Can the Twenty-Fifth Amendment Deal with a Disabled President? Preventing Future White House Cover-Ups

HERBERT L. ABRAMS
Professor of Radiology
Stanford University

Presidential infirmity, accompanied by a failure to fully inform the public, has been stamped indelibly on our history during the past two hundred years. Fourteen of the eighteen American presidents in the twentieth century had significant illnesses while in office.[1] Presidents also have faced physical threats leading to incapacity and death. Of the eight presidents who died in office, four were the victims of bullet wounds. From 1789 to 1958, there were eight assassination attempts against presidents; from 1963 to 1994, there were ten attempts, one successful. The threats are increasing in number.[2]

Among the presidents in this century, Warren Harding, Woodrow Wilson, Franklin D. Roosevelt, Dwight Eisenhower, John F. Kennedy, and Ronald Reagan all had illnesses that were either concealed from the American people or underreported.[3] In response to Eisenhower's demand for a mechanism whereby a disabled president might transfer power temporarily to the vice president, the Twenty-fifth Amendment to the U.S. Constitution was passed by Congress in 1964,[4] was ratified by the states, and became the law of the land in 1967.[5]

Its central purpose was to preserve cognitive competence in the White House at all times by ensuring that a sick or injured president, incapable of decision making in a crisis, will be temporarily relieved of the burdens of office.[6] A second goal was to forestall concealment of presidential disability by making the transfer of power to the vice president temporary, thereby assuring the president that he could reclaim office once he was able to do so. John D. Feerick, the most knowledgeable historian and legal scholar of the Twenty-fifth Amendment, observes, "Since its adoption, the amendment has been implicated at least five different times and has proven its utility in providing for a quick and efficient transfer of presidential and vice presidential power."[7] Elsewhere, however, Feerick states that "the amendment worked quite well in handling the presidential succession crises of 1973 and 1974" (dealing only with section 2 on replacement of the vice president) but that it "did not work as it was intended in 1981 and 1985" (involving the important sections 3 and 4 on disability).[8]

These two statements contradict each other; the generalization of a "quick and efficient transfer" of power cannot be equated with the failure to invoke it when President Reagan was disabled by John Hinckley's bullet in 1981.[9] Feerick contends that the fiascoes of 1981 and 1985 (when Reagan had surgery for colon cancer) "do not reflect a basic weakness in the amendment" but rather "were born out of political considerations."[10] Can there be any doubt that such considerations will be operating at full steam

Presidential Studies Quarterly 29, no. 1 (March)
© 1999 Center for the Study of the Presidency

whenever the possibility of presidential disability arises? How can we be sure that politics will not block the implementation of the Twenty-fifth Amendment in the future, at a time when the nation requires a strong, rational leader in full command of his intellectual and cognitive faculties?

Senator Birch Bayh, the architect of the Twenty-fifth Amendment, has himself deplored the fact that sections 3 and 4 have not worked as the framers intended.[11] The amendment's central problem is threefold. First, the issue is deeply embedded in a political culture where those who surround the president and are closest to his aberrant behavior or disabling illness are dependent for their positions and prestige on keeping him in office.[12] Second, a political judgment of disability by the vice president and the Cabinet must be based on a sound medical determination of impairment of such a degree that it impedes the president's ability to discharge some or all of the duties of office. Third, a mechanism for providing this type of unbiased, accurate information on the president's health never has been formally addressed. (To the extent that it has been considered, primary responsibility has been placed on the White House physician, who is enmeshed in a profound conflict of interest.[13]) These three ingredients of failure can be cured, as we shall see.

During the House of Representatives hearings on the Twenty-fifth Amendment in 1965, Congressman Durward Hall, himself a doctor, expressed his dismay at the glaring lack of medical testimony:

> I see no evidence in the hearings of any statement by either any White House physician, past or present, or any of the surgeons general of our civilian or uniformed branches, or civilian consultants available to the government, such as the American Medical Association. . . . I wonder if those who ordinarily determine inability or disability were consulted or called for hearings or if they were excluded purposely.[14]

Congressman Richard Poff was of the opinion that medical specialists undoubtedly would be included in the action: "Surely, the decision makers, whoever they may be, would not undertake so critical a decision without first consulting the experts in the field, namely the gentlemen of the medical profession."[15]

Congressman Clark MacGregor agreed: "I believe that the members of the Cabinet would not take the step jointly with the vice president to certify the president's inability to the appropriate officers of the Congress without a consultation with the very finest medical brains which were available to them."[16]

Hall added, "I appreciate that remark. . . . I would like to believe that the gentleman is adding to the legislative record which I am trying to establish to that ultimate end. . . . It is to that end that I rise, and I think the point has been well made."[17]

Twenty years later, Bayh remarked on the omission of medical witnesses: "We might have been in error there. We were willing to accept the worst-case situation from a medical standpoint."[18] In fact, the Twenty-fifth Amendment makes no reference to the need for and the means of securing a medical appraisal by the vice president and Cabinet once disability is suspected. Indeed, throughout the deliberative process leading up to the amendment's drafting and ratification, the issue of how medical input would be

obtained was virtually ignored.[19] If any medical advice were needed, those empowered to decide the issue were simply "expected . . . to consult with the president's physicians and others."[20]

In the analysis of section 4 in the 1965 Senate report, Bayh expressed his belief that "reasonable men" would engage in "prompt action" if required: "It is assumed that such [a] decision would be made only after adequate consultation with medical experts who are intimately familiar with the president's physical and mental condition."[21] This "assumption" has been equated with the *intent* of those who framed the amendment that "constitutional decision makers would solicit appropriate medical advice."[22] Although "to assume" is not "to intend," let us agree that there might have been an understanding that an accurate assessment of impairment would be an essential underpinning of a decision to replace a disabled president. In support of that belief, Senator Roman Hruska expressed the conviction during the hearings that "the determination of presidential inability is obviously a factual matter. . . . The issue is simply whether a specific individual with certain physical, mental, or emotional impairments possesses the ability to continue as the chief executive."[23]

In the Senate hearings of 1964, James McGregor Burns, a well-known historian of the presidency, had made the point that "lacking clear medical advice, they [the Cabinet] could not be sure of even the facts in the case."[24] He recommended a presidential commission, which would then designate "a physicians' panel to report the medical facts. . . . The problem is one of judgment on the part of experienced, reasonably disinterested men who understand the condition of the president."[25] He expressed his concern that "there might be some tendency to turn to the kind of physician that might be most expedient in the situation. Whatever body makes the decision must turn to a panel of physicians." He emphasized the importance of a "disinterested choice of physicians rather than choices that might be influenced by the heavily political nature of the president's Cabinet."[26]

Years later, during a reconsideration of the Twenty-fifth Amendment, Bayh clearly was skeptical about relying on the president's physician: "It is awfully hard to envision a personal physician to someone like the president . . . who is not going to feel very close to him and protective of him."[27] He added, "I don't think the president's physician should make those judgments himself."[28]

There is a procedure whereby Bayh's goals could be achieved without changing the amendment, without violating the separation of powers doctrine, without impinging on the safeguards implicit in the appointments clause, and without distorting the fine balance between independence and accountability.

Such a corrective measure[29] borrows from Bert E. Park's germinal contributions in clarifying the outlines of a solution to this matter and the potential cost of failure to grapple with it.[30] It departs from Park's original approach of substituting a disability commission as the "other body" referred to in section 4 of the amendment and, therefore, avoids the controversy over the supposed need to replace the Cabinet.[31] It is in accord with many aspects of Park's modified plan, defined in 1995.[32] In brief, it continues to rely on the vice president and the Cabinet as the final arbiters of the political decision on disability but makes available an independent expert advisory group of medical consultants to provide the medical facts on impairment that the decision makers require.

A Medical Advisory Committee on the Health of the President

Either by statute or by concurrent resolution of Congress, a system should be enacted that ensures the vice president, the Cabinet, and the public of objective, independent, and accurate assessments of the president's health. A properly constructed medical advisory committee will achieve these goals.[33]

Composition. The committee will consist of two internists, two neurologists, a psychiatrist, and a surgeon. Because intact central nervous system and cognitive function is critical to the president's ability to make rational decisions and to exercise leadership, the inclusion of three individuals thoroughly versed in neuropsychiatric disease is well justified. At any point where the assessment of impairment requires additional expertise, the committee can call on appropriate specialists.

Choice of members. Every specialty and subspecialty of medicine is represented in the clinical sections of the Institute of Medicine (IOM) of the National Academy of Science. The membership is chosen on the basis of expertise and contributions to the field and includes many of the best clinicians in the country. Hence, the president of the IOM should recommend two individuals for each position, on the advice of the governing IOM council. From this list, the surgeon general should choose the members of the medical advisory committee for overlapping terms of six years each. At its inception, each member would be chosen for a term of one to six years (by lot). With the loss of a member each year thereby established, one new member would be added annually. The continuity of service of the remaining five would ensure the preservation of the collective memory of the group. The committee would include a reasonable mix of Democrats and Republicans to avoid the taint of partisanship, and its composition would be subject to the approval of the secretary of Health and Human Services. Unlike the president's physician, the members of the advisory committee could not be dismissed at the whim of the president (e.g., to prevent them from revealing his degree of impairment).

Functions. The committee would serve in two major roles. First, the doctors would participate in an annual review of pertinent history, systems, physical examination, and laboratory data on the president at Walter Reed Hospital or the Naval Medical Center, together with the president's physician. For the president, the vice president, and the public, they would summarize and communicate the pertinent and significant findings. In this way, members of the advisory committee would be familiar with their patient, the president, if sudden illness, neuropsychiatric disease, or trauma warranted special evaluation.

The second role would involve the medical evaluation of the president whenever the question of disability arose.[34] The committee would convene immediately after notification by the president's physician or the vice president of the need to review the president's condition. On concluding its assessment, the committee would convey to the president and the vice president the presence or absence of a state of impairment requiring consideration of invocation of the Twenty-fifth Amendment. Significant findings subsequently should be disclosed to the public as well.

The weakest link in this chain is the president's physician. Will he or she convene the medical advisory committee when the president's condition requires it? Bayh recognized that "the president's physician has a dual responsibility, one to the well-being of his patient, the president, and the other to the safety of his country."[35] Bayh has suggested that Congress should "ensure that [the president's physician] promptly informs the chief of staff and the vice president if there is any question about the president's ability to perform."[36] Is such a proposal feasible? Could it be implemented?

The Physician's Conflict of Interest

The president's physician has a professional commitment to uphold confidentiality and shield information if the president demands it rather than to reveal it. (The doctor-patient relationship at its core requires a level of confidentiality that respects the patient's interests fully except when physician disclosure is obligatory.[37]) In general, no conflict of interest should exist for the physician because his or her only interest presumably is the welfare of the patient, identical to the patient's interest. If the president is the physician's patient, however, then there might be a conflict between the patient's demands and the public good.[38]

White House physicians frequently have a close personal relationship and friendship with the president. President Jimmy Carter, for instance, has pointed out that Admiral William Lukash was not only his doctor but also his tennis partner, cross-country skiing companion, and fellow fly fisherman. Knowing the closeness of their relationship, Carter seriously doubts that White House physicians can be depended on to convey important information about medical conditions such as strokes, changes in mental status, and other incapacitating illnesses without the full consent of the president, any more than the president's wife and the White House staff could be expected to do so. Carter has opined that there would have been a strong inclination to conceal Reagan's condition if he had developed Alzheimer's disease while in the White House.[39]

The physician's position, together with its attendant prestige, salary, and privileges, is entirely dependent on the president; the physician can be dismissed at will, as Burton Lee was dismissed by President Bill Clinton. All presidential physicians are political appointees of the president. If they receive a direct order from their "boss" to keep certain medical facts secret, then they might be hard-pressed to disobey for fear of losing their jobs. Even if the president gives no direct order, they still might be hesitant to report that he is unfit for office. As Lloyd Cutler, former White House counsel, has emphasized with respect to the Department of Justice, the president's appointees are "members of an administration team that usually hopes for reelection."[40]

The physician also might be wary of disclosing information about the president if he or she believes that doing so will aggravate his condition. According to the American College of Physicians, "When conflicts arise, the moral principle is clear: the welfare of the patient must at all times be paramount."[41] What if the president views secrecy as synonymous with his welfare?

Presidential physicians are temporary members of the armed forces, including most of those who served McKinley, Theodore Roosevelt, Taft, Wilson, Harding,

Coolidge, Hoover, Franklin D. Roosevelt, Truman, Eisenhower, Kennedy, Johnson, Nixon, Ford, Carter, and Clinton. Such individuals might feel an additional professional obligation to obey direct requests from his or her commander-in-chief to keep certain medical facts secret out of concern for violating a superior's order and respect for the military chain of command.

In the light of these conflicts of interest, the wisdom of devising an instrument for an independent appraisal of the president's condition is compelling. With such a mechanism in place, the president's physician would have no excuse for delay in notifying the committee. The pressure would be too great, and the cost of deception or noncompliance would be too high. The physician would be subject to a strong professional incentive to convene because the annual examination by the advisory committee surely would reveal chronic illness—neurological or otherwise—that had been concealed.

Medical Advisory Committee: Statute or Congressional Resolution?

A powerful argument can be constructed that Congress is empowered by the Twenty-fifth Amendment to enact legislation as a means of implementing its provisions. Although the use of the "such other body" provision has been interpreted as necessarily excluding a role for the Cabinet,[42] this view is not supported by the language of the amendment or the intent of the framers. Feerick himself has emphasized that

> if there were a better system, the amendment itself gives Congress the ability to create it. . . . Congress can designate the other body as itself, expand or restrict the membership of the Cabinet, *combine the Cabinet for purposes of a determination with other officials* . . ., and prescribe the rules and procedures to be followed by that body.[43]

In agreement with Feerick, one analysis concludes that "such other body as Congress may by law provide" may be construed to define the other body, inter alia, as "the principal officers of the executive department who consult with a medical advisory committee on the health of the president."[44] The composition and functions of such an advisory group can be included in the statute as an extension of the Twenty-fifth Amendment.

The 1965 hearings included the following exchange:

Bayh: There have been so many proposals that we thought, "Let us get agreement that the Cabinet" [sic], and as we now see it in the light of 1964 and 1965, the Cabinet is the best vehicle. Then, if history proves we are wrong, Congress can then, without going through the rigamarole of another constitutional amendment procedure, make this determination by statute that it should be another body.

[Martin] Taylor: In other words, what you are saying is that this contemplates an act of Congress which will afterward scrap this machinery. Is that it?

Bayh: Yes.[45]

In the light of the historical record, defining the other body as the Cabinet, with the advisory committee as an appendage to it without decisional authority, would comply with the language and the intent. A statute embodying such an other body could readily be enacted by Congress, retaining the joint responsibility of the vice president and the Cabinet for invocation as stipulated by the amendment.

Would a concurrent or joint resolution achieve the same goal? It would bypass the other body provision and constitute a powerful congressional endorsement, but it would not have the full force of a statutory solution. Nevertheless, there are precedents for resolutions that are legally binding,[46] and once the advisory committee is established, each succeeding president will run for office fully informed and forewarned that the committee's functions represent a constraint of office designed to ensure the nation of the cognitive competence of its leader.

Advantages of the Proposal

Independence. Although the president could use his physician to advise him on the voluntary invocation of the Twenty-fifth Amendment under section 3, he might well desire a "second opinion" from an independent group of expert consultants. More important, involuntary invocation under section 4 would now benefit from the information supplied to the vice president and the Cabinet by an expert advisory committee.

Why not rely on the president's physician? The determination of the president's ability to discharge his duties must be based not only on an objective medical evaluation but also on the certainty that this information will be transmitted to the vice president. A number of scholars believe that the White House physician satisfies these needs. Cutler, for example, contends that the vice president and the Cabinet "need medical advice and they would get medical advice. . . . You can rely on the White House physician."[47] Richard Neustadt, a scholar of the presidency, "cannot see that there is a vehicle better than a physician to the president to convey to the nation an unbiased view of his health and level of impairment."[48] Bayh, in spite of his reservations already noted, also contends that "the White House physician has primary responsibility for the president's health and can advise the vice president and Cabinet quickly."[49]

Perhaps the White House physician can, but will he or she? As already noted, this physician frequently has been used to conceal rather than disclose.

Breadth of expertise. There is an added argument against depending on the president's physician. This individual might not have the requisite skills necessary to evaluate the particular ailment afflicting the president. (Wilson's physician had two years of medical school and training as a gynecologist; Franklin D. Roosevelt's was an otolaryngologist; Reagan's first physician was a neurosurgeon chosen by his father-in-law, also a neurosurgeon.[50]) The physician also might be less than adequately trained to perform comprehensive examinations in all areas of the president's mental and physical health.[51] By contrast, the medical advisory committee would capitalize on the strengths of out-

standing internists, surgeons, neurologists, and psychiatrists already familiar with the president's health status.

Accuracy of the appraisal. Historically, White House physicians have shown a strong propensity for masking presidential illness. Cary Grayson, Wilson's physician, helped orchestrate the cover-up of Wilson's massive stroke under the direction of Wilson's wife, quashed an effort to replace the president, and even dissuaded the president from stepping down.[52] An independent body of experts will be objective, will have no conflict of interest, will not feel personally bound to the president, and can be depended on not to violate the public trust. Because their only role would be to examine the president but not to deliver medical care, they would not have the same professional obligations with regard to confidentiality as would his personal physician.

Credibility. The committee would be known to be staffed with medical experts and would inspire public confidence because it would have nothing to gain by withholding information from the public. It could not be easily dismissed by the president and, therefore, would be less dependent on him than would the president's physician. The quality of the appointees would be certified by the selection role of the IOM and the surgeon general.

Availability. There is no doubt that physician members of the IOM or those recommended by other major medical organizations would be honored to serve on a medical advisory committee on the health of the president. Not only would their agreement to do so constitute an explicit commitment to fulfill the annual obligations of the committee to review the health of the chief executive, but also to respond immediately to the call for convening the committee if the question of presidential impairment were raised. Because the members will have collaborated with each other as well as with the president's physician, they will have had the opportunity to work out in great detail the central elements of the annual health review and, perhaps more important, of their response to presidential illness. A set of contingency health assessment plans, covering all likely scenarios of impairment, would then be available for rapid implementation. The examination of the president could be performed at the White House if the president's health permitted; in a secure suite at the George Washington University Hospital, minutes from the White House (more likely); or in the president's suite at the Naval Medical Center or at Walter Reed Hospital, both in Bethesda, Maryland.

Avoidance of inaction. If we could trust presidents to remove themselves voluntarily when they are unable to continue performing their duties, much of the issue of disabled leadership would be resolved. There has, however, been a tendency on the part of responsible parties (president, vice president, and Cabinet) to delay investigation of suspected presidential impairment and invocation of the Twenty-fifth Amendment when it is appropriate.

The president and his staff cannot be relied on to act selflessly in this matter and, thereby, to relinquish the leadership of the Western world. Presidents might deny that their illnesses exist or believe that they can overcome them. They might fear that revealing their conditions would end their political careers, tainting them as lame ducks even if

their actual disabilities are only temporary. Their motivations might be more complex, as were Franklin D. Roosevelt's near the end of his life. Neustadt asks, "What explain[ed his] behavior? . . . Perhaps it was patriotism that motivated Roosevelt's incuriosity [in his health], inspired by the conviction that his presence added greatly to the prospects of the war and the succeeding peace."[53] Or, perhaps it was selfishness, denial, an unwillingness to acknowledge his fragility and failing powers, the belief that he was irreplaceable, and/or the disbelief that death could come thirteen weeks after his inauguration.

Although there is no way in which to force a disabled president to remove himself from office temporarily, the existence of a committee with a mandate to examine and report on the president's health annually and when disability is suspected will enhance the likelihood that he will use section 3. Openly reporting his condition himself would be less politically damaging than would waiting for the committee to do so. The president could then reclaim his office without delay after the disability was resolved.

In the event that an ailing president refused to remove himself from office, responsibility would fall to the vice president and Cabinet. In modern times, Vice President George Bush and Reagan's Cabinet rejected invocation of the Twenty-fifth Amendment in the aftermath of the attempt on Reagan's life in 1981, despite the fact that Reagan was in surgery for three hours, was under anesthesia for more than five hours, and suffered physical exhaustion and pneumonia for days after the incident.[54]

Vice presidents and Cabinet members might fail to act out of personal loyalty to the person who appointed them to their current positions in government. They also might fear political reprisals by a vengeful president who denies his disability. Wilson, for example, forced the resignation of Secretary of State Robert Lansing after Lansing convened a Cabinet meeting to take care of executive business neglected by Wilson after his stroke.[55] Vice presidents might be reluctant to invoke the Twenty-fifth Amendment for fear of appearing power hungry in the eyes of the public and their political parties. This might explain Bush's deference to the decisions of the White House staff, who had no constitutional authority to reject invocation—as they did—during the Reagan crisis. Cabinet members have their own reasons for not acting. As political appointees, they might feel a strong desire to "save the king" because they might be displaced by the vice president's own appointees if the president is removed from office. They also might be motivated to magnify their own political power when the president is disabled but officially still in office. Recall Alexander Haig, who declared incorrectly at a press conference following the attempt on Reagan's life, "I am in control here in the White House."[56]

The reporting function of a medical advisory committee may go a long way toward creating incentives for action by the vice president. The political backlash from inaction would simply outweigh any perceived gains. Vice presidents, in particular, might be more willing to investigate if a committee is already in place to provide an objective medical appraisal.

Arguments against a Medical Advisory Committee

Invocation is a political decision. One objection to a medical advisory committee is that the determination of disability is a political matter that should not be "resolved" by

a panel of doctors. "Let us not go beyond the president and vice president . . . to decide doubtful cases of disability lest we construct a monstrosity," C. Rossiter decried. "Physicians should not have a say" in the matter.[57] Bayh also expressed reservations about those "who feel a panel of doctors should be brought in to decide on an ailing president's fitness to continue in office."[58] One imaginative essay talks about a "sanhedrin of medical experts," a "medical sanhedrin," the "medical sanhedrin model," and finally (horror of horrors) "a sanhedrin of doctors." This, of course, is the baldest of conspiracy theories at work. It attributes hidden powers to a group of carefully chosen physicians who have no power at all. It speaks of "the degree that medical specialists aspire to control political and constitutional judgments," the view that "medical judgments should substantially supplant political judgments," and "the attempt of medical experts to disqualify a president."[59]

Surely, it must be clear that an advisory committee would advise the vice president, not "decide" or "resolve." Such comments might appropriately be directed to a plan that replaced the vice president and Cabinet by a panel of doctors; the current proposal leaves the political decision exactly where the Twenty-fifth Amendment has located it. The committee's role would be to convey to the president, vice president, Cabinet, and presidential physician its appraisal of the degree of medical impairment present. That is where its involvement in the determination of disability would end. The conceptual difference between judging impairment and disability is not new to those in the medical profession, as Park and others have emphasized.[60] Impairment is "related to the health status of the individual" and must be judged by a physician. Disability, on the other hand, can be determined "only within the context of . . . occupational demands the individual is unable to meet as a result of the impairment" and is a decision ultimately left to nonmedical parties.[61]

Committee physicians might disagree. It has been asserted that agreement among physicians as to the level of impairment might be difficult to attain. Jerrold M. Post and Robert S. Robins believe that consensus is speculative because "the criteria for evaluating and predicting disability will founder on medicine's inherent uncertainty."[62] Bayh also notes "the distinct possibility of differing diagnoses of the president's capacity to perform. . . . A four-to-three vote . . . would hardly soothe the nerves of an American public which was apprehensive about the president's health."[63] This is truly a remarkable argument from the architect of the Twenty-fifth Amendment. What if the Cabinet vote were split down the middle, with a majority of one supporting the vice president's belief that the president was disabled? Would that soothe anyone's nerves? But that is section 4 of the amendment. Five-to-four decisions of the Supreme Court are legion. Perhaps we should express our dismay and amazement that justices may interpret great constitutional issues differently. But their split decisions have hardly shaken the foundations of the republic.

Of course, different doctors might have different opinions. This simply highlights the inadequacy of relying on just a single doctor, the White House physician, to determine the president's health status when it is seriously in question. Bayh says that "it is impossible to diagnose by committee."[64] But we do it every day—in tumor boards, in cardiac conferences, in medical rounds—almost invariably coming to consensus as to

diagnosis and therapy. It is the heart and soul of medicine to use consultants who are familiar with a patient and his or her problems whenever ambiguity exists.

Bayh believes that "the best medical minds should be available to the president."[65] (Does that not sound like a committee? And if so, should it be a one-shot, ad hoc affair or one thoroughly conversant with the president's health?) Certainly, the president's physician has not always been "the best medical mind" (e.g., Charles Sawyer [for Harding], Cary Grayson [for Wilson], Ross McIntire [for Roosevelt]).

The committee's work will be of poor quality. Burton J. Lee, President Bush's White House physician, opposes what he calls "committee medicine":

> I discussed this matter, while in the White House, with many strong advocates of "committee medicine." I persuaded them that this always produces the lowest common denominator of medical decision making. . . . This also disregards how every proficient and expert clinician conducts his clinical affairs.[66]

Surely, Lee means that every patient deserves a good primary care physician. That same physician is happy to call in one or more consultants (a committee?) when problems are complex and the decision is of great moment. But the medical advisory committee will not be managing the president's day-to-day illnesses; instead, it will provide an expert assessment of the degree of impairment of the president when the question arises and, thereby, will moderate the conflict of interest of the physician to the president.

A medical advisory committee is gratuitous and unnecessary. A committee is not needed, it has been said, because presidential inability always will be obvious to those around the president (precisely the ones most likely to engage in a cover-up). A related argument is that the media always will inform the public. "The free press of this country finds out almost immediately everything, and there are very few lies that can be told that the press will believe for very long," according to Lee.[67] In fact, disability would only be obvious to those in the White House and the media in a worst-case scenario in which the president was nearly completely incapacitated. In those "gray area" cases in which disability is only suspected, accurate and impartial advice on the degree of medical impairment remains essential for the vice president and Cabinet to make sound decisions on invocation.

A further argument against an advisory committee suggests that the presidential physician always could summon experts if the need arose. Clinton's doctor emphasizes, "We have a team of military physicians. . . . [We] have consultants from Bethesda Naval Hospital [and] from Georgetown [University] and George Washington University."[68] But a group of consultants gathered ad hoc will not have a baseline knowledge of the president's health from which to detect subtle changes in his condition.[69] The consultants also would lack the institutional credibility of the committee because they would be selected by the physician to the president. By contrast, the prominent composition, clearly defined role, and nonpartisan status of the committee chosen would insulate its findings from suspicion.

The ad hoc approach also is less expedient; it will take time for the consultants to become thoroughly acquainted with the president's medical history. Timing is particularly important in cases where a previously disabled president declares his intention to resume office.[70] Under section 4, the vice president and Cabinet have only four days in which to render a thorough evaluation of the president and judge his ability to resume his duties.

The medical advisory committee could not assemble quickly. It might well take a few hours for the members of the committee to reach Washington, D.C., depending on their locations and the airlines. Surely, it would not take any longer. In the event that the president suddenly were to become incapacitated, the vice president and Cabinet might require instant medical advice to determine whether they wish to consider invocation of the Twenty-fifth Amendment. They would, of course, be expected to rely on the presidential physician until the members of the committee arrive or even on local consultants as required. With the convening of the advisory committee, the president's physician would have the resources at hand to provide expert backup and support in crisis, or in the presence of more protracted illness, and the vice president would have the assurance of the dispassionate appraisal essential for him to make the ultimate judgment on disability.

The committee would violate the separation of powers doctrine. A medical advisory committee, it has been suggested, might violate the separation of powers doctrine because it is initiated by Congress while imposing on the executive branch the requirement of a medical review. Such an apparent intrusion on a presidential prerogative has precedent in the substance of the amendment itself, which created extensive congressional power over presidential inability decisions. Under section 4, the vice president and a majority of the Cabinet certify the president's temporary inability to serve, with the vice president becoming acting president. If the president subsequently states that his inability is terminated and he wishes to return to office, then his cognitive competence may be challenged by the vice president and a majority of the Cabinet. Congress then has the power over reinstating the president. The "such other body" clause, already in the Constitution, clearly establishes a role for Congress in the event that its use is required.[71] If the framers of the amendment saw no challenge to the separation of powers in the congressional role, then the proposed committee, with an informational role that is far less intrusive than Congress's decisional role, would arguably survive any challenge to its constitutionality, whether created by statute or by congressional resolution.

Equally important, the medical advisory committee neither usurps nor interferes with executive powers. It dictates no outcomes, blocks no policies, and cannot change any legal status. It might distress the president, but *Clinton v. Jones*, permitting a civil suit against a standing president, indicates that other branches, such as the Supreme Court that sanctioned the suit, might inconvenience him to a greater degree.[72] In fact, the advisory committee is a far less restrictive alternative because the "such other body" clause permits Congress to interfere radically by cutting the Cabinet out of the loop.

The committee fails to meet the demands of accountability. The decision to invoke the Twenty-fifth Amendment to replace a comatose or reluctant president temporarily by

the vice president "ought to be made by officials who can be held accountable by the electorate."[73] A committee of medical experts "fails to meet the demands of accountability," it has been asserted.[74] Surely, this must be viewed as a spurious argument. With or without the advisory committee, the vice president and a majority of the Cabinet make the decision, exactly as the Twenty-fifth Amendment requires. The committee does nothing but advise and consult. It does not comprise the other body, nor does it supplant the Cabinet in its constitutionally designated role. Elected with full knowledge of the committee's role as defined by Congress, any president who "refuses to be examined"[75] will immediately invite accusations of a cover-up. The political cost of his failure to cooperate would discourage such obstructionist tactics.

The physician members of the committee might object to financial disclosure requirements related to their appointments. Although the members might be subject to the Federal Advisory Committee Act, it is by no means clear whether they would be bound by the "financial disclosure and conflict of interest provisions of the Ethics in Government Act."[76] If it were determined that they were "employees" and not subject to the appointments clause, then they would not be subject to the statute. If they were considered "inferior officers" and subject to the act, then it is unlikely that they would object in any case. Certainly, those at academic medical centers accept the reality and desirability of financial disclosure in all settings where potential conflicts of interest might arise. If necessary, Congress also might exempt the members from these laws to encourage physicians to serve on the committee.

The committee might harass the president. Attorney General William Rogers stated in 1958,

> It seems unwise to establish elaborate legal machinery for giving the president physical and mental examinations. This would give a hostile commission power to harass the president constantly and risk danger of irresponsible demands for commission action. Not only would [it] be an affront to a president's personal dignity, but it would also degrade the presidential office itself.[77]

This view ignores the fact that the advisory committee would have a very narrow mandate. It would meet only to examine the president's health once a year or in the event that the president was thought to be significantly impaired. A threat to the integrity of the presidential office lies less with an independent committee than with the cover-ups and deceit that have characterized the handling of presidential disability in the past.

The assessment of impairment might be "leaked," compromising the president's ability to lead. The sense of this extraordinary concern is that a medical evaluation of impairment would become public because of a "leak."[78] But White House leaks are the coin of the realm and might originate from the president's physician, the White House staff, or even an occasional "deep throat." The only way in which to prevent information on impairment from becoming public is to avoid any medical evaluation whatsoever, even if the president were totally unable to conduct the affairs of office. The committee would be

no more likely to be the source of a rumor as to the president's health than would any of the hundreds of White House employees eager to oblige friendly reporters.

The committee would violate the physician's confidential relationship with his patient. The relationship between doctors and patients traditionally has been grounded in three related principles: the right to privacy (which is recognized in varying degrees by federal and state constitutions and laws), doctor-patient confidentiality (which is founded on the Hippocratic Oath and professional codes of conduct), and doctor-patient privilege (which gives medical information protected status against forced disclosure in legal proceedings). Confidentiality is important for maintaining trust, which in turn may affect therapeutic success.[79]

Although these principles serve an important function, they are not absolute, nor do they necessarily outweigh the particular interests served by full disclosure of the president's health. Privilege often is suspended in favor of protecting constitutional rights or where confidential information may clear an individual charged with a crime.[80]

Confidentiality is circumscribed by laws that require doctors to report matters of public health and safety such as fetal deaths, gunshot and knife wounds, communicable diseases, the dispensation of controlled substances, suspected child abuse, and health conditions that impair a motorist's ability to drive safely.[81]

A doctor is permitted, under the American Medical Association's Code of Ethics, to provide certain important data without the patient's consent. The code provides that a physician must be scrupulous in protecting a potential victim from serious threats of bodily harm voiced by a patient. This directive is reflective of the principles articulated in the 1976 California Supreme Court ruling, *Tarasoff v. Regents of the University of California*, in which the court held that a psychotherapist may violate confidentiality because of the duty to protect individuals from patients intending to harm them.[82]

If we apply the reasoning of the *Tarasoff* ruling to the advisory committee, then its members would have a responsibility to inform the public of any serious illness that might impede or degrade the president's capacity to make decisions for the nation. The benefits of protecting the nation from the action (or inaction) of an impaired leader could outweigh the president's confidential relationship with his doctor. An analogous position is that of airplane pilots who are regularly screened for heart disease knowing that an abnormal electrocardiogram must be reported to one's employer and might cause the pilot's job to be terminated. For these individuals, the consequence of sudden disability is so grave that full reporting of any serious medical conditions is justified. Because the committee would be created specifically for the purpose of evaluating the health of the president, and because each incoming president would understand its mandates, invasion of the president's privacy would be eased. Its findings could be construed as lying outside a specific doctor-patient relationship and beyond the normal standard of confidentiality that exists in that relationship. If the chairman and the members of the Joint Chiefs of Staff undergo annual physical examinations and may, if disabled, be relieved of their command in the national interest, then it seems reasonable to extend this requirement to their commander-in-chief, whose disability would be of far greater importance to the nation.

Even if the objections to the committee were sound—which they are not—it still would be far better to afford the political actors responsible for invocation with a level of medical expertise that could only improve the quality of their decision.

Conclusions

The Twenty-fifth Amendment to the Constitution evolved as a response to the need to relieve a sick and disabled president from the responsibilities of office, in the best interests of both the sick president and the nation. The congressional hearings that preceded and accompanied its enactment made clear that some members of Congress understood the need for objective medical information to be available to the vice president and Cabinet before they could make the political determination of disability. Nevertheless, not a single physician was called to testify or advise in the Senate or the House despite the fact that they represent the only societal repository of expertise on physical and mental impairment. Nor was any mechanism defined whereby a dispassionate medical appraisal of the cognitive competence of the president could be obtained if it were in question. Instead, there was an implicit reliance on the physician to the president, whose conflict of interest is so strong that he or she has been used in the past more to conceal than to reveal the true state of the president's health.

The Twenty-fifth Amendment remains a vital mechanism for ensuring the stability of the presidency. But its disability provisions (sections 3 and 4) have not been implemented as the framers intended. Sooner or later, the nation will be confronted with a president who has Alzheimer's disease, brain trauma, or illness such that his cognitive faculties are not up to the demands of office. A powerful antidote to the White House cover-ups of the past would be a medical advisory committee on the health of the president, created by congressional action.[83] The committee would review the president's health annually and report to the nation on its significant findings; it also would be convened urgently to assess his health status whenever it was in serious question. It would then advise the vice president and Cabinet of the degree of presidential impairment to provide a scientific medical foundation for the political decision as to the presence or absence of disability. The independence, breadth of expertise, lack of conflict of interest, availability, and credibility of the committee would assure the public of an objective appraisal and would preclude inaction by the executive branch in the face of disability.

The arguments against such an advisory committee—that physicians would decide rather than advise; that they might disagree; that they might harass the president or violate confidentiality; and that the committee is unnecessary, would function poorly, could not assemble quickly, and would infringe on the separation of powers doctrine—have been carefully analyzed and been found wanting. Because the advantages of establishing a medical advisory committee are compelling, it should be the subject of congressional action before, rather than after, the next medical cover-up in the White House and the accompanying public crisis of confidence.

Kami Hayashi, my research assistant, made important contributions to this article by organizing some of the material on which it was based with outstanding intelligence, skill, and a full understanding of our objectives. Fred G.

Karem Jr. ably reviewed and clarified the constitutional issues insofar as they might have evoked objections to the design and the role of the medical advisory committee.

Notes

1. Herbert L. Abrams, "Disabled Leaders: Cognition and Crisis Decision-Making," in *Accidental Nuclear War*, eds. Derek Paul, Michael D. Intriligator, and Paul Smoker (Toronto: Science for Peace/Samuel Stevens, 1990), pp. 136-49.
2. Herbert L. Abrams, "If the Chief Can't Command," *New York Times*, January 4, 1995, p. A19.
3. Herbert L. Abrams, "The Vulnerable President and the Twenty-fifth Amendment, with Observations on Guidelines, a Health Commission, and the Role of the President's Physician," *Wake Forest Law Review* 30, no. 3 (1995): 453-80; Bert E. Park, *The Impact of Illness on World Leaders* (Philadelphia: University of Pennsylvania Press, 1986); Robert E. Gilbert, *The Mortal Presidency* (New York: Basic Books, 1992); Robert H. Ferrell, *Ill-Advised: Presidential Health and Public Trust* (Columbia: University of Missouri Press, 1992); Kenneth R. Crispell and Carlos F. Gomez, *Hidden Illness in the White House* (Durham, NC: Duke University Press, 1988).
4. U.S. Constitution, Amendment XXV. The text of the four sections of the Twenty-fifth Amendment are as follows.

   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 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.
5. Herbert L. Abrams, *The President Has Been Shot: Confusion, Disability, and the Twenty-fifth Amendment in the Aftermath of the Attempted Assassination of Ronald Reagan* (New York: Norton, 1992), pp. 164-77.
6. Whereas section 1 confirmed the vice president's assumption of the presidency on the removal or death of a sitting president, and section 2 provided for filling a vacancy in the vice presidential office, sections 3 and 4 addressed the important problem of a disabled president.
7. John D. Feerick, "The Twenty-fifth Amendment: An Explanation and Defense," *Wake Forest Law Review* 30, no. 3 (1995): 481-82.
8. John D. Feerick, *The Twenty-fifth Amendment: Its Complete History and Applications* (New York: Fordham University Press, 1992), pp. xxv-xxvi.
9. Abrams, *The President Has Been Shot*, pp. 178-96.
10. Feerick, *The Twenty-fifth Amendment*, p. xxvi.
11. "The president was minutes and millimeters away from death, yet the Twenty-fifth Amendment was not invoked. It should have been" (Birch Bayh, "The Twenty-fifth Amendment: Dealing with Presidential Disability," *Wake Forest Law Review* 30, no. 3 [1995]: 441-42).
12. Jerrold M. Post and Robert S. Robins, *When Illness Strikes the Leader: Dilemma of the Captive King* (New Haven, CT: Yale University Press, 1993).
13. Abrams, "The Vulnerable President," pp. 470-73.
14. *Congressional Record*, House hearings, April 13, 1965, p. 7938.
15. Ibid.
16. Ibid.

17. Ibid.
18. Birch Bayh, "The Twenty-fifth Amendment: Its History and Meaning," in *Papers on Presidential Disability and the Twenty-fifth Amendment*, ed. Kenneth W. Thompson (Lanham, MD: University Press of America, 1988), p. 29.
19. Bert E. Park, "Presidential Disability: Past Experiences and Future Implications," *Politics and the Life Sciences* 7 (August 1988): 50-66.
20. John D. Feerick, *From Failing Hands: The Story of Presidential Succession* (New York: Fordham University Press, 1965), p. 250.
21. U.S. Congress, Senate Committee on the Judiciary, Report 66, *Presidential Inability and Vacancies in the Office of the Vice President*, February 10, 1965, p. 13.
22. John D. Feerick, Joel K. Goldstein, and Birch Bayh, "Minority Opinion Regarding Recommendation IV," in *Disability in U.S. Presidents: Report, Recommendations, and Commentaries by the Working Group* (Winston-Salem, NC: Bowman Gray Scientific Press, 1997), p. 20.
23. U.S. Congress, Senate Committee on the Judiciary, Report 66, p. 23.
24. Hearings before the Senate Judiciary Subcommittee on Constitutional Amendments, 88th Congress, 2nd Session, February 25, 1964, p. 115.
25. Ibid., p. 116.
26. Ibid., p. 119.
27. Bayh, "The Twenty-fifth Amendment: Its History and Meaning," p. 32.
28. Ibid., p. 36.
29. Abrams, "The Vulnerable President," pp. 464-65.
30. Park, "Presidential Disability," pp. 50-66; Bert E. Park, "Resuscitating the Twenty-fifth Amendment: A Second Opinion Regarding Presidential Disability," *Political Psychology* 16 (1995): 821-39; Bert E. Park, *Ailing, Aging, Addicted: Studies of Compromised Leadership* (Lexington: University of Kentucky Press, 1993), pp. 203-28.
31. See Park, "Resuscitating the Twenty-fifth Amendment," in which he states, "Section 4 of the Twenty-fifth Amendment already gives Congress the power to substitute another body to assist in that determination [of presidential disability] should the need arise." He originally based his proposal for a Disability Commission on this provision. Feerick, however, argues that the other body "replaces the Cabinet as the group which must act in conjunction with the vice president" (*The Twenty-fifth Amendment*, p. 206).
32. Bert E. Park, "Protecting the National Interest: A Strategy for Assessing Presidential Impairment within the Context of the Twenty-fifth Amendment," *Wake Forest Law Review* 30 (Fall 1995): 593-606.
33. Abrams, "The Vulnerable President," pp. 464-65.
34. The medical advisory committee would not be involved in the daily care of the president, which would remain the responsibility of the White House physician.
35. Bayh, "The Twenty-Fifth Amendment: Dealing with Presidential Disability," p. 449.
36. Birch Bayh, "The White House Safety Net," *New York Times*, April 8, 1995, p. A17.
37. Abrams, "The Vulnerable President," pp. 465-69.
38. In discussing the independent counsel, Archibald Cox comments, "In the rare national crises that arise when there is serious evidence of criminal misconduct by a president or other high executive official, only an independent counsel can provide the best assurance of thorough and impartial investigation. . . . The interests of the president and his attorney general are too close to rely on the Justice Department" (Archibald Cox, "Curbing Special Counsels," *New York Times*, December 12, 1996, p. A17). We might rephrase Cox's comments as follows: "In the rare national crises that arise when there is a serious question of presidential impairment, only an independent medical advisory committee on the health of the president can provide the best assurance of impartial review and reporting of the president's health status. . . . The interests of the president and his physician are too close to rely on the physician to the president."
39. Jimmy Carter, Comments at Conference of the Working Group on Disability in United States Presidents, Carter Center, Emory University, Atlanta, GA, January 28, 1995.
40. Lloyd Cutler, "Conflicts of Interest," *Emory Law Journal* 30 (1981): 1020.
41. American College of Physicians, "Ethics Manual," in *Codes of Professional Responsibility*, ed. Rena A. Gorlin (Chicago: American College of Physicians, 1990), p. 246.

42. Richard E. Neustadt, "The Twenty-fifth Amendment and Its Achilles' Heel," *Wake Forest Law Review* 30, no. 3 (1995): 423, 427.
43. Feerick, "The Twenty-fifth Amendment," p. 502, emphasis added.
44. Fred Karem, "The First Patient: Presidential Disability, the Twenty-fifth Amendment, and a Medical Commission on Presidential Health" (unpublished manuscript, Stanford Law School, 1998). Karem has examined the legal implications of establishing a medical advisory committee as a constitutional amendment, as normal legislation, as an implementation measure under the "such other body" provision, and as a congressional resolution. In a remarkably detailed paper, he reviews the constitutional implications and concludes that the amendment language is permissive and supportive of a statutory creation of an advisory committee as an extension of the amendment itself.
45. Hearing before the Subcommittee on Constitutional Amendments of the Senate Committee on the Judiciary, 89th Congress, 1965, pp. 97-98.
46. Park, "Protecting the National Interest," p. 597.
47. Lloyd Cutler, Comments at Conference of the Working Group on Disability in United States Presidents, Carter Center, Emory University, Atlanta, GA, January 28, 1995.
48. Richard Neustadt, Comments at Conference of the Working Group on Disability in United States Presidents, Carter Center, Emory University, Atlanta, GA, January 28, 1995.
49. Bayh, "The White House Safety Net," p. 17. The range and depth of discussion on the question of what *inability* means also is depicted in "House Committee on the Judiciary, *An Analysis of Replies to a Questionnaire and Testimony at a Hearing on Presidential Inability*, 85th Congress, 1st Session, March 26, 1957, pp. 3-11.
50. As it turned out, Reagan's first-term physician (Daniel Ruge), although a neurosurgeon, took pains to include a bright young internist on his staff and never hesitated to use specialists when their talents were required.
51. John Hutton and Lawrence Mohr, along with Ruge (Reagan's physician in his first term), said that they also had evaluated Reagan's mental status by asking him to subtract 7 continually, starting with 100 and by asking other standard questions in annual check-ups. But the fourth doctor, T. Burton Smith (a urologist who was the chief White House physician from January 1985 to January 1987), said that he had been less thorough at times in examining neurological function (Lawrence K. Altman, "While Known for Being Forgetful, Reagan Was Mentally Sound in Office, Doctors Say," *New York Times*, October 5, 1997, p. A34).
52. In October 1919, a few weeks after Wilson's major stroke, Grayson apparently was prepared to disclose Wilson's condition but was prevented from doing so by Wilson's wife (Arthur S. Link, "Woodrow Wilson: A Cautionary Tale," *Wake Forest Law Review* 30 [Fall 1995]: 490). Later, however, as Grayson recounts in his book (Cary T. Grayson, *Woodrow Wilson: An Intimate Memoir* [Washington, DC: Potomac Books, 1977]), there were two incidents in which Wilson raised the issue of resignation. "I am seriously thinking what is my duty to the country on account of my physical condition," Wilson said. "If I am only half efficient, I should turn the office over to the vice president. . . . What do you think?" In response, Grayson suggested that he should hold a Cabinet meeting. "If you will do this . . ., it will reassure you of your ability to continue to handle the situation" (p. 112). Grayson clearly was encouraging Wilson in the denial of his incapacity. Subsequently, when Wilson told him, "I have been thinking over this matter of resigning," Grayson again failed in his duty to the president and the country. He noted that Wilson never broached this topic of resigning again: "It is evident that he believed *what was true*, that he had the strength to administer the office capably" (p. 114, emphasis added). Grayson believed, or he said he believed, that the disabled president, whose lack of leadership was paralyzing the country, was actually competent to govern. This took place in the spring of 1920, at a time when the League of Nations was on its way to defeat in the Senate because of the absence of Wilson's leadership.
53. Neustadt, "The Twenty-Fifth Amendment," p. 429.
54. Abrams, *The President Has Been Shot*, pp. 178-96.
55. Park, "Presidential Disability," p. 52.
56. Abrams, *The President Has Been Shot*, p. 96.
57. Clinton Rossiter, *The American Presidency* (New York: New York American Library, 1960), p. 210
58. Bayh, "The White House Safety Net," p. 17.
59. Edwin M. Yoder Jr., "Determining Presidential Health under the Twenty-fifth Amendment," *Wake Forest Law Review* 30 (Fall 1995): 613-15.

60. Park, "Presidential Disability."
61. American Medical Association, *Guides to the Evaluation of Permanent Impairments*, 2nd ed. (Chicago: American Medical Association, 1984), p. x.
62. Post and Robins, *When Illness Strikes*, p. 175.
63. Bayh, "The Twenty-Fifth Amendment: Dealing with Presidential Disability," p. 447.
64. Bayh, "The White House Safety Net," p. 17.
65. Ibid.
66. Letter from Burton J. Lee to the Editor of the *Journal of the American Medical Association*, December 20, 1994. See also Bayh, "The Twenty-fifth Amendment: Dealing with Presidential Disability," note 47.
67. Ibid.
68. Connie Mariano, Comments at Conference of the Working Group on Disability in United States Presidents, Carter Center, Emory University, Atlanta, GA, January 28, 1995.
69. Park, "Protecting the National Interest," p. 597.
70. Ibid., p. 600.
71. U.S. Constitution, Amendment XXV, Section 4. "Whenever 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 . . ."
72. Clinton v. Jones, 117 S. Ct. 1636 (1997).
73. Katy J. Harriger, "Who Should Decide? Constitutional and Political Issues Regarding Section 4 of the Twenty-fifth Amendment," *Wake Forest Law Review* 20 (Fall 1995): 563-83.
74. Ibid., p. 583.
75. Ibid., p. 582.
76. Ibid. Harriger raises the issue of the willingness of the physician members of such a committee to agree to financial disclosure.
77. Hearings Before the Subcommittee on Constitutional Amendments of the Senate Committee on the Judiciary, 85th Congress, 2nd Session, 1958, p. 14.
78. Feerick, Goldstein, and Bayh, "Minority Opinion."
79. Joseph Healey, "Reconsidering Confidentiality," *Connecticut Medicine* 56 (June 1992): 325.
80. Sandra Nye, "Privilege," in *Confidentiality of Health Records: The Meeting of Law, Ethics, and Clinical Issues* (New York: Gardner, 1982), p. 18.
81. William H. Roach and Susan N. Chernoff, "Confidentiality of Patient Record Information," in *Health Care Ethics: A Guide for Decision Makers*, eds. Gary R. Anderson and Valerie Glesnes-Anderson (Rockville, MD: Aspen, 1984), pp. 226-28.
82. Tarasoff v. Regents of the University of California, 131 Cal. Rptr. 14, 551, P. 2d 334 (1976).
83. A further problem that a medical advisory committee could address if its mission were broadened is the uncertainty about information on the health of presidential candidates. Historically, candidates have been less than candid about their physical and mental health. The result is that the public often has been forced to pick a leader based on incomplete information. A committee could remedy this situation by ensuring that the public receives detailed and objective health data that voters can factor into their decisions. The prospect of older candidates running for the presidency increases the importance of preelection screening. Bob Dole's candidacy in 1996, combined with the general aging of the population, creates the distinct possibility that there will be more candidates over 65 years of age in the future. The incidence of illness and disability and the mortality rate increase dramatically among those in this age group, heightening the need for public awareness of the health status of the candidates.