

Eye on Washington by Nicholas F. Benton

Will 25th Amendment be invoked this year?

Speculation about the actual state of President Reagan's health, and his ability to complete his last year in office, began swirling around Washington when it was reported that he was up most of the night Jan. 12 vomiting, and was forced to cancel some scheduled meetings the next morning.

It didn't help that White House spokesman Marlin Fitzwater delayed his daily press briefing that day well into the afternoon, and then announced that the President would go to Bethesda Naval Hospital for a "routine six-month check-up, not related to the episode of gastroenteritis last night."

Early the next week, even before the results of all the medical tests on the President were known, a group of dignitaries constituting the "Commission on Presidential Disability and the 25th Amendment" convened a press conference to release a report of a two-year study on the proper application of the amendment.

The 25th Amendment, added to the Constitution in 1967, provides for the removal of the President from office for physical or mental disability.

It requires either a voluntary transfer of power by the President to the vice president, or, in the event the President is either incapable of making such a decision (because, for example, he is unconscious) or he is incapacitated but refuses to admit it, it allows the vice president and a majority of the cabinet to vote for a transfer of power.

Under terms of the amendment, were the President to challenge the usurpation of his power by the vice president and the cabinet, he can appeal the decision, which then requires a two-thirds vote of both the Senate

and House to be upheld.

The Miller Center at the University of Virginia commissioned the study on the 25th Amendment after Reagan's colon surgery in 1985.

Included on the commission coordinating the study are former Sen. Birch Bayh (D-Ind.), former Attorney General Herbert Brownell, who served in the first Eisenhower administration, former Supreme Court Chief Justice Warren Burger, and former Internal Revenue Service director Mortimer Caplin.

The principal point of the study, Bayh said, was that the use of the 25th Amendment "needs to become much more routine." He said there "needs to be a national dialogue so that people recognize it is there," and that the President and his staff "should not be timid about using it."

What about the present situation?

Caplin pointed out that there is a "very strongly worded" section of the study addressing members of the White House staff, saying that they should not try to run the government of an incapacitated President.

The report states:

"Key members of the staff and in particular the chief of staff . . . consider themselves uniquely qualified in judging the President's capacity for exercising powers and duties. They . . . have the most to lose if and when the President relinquishes his powers.

"When a President cannot perform the duties of the office, the nation and the government, if it lacks an acting President, may incur no serious difficulty for some time, especially if the President's incapacity escapes public attention. The staff can always appear to act for the President.

"However, a President in office

should not encourage staff assistants ever to believe they can function without a President in place who with full consciousness bears responsibility for their actions."

When Bayh mentioned the failing health of President Roosevelt in his last days, this reporter asked whether the 25th Amendment, had it been in effect at the time, should have been used in that case. "This is extremely relevant, it seems to me, in light of the fact we're now negotiating some very important treaties with the Soviet Union," I remarked. "If President Roosevelt, at the time of Yalta and Teheran, was not, under the terms of the 25th Amendment properly applied, competent to be President of the U.S., that is a very significant fact, and not simply a footnote of history."

Bayh replied that "it is a very relevant question," and that the "major difference between then and now," in addition to the 25th Amendment, "is that we have Vice President Bush working very closely with President Reagan."

The commission's study seemed directed precisely against the kind of situation alluded to by White House Chief of Staff Howard Baker, speaking to the Chemical Society Jan. 13. He insisted repeatedly that President Reagan was going to be the "first President since Eisenhower to fill out a full two terms in office."

Baker recounted an incident that occurred Dec. 8, at the end of the first day of the Reagan-Gorbachov summit. "The President was dejected," Baker recounted. "He told me he would have to stay up all night studying the statistics on the treaty. I told him to go to bed and not worry. 'Don't hit the books,' I told him. 'Just remember who you are, what you believe, and where you want to go, and let us take care of all the details.' He took my advice."