERS BY TRANSMITTING A DECLARATION THAT HE IS ABLE TO DISCHARGE HIS DUTIES. THE SAME IS TRUE UNDER SECTION 4, EXCEPT THAT IN SUCH A CASE A MECHANISM IS PROVIDED FOR THE VICE PRESIDENT, THE CABINET AND THE CONGRESS TO OVERRIDE THE PRESIDENT. IN CASE OF SUCH A DISAGREEMENT OVER THE PRESIDENT'S DISABILITY UNDER SECTION 4, THE VICE PRESIDENT REMAINS ACTING PRESIDENT UNTIL THE ISSUE IS RESOLVED.

SECTION 19 OF TITLE 3 OF THE U.S. CODE [THE FULL TEXT OF WHICH IS ATTACHED AS APPENDIX 3] SETS FORTH THE STATUTORY LINE OF SUCCESSION FOR THE DEVOLUTION OF PRESIDENTIAL POWERS AFTER THE VICE PRESIDENT, AS AUTHORIZED BY ART. II, SEC. 1, CL. 5. THE STATUTE PROVIDES THAT THE SPECIFIED ORDER OF SUCCESSION APPLIES UPON DEATH, RESIGNATION, REMOVAL FROM OFFICE OR "INABILITY" OF AN INDIVIDUAL ACTING AS PRESIDENT. SECTION 19 SPECIFIES THAT THE "POWERS AND DUTIES OF THE OFFICE OF THE PRESIDENT", IF THERE IS NO VICE PRESIDENT ABLE TO DISCHARGE THEM, DEVOLVE FIRST UPON THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, THEN UPON THE PRESIDENT PRO TEMPORE OF THE SENATE, THEN (IN THE ORDER SPECIFIED) UPON THE SECRETARY OF STATE, SECRETARY OF TREASURY, SECRETARY OF DEFENSE, ATTORNEY GENERAL, SECRETARY OF INTERIOR, SECRETARY OF AGRICULTURE, SECRETARY OF COMMERCE, SECRETARY OF LABOR, SECRETARY OF HEALTH AND HUMAN SERVICES, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, SECRETARY OF TRANSPORTATION, SECRETARY OF ENERGY, AND SECRETARY OF EDUCATION.

The following additional considerations may be important in certain circumstances:

1. The Vice President does not have to take a new oath of office upon assuming the powers and duties of the President in the case of a President's inability to act. The Vice President assumes only the powers and duties of the President and the designation "Acting President" in these circumstances and does not become

President. The legislative history of the 25th Amendment and the actual language of the Amendment support this conclusion. The answer seems to be different and more complex in the case of the subsequent officers in the line of succession. Title 3, Section 19, treats the Legislative Branch successors somewhat differently than those in the Executive Branch. The technicalities of succession to temporary presidential authority are not considered herein beyond the Vice Presidential level.

2. The written declarations of disability and recovery specified in sections 3 and 4 of the 25th Amendment may consist of short letters framed in the constitutional terminology.
3. The phrase the "principal officers of the Executive Departments" in the 25th Amendment includes only those Cabinet members specified in Title 3, Section 19. Other "cabinet-level" officials might arguably be embraced but the far stronger position is that they are not.
4. The "transmittal" of the declarations contemplated by the 25th Amendment is the operative event to effect the transfer of authority rather than the receipt of the declaration by the addressees. Arguments in favor of the latter circumstance as the operative event are

not persuasive. Transmittal should be made both to the offices of the addressees and to them personally.

5. A single declaration with all the necessary signatures would not appear to be necessary under Section 4 of the 25th Amendment. While this would be the preferable course if all signatures were available, counterpart declarations would be an adequate alternative.
6. Under Section 4, actual physical signatures on the declarations would not appear to be necessary if, for example, the critical official was out of town or on board an aircraft. He could authorize another to affix his name. The imperatives of the situation would govern the approach taken, but if a prompt transfer of authority is necessary, the fastest genuine expression of endorsement would be appropriate.
7. Under Section 3, a voluntary Presidential declaration of disability should be signed personally by him if possible, but a reliable manifestation of his understanding and assent should suffice. In cases of doubt regarding his capacity to understand and assent, the section 4 procedure should be used.

Theodore B. Olson

APPENDIX 1

Article II, section 1, clause 5:

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law, provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

APPENDIX 2

Amendment XXV:

(Ratified February 10, 1957)

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

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

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

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

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

APPENDIX 3

3 U.S.C. § 19:

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

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

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

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

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

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

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

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

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

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

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

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

[Note: The language set forth above reflects the recent amendment of subsection (d)(1), adding the Secretaries of Energy and Education to the order of succession and renaming the Secretary of HEW.]

TAB -- B

PRESIDENTIAL SUCCESSION AND DELEGATION IN CASES
OF DISABILITY



United States Department of Justice
Washington, D.C. 20530

ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL COUNSEL

3 APR 1981

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Presidential Succession and Delegation in Cases
of Disability

As a result of the recent assassination attempt on President Reagan, this Office has researched several issues that relate to presidential succession and the delegation of presidential power in the event of a temporary disability of the President. This memorandum sets forth our conclusions on the relevant legal issues.

I. Presidential Succession

The Twenty-Fifth Amendment to the United States Constitution establishes a mechanism for presidential succession in the event that the President becomes unable to perform his constitutional duties. Succession may take place in two ways. First, if the President is able and willing to do so, he may provide for the temporary assumption of the powers and duties of his office by the Vice President by "transmit[ting] to the President pro tempore of the Senate and the Speaker of the House his written declaration that he is unable to discharge the powers and duties of the President." See U.S. Const., Amend. XXV, § 3. When the President transmits such a declaration, his powers and duties devolve upon the Vice President as Acting President ^{1/} until the President transmits an additional written declaration stating that he has become able to perform his responsibilities.

^{1/} There appears to be no requirement that the Vice President resign from his position as Vice President or take the President's oath of office to serve as "Acting President." As a general rule, an official who is "acting" in a certain capacity need not vacate the office previously held or take the oath of office ordinarily taken by the person whose duties he has temporarily assumed. This conclusion is supported by Hearings on Presidential Inability and Vacancies in the Office of Vice President Before the Subcomm. on Constitutional Amendments of the Senate Comm. on the Judiciary, 88th Cong., 2d Sess. 215, 232 (1965); Hearings on Presidential Inability and Vice Presidential Vacancy Before the House Comm. on the Judiciary, 89th Cong., 1st Sess. 87 (1965). See also J. Ferrick, The Twenty-Fifth Amendment 199 (1976). The rule as to resignation and/or taking the President's oath appears to be different for those officials further down the line of succession. See 3 U.S.C. § 19. This memorandum does not address the issues involved in the devolution of powers beyond the position of Vice President.

II. Presidential Delegation

Under circumstances in which it is not considered necessary or appropriate to invoke the provisions of the Twenty-Fifth Amendment, it may nonetheless be desirable for the President to delegate certain powers to other officials, including the Vice President. Under statute, see 3 U.S.C. § 3001, and under the Constitution, see Myers v. United States, 272 U.S. 52, 117 (1926), the President has broad authority to delegate functions vested in him by law. At the same time the Constitution and certain statutory provisions impose limits on the President's power to confer his authority on subordinate officials. The nature and extent of those limits are considered in this section.

A. Constitutional Limitations on the President's Power to Delegate his Functions.

As early as 1855, Attorney General Cushing articulated the general rule that the functions vested in the President by the Constitution are not delegable and must be performed by him. 7 Op. A.G. 453, 464-65 (1853). The Attorney General opined:

Thus it may be presumed that he, the man discharging the presidential office, and he alone, grants reprieves and pardons for offenses against the United States, not another man, the Attorney General or anybody else, by delegation of the President.

So he, and he alone, is the supreme commander-in-chief of the Army and Navy of the United States, and of the militia of the several States, when called into the actual service of the United States. That is a power constitutionally inherent in the person of the President. No act of Congress, no act even of the President himself, can, by constitutional possibility, authorize or create any military officer not subordinate to the President.

So he appoints and removes ambassadors and other officers of the United States, in the cases and

with the qualifications indicated by the Constitution.

So he approves or disapproves of bills which have passed both Houses of Congress: that is a personal act of the President, like the vote of a Senator or a Representative in Congress, not capable of performance by a Head of Department or any other person.

A study prepared by this Office in the 1950's reaches the same conclusions. This study and our research suggest that the following are nondelegable functions of the President:

1. The power to nominate and appoint the officers of the United States to the extent provided in Article II, § 2, cl. 2 of the Constitution.
2. The power to approve or return legislation pursuant to Art. I, § 7, cl. 2 and 3, and the power to call Congress into special session or to adjourn it according to Article II, § 3.
3. The power to make treaties by and with the advice and consent of the Senate. Article II, § 2, cl. 2. It should be noted, however, that the power to negotiate treaties and the power to enter into Executive agreements may be delegated. See 7 Op. A.G., supra, at 465.
4. The power to grant pardons.
5. The power to remove purely executive Presidential appointees. This power is vested in the President as an incident of his appointment power. Myers v. United States, 272 U.S. 52, 119 (1926).
6. The power to issue Executive Orders. Only the President can issue formal Executive orders and Proclamations. He can, however, delegate the power to issue many orders which cover substantially the same subject matter as Executive orders and Proclamations as long as they are not so named.
7. The powers of the President as Commander-in-Chief of the Army and Navy. Article II, § 2, cl. 1. In view of Article I, § 8, cl. 12 and 13, which state that Congress shall have the power to raise and support the Army and to provide and maintain a Navy, many of the

President's powers as Commander-in-Chief are statutory in part. To conclude that the President may not delegate his ultimate constitutional responsibilities as Commander-in-Chief is not to suggest that he is the only officer of the Government who may make military decisions in time of emergency, when immediate response may be necessary. The President may make formal or informal arrangements with his civilian and military subordinates, in order to ensure that the claim of command will function swiftly and effectively in time of crisis. Of course, every military officer must be subordinate to the President.

B. Statutory Limitations on the President's Power to Delegate his Functions.

The foregoing discussion sets forth the general rule that the President may not delegate inherent powers that are conferred on him by the Constitution. On the other hand, he may generally delegate powers that have been conferred on him by Congress. Congress has so provided in 3 U.S.C. § 301, which states:

The President of the United States is authorized to designate and empower the head of any department or agency in the executive branch, or any official thereof who is required to be appointed by and with the advice and consent of the Senate, to perform without approval, ratification, or other action by the President (1) any function which is vested in the President by law, or (2) any function which such officer is required or authorized by law to perform only with or subject to the approval, ratification, or other action of the President: Provided, That nothing contained herein shall relieve the President of his responsibility in office for the acts of any such head or other official designated by him to perform such functions. Such designation and authorization shall be in writing, shall be published in the Federal Register, shall be subject to such terms, conditions, and limitations as the President may deem advisable, and shall be revocable at any time by the President in whole or in part.

Congress has further provided, in 3 U.S.C. § 302, that:

The authority conferred by this chapter shall apply to any function vested in the President by law if such law does not affirmatively prohibit delegation of the performance of such function as herein provided for, or specifically designate the officer or officers to whom it may be delegated. This chapter shall not be deemed to limit or derogate from any existing or inherent right of the President to delegate the performance of functions vested in him by law, and nothing herein shall be deemed to require express authorization in any case in which such an official would be presumed in law to have acted by authority or direction of the President.

As a result of these statutes, the President is authorized to delegate any power vested in him by statute unless the statute "affirmatively prohibit[s] delegation." In our view, a statute should be construed as an "affirmative" prohibition of delegation only if it prohibits delegation expressly or by unmistakable implication. The purpose of sections 301 and 302 is to facilitate the functioning of the Executive by specifically authorizing delegation in the great majority of cases. To this end, section 301 states a general rule in favor of delegation. In light of the breadth of this general rule, the exception in section 302 should be narrowly construed. The same inference can be drawn from the fact that Congress took care in section 302 not to derogate from any "existing or inherent right of the President to delegate the performance of functions vested in him by law."

Statutes which do expressly or by unmistakable implication prohibit delegation are subject to the possible constitutional objection that the power to delegate is inherent in the Executive and may not be restricted by Congress. The issue is a difficult one and has never been resolved in court. In our view, the wiser course is to comply with any clear congressional intention to prohibit delegation, in order to avoid testing the limits of this constitutional question, unless circumstances imperatively require delegation.

In the brief time we have had to review the matter, we have discovered only a very few statutes that expressly or by unmistakable implication prohibit delegation. What follows is a description of categories of statutes that fall or may fall within this general class.

1. Statutes Explicitly Prohibiting Delegation

The clearest cases are those in which the statute explicitly prohibits delegation. An example is found in the Export Administration Act of 1979, 50 U.S.C. § 2403(e)(Supp. III 1979), which provides that:

The President may delegate the power, authority, and discretion conferred upon him by this Act to such departments, agencies, or officials of the Government as he may consider appropriate, except that no authority under this Act may be delegated to, or exercised by, any official of any department or agency the head of which is not appointed by the President, by and with the advice and consent of the Senate. The President may not delegate or transfer his power, authority, and discretion to overrule or modify any recommendation or decision made by the Secretary [of Commerce], the Secretary of Defense, or the Secretary of State pursuant to the provisions of this Act.

2. Statutes Conferring Nondelegable Functions

An unmistakable congressional intent to prohibit delegation may also be inferred from statutes that impose on the President a duty or power to exercise a nondelegable function. For example, it is commonly thought that only the President may issue an Executive Order or Proclamation. Statutes that authorize the President to take an action, but require him to act by way of Executive Order or Proclamation, can therefore be read as precluding delegation. An example is found in 22 U.S.C. § 441(a):

Whenever the President ... shall find that there exists a state of war between foreign states, and that it is necessary to promote the security or preserve the peace of the United States or to protect the lives of citizens of the United States, the President shall issue a proclamation naming the states involved; and he shall, from time to time by proclamation, name other states as and when they become involved in the war.

3. Statutes Implicitly Prohibiting Delegation

A broad range of statutes confer powers on the President but do not state in terms or in the legislative history whether those powers are delegable. In some instances, the character or importance of the powers in question, or other special circumstances, may constitute a sufficient indication of a legislative intent to prohibit delegation.

In the brief time available, we have been unable to reach any firm conclusions regarding particular statutes in this category. In general, it would appear that statutory powers that have been exercised by the President himself on a consistent and longstanding basis are more likely than others to be held nondelegable. An example might be the President's statutory power to enter into or terminate trade agreements with certain nations under 19 U.S.C. § 1351.

A second special circumstance that can give rise to an inference of nondelegability occurs when Congress gives authority to an agency but subjects that authority to a requirement of presidential approval. In this circumstance, it can be argued that a delegation of the President's approval authority back to the agency would subvert the evident legislative intent to assure review by someone outside the agency, while a delegation to anyone else would conflict with the congressional intent to centralize primary administrative responsibility in the agency. For an example of such a statute, see § 12(k) of the Securities Exchange Act of 1934, 15 U.S.C. § 78 l(k). 5/

III. Delegable Functions

All remaining functions of the President may be delegated to subordinate officers. Many statutes explicitly authorize delegation. See, e.g., 22 U.S.C. § 2381 (delegation of certain foreign affairs powers). In the absence of specific authorization, the general delegation statute, 5 U.S.C. §§ 301, 302, explicitly authorizes delegation except where precluded by statute. It is beyond the scope of this memorandum to describe the full

5/ We emphasize that the above examples are entirely tentative; it may well be that, upon further examination of the statutes and their legislative histories, this Office would conclude that Congress did not intend to prohibit delegation.

extent of the presidential powers and responsibilities that may be delegated. 6/ In general, powers which may be delegated include those of approval, authorization, and assignment; powers to establish and convene certain administrative commissions, to designate responsible officers, and to make certain factual determinations; powers to direct that certain actions be taken, to fix compensation of officers, to prescribe certain rules and regulations, and to make recommendations or reports.

It bears repetition that the President may not delegate his power to delegate his own functions. This is, in our view, a function that is constitutionally vested in the President personally. The President may delegate his powers if he is capable of a conscious decision to do so. If, however, he is incapable of such a decision, delegation cannot occur. If such a situation continues for a substantial period of time, it would appear desirable to initiate procedures for presidential succession under the Twenty-Fifth Amendment. 7/

IV. Form and Method of Delegation

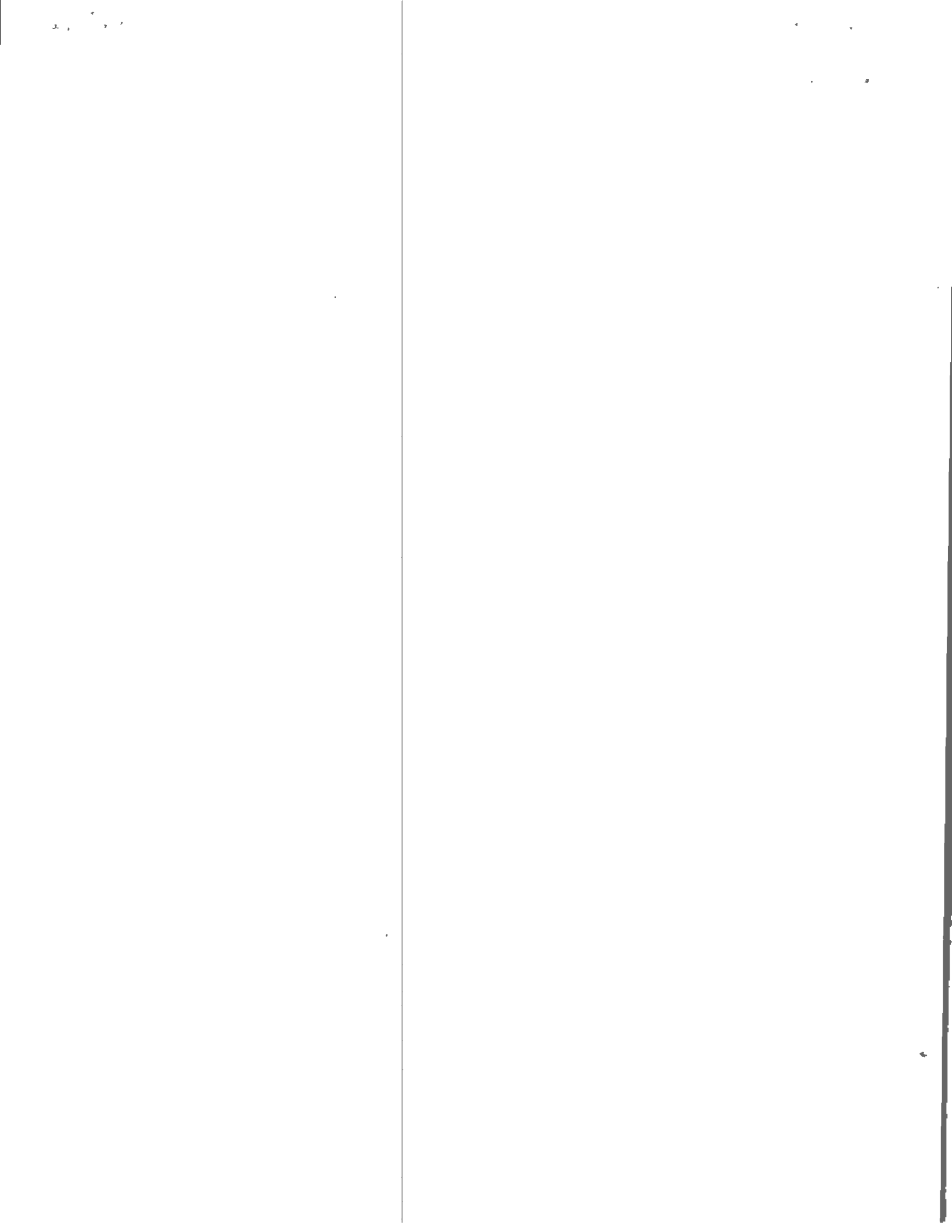
Whenever a presidential function or power is delegable, it may be delegated to the head of any department or agency in the Executive Branch, or any official thereof, if the official is appointed with the advice and consent of the Senate. 3 U.S.C. § 301. By statute, such a delegation is ordinarily accomplished through the preparation and publication of a written order or memorandum. The relevant document is normally signed by the President personally; but there is no express statutory requirement

6/ For a description of the President's general authority, see President's Council on Executive Organization, The Powers and Responsibilities of the President (1970).

7/ It might be possible for the President to delegate his powers contingent upon the occurrence of a specified event such as a certification by the President's personal physician that the President is temporarily incapable of making a conscious decision. We would emphasize, however, that this procedure should not be used if its effect is contrary to the intent of the procedures for presidential succession contained in the Twenty-Fifth Amendment.

to that effect. In our opinion, the relevant statutory requirements are satisfied as long as the President actually makes the delegation in question and causes an appropriate written memorial to be prepared and published. He need not sign the document by his own hand. See United States v. Fletcher, 148 U.S. 84 (1893); 7 Op. Att'y Gen. 453, 472-73 (1855); 22 Op. Att'y Gen. 82 (1898). Moreover, the statute does not purport to restrict the President's constitutional power to delegate his powers and functions. See 3 U.S.C. § 302. We believe that a President may determine in an exigent circumstance that it is necessary to delegate a power or function without immediate compliance with the normal formal requisites (i.e., publication of a written document). Such a delegation is effective if it is necessary to enable the President to discharge his constitutional duty.

Theodore B. Olson
Office of Legal Counsel



ATTACHMENT

Sample letter invoking § 3, Amendment XXV

To the President pro tempore of the Senate and the Speaker of the House:

Dear [Mr. President] [Mr. Speaker]:

In accordance with the provisions of § 3 of the Twenty-Fifth Amendment to the United States Constitution, I hereby transmit to you my written declaration that I am presently unable to discharge the powers and duties of the Office of President of the United States. Pursuant to those provisions, the Vice President, George Bush, shall discharge those powers and duties as Acting President during the period of my disability.

Sincerely,

Ronald W. Reagan

Sample letter invoking § 4, Amendment XXV

To the President pro tempore of the Senate and the Speaker of the House:

Dear [Mr. President] [Mr. Speaker]:

In accordance with the provisions of § 4 of the Twenty-Fifth Amendment to the United States Constitution, we hereby transmit to you our written declaration that the President of the United States, Ronald W. Reagan, is presently unable to discharge the powers and duties of his office. Pursuant to those provisions, the Vice President, George Bush, shall discharge those powers and duties as Acting President.

Sincerely,

George Bush

TAB -- C

PRIOR PRESIDENTIAL DISABILITIES



United States Department of Justice
Washington, D.C. 20530

ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL COUNSEL

8 APR 1981

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Prior Presidential Disabilities

This is a summary of prior Presidential disabilities and the resulting effect on Presidential authority. 1/

1. James Madison suffered from a severe fever in the summer of 1813 in the midst of disputes with Congress on how to pay for the War of 1812. I. Brant, James Madison: 1812-1836, at 184-94 (1961). Daniel Webster reported at one point that Madison was too weak to read resolutions brought to his bedside. Id. at 186-87. Both Houses of Congress became "engrossed" for over a month in speculation on the succession, 2/ since the Vice President was aged and there was a vacancy in the position of President pro tempore of the Senate. J. Feerick, The Twenty-Fifth Amendment 4-5 (1976) (Feerick). Madison recovered, however, and no legislation was passed nor were formal arrangements for the delegation or transfer of power implemented.

1/ Material consulted included the New York Times, S. Rep. No. 66, 89th Cong., 1st Sess. (1965) and hearings held in 1958. Presidential Inability: Hearings on S.J. Res. 100, S.J. Res. 133, S.J. Res. 134, S.J. Res. 141, S.J. Res. 143, S.J. Res. 144, S. 238, and S. 3113 Before the Subcomm. on Constitutional Amendments of the Senate Comm. on the Judiciary, 85th Cong., 2d Sess. (1958) [hereinafter cited as 1958 Hearings]. A list of articles on presidential inability can be found in the 1958 Hearings, at 41-42.

2/ The first succession act was passed in 1792. Act of March 1, 1792, §§ 9-11, 1 Stat. 239. Unsuccessful efforts to change this statute occurred in 1820, 1856 and 1881.

2. William Henry Harrison was inaugurated on March 4, 1841 and died of pneumonia on April 4, 1841. His illness was so short that the question of inability apparently did not arise. 3/

3. James A. Garfield was wounded on July 2, 1881 by an assassin and died 80 days later on September 19, 1881. Vice President Chester A. Arthur did not act in his stead. Arthur refused to do so because of a fear, shared by many constitutional scholars of the time, that once he had assumed the powers and duties of the office, they would "devolve on the Vice President" permanently, leaving him unable to turn the reins back to the President. U.S. Const., art. II, sec. 1, cl. 6. See S. Rep. No. 66, at 26. Although the entire Cabinet believed Garfield to be unable to carry out his duties, 4/ four of them, including the Attorney General, agreed with Arthur's analysis. Secretary of State James G. Blaine was in fact criticized for attempting to usurp Presidential powers during Garfield's lengthy illness. 1958 Hearings, at 149-50. 5/

4. Grover Cleveland had two major operations for cancer of the mouth in July, 1893. He told almost no one, including Vice President Adlai Stevenson. The two operations took place on a friend's yacht, with Cleveland unconscious and strapped

3/ When Harrison died, Secretary of State Daniel Webster questioned whether the Constitution meant that Vice President John Tyler became "Acting President," rather than the President. Tyler disagreed and took the oath as President, thus establishing the "Tyler precedent" that the Vice President does succeed to the office of the President when the prior occupant dies.

The deaths of Zachary Taylor (July 9, 1850) and Abraham Lincoln (April 15, 1865) were apparently so swift that their Vice Presidents (Millard Fillmore, Andrew Johnson) assumed control without trouble.

4/ Garfield was able to conduct only one minor piece of business -- the signing of an extradition paper.

5/ Arthur, who succeeded Garfield, suffered from an increasingly debilitating kidney disease while in office. Although he gradually reduced his schedule, he does not appear to have become completely incapacitated.

to a chair propped against the mast. Ferrick, supra, at 11-12. The complete secrecy was due to fears that the country might suffer an economic panic if it knew the President had cancer. The truth was apparently suppressed until 1917. 6/

5. William McKinley was wounded on Friday, September 6, 1901. He underwent emergency surgery and his doctors issued optimistic statements about his recovery. So positive was the outlook that Vice-President Theodore Roosevelt and the Cabinet members who had gathered in Buffalo over the weekend began to disperse. M. Leech, In the Days of McKinley 598-99 (1959). "[T]he Vice-President was so firmly convinced that the emergency was over that he went to join his family at a camp in the Adirondacks, twelve miles from telegraph or telephone." Id. When McKinley began to fail, a guide was sent up into the mountains to fetch Roosevelt. Although he rushed back, Roosevelt arrived to take the oath of office twelve hours after McKinley's death on September 14.

6. Woodrow Wilson was incapacitated from a stroke for about eight months of his second term. At no time did Vice President Thomas R. Marshall attempt to take over. See 1958 Hearings, at 19. The hesitation was due to a fear that such action would be viewed as an effort to oust Wilson permanently. When he recovered, Wilson forced Secretary of State Lansing, who had called Cabinet meetings and suggested that Marshall take over as Acting President, to resign, charging him with disloyalty. Id.

7. Franklin Roosevelt was in declining health during his last year in office; and died on April 12, 1945. Vice President Harry S Truman had had only two conversations with Roosevelt since the inauguration, neither dealing with disability. Perhaps as a reaction to this, Truman supported a new succession statute, Act of June 25, 1948, 62 Stat. 677 (1948).

8. Dwight D. Eisenhower suffered three major illnesses while in office - a heart attack (1955), ileitis (1956) and a "mild" stroke (1957). From the first, Vice President Richard

6/ It was the death of Cleveland's first Vice President, Thomas A. Hendricks, in 1885, while Congress was out of session, which accelerated passage of the Presidential Succession Act, 24 Stat. 1 (1886).

Nixon consulted with the Cabinet and developed a procedure for relaying important matters to the President. A White House request for an opinion on the temporary delegation of presidential power was not acted upon because Attorney General Brownell felt there were sufficient legal arrangements in place to handle day-to-day operations.

Eisenhower was very troubled by the implications of the disability problem during each of his illnesses. He asked the Department of Justice to study the problem and recommend a solution, urged Congress to act, and entered into an informal agreement with Mr. Nixon. Ferrick, supra at 20-22. The agreement provided that:

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.

S. Rep. No. 66, at 27. 7/ Although Congress did hold hearings,

7/ See also N.Y. Times, March 4, 1958, at 1, col. 2. Presidents Kennedy and Johnson entered into similar agreements with their vice-presidents. S. Rep. No. 66, at 27; N.Y. Times, Jan. 28, 1965, at 13, col. 1. The Johnson-Humphrey agreement was identical to the Eisenhower-Nixon agreement. The Kennedy agreement differed only in that it urged the Vice-President to consult with the Cabinet and the Attorney General "as a matter of wisdom and sound judgment." Id.

hearings, no permanent action was taken. 8/

9. Lyndon B. Johnson was hospitalized four times, the first time being for a major bout with the flu (January 23-27, 1965). 9/ In October, 1965 Johnson was hospitalized for gall bladder surgery. 10/ He was anesthetized for three to four hours, after which Press Secretary Moyers announced that Johnson was again able to make Presidential decisions. 11/

The same pattern was repeated in November, 1967 when Johnson underwent simultaneous surgery for a polyp on his vocal cord and repair of a ventral hernia. He was anesthetized for about an hour and a half. Note was made of the agreement that could make Humphrey "Acting President" and columnist Tom Wicker urged that the 25th Amendment be ratified.

In December, 1968, Johnson was again hospitalized for the flu. The papers, however, said little other than that he worked on government papers on one day of his stay.

10. Richard M. Nixon was hospitalized from July 12-20, 1973 for viral pneumonia. The President's press office said that he would be able to do necessary work and that he was not sick enough to require the Vice President to make special arrangements. In an interview, Vice President Spiro T. Agnew

8/ See 1958 Hearings and Hearings before the Special Subcommittee to Study Presidential Disability of the House Committee on the Judiciary, 84th Cong., 2d Sess. (1956).

9/ At the time, Vice President Hubert H. Humphrey stated that there had been discussions of when he would take over and a copy of the Johnson-Humphrey accord was made available to the press on January 28. See n.7 and text.

10/ The accord was again noted by the press and columnist Arthur Krock urged the states to ratify the Twenty-Fifth Amendment.

11/ Citing recent history, Johnson had urged Congress to act on the disability problem in his State of the Union address in January, 1965. The proposed Twenty-Fifth Amendment was sent to the states in July, 1965.

said that there was no agreement between the President and him on what to do in the event of Nixon's disability and that the issue had never been discussed.

Although there were persistent rumors about Nixon's health during the months prior to his resignation, the only White House announcement was an acknowledgement that the President suffered from phlebitis. The operation on his leg did not occur until September 23, 1974, after his resignation.

11. Jimmy Carter's scheduled surgery for hemorrhoids in late December, 1978 was cancelled. Preparations for the Vice President to assume power under section 3 of the Twenty-Fifth Amendment were also cancelled.

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