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Illuminating the 25th?: The Twenty-fifth Amendment to the US Constitution in Eight
Novels

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Abstract

This thesis is the first detailed analysis of portrayals of the Twenty-fifth Amendment in fiction. Ratified in 1967, the Amendment established a constitutional process for managing the contingency of presidential inability. The research examines the portrayal of the Amendment in eight political thrillers published between 1965 and 2014 to analyse issues relating to presidential inability, succession and the role of the Constitution in American culture. The Amendment is a frequent plot device in political thrillers across various popular culture media, and concerns over presidential inability remain topical to this day. A strand of scholarship interprets political or societal issues as problem narratives that look to constitutional interpretation and change to raise public debate and suggest a resolution. This thesis presents presidential inability as a problem narrative with two facets, anxiety and usurpation and identifies a subgenre of the American political novel that these novels represent. Many expert recommendations to improve the Amendment recognise the need to provide information and educate the public on the 25th's purpose. Fiction is one public platform that can engage with that aim. I argue that in the absence of real-life precedent, fictional representations illuminate the contingency that the Amendment plans for and, perhaps, can act as surrogate contingency planning manuals by illustrating the Amendment's provisions and suggesting interpretations. The novels highlight the Amendment's flexibility and ambiguities. The core of the study uses the concepts of political power and legitimacy to explore the novels' treatment of four key aspects of the Amendment, its wording, the roles of the constitutional actors, the processes it sets out and the circumstances when constitutional actors should at least consider its invocation. This thesis uses these four aspects for its structure, bookended by its investigation of three broader features of fiction's use of the 25th: its representations of the presidency, the Amendment's limitations and the use of alternative means of removing a president. Scholars have criticised wider fictional representations of the Amendment as creating misconceptions. Detailed analysis of the eight novels shows that fiction goes beyond representing the Amendment correctly. By presenting characters that essentially act in good-faith and demonstrate its drafters' intent of constitutional morality, the novels show that the problem narrative of presidential inability is unfounded.

Keywords: Twenty-fifth Amendment, presidential inability, power, legitimacy, fiction

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Abbreviations, acronyms, and conventions

The abbreviations, acronyms, and conventions used in this thesis, unless the sense dictates otherwise, are summarised below.

The pronouns used in this thesis reflect that all forty-six real-life American presidents and all eight fictional ones are male. The president is ‘he’ unless the reference is to the two fictional female vice presidents who succeed to the presidency. In recognition of Vice President Kamala Harris’s election in 2020 and the two fictional female vice presidents, the vice presidents are ‘they’ or ‘theirs’ unless sense dictates otherwise.

AMA – the American Medical Association, the only national association that convenes state and speciality medical societies in the United States.

CACTUS - Project CACTUS is the Command and Control The Ultimate System. Its brief is to eliminate the risk of human error in a nuclear launch in Fletcher Knebel, *Night of Camp David* (New York: Vintage Books, 2018). First published in 1965.

FFP - The Frederick Forsyth Papers. Forsyth, Frederick MSS., 1960-2013, Lilly Library, Indiana University, Indiana, IN.

MPP - Mario Puzo Papers, 1955-2000. Rauner Special Collections Library at Dartmouth College, Hanover, NH.

NCC - the National Constitution Center, Philadelphia, PA.

NYT - *The New York Times*.

POTUS - President of the United States.

President - capitalised if referring to a named real-life or fictional president unless sense dictates otherwise.

Section - capitalised refers to a Section of the Twenty-fifth Amendment.

Vice President - capitalised if referring to a named real-life or fictional vice president unless sense dictates otherwise.

WaPo - *The Washington Post*.

WFMP - Walter F. Mondale Papers, The Minnesota Historical Society. St. Paul, MN.

WSP LoC - William Safire Papers. Manuscript Division, Library of Congress, Washington D.C.

WSP NYPL - William Safire Papers. The New York Times Company Archive, Manuscript and Archives Special Collections, The New York Public Library, New York.

WSP Syracuse - William Safire Papers. Special Collections Research Center, Syracuse University Libraries, Syracuse, NY.

Introduction

‘What Would Happen if the President of the U.S.A. Went Stark-Raving Mad?’¹ The eye-catching premise on the 2018 cover of Fletcher Knebel’s reissued 1965 novel *Night of Camp David* (*Camp David*) reflects contemporary interest in the Twenty-fifth Amendment (the Amendment, the Twenty-fifth, or the 25th).² The Amendment elaborates the processes available to remove a president who is ‘unable to discharge the powers and duties of the office’ (presidential responsibilities or powers and duties).³ The debate over the constitutional meaning of presidential inability made headlines again in October 2020 on President Donald Trump’s hospitalisation during the Covid-19 pandemic.⁴ The White House physician released only sketchy information about his condition, treatment, and prognosis.⁵ Since his January 2021 inauguration, conservative media continue to make unsubstantiated allegations of President Joe Biden’s mental frailty.⁶ Trump and Biden are the oldest ever presidents.⁷ Currently (September 2022), the third and fourth in the line of succession, the Speaker of the House of Representatives (the Speaker) (Nancy Pelosi) and President pro tempore of the Senate (Patrick Leahy) are both over eighty years of age.⁸ The age profile of senior politicians suggests the spectre of presidential incapacity will continue to haunt presidential campaigns and any incumbent.⁹ *Camp David’s* re-release is a timely

¹ Fletcher Knebel, *Night of Camp David* (New York: Vintage Books, 2018) (*Camp David*). First published 1 January 1965. It had been out of print since 1971.

² Ibid.

³ US Constitution, amend. 25, secs. 3-4, Appendix A.

⁴ Brian C. Kalt, “The Law Is Clear About Handling Presidential Illness — But It Can Get Murky Fast”, *Washington Post* (*WaPo*), 2 October 2020.

⁵ Adam Gabbatt, “How Healthy is Trump? Years of misinformation make it difficult to know,” *The Guardian*, 3 October 2020, Alexandra Alper, “After Mixed Messages from White House, Trump says ‘real test’ ahead in his covid fight”, *Reuters*, 3 October 2020, Noah Weiland et al, “Trump Was Sicker Than Acknowledged With Covid-19”, *New York Times* (*NYT*), 11 February 2021.

⁶ For example, Marisa Schultz, “Dr Ronny Jackson calls on Biden to immediately undergo cognitive test to assess ‘mental impairment’”, *Fox News*, 17 June 2021.

⁷ Donald Trump was 70 years old at inauguration in 2017, Joe Biden ,78 in 2021, and Ronald Reagan, 69 in 1981.

⁸ As at 1 September 2022 both Nancy Pelosi and Patrick Leahy are 82 years old. George C. Kiser, “Are Senior Citizens Too Old for the Vice Presidency: A Look at the Record”, *Presidential Studies Quarterly* 24, no.4 (Fall 1994): 809-821, <https://www.jstor.org/stable/27551326>, Derek Thompson, “Why Do Such Elderly People Run America?”, *The Atlantic*, 5 March 2020.

⁹ George C. Kiser, “Are Senior Citizens Too Old for the Vice Presidency: A Look at the Record”, *Presidential Studies Quarterly* 24, no.4 (Fall 1994): 809-821, <https://www.jstor.org/stable/27551326>, Derek Thompson, “Why Do Such Elderly People Run America?”, *The Atlantic*, 5 March 2020.

reminder of the importance of fictional representations as a source of information on how the Constitution provides a process to resolve presidential inability.¹⁰

The central question this thesis asks is how do novels that explore presidential inability illuminate the 25th Amendment?¹¹ In answering this question, this thesis surveys how political thrillers referencing the Amendment illuminate a relationship between fiction and the US Constitution that looks to constitutional meaning to raise problem narratives and invite resolutions.¹² A problem narrative is a real-life civic issue for which fictional representations suggest morally appropriate resolutions.¹³ Here, the problem narrative arises from interpretations of the constitutional meaning of ‘unable’ in the 25th Amendment.¹⁴ This thesis presents presidential inability as a problem narrative arising from anxiety over the potential actions of an unable president against the national interest and usurpation by those that might seek to remove a president from his powers and duties.¹⁵ Much debated but little used, the Amendment in general and its Section 4 in particular — which deals with the involuntary removal of a president from his presidential responsibilities — is a useful plot device in certain popular cultural genres. Indeed public reference to the 25th treats it as a shorthand for Section 4.¹⁶ When exploring how a corpus of eight novels illuminates the Amendment, the analysis developed in this thesis goes beyond merely looking at what the novels get right or wrong about it to suggest ways to refine its interpretation. By engaging with power and legitimacy issues in analysing these political thrillers, this thesis argues that fiction serves a valuable purpose in exploring and publicising the need for contingency planning for presidential incapacity. Novels can serve

¹⁰ Tom McCarthy, “Night of Camp David: the Return of a 1965 Book About An Insane President”, *The Guardian*, 30 November 2018, Bob Woodward, interview in *By The Book*, *NYT*, 13 September 2018.

¹¹ By date of publication: Knebel, *Camp David*, Robert E. Serling, *The President’s Plane Is Missing* (Garden City, NY: Doubleday & Company, Inc., 1967) (*Plane*), Charles Templeton, *The Kidnapping of the President* (London: Quartet Books, 1974) (*Kidnapping*), William Safire, *Full Disclosure* (Garden City, NY: Doubleday & Company, Inc., 1977), Frederick Forsyth, *The Negotiator* (London: Corgi Books, 1989) (*Negotiator*), Mario Puzo, *The Fourth K* (London: Guild Publishing, 1991) (*Fourth K*), John Calvin Batchelor, *Father’s Day* (New York, St. Martin’s Press, 1994), Dale Napier, *White House Storm* (Las Vegas, NV: Mastersoft Media, 2014) (*WH Storm*).

¹² Alison LaCroix and Bernadette Meyier, in “American Literature and the Constitution”, *National Constitution Center*, webinar, 12 May 2021.

¹³ *Ibid.*

¹⁴ US Constitution, amend. 25, secs.3-4, Appendix A.

¹⁵ For an exploration of anxiety see Rebecca C. Lubot, “A *Dr Strangelove* Situation: Nuclear Anxiety and Presidential Continuity”, *Fordham Law Review* 86, no.3 (December 2017): 1175-1198, <https://ir.lawnet.fordham.edu/flr/vol86/iss3/8>. On usurpation for example see *Cong. Rec.*, 89th Cong., 2nd sess., vol. 110, pt. 17, 28 September 1964, 22990.

¹⁶ Brian C. Kalt, *Unable: The Law, Politics, and Limits of the Twenty-fifth Amendment* (New York: Oxford University Press, 2019), 3.

as surrogate contingency planning manuals as they provide a means to inform and influence public understanding and broaden the public platforms for debate over issues of presidential inability. When doing so, fiction reflects, highlights and sometimes changes the problem narrative of anxiety and usurpation surrounding presidential inability and the associated succession issues.

The Twenty-fifth Amendment

Part of the Constitution since 1967, the Amendment contains four sections, all concerned with ensuring the continuity of the presidency. Section 1 confirms that a vice president succeeds to the presidency in the event of the president's removal, death, or resignation, finally confirming President John Tyler's 1841 interpretation of the Constitution's grammatical shortcomings.¹⁷ The succession of Vice President Gerald Ford on the resignation of President Richard Nixon in 1974 is the sole use of this section to date.¹⁸ Section 2 allows no medium-term vacancy in the vice presidency, without whom none of the constitutional actors can invoke Sections 3 or 4.¹⁹ Under Section 2, the president nominates a vice president for confirmation by Congress.²⁰ Nixon and Ford both used Section 2. Nixon nominated Ford on the resignation of Vice President Spiro Agnew in 1973, and President Ford nominated Nelson Rockefeller as vice president in 1974.²¹ Sections 3 and 4 separate the office of the presidency from its powers and duties by confirming the role of acting president.²² Section 3 allows a president to step aside voluntarily and reclaim his presidential responsibilities later.²³ Presidents Ronald Reagan, George W. Bush, and Biden invoked Section 3 four times. Reagan used it in 1987, Bush in June 2002 and July 2007, and Biden in November 2021, all before anaesthesia, reclaiming their presidential responsibilities within a few hours.²⁴

¹⁷ US Constitution, art. 2, sec.1, and the use of 'the Same', Appendix A, John D. Feerick, *The Twenty-fifth Amendment: Its Complete History and Applications* (New York: MJF Books, 2014), 6.

¹⁸ Feerick, *The Twenty-fifth Amendment*, chp. 11.

¹⁹ US Constitution, amend. 25, secs. 2-4, Appendix A.

²⁰ *Ibid.*, sec. 2..

²¹ Feerick, *The Twenty-fifth Amendment*, chps. 10 and 12.

²² US Constitution, amend. 25, secs. 3-4, Appendix A.

²³ *Ibid.*, sec. 3.

²⁴ Feerick, *The Twenty-fifth Amendment*, 196-201, Physician to the President, The White House, memorandum from Kevin C. O'Connor, to Jennifer R. Psaki, 19 November 2021, "President Biden's Current Health Summary".

The as-yet uninvoked Section 4 provides a constitutionally legitimate process for a vice president and a majority of the Cabinet (or another body if Congress so provides) to declare a president unable to discharge his presidential responsibilities. A president may then declare to Congress that no such inability exists. If a vice president and Cabinet wish to sustain their declaration of presidential inability, they must do so within four days. Congress must then decide by a two-thirds majority in both Houses within twenty-one days of assembling whether to declare a president unable.²⁵ The two-thirds majority is a higher threshold than for impeachment, the only other constitutional method of removing a president.²⁶ The vice president remains acting president until Congress votes, or the twenty-one days expire. Should Congress find against the president, he retains the presidency, but the vice president continues as acting president, potentially for the remainder of the quadrennial term. The 25th does not deal with vice presidential inability.

Constitutional amendments do not require presidential approval. In the case of the 25th, endorsement by President Lyndon Johnson, his witnessing of its proclamation in the Oval Office and its speedy ratification indicated its significance.²⁷ For 178 years, an unreliable mix of questionable precedent, controversial succession laws, letter agreements, luck, and wishful thinking were the only means of dealing with presidential inability. By the time Congress passed the Amendment on 6 July 1965, eight of thirty-six presidents had died in office, four by assassination, four from natural causes.²⁸ The House of Representatives (the House) impeached one president, but the Senate did not convict.²⁹ Since the Amendment's ratification on 10 February 1967, no assassination attempts have succeeded, no president has died in office, but one president has resigned, and the House has impeached two presidents, one of them twice.³⁰ The Senate removed neither.

²⁵ US Constitution, amend. 25, sec. 4, Appendix A.

²⁶ *Ibid.*, US Constitution, art. 2, sec. 4.

²⁷ Birch Bayh, *One Heartbeat Away* (Indianapolis: IN: The Bobbs-Merrill Company, Inc., 1968), 341, *Cong. Rec.*, 89th Cong., 1st sess., vol. 111, pt. 2, 28 January 1965, 1547-8, "White House Ceremony Marking the Twenty-fifth Amendment's Ratification", photograph, 25 February 1967, https://ir.lawnet.fordham.edu/twentyfifth_amendment_photos.

²⁸ The assassinations are Presidents Abraham Lincoln (1865), James Garfield (1881), William McKinley (1901), and John Kennedy (1963). The natural causes are Presidents William Henry Harrison (1841), Zachary Taylor (1850), Warren Harding (1923), and Franklin Roosevelt (1945). See Kathryn Moore, *The American President* (New York: Sterling, 2018).

²⁹ President Andrew Johnson in 1868, see Cass R. Sunstein, *Impeachment: A Citizen's Guide* (London: Harvard University Press, 2017), 104-6.

³⁰ Congressional Research Service, *In Focus, US Secret Service: Threats to and Assaults on Presidents and Vice Presidents*, 15 January 2021. Nixon resigned in 1974. President Bill Clinton was impeached in 1998, see Sunstein, *Impeachment*, 99-104, see also Articles of Impeachment Against Donald John Trump, H.Res. 755, 116th Cong., 1st sess., (18 December 2019), Resolution Impeaching Donald John Trump,

The problem narrative about presidential inability entwines anxiety that an impaired president executes poor decisions, particularly over a nuclear launch, and usurpation that others may wrongly remove a president or exert the power of the office. The tension between these two facets of the problem narrative creates mischief in the fictional plots. The lack of a process for a president stepping aside (voluntarily) or being constitutionally removed as unable to carry out his presidential responsibilities (temporarily or otherwise) contributed to the emergence and relative success of these narratives. Congress failed to act despite the increasing press and public scrutiny of presidential fitness following President Franklin Roosevelt's final illness in 1945 and President Dwight Eisenhower's multiple chronic health problems in the 1950s.³¹ The conjunction of Cold War nuclear concerns and the anxiety of a severely diminished chief executive had President John Kennedy survived in Dallas in 1963 created congressional momentum. While drawing on the process the 25th creates, the arc of the eight novels reflects these concerns.

Building the literary corpus and sources

Novels provide more space than other media to explore a range of possible and detailed scenarios vital to invoking the Amendment.³² When doing so, novels provide a public platform for debate on US politics. Of course, other popular culture representations reflecting the presidency's role in government or in influencing current and historical events also have a role in shaping public imaginary and understanding, especially as many more people view film and TV, for example, than read novels.³³ But the space novels afford allows them to scrutinise the nuances and complexities of medical and political issues that surround presidential inability in ways that film and TV cannot as they strive to keep their audiences entertained.³⁴ As the first detailed examination of fictional representations of the 25th, this thesis will examine novels only, suggesting an approach readily adaptable to other media.

President of the United States, for high crimes and misdemeanors, H.Res. 24, 117th Cong., 1st sess., (25 January 2021).

³¹ John D. Feerick, *From Failing Hands: The Story of Presidential Succession* (New York: Fordham University Press, 1965).

³² Kalt, *Unable*, 81

³³ See Feerick, *The Twenty-fifth Amendment*, chp. 16, Kalt, *Unable*, chp. 7, for film and TV representations. The Smithsonian Museum of American History has had an exhibit on the presidency and the National Constitution Center (NCC) has had an exhibit on the Amendment, as examples of other cultural representations.

³⁴ Kalt, *Unable*, 81.

This thesis focuses on eight novels, all with a potential or actual presidential inability at their core. Together these novels form a key primary source. With no pre-existing lists of novels focused on the Amendment, the selection process commenced with existing definitions of three relevant genres. One definition of the ‘American political novel’ reflects its concern with the ‘overt institutionalized politics of the officeholder, the candidate, the party official, or the individual who perform political acts’.³⁵ Invoking the Amendment is a political act to resolve a medical issue and offers a problem narrative for fictional resolution. A second genre is ‘the Washington novel’, defined as portraying government institutions creating ‘fictional authority’ within ‘the culture of political debate’.³⁶ The institutions of the presidency, the Cabinet and Congress all have roles in the Amendment, and the novels portray the political debate surrounding presidential inability. Thirdly, the ‘presidential novel’ portrays the president as ‘the hero of the national story’ and a source of public trust.³⁷ The novels show that presidential health issues raise questions of public trust. My review of internet fan lists, *New York Times (NYT)* Best Seller lists, the bibliographies in researchers Feerick, Kalt, Smith and Boyer, and augmented by novels suggested by those engaged with my research, generated a list of fifty-six novels published over the period 1934 to 2017 potentially hinging on presidential inability or succession issues.³⁸ Given the exploratory nature of this project, which is the first detailed study of the Amendment in fiction, as well as the size and incomplete character of the initial corpus of novels, I decided to use a convenience sampling strategy.³⁹

After eliminating seven novels that predated the Amendment, I applied four criteria, keeping the three definitions above in focus. Firstly, seeking novels that portrayed recognisable institutions, settings and political circumstances eliminated ten novels in the

³⁵ Joseph Blotner, *The Modern American Political Novel 1900-1960* (Austin, TX: University of Texas Press, 1960), 8.

³⁶ Roger Kaplan, “Allen Drury and The Washington Novel”, *Policy Review* 97 (Oct/Nov 1999), 69, 73.

³⁷ Warren G. Rochelle, “The Literary Presidency”, *Presidential Studies Quarterly* 29, no.2 (June 1999): 407-420, <https://www.jstor.org/stable/27551996>.

³⁸ The key internet search was: ‘United States presidential line of succession in fiction’, accessed 28 October 2018, Michael Korda, *Making the List: A Cultural History of an American Bestseller 1900-1999* (New York: Barnes and Noble, 2001), xxi-xxii, Feerick, *The Twenty-fifth Amendment*, chp. 16, Kalt, *Unable*, chp. 7, Jeff Smith, *Presidents We Imagine: Two Centuries of White House Fiction, On the Page, On the Stage, Onscreen and Online* (Madison, WI: University of Wisconsin Press, 2009), Paul Boyer, *By The Bomb's Early Light: American Thought and Literature at the Dawn of the Cold War* (New York: Pantheon Books, 1985).

³⁹ Tom Clark et al, *Bryman's Social Research Methods Sixth Edition* (Oxford: Oxford University Press, 2021).

science fiction, dystopian, comic or alternative history genres. Secondly, contemporaneous book reviews, newspaper advertisements, the novels' blurbs, or publishers' websites clarified that sixteen novels portrayed succession issues solely, and ten represented more routine features of presidential power, thus overlooking the role of the Amendment. Each of the remaining thirteen novels was critically or publicly well-received or reflected something of their *zeitgeist* in their take on presidential inability. Thirdly, I read the thirteen novels to seek a range of presidential incapacities and to establish whether the 25th was portrayed in sufficient detail to meet the aims of this thesis, leading to the elimination of five.⁴⁰ With the ready accessibility of different media for book consumption, the availability of current print editions was not a consideration. One implication of the sampling strategy is that the eight novels cannot be said to represent the entire universe of novels on the Amendment. This limitation does not, however, affect the exploratory nature of this thesis and its objectives.

The publication dates of these eight novels cover nearly fifty years, broadly from the shock of the last president to die in office, Kennedy's 1963 assassination, to the aftermath of the horror of 9/11. These watershed events also bookmark publicly known US government attempts at contingency planning for government continuity, including ratification of the Amendment.⁴¹ Each novel raises questions of what to do about presidential inability, who should do it, and when resolving it is a political imperative. Obviously, the eight do not constitute a complete portrait of the Amendment or the gamut of legitimacy or power issues that could arise from its invocation. There are overlaps and gaps in the range and severity of incapacities portrayed, the relationships among the relevant constitutional actors, and the broader exigencies from the Cold War through global resource shortages to cyber warfare. And sometimes, the detail conveyed about the Amendment is just wrong, but, even where the facts portrayed are incorrect, these eight novels illuminate important real-life issues – and misunderstandings – pertinent to the 25th.

⁴⁰ Tom Clancy, *The Sum of All Fears* (London: HarperCollins, 1991), Vince Flynn, *Transfer of Power* (London: Pocket Books, 1999), Brad Thor, *The Lions of Lucerne* (New York: Pocket Star Books, 2002), Michael Palmer, *The First Patient* (London: Arrow Books, 2008), Sam Bourne, *To Kill the President* (London: HarperCollins, 2017).

⁴¹ Garrett M. Graff, *Raven Rock* (New York: Simon & Schuster, 2017), Continuity of Government Commission, The Brookings Institution, and American Enterprise Institute (the CoGC), *Preserving our Institutions: the First Report of the Continuity of Government Commission: The Congress*, May 2003, The CoGC, *The Presidency: Preserving our Institutions: the Second Report of the Continuity of Government Commission: Presidential Succession*, June 2009 (the CoP Report), https://ir.lawnet.fordham.edu/twentyfifth_amendment_reports/2.

The eight novels use real-life characters, events, or symbols to anchor reality. All are set in a near future to their publication date, placing Section 4 as an event that needs imagining rather than experienced, supporting the argument that these novels can be approached as surrogate contingency planning manuals. All eight fictional presidents are in their first term and, therefore, still have the promise of their election to fulfil. Consequently, they are still concerned about public opinion as they might seek a second term and have campaign commitments to deliver. The novels also share racial and gender norms that reflect the historical reality of the American presidency. The fictional presidents are white males, from forty-eight to seventy-five years of age. While two vice presidents are female, both are white and in their 50s, and only one ranking Cabinet officer is black.⁴² This thesis does not analyse the novels' portrayal of race or gender but acknowledges the whiteness and masculinity portrayed.

The fictional presidents represent a range of political affiliations, personal circumstances, and political outcomes. Two are Republican, three are Democrats, and two have no stated affiliation. Three are widowers, one is divorced, three are happily married, and one has separated from and then reconciled with his wife. Only four have living children at the beginning of the novels. Regarding inability, the novels portray two absent presidents, two suffering profound grief, one with a physical disability, and three with cognitive issues. The novels' conclusions show three presidents continue in office, one dies by assassination, and four resign. One novel invokes both Sections 3 and 4. Four novels consider Section 4, and the other three invoke it. With the range of ailments and outcomes, the novels highlight the scope for constitutional mischief that Section 4 invites as each contributes different points of interest for this thesis. The table below summarises the novels' use of the Amendment, not just invocation, and their outcomes.

⁴² Puzo, *Fourth K*, 154, 197, Napier, *WH Storm*, 21, 116, Safire, *Full Disclosure*, 16.

Table 1 Summary of the novels

Novel	Author	Year	25th Sections	Inability issue	President/ Vice President	Outcome
<i>Night of Camp David</i>	Fletcher Knebel	1965	1 and 4	Cognitive	Mark Hollenbach/ Patrick O'Malley	President resigns, vice president becomes president
<i>The President's Plane is Missing</i>	Robert Serling	1967	4	Absence	Jeremy Haines/ Frederick Madigan	Vice president becomes acting president, president resumes powers and duties
<i>The Kidnapping of the President</i>	Charles Templeton	1974	3 and 4	Absence	Adam Scott/Ethan Roberts	Vice president does not take on powers and duties
<i>Full Disclosure</i>	William Safire	1977	1,3 and 4	Physical	Sven Ericson/ Arnold Nichols	Vice president and president both resign, Speaker becomes acting president
<i>The Negotiator</i>	Frederick Forsyth	1989	1 and 4	Grief	John Cormack/ Michael Odell	Vice president is de facto acting president, president resumes powers and duties
<i>The Fourth K</i>	Mario Puzo	1991	1 and 4	Grief/ hubris	Francis Kennedy/ Helen DuPray	President is assassinated, vice president becomes president
<i>Father's Day</i>	John Calvin Batchelor	1994	1,2,3 and 4	Cognitive	Teddy Jay/ Shy Garland	Acting president is assassinated, president resigns, Speaker becomes acting president
<i>White House Storm</i>	Dale Napier	2014	1 and 4	Cognitive	Charlie Davidson/ Joan Queenan	President resigns, vice president becomes president

First published as Congress debated the Amendment, reviews of *Night of Camp David* (*Camp David*) presented it as 'skilfully rendered' and 'a little too plausible for comfort',

and it spent at least eighteen weeks on the *NYT* Best Seller List.⁴³ On its re-publication in 2018, its publisher noted its cross-over appeal to non-fiction readers, and reviews commented on its relevance to the then-current political moment.⁴⁴ Knebel was a political journalist and co-author of *Seven Days in May*, a seminal novel of Cold War anxiety.⁴⁵ The plot elaborates on the difficulties of identifying presidential inability and questions who can resolve it. The novel focuses on the challenges of Senator Jim MacVeagh to gather evidence that will convince others, particularly Vice President Patrick O'Malley, that President Mark Hollenbach is mentally impaired. Hollenbach is about to meet the Soviet Premier to seek a common approach to China's threat. Of relevance for this thesis is the knowledge of medical professionals and a president's family, the good faith of the actors portrayed and the pre-Amendment practice of letter agreements between a president and his vice president as a contingency plan.

The President's Plane is Missing (Plane) was written by aviation journalist Robert Serling. The novel was introduced on a 'new and recommended' list in the *NYT* and spent at least twenty-one weeks on the *NYT* Best Seller List.⁴⁶ The plot is as follows: President Jeremy Haines has arranged a secret meeting at Camp David in Maryland with the Soviet Premier to negotiate a bilateral pact to deter an increasingly aggressive China.⁴⁷ The press believes that Haines has departed on a much-needed short vacation. Air Force One crashes in Arizona, but investigators find no trace of Haines in the wreckage. The presidential inability portrayed in *Plane* is absence, a common fictional trope in the presidential novel genre.⁴⁸ The debate in *Plane* on the circumstances when the Amendment might apply, the relationship between the president and his vice president, and between the vice president and the Cabinet are relevant to this thesis. Also relevant are *Plane's* depictions of the political issues that arise when the duration of presidential inability is uncertain.

Canadian political journalist Charles Templeton's *The Kidnapping of the President (Kidnapping)* did not appear on the *NYT* Best Seller List, and *NYT* reviewed it

⁴³ David Dempsey, "Was the President Off His Rocker", *NYT*, 23 May 1965, "Best Sellers", *NYT*, 24 Oct 1965.

⁴⁴ McCarthy, "Night of Camp David".

⁴⁵ Charles W. Bailey and Fletcher Knebel, *Seven Days in May* (New York: Harper & Row, 1962).

⁴⁶ "Best Sellers", *NYT*, 21 April 1968, "Dell Best Sellers", *NYT*, 15 September 1968.

⁴⁷ Serling, *Plane*, 3.

⁴⁸ For examples, Rex Stout, *The President Vanishes* (New York: Pyramid Books, 1967), first published 1934 and more recently, Bill Clinton and James Patterson, *The President is Missing* (London: Century, 2018).

unfavourably.⁴⁹ *Kidnapping* earned its place in the corpus of novels for portraying involuntary absence as a contrast to *Plane*'s voluntary absence. Guerrillas kidnap President Adam Scott and hold him in a booby-trapped truck in Times Square, New York, on the eve of the mid-term elections. It is unlikely that Scott will be injured but survive, the scenario that concerned the Amendment's drafters.⁵⁰ Unknown to anyone other than Scott and Vice President Ethan Roberts, Scott has requested his resignation. *Kidnapping*'s use of the Amendment's wording and historical examples of presidential inability is of interest here. Also relevant is the Cabinet debate on paying the ransom as a proxy debate on Scott's incapacity and Roberts' conflicted position.

Publisher Bill Adler suggested a novel exploring the constitutionally grey areas created by a sudden onset physical disability of a president to William Safire.⁵¹ Safire was a Nixon speechwriter turned political columnist.⁵² Safire's 1977 novel, *Full Disclosure*, is the first to use the Amendment as the architecture for its plot, exploring Section 4's nuances through the perspectives of the constitutional actors and others. President Sven Ericson is collateral damage in a Soviet coup d'état, leaving him blind. The ambitious Treasury Secretary, T. Roy Bannerman, who controls Vice President Arnold Nichols, tries to orchestrate Ericson's resignation. Cabinet, congressional and public opinion start to turn against the blind president. *Full Disclosure* highlights the Amendment's nuances through Cabinet and congressional voting on Section 4, its contrast with impeachment, and shifts in public opinion. *Full Disclosure* was well-received critically and popularly on its release, both hardback and paperback versions spending at least fourteen weeks and one week respectively in the *NYT* Best Seller Lists.⁵³ Safire received a then-record sum for the paperback rights and sold the film rights.⁵⁴ Safire later used his *NYT* column to comment on the real-life lack of the Amendment's use and his position as Chairman of the Dana

⁴⁹ Newgate Callender, "Criminals at Large", *NYT*, 20 July 1975.

⁵⁰ Bayh, *One Heartbeat Away*, 1-6.

⁵¹ Letter to William Safire from Bill Adler, 29 July 1974, The William Safire Papers, Special Collections Research Center, Syracuse University Libraries, Syracuse, NY (*WSP Syracuse*).

⁵² Biographical Note in the Finding Aid, William Safire Papers, Manuscript Division, Library of Congress, Washington D.C. (*WSP LoC*).

⁵³ "Best Sellers", *NYT*, 23 October 1977, John D. Feerick, "Review of *Full Disclosure*", The Lawyer's Bookshelf, *New York Law Journal*. 29 July 1977.

⁵⁴ "1st Safire Novel in Paperback Said to Bring Over \$1million", *NYT*, 8 February 1977, letter from Benjamin Stein to William Safire, 1 July 1979, *WSP Syracuse*. I have found no evidence of a film version.

Foundation to sponsor the Working Group on Presidential Disability (the Working Group Report), which contributed recommendations to improve the Amendment.⁵⁵

Novelist and journalist Frederick Forsyth's bestseller *The Negotiator* (*Negotiator*) was published in 1989 and received critical reviews on its release.⁵⁶ It spent at least fourteen weeks on the hardback *NYT* Best Sellers List and at least seven on the paperback list.⁵⁷ Reagan's staff's consideration of Section 4 in 1987 influenced Forsyth's exploration of how those opposed to a president might remove him.⁵⁸ President John Cormack is deliberately brought to mental and physical collapse by the kidnap and murder of his only son. His grief brings him close to resigning, as intended by an oil industry cabal opposed to Cormack's *détente* with the Soviet Union. Cormack finally plans to resign but finds new resolve when the negotiator of the title identifies those responsible for his son's murder. Of interest here is the supportive relationship between the president and his vice president, the president and his ranking Cabinet members and the effects of incapacitating grief on Cormack's ability to fulfil his presidential responsibilities.

Mario Puzo, the author of *The Godfather*, posits a distant cousin of John Kennedy as *The Fourth K* (*Fourth K*) of his title.⁵⁹ John Kenneth Galbraith reviewed *Fourth K* as 'beyond the range of reasonable probability' while the *Washington Post* (*WaPo*) described it as 'a page-turner not only for the right reasons but also for the wrong ones'.⁶⁰ The novel spent at least two weeks on the *NYT* Best Seller List on publication in 1991 and a further three on the paperback list.⁶¹ Like Cormack in *Negotiator*, grief incapacitates President Francis Kennedy. Terrorists hijack and kill Kennedy's only daughter after assassinating the Pope. Kennedy becomes increasingly hubristic in responding to the terrorists' ransom demands and a nuclear explosion in Manhattan. As congressional support for Kennedy wanes, his

⁵⁵ William Safire, "Taking the 25th", *NYT*, 15 July 1985, letter from William Safire on the Dana Foundation letterhead, 5 November 2001, *WSP Syracuse*. The Working Group on Presidential Disability (the Working Group Report) see James F. Toole and Robert J. Joynt, eds., *Presidential Disability, Papers, Discussions and Recommendations on the Twenty-fifth Amendment and Issues of Inability and Disability Among Presidents of the United States* (Rochester, NY: University of Rochester Press, 2001).

⁵⁶ John Katzenbach, "Floundering Forsyth", *WaPo*, 21 April 1989.

⁵⁷ "Best Sellers", *NYT*, 30 July 1989, "Paperback Best Sellers", *NYT*, 20 May 1990.

⁵⁸ Forsyth drew on Jane Mayer and Doyle McMahon, *Landslide: The Unmaking of the President 1984-1988* (Boston, MA: Houghton Mifflin, 1988 and Los Angeles, CA: Greymalkin Media LLC, 2018, Kindle), *The Frederick Forsyth Papers, 1960-2013*, Lilly Library, Indiana University, Indiana, IN (*FFP*).

⁵⁹ Mario Puzo, *The Godfather* (New York: G.P. Putnam's Sons, 1969).

⁶⁰ John Kenneth Galbraith, "A Bad Week for the President", *NYT*, 13 January 1991, E. J. Dionne Jr., "Trouble in Camelot", *WaPo*, 20 January 1991.

⁶¹ "Best Sellers", *NYT*, 20 January 1991, "Paperback Best Sellers", *NYT*, 29 December 1991.

Cabinet seeks to invoke Section 4. *Fourth K* conflates Section 4 with impeachment, and much of the detail on impeachment and the Amendment is wrong. However, its portrayal of the potential conflicts of Vice President Helen DuPray, the roles of the Cabinet, and public opinion in the exercise of Sections 3 or 4 justified its inclusion in the corpus of novels, highlighting that illumination does not depend on portraying the Amendment correctly.

Father's Day portrays an autogolpe, a self-coup, by an acting president to prevent an elected president from resuming his presidential responsibilities. Autogolpe is used in this thesis to describe Garland's actions rather than a coup d'état. A journalist and broadcaster, Batchelor also publishes under a pseudonym, Tommy Paine.⁶² Reviews and advertisements for *Father's Day* refer to its use of the Amendment. *Father's Day* did not make the *NYT* Best Seller Lists, and reviews were critical.⁶³ President Theodore 'Teddy' Jay invoked Section 3 after suffering from severe depression. While over the top and satirically portrayed, the power-hungry Vice President Thomas Edison 'Shy' Garland's actions as acting president illustrate the political risks to all parties in mounting a Section 4 challenge. *Father's Day* also presents the difficulties of evidencing a medical diagnosis. Jay's prolonged absence shows the challenge of restoring political viability. Of the novels, *Father's Day* is critical of the 25th.

Dale Napier's 2014 debut novel, *White House Storm* (*WH Storm*), is the final novel selected. As the novel is self-published, there are few reviews on book-selling sites.⁶⁴ Napier has a portfolio career and has published non-fiction.⁶⁵ *WH Storm* is a homage to *Seven Days in May* in updating its plot to the cyber-security issues of control over a nuclear launch and to *Father's Day* in the cognitive decline of President Charlie Davidson. A former Governor of California, Davidson shares more than political history with Reagan: he is in the early stages of Alzheimer's disease. The newly formed Democratic Republic of Persia has developed nuclear capabilities, and China may be planning a cyber-attack on US military systems. Vice President Joan Queenan is initially unaware of Davidson's diagnosis. *WH Storm* uses the 25th to explore the challenges of episodic presidential mental ill-health and the need for clarity in the chain of command.

⁶² 'John Calvin Batchelor', VJ Books, accessed 17 May 2022, <https://www.vjbooks.com/John-Calvin-Batchelor-s/1791.htm>,

⁶³ Timothy Foote, "The President's Brain is Missing", *NYT*, 30 October 1994.

⁶⁴ 'White House Storm (Queen Joan Book 1)', accessed 17 May 2022, www.goodreads.com.

⁶⁵ 'Dale Napier', accessed 17 May 2022, www.amazon.com.

While existing definitions of genre aided selection, this thesis proposes that these eight novels nest within them as a distinct subgenre of ‘25th Amendment novels’, defined as exploring the problem narrative of presidential inability and institutional and public responses to it.⁶⁶ As the bestsellers among the eight illustrate, publication of this genre reflects a willing consumption of problem narratives of anxiety and usurpation about presidential inability.⁶⁷ While the novels illuminate the significance of the Amendment and concerns about its real-life use, they also highlight broader constitutional and statutory issues by not staying within the confines of the 25th. Portraying its consequences, including succession issues, its limitations, and comparison with other means of removing a president contributes to the illumination the novels achieve.

This thesis also utilises government documents and newspaper articles, focusing on *NYT* and *WaPo*. It also uses presidential and vice presidential archives and autobiographies, specifically, the archives of Presidents Harry Truman, Kennedy, Ford and Reagan and Vice President Walter Mondale and autobiographies of Presidents Eisenhower, Nixon, Jimmy Carter and Reagan.⁶⁸ The analysis also utilises archival sources for three of the eight authors, William Safire, Frederick Forsyth and Mario Puzo.⁶⁹ Among the government documents referred to extensively is a contingency plan on presidential inability prepared during Reagan’s presidency and added to until at least President Bill Clinton’s administration (the Contingency Plan).⁷⁰ In addition to the Constitution and the eight novels, these are the primary sources consulted.

⁶⁶ My definition.

⁶⁷ Jerry Palmer, *Potboilers: Methods, Concepts and Case Studies in Popular Fiction* (London: Routledge, 1991), 37, Smith, *Presidents We Imagine*, 9.

⁶⁸ For example, the Harry S. Truman Library, the John F. Kennedy Library, The Gerald R. Ford Library the Reagan Library, The Walter F. Mondale Papers, The Minnesota Historical Society (*WFMP*), Dwight D. Eisenhower, *Mandate for Change* (London: Heinmann, 1963), Richard M. Nixon, *RN: The Memoirs of Richard Nixon* (Book Club Associates by association with Grosset & Dunlop, Inc., 1978), Jimmy Carter, *Keeping Faith* (London: Collins, 1982), Ronald W. Reagan, *Ronald Reagan: An American Life* (New York: Simon & Schuster, 1990).

⁶⁹ *FFP*, Mario Puzo Papers, 1955-2000, Rauner Special Collections Library, Dartmouth College, Hanover, NH (*MPP*), *WSP LoC*, William Safire Papers, The New York Times Archive, Manuscript and Archives Special Collections, The New York Public Library, New York (*WSP NYPL*), *WSP Syracuse*.

⁷⁰ Office of the White House Counsel, *Contingency Plans: Death or Disability of the President* (1993) (the Contingency Plan), 10, 2, https://ir.lawnet.fordham.edu/twentyfifth_amendment_executive_materials/10.

Fiction, presidential power and legitimacy

There is scant scholarship on fiction's role in informing the public about the Amendment. While referencing democratic values and processes, most scholarship on the contribution of popular fiction to the understanding of political or social events and movements and, more specifically, on the presidency does not touch on the Amendment.⁷¹ Four constitutional scholars have explored the role of the 25th in popular culture, and two have briefly analysed one or more, but not all, of the eight novels under consideration here. These scholars acknowledge that many of the misunderstandings of the Amendment result from popular culture misrepresentation, including its conflation with the only other constitutional means of removing a president, impeachment, as *Fourth K* illustrates.⁷² This thesis develops a more open approach that moves beyond mere criticism of inaccuracies to consider the utility of these novels and fiction more generally in the public debate on presidential power during an inability crisis.

While scholarship about author intent and positionality was researched, literary scholarship has rejected theories of author intent.⁷³ Archival papers for three of the authors suggest that conclusions on intent, beyond the 25th being a good idea for a novel, are, in any case, impossible to draw. More likely, 'Section 4 is an irresistible subject . . . The stakes are high: control of the presidency. The cast of characters is large . . . Any of them have potentially juicy roles as schemers, heroes, unwitting dupes, or tortured soles'.⁷⁴ Notwithstanding the rejection of author intent to educate as motivation for producing these novels, wider literature from other academic disciplines shows how fiction can have an educational role, particularly in imagining possible futures, and especially where 'the fictional world is emotionally coherent', such fiction can be 'exceptionally powerful in shaping cognition and persuasion' and supports the novel-centric approach adopted in this study.⁷⁵

⁷¹ Boyer, *By The Bomb's Early Light*, chp. 20, Smith, *Presidents We Imagine*.

⁷² William F. Baker and Beth A. FitzPatrick, "Presidential Succession Scenarios in Popular Culture and History and the Need for Reform", *Fordham Law Review* 79, no. 3 (December 2010): 835-842, <https://ir.lawnet.fordham.edu/flr/vol79/iss3/4>, Feerick, *The Twenty-fifth Amendment*, 260 has four sentences on one novel, Kalt, *Unable*, 81-90 covers five of the eight.

⁷³ Roland Barthes, *The Death of the Author*, trans. Richard Howard, www.writing.upenn.edu/~taransky/Barthes.pdf.

⁷⁴ Kalt, *Unable*, 75.

⁷⁵ Manjana Milkoreit, "Imaginary Politics: Climate Change and Making the Future", *Elementa: Science of the Anthropocene* 5, no.62 (2017), 5, <https://doi.org/10.1525/elementa.249>, Calvert W. Jones and Celia Paris, "It's the End of the World and They Know It: How Dystopian Fiction Shapes Political Attitudes", *Perspectives on Politics* 146, no.4 (2018), 969, <https://doi.org/10.1017/S1537592718002153>. See also,

This thesis addresses a gap in scholarship about fictional representations of the Amendment that sits at the crossroads of four major themes: the relationship between fiction and the Constitution, developments in the presidency, presidential health, and the vice presidency. Scholarship on these themes provides the base from which the analysis of the eight novels proceeds. While each chapter will draw on scholarship pertinent to the aspect of the Amendment it explores, this introduction outlines these four major themes.

The first theme draws on the strands of scholarship that explore political fiction in American culture to identify, survey and suggest resolutions to problem narratives in civic life.⁷⁶ If these eight novels illuminate the Amendment, then academic literature on constitutionalism can aid in understanding fictional texts that engage with government institutions. The Constitution has the status of a sacred text in the United States. Yet, public knowledge of it is notoriously poor. While Kammen acknowledges that the situation is no worse in the United States than in other democracies, he explains why it is vital to address this gap in the United States and emphasises the role of education in improving public knowledge.⁷⁷ Kammen adopts a definition of constitutionalism as ‘the name given to the trust which men repose in the power of words engrossed on parchment to keep a government in order’.⁷⁸ This broad definition supports using the Constitution as shorthand for creating meaning in popular culture representations of US government institutions, including the presidency, and for the constitutional actors to act with ‘constitutional morality’ to resolve the problem narrative, which these eight novels do.⁷⁹ Constitutional morality, in this sense, means that the constitutional actors adopt expected norms of reverence and respect for the Constitution and act in good faith to establish the ‘unquestioned authority’ of a vice president exercising presidential powers and duties or of

Gary Wilder, *Freedom Time: Negritude, Decolonization and the Future of the World* (Durham, NC: Duke University Press, 2015), chps. 2 and 3.

⁷⁶ See for examples Peter Brooks, “Narratives of the Constitutional Covenant”, *Daedalus, the Journal of the American Academy of Arts and Sciences* 141, no.1 (Winter 2012), LaCroix and Meyier, in “American Literature and the Constitution”, Catherine Zuckert, “On Reading Classic American Novelists as Political Thinkers”, *The Journal of Politics* 43, no.3 (August 1981): 683-706, <https://www.jstor.org/stable/2130632>.

⁷⁷ Michael Kammen, *A Machine That Would Go Of Itself: The Constitution in American Culture* (New Brunswick, NJ: Transaction Publishers, 2006).

⁷⁸ Walton H. Hamilton, “Constitutionalism” in *Encyclopaedia of the Social Sciences* (New York: Macmillan Publishers, 1931), Kammen, *Machine*, xxiv.

⁷⁹ *Hearings Before the Subcommittee on Constitutional Amendments of the Committee on the Judiciary, Presidential Inability and Vacancies in the Office of the Vice President, Senate, 88th Cong., 2nd sess., 24 January 1964*, testimony of Herbert Brownell, 136, http://ir.lawnet.fordham.edu/twentyfifth_amendment_congressional_materials/7.

a president reclaiming them. Good-faith constitutional actors seek the public legitimacy of their actions and the consequences thereof.⁸⁰

Change in the presidency's institutional design and the execution of its powers is the second theme. Schlesinger traces the increase in presidential powers, beyond those constitutionally granted, to the rise in presidential authority, particularly in claiming war powers, which changed the executive branch's relationship with Congress.⁸¹ Power, in broad terms, is best understood as 'the capacity or ability to influence the behaviour of others or the course of events'.⁸² Discussion of power in this thesis thus explores how a president exercises political influence, who accepts his influence, and, importantly for these fictional representations, the recognition and consequences of its waning. In addition to constitutional powers, Neustadt's framing of presidential power as influence that is 'hard to consolidate, easy to dissipate, rarely amassed' is particularly relevant to this thesis, as eight fictional presidents wrestle with their response to their actual or perceived inability.⁸³ As a president exercises power through the roles he performs, this thesis will also draw on Rossiter's enumeration of the roles the nation expects a modern president to play. Beyond his five constitutional roles of Head of State, Chief Executive, Chief Diplomat, Commander-in-Chief, and Chief Legislator lie a further five: Chief of Party, Voice of the People, Protector of the Peace, Manager of Prosperity, and Leader of the Coalition of Free Nations.⁸⁴ This view of power as performance helpfully links the practice of the presidency to fictional works which develop representations that can affect public understanding. This thesis proposes an additional role, that of 'Chief Ghost', where fiction portrays real-life presidents as contrasts or educators to their imaginary presidents.

The third theme is the history of presidential health.⁸⁵ This history identifies the cover-ups of presidential ill health and their consequences, which some of the novels reflect, most

⁸⁰ *Hearings*, 24 January 1964, 135.

⁸¹ Arthur M. Schlesinger Jr., *The Imperial Presidency* (London: André Deutsch Limited, 1974).

⁸² 'Power', accessed 9 February 2021, www.lexico.com.

⁸³ Richard Neustadt, *Presidential Power and the Modern Presidents: The Politics of Leadership from Roosevelt to Reagan* (New York: The Free Press, 1990), ix.

⁸⁴ US Constitution, art. 2. Clinton Rossiter, *The American Presidency* (London: Hamish Hamilton, 1957 and Baltimore: The Johns Hopkins University Press, 1987).

⁸⁵ See for example, Rudolph Marx, *The Health of the Presidents* (New York, G. P. Putnam's Sons, 1960), Kenneth R. Crispell and Carlos E. Gomez, *Hidden Illness in the White House* (Durham, NC: Duke University Press, 1988), Robert H. Ferrell, *Ill-advised: Presidential Health and Public Trust* (Columbia, MO: University of Missouri Press, 1992), Robert E. Gilbert, *The Mortal Presidency: Illness and Anguish in the White House* (New York: Basic Books, 1992).

obviously in the title of *Full Disclosure*. Both Gilbert and Ferrell emphasise the consequential deterioration of public trust caused by the non-disclosure of presidential ill health and its contribution to the problem narrative of public anxiety about presidential inability.⁸⁶ The tension between ‘the public’s right to know’ and the confidentiality implicit in the doctor-patient relationship remains unsolved insofar as it relates to the president.⁸⁷ Recommendations to improve the Amendment suggest means of releasing some of this tension, including using a decision-making framework to support the constitutional actors.⁸⁸ Chapter 4 adapts this framework and applies it to the eight fictional representations, thus demonstrating how scholars can use fiction to refine the ways in which we understand and approach the 25th.

The fourth main theme is the vice presidency. There was no mechanism to replace a vice president until the Twenty-fifth, a measure of historical disdain for the office, and scholars have only recently studied its evolution.⁸⁹ Its history suggests that ‘the real risk is not that the Twenty-fifth Amendment will be invoked when it shouldn’t, but that it won’t be invoked when it should’.⁹⁰ A vice president risks their political capital by invoking Section 4. Instead, vice presidents have increased their political capital by not invoking when perhaps they should have: a dilemma the eight novels portray in ways that we can learn from.

By analysing novels that hinge on the 25th Amendment and its role as the constitutional contingency plan for presidential inability, this thesis engages with legitimacy and presidential power questions. To ensure clarity over the exercise, or transfer, of presidential power, if the novels are surrogate contingency planning manuals for presidential inability and not for coups d’état, they should emphasise the legitimacy of the actors and their decisions in removing a president from his powers and duties. Such a contingency plan should also define the events, alert those responsible, and delineate appropriate steps. The Amendment does not define these features, but they would concern

⁸⁶ Gilbert, *The Mortal Presidency*, Ferrell, *Ill-advised*.

⁸⁷ Aaron Seth Kesselheim, “Privacy Versus The Public’s Right to Know — Presidential Health and the White House Physician”, *Journal of Legal Medicine* 23, no.4 (2002): 523-545, <https://doi.org/10.1080/01947640290050328>.

⁸⁸ Daniel J.T. Schuker. “Burden of Decision: Judging Presidential Disability Under the Twenty-fifth Amendment”, *Journal of Law and Politics* 30 (2014): 97-140.

⁸⁹ See for example, Joel K. Goldstein, *The Modern American Vice Presidency* (Princeton, NJ: Princeton University Press, 1982), Jody C. Baumgartner with Thomas F. Crumblin, *The American Vice Presidency From the Shadow to the Spotlight* (London: Rowman & Littlefield, 2015).

⁹⁰ Sunstein, *Impeachment*, 145.

constitutional actors in real life and might involve struggles for influence. Even as a president retains his constitutional powers, his ability to exercise them may wane, threatening his political viability with any hint of his inability. This thesis, therefore, draws on the political science theories of presidential power outlined above to examine fictional portrayals.

Contingency plans are analogous to a future history. The novels' near-future settings and exploration of power and legitimacy highlight the challenges of planning and its limitations. Some historians use novels as surrogates or for corroboration in their research; these novels are, arguably, a similar resource, but at the same time, they reflect a range of possible futures or scenarios that are helpful and, in some ways, test multiple contingencies.⁹¹ By showcasing constitutional limitations, the novels emphasise that the nation cannot take the stability of the executive branch for granted, particularly if bad-faith actors have constitutional roles.

This thesis observes legitimacy in its institutional, procedural, and public forms in the novels. Institutional legitimacy flows from the constitutional and statutory requirements that underpin and surround the presidency and, therefore, from the individual exercising its responsibilities. The novels use the appropriate constitutional actors, the accoutrements of the presidency, its space, and symbols to communicate institutional legitimacy. Procedural legitimacy manifests itself (or not) from following established, if untested, rules and processes for presidential inability and succession. The novels draw on this form of legitimacy when they quote or paraphrase wording from the Amendment, the Constitution, and the various Presidential Succession Acts and use the appropriate processes for the circumstances portrayed.⁹² This thesis deploys public legitimacy to show how the novels use public confidence to support or challenge institutional and procedural legitimacy.⁹³ The

⁹¹ See for examples, James Smith Allen, "History and the Novel: Mentalité in Modern Popular Fiction", *History and Theory* 22, no.3 (October 1983), 236, <https://www.jstor.org/stable/2504982>, Julia Reid, "Novels", in *Reading Primary Sources*, eds., Miriam Dobson and Benjamin Zeimann (London: Routledge, 2009), 161.

⁹² US Constitution, amend. 25, secs. 3 and 4, art. 2, sec. 1, Appendix A. The three Presidential Succession Acts are: (1) Election of President and Vice -President of the United States, and providing for Vacancies in the Offices of President and Vice-President, *Statutes at Large of the United States*, 1 Stat. 239, 2nd Cong., 1st sess., Ch. 8. (the 1792 Presidential Succession Act), (2) Acting President, *US Statutes at Large*, 24 Stat. 1, 49th Cong., 1st sess., Ch.4 (the 1886 Presidential Succession Act), (3) Vacancy in Offices of Both President and Vice President; Officers eligible to act, 80th Cong., 1st sess., codified at 3 US Code §19 Suppl. 1, 1952, (the 1947 Presidential Succession Act).

⁹³ See for examples, Mattei Dogan, "Political legitimacy: new criteria and anachronistic theories", *International Social Science Journal* 60, no.196 (2009): 195-216, Tamir Sheafer, "Charismatic Communication Skill, Media Legitimacy and Electoral Success", *Journal of Political Marketing* 7, no.1 (2008): 1-24, Tamir Sheafer, "Charismatic Skill and Media Legitimacy", *Communication Research* 28,

novels display public legitimacy through media commentary, public demonstrations, opinion polls, stock market indices, and ultimately acceptance of a vice president as acting president or a president reclaiming his powers and duties. All three forms of legitimacy, when undertaken by good-faith actors, combine in applying constitutional morality to the Amendment's use. This issue was of key concern to the Amendment's drafters.⁹⁴ If the novels illuminate the Amendment as intended by its drafters, then they should demonstrate this sense of constitutional morality in their resolution of the problem narrative of presidential inability.

Thesis structure

The structure of this thesis focuses on four key aspects of the text of the 25th, who, what, how and when. In other words, the study examines the roles of constitutional actors, the wording of the Constitution, the processes they must use, and the circumstances where they should consider invocation. This thesis also explores three additional features of fiction's use of the Amendment, the broader representations of the presidency, the novels' role in the debate over improvements to the Amendment, and the use of alternatives to bookend its investigation of the four key aspects. This structure helps to answer the central research question by exploring how the novels illuminate, or not, all four aspects, the three additional features and the part each plays in contingency planning.

Chapter 1 sets the novels within the tradition of representations of presidents and the presidency in fiction and reviews how the novels illuminate the president's role as a constitutional actor under the 25th. This chapter builds and frames the institutional legitimacy of the presidency and the role of fiction in the first facet of the problem narrative of presidential inability, public anxiety over what an unable president might do. Chapter 2 analyses the other constitutional actors' roles by exploring the institutional legitimacy of the vice presidency, the Cabinet and Congress under the 25th, focusing on the second facet of the problem narrative, usurpation.

Chapter 3 explores the novels' use of the wording of the Amendment as the anchor for the procedural legitimacy of the actions considered or taken, the constitutional processes involved and how constitutional actors can deepen the procedural legitimacy of their

no.6 (December 2001): 711-738, David Beetham, "Legitimacy", *Routledge Dictionary of Philosophy*, 1998, <https://doi.org/10.4324/9780415249126-S034-1>.

⁹⁴ Bayh, *One Heartbeat Away*, 67, *Hearings*, 24 January 1964, 136.

decisions. Ways of deepening procedural legitimacy include, but are not limited to, seeking evidence from medical sources, corroboration from family members or staff close to the president, and the mechanisms of decision-making and consensus-building between or among the constitutional actors.

Chapter 4 considers the medical and political circumstances in which invocation of Sections 3 or 4 may be appropriate, building the institutional and procedural legitimacy of decisions considered or made into public legitimacy. The chapter considers acceptance of the outcome based on the transparency and accountability of constitutional actors who have brought constitutional morality to their actions.

Finally, Chapter 5 analyses the novels' role in engaging with the debates over recommendations for improving the Amendment, the consequences of its use in the broader line of succession, and contrasts the use of other constitutional or statutory alternatives to remove a president.

By drawing on existing academic literature and government documents, analysing the eight novels goes beyond enumerating what the novels get right or wrong about the Twenty-fifth Amendment. This thesis asks how these novels illuminate the Amendment's four key aspects and three broader features of fiction's use of the 25th. The study shows how these novels act as surrogate planning manuals for the contingency of presidential inability as they highlight, reflect and sometimes change the problem narrative of anxiety and usurpation.

Chapter 1 Fiction and the Presidency

Introduction

‘Americans have taken too much pride and proportionately too little interest in their frame of government’.¹

As a familiar and visible institution in daily life, the presidency is one way Americans observe their Constitution in action. The presidency also embodies much of the spirit of the Constitution in the checks and balances surrounding it and in the many roles a president fulfils. The Twenty-fifth Amendment is, therefore, a pragmatic response to the challenges of ensuring the continuity of one constitutional institution, the presidency. With ongoing concerns that ignorance and indifference remain the default response to the Constitution, notwithstanding the deep-seated constitutionalism in American public life, cultural references, including fiction, have a crucial role. Popular culture is a means of generating engagement with the framework of government, including its institutions and contingency plans. US citizens view their Constitution as a sacred document, yet their knowledge and understanding of this text are poor.² Representations of the Constitution in popular culture, including fiction, can help illuminate its meaning, improve public and academic understanding, deepen a sense of national identity, and create a public platform for conversation.³ Arguably, such popular culture representations play a crucial role when there is a problem narrative to resolve, when there are few real-life examples or when the public may contest its application, as with presidential inability.⁴

This thesis suggests the eight novels it analyses are a distinct subgenre of the American political novel as 25th Amendment novels. This chapter will contextualise this subgenre within the strands of constitutionalism and as part of the ongoing civic debate about the role of the presidency. The presidency as an institution and the president as a character frequently appear in fiction; deploying real-life presidents in fiction creates the role of

¹ Michael Kammen, *A Machine That Would Go Of Itself: The Constitution in American Culture* (New Brunswick, NJ: Transaction Publishers, 2006), xxvi.

² *Ibid.*, xiii.

³ Milton M. Klein, “The Constitution in the Public Imagination” (The Lawrence F. Brewster Lecture in History, East Carolina University, October 1987), Bruce Ackerman, “The Living Constitution”, *Harvard Law Review* 120, no. 7 (May 2007): 1806, <https://www.jstor.org/stable/40042636>, Akhil Reed Amar, *The Words That Made US: America’s Constitutional Conversation, 1760-1840* (New York: Basic Books, 2021), xiii.

⁴ Alison LaCroix and Bernadette Meyier, in “American Literature and the Constitution”, *National Constitution Center*, webinar, 12 May 2021.

‘Chief Ghosts’ for former presidents and uses that role to set fictional presidents within the history of the presidency and its occupants. Scholarship on fictional portrayals is limited and focuses on presidential image rather than the imaginings of the office and its occupant.⁵ This thesis analyses how fictional representations reflect and shape problem narratives of anxiety and usurpation around presidential inability and the institutional responses to it. This chapter explores three issues of the presidency relevant to the 25th Amendment novels, the president as a constitutional actor under the 25th, followed by an exploration of the presidency in fiction and how that reflects and influences narratives about the presidency or individual presidents. This section will review the portrayals of the eight fictional presidents before, during, and after their inability. The third section draws these two issues together to examine the narratives surrounding an unable president.

This examination of the corpus of 25th Amendment novels draws on the literature on constitutionalism and the role of problem narratives in American political literature that explores the influence of the Constitution on fiction and vice versa.⁶ Even among scholars, for example, where understanding of the Constitution is deep and nuanced, narratives of constitutional meaning remain unsettled and constitutional conversations remain ongoing. This chapter asks how the novels illuminate the presidency's constitutional roles and real-life changes in the design and execution of the office. The institutions created by the Constitution change over time, including in their response to presidential inability. As a subgenre, 25th Amendment novels highlight the circumstances that might lead to the removal and replacement of an unable Chief Executive, who has the constitutional responsibility to deal with presidential inability, and the process they must use, as subsequent chapters will explore.

The process of ‘constitutionalism’ is the means of embedding the use, reverence, and ignorance of the founding law in civic life. American law professor Walton Hamilton defined constitutionalism as ‘the name given to the trust which men repose in the power of words engrossed on parchment to keep a government in order’.⁷ The Amendment reflects the ‘dangerous dependence’ on the presidency as a vital mechanism for the government to

⁵ The exception is Jeff Smith, *Presidents We Imagine: Two Centuries of White House Fiction, On the Page, On the Stage, Onscreen and Online* (Madison, WI: University of Wisconsin Press, 2009). On real-life presidents see for example, Iwan Morgan and Mark White, eds., *The Presidential Image: A History from Theodore Roosevelt to Donald Trump* (London: I. B. Tauris, 2020), William Spragens, *Popular Images of American Presidents* (New York: Greenwood Press, 1988).

⁶ Kammen, *Machine*, LaCroix and Meyer, “American Literature and the Constitution”.

⁷ Walton H. Hamilton, “Constitutionalism” in *Encyclopaedia of the Social Sciences* (New York: Macmillan Publishers, 1931), 255, quoted in Kammen, *Machine*, xxiv.

function in an orderly manner during personal and possibly political crises.⁸ The remedy for presidential inability therefore matters. Hamilton's definition supports the use of the Constitution as a form of shorthand for creating meaning in popular culture representations of US government institutions, including the executive branch through the office of the presidency. Using the shorthand brings this 'dull reading' into modern civic life.⁹ Fiction is one public platform that deploys this shorthand and where constitutional conversations continue. One way the eight novels use their public forum is to draw on the wording of the Amendment to support the novel's premise in prominent ways. But while plausible depictions benefit from this shorthand, inaccurate portrayals create misconceptions, even as they illuminate the Amendment. When the novels illuminate the 25th Amendment, they foreground its purpose as a contingency plan for the peaceful transfer of presidential power as it affects both the institution and its incumbent. Fiction informs the civic debate about what actions constitutional actors can and should take when human frailties impact a public official to whom so much power has been entrusted and has accumulated. The Amendment is all about ensuring the presidency's continuity while recognising the prerogative of its incumbent to exercise his presidential responsibilities, establishing the president as the first constitutional actor under its provisions.

The president as a constitutional actor in the 25th

The first consideration of a president's actions is the institutional authority of the presidency; the measures taken are things only a president can do. This section follows the Amendment's structure to explore the president's actions as the first constitutional actor in the Amendment. A president's only active constitutional role under Section 1 is to resign, as one real-life president did and four fictional presidents do.¹⁰ Beyond defending himself in the Senate, under the Constitution's impeachment provisions, a president has no constitutional role in his removal from office or, obviously, on his death. Section 2 requires a president to nominate a vice president for congressional approval whenever a vacancy arises. President Mark Hollenbach in *Camp David* will only replace Vice President Patrick O'Malley at the forthcoming election rather than force his resignation, so there is no

⁸ Richard Neustadt, *Presidential Power and the Modern Presidents: the Politics of Leadership from Roosevelt to Reagan* (New York: The Free Press, 1990), 162.

⁹ James M. Beck, "The Anniversary of the Constitution", *The Constitutional Review* 13, no. 4 (October 1929), 187.

¹⁰ Nixon's resignation is referenced in Safire, *Full Disclosure*, 127, Batchelor, *Father's Day*, 521.

vacancy.¹¹ But *Father's Day* portrays the president's Section 2 role as President Teddy Jay considers replacing his vice president during the quadrennial term.¹² The choice of Speaker Luke Rainey as Vice President Shy Garland's potential replacement is not Jay's personal choice. Instead, it is the price of his political survival by bringing one key constituency, the Florida wing of Jay's party, fully behind him in Congress, showing Jay's waning political viability.¹³ Beyond dealing with a vice presidential vacancy, a president can take action on his inability and respond to actions by other constitutional actors under Sections 3 and 4, respectively.

One basis for procedural legitimacy is that those with the appropriate institutional authority decide. Regarding the self-declaration of inability and its cessation, only a president can use Section 3. *Father's Day* portrays the president's voluntary declaration of his inability under Section 3 and the consequences of passing presidential responsibilities to an acting president. Jay has stepped aside five months before the novel's start and reclaims his powers and duties, as he is constitutionally entitled to do. Neither the grief-stricken presidents in *Negotiator* and *Fourth K* nor the booby-trapped President Adam Scott in *Kidnapping* invokes Section 3. President John Cormack, in *Negotiator*, behaves as if he had invoked it. He has all but abrogated his powers and duties to Vice President Michael Odell as *de facto*, if not *de jure*, acting president. President Francis Kennedy, in *Fourth K*, simply channels his grief and carries on. Of the other novels, only *Full Disclosure* shows its president considering stepping aside under Section 3. At his first press conference on returning from Yalta, the press ask President Sven Ericson; “Don’t you think it would be in the best interests of national security, sir, if you stepped aside under the provisions of the Twenty-fifth Amendment until such time as you were fully capable of discharging your duties?”¹⁴ He responds with a simple “No”.¹⁵ The Speaker clarifies to the press that a Section 3 decision is the president’s and the president’s only: “Read your Constitution. If he’s able to say he’s able, then he’s able”.¹⁶ In *Full Disclosure*, this support from the Speaker, a Republican unlike Ericson, is an early indicator of the bipartisan *dénouement*. Although the novels, except for *Father's Day*, do not draw significantly on Section 3, where they do, their presidents are conscious and able to communicate. The novels show

¹¹ Knebel, *Camp David*, 13.

¹² Batchelor, *Father's Day*, 296.

¹³ *Ibid.*

¹⁴ Safire, *Full Disclosure*, 117

¹⁵ *Ibid.*

¹⁶ *Ibid.*, 144.

its lack of use in a reluctance to surrender powers and duties, either as part of their president's general debility or where their presidents have little confidence in their vice presidents.

Father's Day and *Full Disclosure* correctly portray a president's role in Section 3. In both novels, it becomes the trigger for a Section 4 invocation. In *Full Disclosure*, Ericson's unwillingness to use Section 3 starts his political descent; in *Father's Day*, Jay's reclaiming his presidential responsibilities under it triggers the constitutional challenge. As Jay has stepped aside under Section 3, Garland cannot invoke Section 4 until he tries to reclaim his powers and duties. Ericson believes he can fulfil the powers and duties required by the office.¹⁷ Both Ericson and Jay exercise their constitutional right to challenge the Section 4 decision in Congress. Ericson succeeds in his challenge, only to resign.¹⁸ In *Father's Day*, Congress is likely to have upheld the invocation of Section 4, and the House votes in Garland's favour, leaving Garland as acting president.¹⁹ The Senate vote is due two days after Garland's assassination and Jay's resignation.²⁰

As a fictional constitutional actor with an active role under the 25th, either to declare the start and end of their inability under Section 3 or to challenge a Section 4 invocation by their vice president and Cabinet, these eight novels portray their presidents' 25th roles correctly. All three presidents, Hollenbach, Jay, and President Charlie Davidson, in *WH Storm*, with mental health issues resign.²¹ President Jeremy Haines returns to the powers and duties of his office, although *Plane* does not state the mechanism.²² Presidents Adam Scott and John Cormack, in *Kidnapping* and *Negotiator*, respectively, neither surrender their powers and duties nor face a formal Section 4 challenge and simply carry on. *Fourth K's* President Francis Kennedy is subject to a mash-up of impeachment and Section 4, but Cabinet and Congress withdraw the actions against him, only for a disaffected student to assassinate Kennedy on inauguration day.²³ The novels show presidents well aware of their presumption of power and the difficulties of decisions on both invoking Section 3 and responding to an invocation of Section 4. With the Amendment honouring a president's

¹⁷ Safire, *Full Disclosure*, 117.

¹⁸ *Ibid.*, 476, 491.

¹⁹ Batchelor, *Father's Day* 389, 392.

²⁰ *Ibid.*, 524.

²¹ Knebel, *Camp David*, 332, Napier, *WH Storm*, 250, Batchelor, *Father's Day*, 524.

²² Serling, *Plane*, 292.

²³ Puzo, *Fourth K*, 494.

presumption of power, the broader exercise of those powers and their representations in fiction explores public expectations of presidents and how fiction draws from and represents that power.

The presidency and presidents in fiction

Fascination with the presidency and real-life presidents ensures that fictional portrayals are plentiful, reflecting both trends in the office and the actions of its incumbents to embellish it.²⁴ There is a deep cultural history of depicting real-life presidents in memorabilia, drama, cartoons, presidential libraries, museum exhibits, film, and TV series: establishing their role as Chief Ghosts.²⁵ This thesis demonstrates a further aspect of Chief Ghosts' roles in fiction to act as exemplars or contrasts to the fictional presidents. The stories told reflect developments in the office, in what citizens see in their presidents and expect from them, and, sometimes, as with the eight novels, in the public anxiety created by ill health diminishing a president.²⁶ Fiction also joins the debate on what the nation expects from presidential power, even as it embellishes the office.²⁷ While there are pre-1967 examples of real-life presidential inability, which some of the novels draw on, notably Presidents Woodrow Wilson, Franklin Roosevelt, and Dwight Eisenhower, in the absence of real-life uses of Section 4, the only other examples available are fictional.

Literature on presidents and the presidency in fiction concentrates on the classics of American literature, none of which hinge on the 25th, rather than the subgenre of 25th Amendment novels.²⁸ Novels in the political scenario, the Washington novel, the presidential novel genres and the 25th Amendment novels all have a place for real-life presidents, drawing on them as Chief Ghosts. These real-life examples anchor the novels in reality and contrast the situations fictional presidents face. Such fictional portrayals say a great deal about the state of the nation, acting 'as projections of the nation itself' in its responses to the use (and abuse) of presidential power.²⁹ The grandeur of the role, the

²⁴ Smith, *Presidents We Imagine*, 7.

²⁵ John W. Matviko, ed., *The American President in Popular Culture*, (Westport, CT: Greenwood Press, 2005). The essays therein cover everything but novels. Benjamin Hufbauer, *Presidential Temples: How Memorials and Libraries Shape Public Memory* (Lawrence, KS: University of Kansas Press, 2005).

²⁶ Smith, *Presidents We Imagine*, 7, 9.

²⁷ Ibid.

²⁸ Sean McCann, *A Pinnacle of Feeling: American Literature and Presidential Government* (Princeton, NJ: Princeton University Press, 2003), but see Warren G. Rochelle, "The Literary Presidency", *Presidential Studies Quarterly* 29, no.2 (June 1999): 407-420, <https://www.jstor.org/stable/27551996>.

²⁹ Smith, *Presidents We Imagine*, 9.

potential for crisis and challenge against a background of corruption, subterfuge, human frailty, and character failings should make this a fertile field for academic comment: yet existing literature does not cover the 25th in any detail.³⁰ Three themes are relevant to the novels: how the novels portray presidential power and the roles a president fulfils, the importance of the symbols of the presidency, and how the novels start to anchor their fictional presidents in the historical record.

Some classic political science theories that explain how presidential power needs to operate in addition to the ‘powers and duties of the office’ as defined in the Constitution support fictional depictions.³¹ All eight novels rely on portraying presidential roles beyond those granted by the Constitution to create recognisable and convincing characters in their fictional presidents. The novels use roles to show how their presidents react and respond to an inability crisis. The novels also draw on the rise of presidential power in their plots as the exigencies their fictional presidents face require presidential imprimatur for resolution. Scholars trace the increase in the power of the modern presidency through domestic policy, foreign relations, in particular the war powers, and budgetary control, all of which altered the relationship between the executive branch and Congress. A shift in the relationship that the novels rely upon to underpin tension in their plots.

For example, all eight novels draw on foreign policy issues for their plots, from Cold War nuclear concerns with the Soviet Union or China, through problems of oil shortages in the Middle East to security issues and cyber warfare. Situations threatening US hegemony require clarity on who is exercising presidential power at any given moment and highlight anxiety over an unable president. Features of Rossiter’s and Neustadt’s theories help to analyse the fictional representations. Rossiter explains the constitutional roles through which the president exercises power.³² The novels show mainly the Chief Executive, Chief Diplomat, and Commander-in-Chief roles, given the exigencies they depict. Neustadt’s contribution defines presidential power as the ability to exert personal influence

³⁰ William F. Baker and Beth A. FitzPatrick, “Presidential Succession Scenarios in Popular Culture and History and the Need for Reform”, *Fordham Law Review* 79, no. 3 (December 2010): 835-842, <https://ir.lawnet.fordham.edu/flr/vol79/iss3/4>, John D. Feerick, *The Twenty-fifth Amendment: Its Complete History and Applications* (New York: MJF Books, 2014), chp. 16, Brian C. Kalt, *Unable: The Law, Politics, and Limits of the Twenty-fifth Amendment* (New York: Oxford University Press, 2019), chp. 7.

³¹ Clinton Rossiter, *The American Presidency* (London: Hamish Hamilton, 1957), Neustadt, *Presidential Power*, Arthur M. Schlesinger Jr., *The Imperial Presidency* (London: Andre Deutsch Limited, 1974). See also Smith, *Presidents We Imagine*, on Neustadt, 164-165.

³² Rossiter, *The American Presidency*.

effectively, separately, and in addition to his formal constitutional powers.³³ As *Camp David* and *Full Disclosure*, in particular, demonstrate, Hollenbach and Ericson use their influence to continue implementing their political agenda even as challenges to their inability increase. In Hollenbach's case, to continue *détente* with the Soviet Union against the common threat of China's nuclear programme and his concept of super-union with Scandinavia and Canada.³⁴ Ericson seeks to improve relations with the Soviet Union through dialogue with Foreign Minister Vasily Nikolayev.³⁵ The roles and personal influence exercised in the novels explain the pre-eminence of the presidency.

The origin of a narrative of anxiety caused by fear of an unable president is suggested by Schlesinger's exposition of the rise of the 'imperial presidency', in part created by presidents using the circumstances of Cold War crises to act on power and in part from congressional abrogation.³⁶ In tandem, these developments created an action-orientated president, changed the mythology of the presidency, but created anxiety about the consequences of an impaired president. In seeing Watergate as the zenith of the imperial president and revisiting Schlesinger's approach, Rudalevige considers a 'new imperial presidency' in response to the watershed events of 9/11, showing that the deeper the crises, the more visible a president's leadership must be.³⁷ In doing so, Rudalevige highlights the challenges the novels portray where external circumstances magnify presidential health concerns that might impact his judgement. These developments created the fictional trope of the president as a hero, a trope these eight fictional representations toy with as their presidents face usual human vulnerabilities.

Influenced by the growth of the imperial presidency in their depictions of presidential power, books about an absent or unable president proliferated during the Cold War. These fictional predecessors of the 25th Amendment novels reflect a willing consumption of problem narratives of presidential inability and the anxiety it creates.³⁸ But some scholars perceive the growth in presidential power as occurring half a century earlier. President

³³ Neustadt, *Presidential Power*.

³⁴ Knebel, *Camp David*, 84, 167-168.

³⁵ Safire, *Full Disclosure*, 20, 420, 456.

³⁶ Schlesinger, *The Imperial Presidency*.

³⁷ Andrew Rudalevige, *The New Imperial Presidency* (Ann Arbor, MI: The University of Michigan Press, 2006).

³⁸ The earliest published novel my research found that deals with the anxieties of an absent president is Rex Stout, *The President Vanishes* (New York: Pyramid Books, 1967), first published 1934. For Cold War anxieties see, for example, Charles W. Bailey and Fletcher Knebel, *Seven Days in May* (New York: Harper & Row, 1962).

Theodore Roosevelt's 'new nationalism' and its claim that 'occasionally great national crises arise which call for immediate and vigorous executive action and that in such cases it is the duty of the President to act upon the theory that he is the steward of the people' is the start of the increase in presidential power.³⁹

This idea of stewardship is latent in all eight novels analysed but is portrayed more as stewardship of the presidency as an institution and impacts how the challenges of the 25th are, fictionally, resolved. For example, Hollenbach, Ericson, Jay and Davidson all resign, believing it to be the right thing to do to protect the office.⁴⁰ In some cases, stewardship is the reason (excuse?) they explain to themselves for continuing in office, to shield the office from the mediocrity of their poor choice of vice president. For example, in *Full Disclosure* Ericson contrasts himself with his vice president thus: "operating at twenty per cent of capacity, I would be a better president than Arnold Nichols operating at one hundred per cent of capacity".⁴¹ In *Father's Day*, Jay says to Garland, "you're not fit. . . you're not ready for this job".⁴² Also, in *Father's Day*, Jay's champions are all from the opposing party and choose to defend Jay as safeguarding the presidency from Garland's usurpation.⁴³ Exploring stewardship ideas is one way the novels show the good faith intent of their presidents.

The presidents that resign underpin their stewardship by ensuring that the presidency, and by extension the nation, is passed on to his successor safer, better, and stronger than when he took office. At the very least, as *Full Disclosure* acknowledges, he should not diminish the presidency, as inherent in his oath. 'I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States and will to the best of my ability, preserve, protect and defend the Constitution of the United States'.⁴⁴ The novels build on stewardship to exhibit a sense of constitutional morality in their presidents' actions.

³⁹ Schlesinger, *The Imperial Presidency*, 83, Smith, *Presidents We Imagine*, chp. 5, Paul Boyer, *By The Bomb's Early Light: American Thought and Culture at the Dawn of the Atomic Age* (New York: Pantheon Books, 1985), chp. 20.

⁴⁰ Knebel, *Camp David*, 332, Safire, *Full Disclosure*, 500, Batchelor, *Father's Day*, 524, Napier, *WH Storm*, 250.

⁴¹ Safire, *Full Disclosure*, 126.

⁴² Batchelor, *Father's Day*, 160.

⁴³ *Ibid.*, 216, 229.

⁴⁴ US Constitution, art. 2, sec. 1. For example, Safire, *Full Disclosure*, 189, 484, 493.

Camp David, Plane and *Kidnapping* predate Watergate, and Safire conceived *Full Disclosure* during it.⁴⁵ *WH Storm* is the only one published after 9/11. The eight novels illustrate particular features from Neustadt's theory to portray power as influence, and Rossiter's through the roles their fictional presidents undertake as an inability crisis mounts.⁴⁶ The work of Schlesinger and Rudalevige gives the problem narratives of anxiety credence.⁴⁷ These eight novels' publication dates roughly map against their theories of the presidency.

Fiction uses the symbols of the roles a real-life president fulfils to highlight the legitimacy of presidential actions and activities. A real-life president carries out at least ten roles. The Constitution requires five: Head of State, Chief Executive, Chief Diplomat, Commander-in-Chief, and Chief Legislator.⁴⁸ A further five roles have been 'grafted onto the original trunk': Chief of Party, Voice of the People, Protector of the Peace, Manager of Prosperity, and Leader of the Coalition of Free Nations.⁴⁹ While none of the eight novels reflects all ten roles, each portrays more than one. The power these roles convey makes fictional portrayals easily recognisable, even if the roles are not named. That is, the actions taken by these fictional presidents do not jar with real-life expectations. From the Cold War period onwards, the electorate expected super-human qualities of their president, another reason why 25th Amendment novels remain a valuable source of information in portraying presidents with typical human vulnerabilities, with the 25th as the mechanism to resolve anxiety for his substitution or replacement.

The eight novels use real-life symbols as a descriptive shorthand for the role portrayed. For example, Marine One and Air Force One, particularly abroad, mark a president as Head of State or Chief Diplomat. Air Force One or Marine One are the call signs of any flight in which the president is a passenger, not the physical aircraft; the use is a clear signifier of presidential power.⁵⁰ Used in *Plane*, most notably, Air Force One's crash creates the mystery of the missing president. At the risk of nit-picking, *Plane* should not have used the call sign as Haines was not on board; but that would have given away the plot. In *Full*

⁴⁵ See letter from Bill Adler to William Safire, 29 July 1974, *WSP Syracuse*, on the conception of *Full Disclosure*, Colin Kidd, "The Watergate Plot", *Prospect*, August/September 2022, 93.

⁴⁶ Rossiter, *The American Presidency*, Neustadt, *Presidential Power*.

⁴⁷ Schlesinger, *The Imperial Presidency*, Rudalevige, *The New Imperial Presidency*.

⁴⁸ US Constitution, art. 2.

⁴⁹ Rossiter, *The American Presidency*, 16-17.

⁵⁰ Serling, *Plane*, 51. Dennis McLellan, "Robert J. Serling dies at 92; one of the nation's top aviation writers", *LA Times*, 20 May 2010.

Disclosure, the aircraft symbolises stability compared to the more technically advanced but less tested flight available to the Soviet Premier and a place of safety following Ericson's injuries.⁵¹

The retreat of Camp David in the Catoctin Mountains outside of Washington D.C. is also used. It is not a place of relaxation from the pressures of the presidency but where the power of influence is in play. Knebel's *Camp David* and *Plane* deploy the presidential retreat at Camp David. It is where Hollenbach develops his plan as Protector of the Peace for the forthcoming summit with the Soviet Premier and Leader of the Coalition of Free Nations as he outlines a Scandinavian-Canadian super-union in *Camp David*. It is also where, as Chief of Party, he approaches Senator Jim MacVeagh as a potential vice presidential candidate, flattering him with the intimacy the retreat provides for confidential conversations. In *Plane*, Camp David is where Haines negotiates secretly with the Soviet Premier as Chief Diplomat and Protector of the Peace.

Occupation of the White House and the Oval Office as a power base is also used, notably in *Full Disclosure*. Ericson hunkers down during his Section 4 challenge as Head of State and Chief Executive, refusing to move out, indicating that he retains the presidency and expects Congress to restore its powers and duties to him.⁵² The White House becomes an ambiguous space in *Full Disclosure* as Ericson plans his Section 4 challenge as he occupies the physical space and the presidency as an office while unable to exercise any of its powers and duties. By contrast, in *Father's Day*, Garland lives in the White House with his wife and works as acting president from the president's private office, not just the more visible Oval Office, which he views as a performative space for his acting presidency.⁵³ In contrast with Ericson's stubbornness in moving out, Garland has moved into the White House and positioned his occupation as more than a temporary move, setting up his retention of power as president in his planned autogolpe. But when Jay tries to reclaim his presidential responsibilities, in his first visit to Garland in the White House, Jay greets Garland's wife, Iphigenia, with "you've kept things so well for me", making Garland's caretaker role clear.⁵⁴ After Garland and the Cabinet invoke Section 4, Jay relocates to President George Washington's home at Mount Vernon, symbolically referencing himself

⁵¹ Safire, *Full Disclosure*, 18, 42, 44, 53, 144.

⁵² *Ibid.*, 437- 476.

⁵³ Batchelor, *Father's Day*, chp. 11.

⁵⁴ *Ibid.*, 153.

as the father of the nation. Mount Vernon is where Jay seeks to convince others of his fitness and the legitimacy of his claims to the presidency.⁵⁵ Jay is invisible to the country at Mount Vernon, while Garland retains the White House. *Full Disclosure* also draws on the presidential yacht, *Sequoia*, as a place of influence and decision making, mainly as Chief of Party and on the presidential box at the Kennedy Center for the same reason.⁵⁶ The novels show the physical space a president occupies as representing the roles he undertakes and its ambiguity when he is not in possession of the powers and duties. These symbols of presidential power are used in the novels to signify that its user has the powers and duties of the office.

With the anxiety of an unable president at its peak with decisions over a nuclear launch, it is surprising that the novels do not make more of the role of Commander-in-Chief. A key symbol is the proximity to the ‘black bag’ containing the nuclear codes that is a constant close presence in real life, the ground zero of anxiety of an unable president. In *Camp David*, it is through the work of Command and Control the Ultimate System (CACTUS) that MacVeagh shares his concerns about Hollenbach’s mental state with Defense Secretary Sidney Karper. Karper’s instruction of CACTUS is to remove ‘human aberration’ from a launch decision and procedure.⁵⁷ *Camp David* explains that while only a president can instruct a nuclear launch, in practice, the Defense Secretary and the Chairman of the Joint Chiefs of Staff also have roles in the procedural legitimacy of a nuclear launch.⁵⁸ Karper’s response to his concerns over Hollenbach’s mental health was to set up CACTUS. Still, over two separate chapters *Camp David* explains how the work of CACTUS shows it is impossible to remove human aberration from a nuclear decision. That is to say, the anxiety of an unable president is justified if remote. With a publication date of 1965, not surprisingly, *Camp David* is the novel that, more than the others, links the Amendment to its Cold War antecedents and makes more of the president’s role in a nuclear launch.

Of the other novels, *Full Disclosure* confirms Nichols’ assumption of presidential responsibilities by transferring the ‘black bag’. Still, with Ericson refusing to vacate the White House, the military officers possessing the nuclear codes must cross the street to the

⁵⁵ Batchelor, *Father’s Day*, chp. 18.

⁵⁶ Safire, *Full Disclosure*, 469, 488.

⁵⁷ Knebel, *Camp David*, 92.

⁵⁸ See Congressional Research Service, *In Focus, Defense Primer: Command and Control of Nuclear Forces*, updated 3 December 2020.

vice president's office in the Executive Office Building (itself a further symbol of the vice president's lack of power). Doing so removes a symbol of power from Ericson.⁵⁹ In *Plane*, the broader reference is to Madigan needing to be briefed by the Pentagon.⁶⁰ Of the later published novels, only *Father's Day* refers to the transfer of the nuclear authority, perhaps as it is simply expected and not worthy of a particular comment by the time of their publication.⁶¹ Nonetheless, the novels use these symbols of power to illuminate who is exercising the presidential power to influence, emphasising the role a president is undertaking and who a president is influencing or influenced by. The transfer and use of the symbols also highlight the contingency of the vice president's role as acting president.

This thesis adds a role to Rossiter's ten roles, that of Chief Ghost, as one way the novels anchor their fictional presidents into the historical record. The last real-life president referenced in any of the novels is Clinton, the forty-second, in *WH Storm*, published in 2014.⁶² The 'surprising after-life' of real-life presidents goes beyond presidential libraries, tombs, and the myriad of buildings and places named in their honour, to biography and presidential rankings, to their use in fiction.⁶³ Such fictional use anchors the fictional presidents in reality, introduces them straight into the historical record and acts as guides to the fictional presidents' behaviours and responses, as subsequent chapters will demonstrate.

One way these eight novels are both reverent and playful with their Chief Ghosts is to number their fictional president or clarify where he fits sequentially. All the novels take place in a near future to publication. Seven novels (*Kidnapping* is the exception) show where their president fits within the historical record. *Camp David's* Hollenbach is likely the thirty-eighth president, published in 1965 when Johnson was the thirty-sixth president. *Camp David* refers to the 25th only as 'the disability thing in the Amendment we put through a few years ago'.⁶⁴ *Plane's* Haines is the thirty-seventh, published in 1967 when

⁵⁹ Safire, *Full Disclosure*, 450.

⁶⁰ Serling, *Plane*, 92-3.

⁶¹ Batchelor, *Father's Day*, 505.

⁶² Napier, *WH Storm*, 190. The reference is incorrect. Clinton did not invoke Section 3 for a knee injury, opting for treatment that involved epidural anaesthesia, Bill Clinton, *My Life* (London: Hutchinson, 2004), 748, Dr Connie Mariano, *The White House Doctor My Patients Were Presidents: A Memoir* (New York: Thomas Dunne Books St. Martin's Griffin, 2010), 201-202.

⁶³ Brady Carlson, *Dead Presidents: An American Adventure Into the Strange Deaths and Surprising Afterlives of Our Nation's Leaders* (New York: W.W. Norton, 2016), on presidential gravesites. The role of Chief Ghosts in fiction is my addition to these surprising afterlives.

⁶⁴ Knebel, *Camp David*, 177.

Johnson remained in office.⁶⁵ *Kidnapping* does not mention Scott's sequential number, and there are no clues, published in 1974 when the thirty-seventh, Nixon, was in office. *Full Disclosure* labels Ericson as the forty-first, published in 1977 when Ford was the thirty-eighth president.⁶⁶ *Negotiator* does not state Cormack as the fortieth, but it does refer to Odell becoming the forty-first, should Cormack resign.⁶⁷ Published in Spring 1989, the action in *Negotiator* takes place over the spring and autumn of 1991 and mentions that Cormack's inauguration was in January 1989.⁶⁸ President George H. W. Bush's inauguration as the forty-first was in January 1989.

Fourth K does not state Francis Kennedy's number; the book's cover says its setting is in the near future, so possibly Kennedy is the forty-second or forty-third as it was published in 1991 when Bush was the forty-first president.⁶⁹ Jay in *Father's Day* is the forty-third, published in 1994 when Clinton was the forty-second president.⁷⁰ Finally, Davidson in *WH Storm* is probably forty-fifth, published in 2014 when President Barack Obama was the forty-fourth president.⁷¹ Davidson's inauguration occurs between 2015 and 2019.⁷² Recognisable references to the sequence of presidents anchor their fictional presidents in a future history, triggering public imaginary of presidential inability and its consequences in a non-threatening way as preparation for real-life.

The challenge of the Amendment marks even the four fictional presidents who continue in office as they resolve to do something differently. It could be simply to engage their vice president more in governing (Scott and Haines) or to engage more with their national constituency (Kennedy before assassination, Cormack on returning to his presidential duties).⁷³ Like others in the broader genre of presidential novels, the eight novels rely on the symbolic power of the presidency and the extraordinary power inherent in its constitutional roles and those grafted onto it to present recognisable characters. Rossiter

⁶⁵ Serling, *Plane*, 275.

⁶⁶ Safire, *Full Disclosure*, 12.

⁶⁷ Forsyth, *Negotiator*, 495.

⁶⁸ *Ibid.*, 23, 69.

⁶⁹ Puzo, *Fourth K*, front inside cover.

⁷⁰ Batchelor, *Father's Day*, xi.

⁷¹ Napier, *WH Storm*, 27.

⁷² *Ibid.*, 3, 5, 27. Davidson is 75 years old and was 'in his late teens or early twenties' in 1964 suggesting a date of birth between 1940 to 1944, has been president for 2 years, giving a likely inauguration date in January 2017, that is after Obama's two terms. As *WH Storm* was published in 2014 during Obama's first term, it seems a reasonable conclusion that Davidson is the forty-fifth president.

⁷³ Templeton, *Kidnapped*, 284, Serling, *Plane*, 286-7, Puzo, *Fourth K*, 284, Forsyth, *Negotiator*, 507.

described the presidency as ‘the most powerful secular office in the world’, its role ‘exalted beyond the intent of the Constitution’s framers at the expense of Congress’.⁷⁴ The anxiety of presidential inability, including within fiction, reflects the concerns about what happens if the president cannot fulfil his presidential responsibilities: a problem to which there was no constitutional solution until the states ratified the Amendment in 1967.

Narratives of the unable POTUS

This section will explore the role of the 25th Amendment novels in reflecting and shaping one facet of the problem narrative of presidential inability, the anxiety of an absent or unable president, and the Amendment’s role in countering that anxiety by planning for stability. In theory, a peaceful transfer of presidential responsibilities to an acting president, including until the next quadrennial election, provides stability.

Narratives of presidential inability in fiction draw out the implications of the waning of political viability and the consequences of mounting challenges to a president’s ability to govern. Such challenges play on the importance of the president’s personal character when inability is threatened or alleged. The powers granted to the president by the Constitution, or by those grafted on to it, are no guarantee of the ability of a president actually to exercise those powers as ‘the very size of the challenges facing the office threatened to dwarf the individuals who held it’.⁷⁵ *Camp David, Plane* and *Full Disclosure* acknowledge this point. Hollenbach uses the demands of the job to explain his increasingly aberrant behaviour when he gate-crashes the informal meeting deciding whether to take their concerns to a full Cabinet.⁷⁶ Haines is exhausted by the presidency, setting up a short vacation as a cover for his secret meeting with Premier Bujesky.⁷⁷ Ericson mulls over whether he can continue as president in the early days of his disability and later as he has made adjustments to cope with his blindness.⁷⁸ The novels illustrate a president’s challenges in exercising those powers when inability either threatens or is alleged. This section explores three themes in the portrayals of an unable POTUS. The first is the power to influence; rather than merely giving orders, ‘the power to persuade is the power to

⁷⁴ Rossiter, *The American Presidency*, xi.

⁷⁵ Smith, *Presidents We Imagine*, 163.

⁷⁶ Knebel, *Camp David*, chp. 20.

⁷⁷ Serling, *Plane*, 11, 19, 38.

⁷⁸ Safire, *Full Disclosure*, 124-125, 484.

bargain'.⁷⁹ As *Father's Day* portrays in its depiction of Jay's attempt to reclaim his presidential responsibilities, the need for invocation of Sections 3 or 4 may indicate a waning of personal power; that is to say, a president's ability to influence has become seriously, perhaps irredeemably, compromised. The second theme is the importance of character in a president, and the third is a president's concern with his legacy.

Sustaining the power of influence over one or two terms in office needs the support, or at least the absence of direct opposition, from Congress, as *Fourth K* shows in how challenges mount to Kennedy's hubris and authoritarian leanings. Other factors can impact a president's ability to harvest or stockpile influence; the support of close staff in the executive branch, Cabinet colleagues and the public mood. The novels show to varying degrees how a positive reaction amongst a president's closest political associates maintains his ability to influence, and an adverse reaction can destroy it. For example, *Full Disclosure* illustrates the shifting tolerance among White House staff, Cabinet, and opinion polls, crucial for Ericson's political survival. As Ericson changes his closest team with the promotion of his Chief of Staff, Lucas Cartwright, to Defense Secretary, and his new Chief of Staff is at odds with the Press Secretary, Ericson loses control of the media agenda and is wrong-footed during a critical speech, directly impacting the rate of decline in public approval of Ericson to a low of 25%.⁸⁰ *Full Disclosure* uses the polls to question whether Ericson still has a mandate to govern, to stiffen Ericson's resolve to stay in office, and later influence his decision to resign.

Father's Day likewise frames 'the suborning of loyalty' clearly shown in *Full Disclosure* in Garland's support from the same constituencies to stay in power.⁸¹ Jay has lost his Cabinet, the House, and probably the Senate.⁸² Despite Jay's landslide electoral victory, his approval rating tanked within two years.⁸³ Garland has the support of Jay's Cabinet and has relied on his closest staff for advice during his acting presidency; their fealty is to him. Crucially, Garland has public support, as shown in opinion polls indicating approval for his actions as acting president over five months at 68%.⁸⁴ As the novel starts, he is much more popular than Jay was before his Section 3 step aside. And more crucially, polling suggests

⁷⁹ Neustadt, *Presidential Power*, 32.

⁸⁰ Safire, *Full Disclosure*, 463.

⁸¹ *Ibid.*, 140.

⁸² Batchelor, *Father's Day*, 200, 289, 290, 423.

⁸³ *Ibid.*, xi.

⁸⁴ *Ibid.*, 44.

approval for him continuing as acting president.⁸⁵ Garland has used his time as acting president to consolidate his position and sets up the question of whether, given Jay's prolonged absence, he can regain his political viability. Power as influence is vital to a president returning from a prolonged Section 3 step aside. It is even more crucial to his ability to sustain a Section 4 challenge in Congress. Diminishing influence is a sign of potential challenges to his public legitimacy even as his institutional and procedural legitimacy continues and may impact public views of the constitutional morality of the actions taken.

In all eight novels, how a president exercises the power of influence, depending on the nature of the fictional plot, shows the impact of impairment concerns. For example, in *Father's Day*, Jay relies heavily on opposition congressional leaders to determine the strategy and tactics of the response to Garland and its execution - literally, in the case of Garland's assassination as Jay's champions stage manage the situation that leads to Garland's death.⁸⁶ In doing so, *Father's Day* emphasises Jay's loss of power. The congressional leaders know of Garland's attempted autogolpe and honour Jay's prerogative of power as the elected president, even as they have little confidence in him: "the president's [Jay] not much, but he's all we have".⁸⁷ Jay's faith is in the Constitution to recognise his prerogative of power and return presidential responsibilities to him.⁸⁸ In contrast, at least initially, Ericson continues to influence his Cabinet and Congress, while *Fourth K's* Kennedy influences the electorate but not his Cabinet and Congress. Presidential roles and the impact of perceived or actual inability on how a president fulfils them shows how a president is exercising power and influence or is struggling to do so. With the continuity of the presidency at the heart of the 25th, the roles of Chief Diplomat, Chief Executive, and Commander-in-Chief are likely to be front and centre. Like real life, the novels may blur the boundaries between the roles.

When continuity of the presidency raises succession issues below the vice presidency, the president's role as Chief of Party becomes more visible in the novels. *Kidnapping* and *Plane* deal with an absent president later released or revealing himself to his vice president, Cabinet, and the public. In *Kidnapping*, Scott influences through his role as Chief of Party

⁸⁵ Batchelor, *Father's Day*, 44, 147.

⁸⁶ *Ibid.*, 507, chp. 44.

⁸⁷ *Ibid.*, 214.

⁸⁸ Batchelor, *Father's Day*, 242.

in his midterm election campaigning but can demonstrate few other roles. Scott's undertaking this role creates the opportunity for his kidnappers. By the necessity of his captivity and the less than twenty-four hours of the plot, Scott does very little after his ambush. However, the willingness of Scott's Cabinet to pay the ransom to release him shows his influence as Chief Executive as his Cabinet continued to support his views and, eventually, for Roberts to overcome his conflict of interest and vote. In *Plane*, by contrast, Haines relishes his role as 'the nation's leader' but is resigned to his essential second role as party leader.⁸⁹ *Plane* uses the distinction on Haines' roles to draw out differences with his mediocre vice president, showing Madigan's ease in the day-to-day party politics that earned him the vice presidency but lack of vision, escalating the crises just as Haines has resolved it.⁹⁰ On the international stage, Haines finds his *métier* as Chief Diplomat. He uses his influence to significant effect by reaching an agreement with the Soviet Premier.⁹¹ But Haines has to undertake this agreement secretly, creating the mystery of his absence when Air Force One crashes. Both Scott and Haines draw on their stockpiles of influence during their short absence and find it easy to step back into being president.

Both *Negotiator* and *Fourth K* deal with grief, and their presidents are temporarily impaired, but both continue to hold, if not exercise, the powers and duties of the presidency. In *Negotiator*, before his only son's murder, Cormack's key role is Chief Diplomat brokering 'The Nantucket Treaty' with the Soviet Union.⁹² As the grief-stricken Cormack withdraws from the demands of the presidency, Odell steps in to fill the void as Head of State and Chief Executive but uses no constitutional mechanism. He is *de facto* but not *de jure* acting president.⁹³ Odell exercises the presidential powers and duties; there is no gap while Cormack's grief incapacitates him. *Fourth K*'s Kennedy wins office on an ambitious and progressive domestic platform, but a hostile Congress blocks Kennedy's agenda. As this Congress is of Kennedy's party, his failures to influence as Chief Legislator and Chief Executive are evident. In the aftermath of the slaying of his only daughter by terrorists harboured by a Middle East state and the nuclear devastation of Manhattan wrongly attributed to international foes, Kennedy's focus shifts to the international sphere. But rather than Chief Diplomat, he responds to the exigencies facing

⁸⁹ Serling, *Plane*, 15.

⁹⁰ *Ibid.*, 25, 27, 263.

⁹¹ *Ibid.*, 278.

⁹² Forsyth, *Negotiator*, 49.

⁹³ Forsyth, *Negotiator*, 312.

him as Commander-in-Chief by invoking martial law at home and ordering the destruction of a fictional Middle Eastern city.⁹⁴ These two portrayals of grief in the presidency show the extremes of responses. Cormack's total abrogation of all his roles and responsibilities while the government continues to function in his absence compared to Kennedy's prioritising those roles where he can respond in the most threatening manner, but the government is close to paralysis. The contrast shows the reach of potentially unchecked presidential power and its consequences.

The novels that portray presidential mental health exhibit the difficulties of using or regaining the power of influence to persuade when it starts to wane. The popular, if aloof, Hollenbach in *Camp David* is portrayed as Chief Diplomat as he plans for the Stockholm summit with the Soviet Premier.⁹⁵ His messianic stance shows his self-belief as Leader of the Coalition of Free Nations as he proposes, through his paranoia, a new world order. As Chief of Party, Hollenbach continues to exercise influence as he seeks a new vice presidential running mate. Like *Fourth K*, *Camp David* highlights the risks of presidential power when unchecked and that, in some situations, anxiety is justified, where constitutional actors have yet to engage with the potential inability of their president.

In *Father's Day*, Garland abuses his role as Commander-in-Chief. Jay has already stepped aside under Section 3 before the novel's start. Garland influences senior military commanders to support his autogolpe rather than trust Section 4 to keep Jay side-lined as president and Acting President Garland with its powers and duties. Garland's approach to selecting his potential vice presidential candidate shows his influence as Chief of Party. He assumes he will be president, not the acting president, either through Jay's resignation or death, due to the autogolpe. Garland's three candidates, the Chairman of Joint Chiefs of Staff (Sensenbrenner), the House Majority Leader (Magellan), and the Senate Minority Leader (Motherwell, a Republican), are his choice, and party support for any of them would be forthcoming.⁹⁶ Similarly, in office, *WH Storm's* Davidson's role depiction focuses on the challenges his Alzheimer's diagnosis brings to the integrity of the chain of command, as Commander-in-Chief, where senior military officers are the only ones aware of his diagnosis.⁹⁷ With the anxiety of an unable president magnified by fear of a nuclear

⁹⁴ Puzo, *Fourth K*, 263, 278.

⁹⁵ Knebel, *Camp David*, 167.

⁹⁶ Batchelor, *Father's Day*, 78, 175, 475.

⁹⁷ Napier, *WH Storm*, 248.

launch, the three novels that portray mental health issues in their presidents resolve the problem narrative by their presidents' resignations but do so after establishing that the 25th provides the mechanism for enhancing a peaceful transfer of power and the safety of the nation.

Full Disclosure's Ericson begins as Chief Diplomat. He is ambushed and blinded during his first meeting with Premier Kolkov en route to a Yalta summit.⁹⁸ Despite the challenges of his disability, which may or may not be permanent, Ericson exercises influence successfully as Chief of Party to manage potential succession issues and, eventually, unsuccessfully as Chief Executive in continuing to influence his Cabinet and Congress. Through practical adjustments, Ericson can deal with the day-to-day work of the presidency and its strategic direction. He may be disabled but can carry out his constitutional roles and presidential responsibilities.⁹⁹ It is his decline in influence, the loss of his power to persuade, that matters. *Full Disclosure* shows Ericson's decline through a mixture of a senior Cabinet member's challenge to his authority, the disclosure of the cover-up of a temporary incident of blindness during the presidential campaign, and whether he was complicit in falsely portraying his Soviet host's heroism during the ambush.¹⁰⁰ The novels' portrayals of a range of constitutional roles through which a president exercises his power show how hard it is to regain influence once it starts to decline. Its decline may be more evident, or immediate, through some of his roles than others. While institutional and procedural legitimacy favour a president retaining office, a decline in public legitimacy may reinforce the loss of influence, leaving a president as a lame-duck unless he resigns.

But the constitutional roles of the presidency alone do not create influence. Character also plays a vital role in presidential power by framing the energy and positivity a president brings to delivering his agenda.¹⁰¹ The 25th Amendment novels emphasise the role of character in politics, as fictional presidents wrestle with personal frailties and challenges to their power mount.¹⁰² For this purpose, the mental and moral qualities that create an

⁹⁸ Safire, *Full Disclosure*, 31-36.

⁹⁹ But see Chapter 4 of this thesis on the Amendment's drafters' views on blindness.

¹⁰⁰ Safire, *Full Disclosure*, 335.

¹⁰¹ James David Barber, *The Presidential Character: Predicting Performance in the White House* (New York: Pearson Longman, 2009), 8-11.

¹⁰² See Catherine Zuckert, "On Reading Classic American Novelists as Political Thinkers." *The Journal of Politics* 43, no. 3 (August 1981): 706. <https://www.jstor.org/stable/2130632>.

expectation of good faith define character.¹⁰³ This way, the key fictional players will honour the Constitution by exhibiting constitutional morality in their actions. In the eight novels, the backstory usually sets out the fictional president's character, his ascent to the presidency, and prior life experiences.¹⁰⁴ Another way the novels signal the Chief Ghosts is for their name, or even just initials, to stand as a kind of shorthand for character, values, or other attributes associated with former real-life presidents during their lifetime.¹⁰⁵ For example, Presidents Abraham Lincoln and Lyndon Johnson are used in the novels to demonstrate political courage and resolution in their fictional presidents as positive attributes.¹⁰⁶

All eight novels illustrate the required character of a president.¹⁰⁷ Their resolutions show their elected presidents as men of good faith, stewards of the presidency who honour their oath of office. Would-be usurpers fail. The self-esteem and rational thinking that the fictional presidents draw on to decide the consequences of their inability, whether temporary or permanent, also illustrate their character. The most personal portrait of the eight fictional presidents is in *Camp David*, the most detailed in *Full Disclosure*. The press in *Camp David* admires Hollenbach for his intellect and vision for change, as evidenced by their treatment of him at the Gridiron Dinner, known for its mocking and satirical take on the incumbent of the White House.¹⁰⁸ The press views this aloof and austere man affectionately, with nods to the little quirks in his daily routine that later presage his mental decline. Hollenbach seems set for a second term. The self-contained Hollenbach is a master tactician capable of disguising his mental frailties in exchanges that take place in public but less so in private. His influence comes from the admiration of his intense personal discipline and self-control: the very traits that threaten to disturb his mental well-being. In *Full Disclosure*, Ericson is a loner with no family. The details provided of Ericson draw out the strength of character needed to cope with his sudden disability; they

¹⁰³ Barber, *The Presidential Character*, iv. 'presidential character' is defined as 'the way the President orients himself towards life'. A dictionary definition of 'character' is 'the mental and moral qualities distinctive to an individual', see Oxford Dictionary of English, <https://www.oed.com>.

¹⁰⁴ Knebel, *Camp David*, 11, Serling, *Plane*, 9, Templeton, *Kidnapping*, 47-49, Safire, *Full Disclosure*, 16, 25, 29, 53, 62-64, 126, Forsyth, *Negotiator*, 48-9, Puzo, *Fourth K*, 58-65, 67, Batchelor, *Father's Day*, 51, Napier, *WH Storm*, 21.

¹⁰⁵ Carlson, *Dead Presidents*, Matviko, ed. *The American President*, Will Oremus, "RFK, DSK, OBL, WTF? When did we start referring to famous people by three initials", *Slate*, 11 June 2012, <https://www.slate.com>, accessed 17 September 2019.

¹⁰⁶ For example, Safire, *Full Disclosure*, 20, on Lincoln, Batchelor, *Father's Day*, 62, on Johnson.

¹⁰⁷ See Barber, *The Presidential Character*, for case studies.

¹⁰⁸ Knebel, *Camp David*, 2.

show the minutiae of daily adjustments made and how, with support, he can continue to undertake what the presidency requires of him.

Plane draws out the importance of character on the power to influence. Haines' programme of domestic policies in *Plane* was the basis for his election, yet he needs to develop influence on the international stage to master the challenges he faces. There are effectively two presidents in this novel, with Haines off-page for much of it, leaving the scene to the inept Madigan as acting president. The contrast in character between them is set up early in the novel: '[Haines] persuaded because he was a leader and he led because he could persuade'.¹⁰⁹ *Plane* portrays Haines' strength of character in his tolerance and kindness, which instils confidence in him from his fellow citizens, the media, and his Soviet counterpart in Haines' willingness to take measured risks. In contrast, Madigan is a mediocre politician, not a leader: "'they have a leader in the Acting President", [Secretary of State] Sharkey replied — suppressing the strong desire to add "I hope"'.¹¹⁰ The concerns about Madigan's character show him as so 'nondescript and average that . . . he was impossible to caricature'.¹¹¹ There is little affection and scant tolerance for Madigan from any constituency he needs to influence as acting president, and his lack of presidential character nearly causes a war.

Plane and *Full Disclosure* are the only two of the eight novels to explore the paradox of the 25th: the more serious the medical issue, the more obvious the political solution available under Sections 3 or 4. It is not known in *Plane* whether the absent Haines is alive or dead, a situation that Haines' vice president and Cabinet recognise needs Section 4. In *Full Disclosure*, Ericson's exercise of power highlights the problem of deciding on his ability to govern. In the immediate aftermath of the ambush, he is blind and in a foreign hospital. The nation, his White House staff, and Cabinet colleagues demonstrate considerable empathy and support for Ericson, who remains popular and robust in pursuing his strategic agenda.¹¹² He does not consider stepping aside and moves by the other constitutional actors to invoke Section 4 remain muted. Ericson has the support of his personal staff and most of the Cabinet until former Treasury Secretary T. Roy Bannerman persuades a Cabinet majority that Ericson is unable to govern.¹¹³ Ericson's character is

¹⁰⁹ Serling, *Plane*, 14.

¹¹⁰ *Ibid.*, 215.

¹¹¹ *Ibid.*, 23.

¹¹² Safire, *Full Disclosure*, 146, 463.

¹¹³ *Ibid.*, 368, 434, 436.

shown in his resolve to accept the challenges blindness brings and his thoughtful approach to exercising power: 'Ericson was turning into a President'.¹¹⁴ *Full Disclosure's* nuanced approach shows the interaction of the slow loss of Ericson's power with his desire to stay in office as public opinion turns against him.¹¹⁵ As his desire and public opinion move negatively, Ericson finally decides that he is doing the right thing as the presidency's steward by resigning. Doing so fulfils an expectation of presidential character.¹¹⁶

The three fictional professor-presidents have their character rooted in their intellect. *Full Disclosure* portrays the respect Ericson's staff have for his cleverness.¹¹⁷ *Negotiator* shows Cormack as having the powers of a statesman in persuading others to change their views by creating a compelling vision and having the means to realise it. Cormack's self-esteem and commitment to tackling global problems in a new way demonstrate his character. In *Fourth K*, Kennedy's charisma and intellect are the central drivers of his influence. Privilege also plays its part; Kennedy possesses influence based on connections made from his family name, personal wealth, and schooling. *Fourth K* portrays what might happen when a president's personal staff challenges the foundations of his influence, presidential character is inflexible, and entitlement turns to hubris. Colleagues and long-term friends are part of Kennedy's elite, sharing common goals but not his vision of how to achieve them. However, Kennedy's influence wanes when the need for revenge for his daughter's murder subsumes his vision, and his chosen response threatens the financial stability of some of his colleagues. As a result, attempts on his life are deliberately unthwarted.¹¹⁸

Father's Day shows Jay as a wise patriarch who tried to use his presidency to achieve much-needed reform. Jay won a landslide election, but his self-esteem collapsed during his months of treatment for depression. Jay cannot summon the focused energy required to sustain the challenge to reclaim his presidential responsibilities. He cannot convince even his family that he should take back the powers and duties of the office. His failed attempts to regain the power to influence demonstrate how difficult it is to regain the power to persuade once lost. *Father's Day* shows the power to influence through Garland's energy and drive, allowing him to consolidate his position. In contrast, the elected president relies on others to find ways to support his Section 4 challenge through party and public

¹¹⁴ Safire, *Full Disclosure*, 328.

¹¹⁵ *Ibid.*, 463.

¹¹⁶ *Ibid.*, 484.

¹¹⁷ Safire, *Full Disclosure*, 16.

¹¹⁸ Puzo, *Fourth K*, 427.

channels. Similarly dealing with mental health challenges, *WH Storm* portrays Davidson's influence as the corollary of his physical attributes. As they wane with age and ill-health, so does his power to influence.

Character failure is not why influence wanes in five of the eight fictional presidents. Instead, its cause is the decline in political viability due to the spectre of his inability.¹¹⁹ Where the Twenty-fifth Amendment is involved, who influences the fictional president in his response to the 25th's personal and political challenges might matter. The novels portray all eight elected, fictional presidents with recognisable and admired mental and moral qualities that enabled their political ascent. Only in *Fourth K* does the shift to hubris create a downfall. It is in the combination of character and power to influence that legacy is shaped, and where the eight fictional presidents draw on the Chief Ghosts to illuminate the inability challenges they face.

Fiction uses the Chief Ghosts to determine whether real-life presidential inability and a president's reaction to it impacted their legacies. If so, are there learning points for our fictional presidents to consider in their reactions? American presidents continue to have a lower life expectancy than the average citizen, and ill health and inability have constantly stalked the presidency.¹²⁰ While eight presidents have died in office, four from natural causes and four from assassination, two of whom lingered for many days before dying, no president has resigned on ill-health grounds.¹²¹ And until the 25th Amendment, there was no constitutional mechanism to allow a president to voluntarily step aside to seek treatment and recover or to remove him involuntarily. Where the novels use the medical frailties or other attributes of real-life presidents as Chief Ghosts, they take part in their legacy. What

¹¹⁹ Hollenbach in Knebel, *Camp David*, Ericson in Safire, *Full Disclosure*, Kennedy in Puzo, *Fourth K*, Jay in Batchelor, *Father's Day*, Davidson in Napier, *WH Storm*.

¹²⁰ Robert E. Gilbert, *The Mortal Presidency: Illness and Anguish in the White House* (New York: Basic Books, 1992), chp. 1. Calculations are up to Johnson. Even adjusting Gilbert's calculations for the longevity of Presidents Ford, Carter, Reagan, and George H.W Bush using Center for Disease Control Mortality tables from <https://www.cdc.gov>, US presidents still have a lower life expectancy than the average citizen. John R. Bumgarner, *The Health of the Presidents: the 41 US Presidents Through 1993 From a Physician's Point of View* (Jefferson, NC: McFarland, & Company, Inc., Publishers, 1994), Serling, *Plane*, 5.

¹²¹ The four by assassination are Lincoln (1865), Garfield (1881), McKinley (1901), and Kennedy (1963). The four from natural causes are Harrison (1841), Taylor (1850), Harding (1923), and Roosevelt (1945). See Kathryn Moore, *The American President* (New York: Sterling, 2018). Nixon resigned in 1974 rather than face impeachment over his role in the Watergate scandal. See Garrett M. Graff, *Watergate: A New History* (New York: Avid Reader Press, 2022), 633-644.

does the comparison with their real-life counterparts tell us about presidential inability and the hypothetical use of the Amendment?

Camp David, *Full Disclosure*, and *WH Storm* all refer to President Woodrow Wilson. Wilson was by any definition unable to fulfil his presidential responsibilities for seventeen months, from 2 October 1919 to the end of his term on 4 March 1921, and his wife and physician tightly controlled access to him.¹²² The novels draw on Wilson to contrast the lesser impairment suffered by their fictional presidents and the presumption of an elected president's claim on the office. *Full Disclosure* illustrates Roosevelt's polio disability and use of a wheelchair to contrast the greater public visibility of the blind Ericson. Ericson cannot hide his disability. *Full Disclosure* illustrates that the desire for a 'strong and confident leader' can never be based on public pity for a disability.¹²³ *WH Storm* references the effect of Roosevelt's compromised health on his performance at the Yalta Conference in February 1945, and force of character was not enough to convince Stalin.¹²⁴ While the reputations of Wilson and Roosevelt fluctuate over time, their secure position among those with a positive legacy as illustrated by one measure, presidential rankings. Roosevelt is consistently in the top three, and Wilson is just outside the top ten.¹²⁵ The evidence suggests that ill health does not impact legacy significantly or negatively.

Four of the novels reference Eisenhower's illnesses. *Camp David* and *Full Disclosure* show his inability to communicate after his stroke as sources of information on responding to Hollenbach's and Ericson's challenges.¹²⁶ As Ericson comes to terms with his blindness and Ericson's Chief of Staff having worked for Eisenhower, *Full Disclosure* employs this fictional first-hand knowledge to depict Eisenhower's despair at his memory issues and his resilience in recovering from his stroke. Sharing the anecdote helps Ericson realise that his predecessors have faced similar vulnerabilities and have continued in office. The ensuing

¹²² Arthur S. Link, "Woodrow Wilson: A Cautionary Tale", *Wake Forest Law Review* 30, no.2 (1995): 585-592, Knebel, *Camp David*, 182, 267, Safire, *Full Disclosure*, 127, 209, 229, 292, Napier, *WH Storm*, 110.

¹²³ Safire, *Full Disclosure*, 125.

¹²⁴ Napier, *WH Storm*, 23.

¹²⁵ The first poll took place in 1948, see Arthur M. Schlesinger, 'Polling on Presidential Greatness, history provides some answers', *Life*, 1 November 1948, Gary M. Maranell "The Evaluation of Presidents: An Extension of the Schlesinger Polls", *The Journal of American History* 57, no.1 (1970): 104-113, <https://www.jstor.org/stable/1900552>, Arthur M. Schlesinger Jr., "Rating the Presidents: Washington to Clinton", *Political Science Quarterly* 112, no.2 (Summer 1997): 179-190, <https://www.jstor.org/stable/2657937>. The Siena College Research Institute Presidential Expert Poll 2018, (the Siena poll), <https://scri.siena.edu/2019/02/13/sienas-6th-presidential-expert-poll-1982-2018/>, accessed 24 September 2019. Brian Lamb, Susan Swain, and C-SPAN, *The Presidents* (New York: Public Affairs, 2019) (the C-SPAN poll).

¹²⁶ Knebel, *Camp David*, 229, Safire, *Full Disclosure*, 89, 153-154.

discussion increases Ericson's resolve to continue.¹²⁷ *Full Disclosure* also shows the problems with sharing information on Ericson's situation in referencing the role of James Hagerty, Eisenhower's press secretary.¹²⁸ In 1956 Eisenhower suffered a heart attack while playing golf in Denver, Colorado. Hagerty was 'under orders to tell as full a story as humanly possible' should any health crises arise during Eisenhower's presidency.¹²⁹ While Hagerty's disclosure that 'the President had had a good bowel movement' embarrassed Eisenhower, the principle of full disclosure by the press secretary to the media is another playful nod to history in the novel's title. But *Full Disclosure* and *Father's Day* also recognise that what counts as full disclosure depends on the president's overall relationship with the media and how well the White House controls the agenda and messaging about a president's overall health. The difference is that Jay has lost the organisational structure to do so.

None of the novels references John Kennedy's chronic health issues.¹³⁰ In *Kidnapping*, with Scott having already experienced an attempted assassination during his congressional election campaign, all four assassinated presidents are invoked.¹³¹ The purpose is to demonstrate the foolhardiness of unrestricted, public contact from the point of view of those responsible for protecting a president. Where the incumbent has an 'indifference to security,' portrayed as a character strength, the contingency of presidential inability and the need for the 25th may be more likely.¹³² Again neither Eisenhower's nor Kennedy's health issues impact their legacy, as measured by the Siena or C-SPAN polls; they are in the top ten on both polls.¹³³

Negotiator makes references to Reagan. Cormack's debilitating grief results from the murder of his only son. *Negotiator* could have drawn comparisons with Presidents Franklin

¹²⁷ Safire, *Full Disclosure*, 154.

¹²⁸ *Ibid.*, 71, 80.

¹²⁹ James C. Hagerty, Oral history interview by Ed Edwin on 2 March 1967, 31 January, 2 February, 6 February, 16 April, 17 April 1968. Columbia Center for Oral History, Columbia University, <https://dx.doi.org/10.7916/d8-j9r4-t815>, 296, 300.

¹³⁰ John Kennedy's health issues were not common public knowledge until long after his death, Robert Dallek, "The Medical Ordeals of JFK", *Atlantic Monthly*, December 2002, <https://www.theatlantic.com/magazine/archive/2002/12/the-medical-ordeals-of-jfk/305572/>. Only two of the eight novels were published after 1992.

¹³¹ Templeton, *Kidnapping*, 23, 39.

¹³² *Ibid.*, 20.

¹³³ The Siena Poll, the C-SPAN poll.

Pierce and Calvin Coolidge.¹³⁴ But it is in raising the consequences of the near-misses on the first time constitutional actors should have used Section 3 (or 4), whether doing so might have prevented the Iran-Contra affair, that Cormack's Cabinet focuses their attention. A fictional report, the Cannon Report, instead of real-life findings of the Walsh Report, which referenced Reagan's memory failure, is used to compare Cormack's situation.¹³⁵ In *WH Storm*, rather than invoke real presidents by name, Davidson is portrayed physically and politically as a combination of Reagan and Governor Arnold Schwarzenegger. As measured in the Siena and C-SPAN polls, Reagan's legacy is 13th and 9th respectively. Few people know about Davidson's Alzheimer's diagnosis, with Davidson's forgetfulness described as 'pulling a Reagan' by those unfamiliar with the diagnosis, making another unacknowledged reference to the Walsh Report.¹³⁶ The novels use *Chief Ghosts* to spotlight the importance of thinking beyond identifying presidential inability to the consequences of taking no action. Based on the *Chief Ghosts* these novels deploy, the fictional presidents should not fear a tainted legacy from ill health. What matters more is how it might prolong or deepen an existing crisis. Handling a crisis and reflecting on his legacy may also lead to a president taking voluntary action on his inability.

Conclusion

This chapter illustrates that the eight novels have a role in informing and reflecting the civic discussion about the Constitution and its contingent mechanisms to deal with presidential inability. The 25th Amendment novels also take their place in the broader fiction about the presidency, portraying the incumbent at their most vulnerable and showing the president's role in determining his inability and questioning others' claims. They explore the importance of character in fulfilling the role competently while not shirking from medical or political challenges.

This thesis does not claim that the novels, individually or collectively, shape profound political thinking. But their pragmatic approaches to the various inability issues they raise

¹³⁴ Both Franklin Pierce and Calvin Coolidge suffered the loss of a son either just before or shortly after assuming office. See Jonathan R.T. Davidson and Kathryn M. Connor, "The Impairment of Presidents Pierce and Coolidge after Traumatic Bereavement", *Comprehensive Psychiatry* 49 (2008): 413-419.

¹³⁵ Forsyth, *Negotiator*, 456. Lawrence E. Walsh, Final Report of the Independent Counsel for Iran-Contra Matters, 4 August 1993 (The Walsh Report), chp. 27, <https://irp.fas.org/offdocs/walsh>, accessed 2 September 2019.

¹³⁶ Napier, *WH Storm*, 8.

essentially counter the anxiety of an unable president that shaped their genre. By placing their fictional presidents into the historical record and drawing on the Chief Ghosts for illustration, the novels recognise that presidential power has always transferred peacefully in real life, where constitutional norms are respected. Doing so creates expectations that it should also do so fictionally, even as their plots show how constitutional and other actors could derail it. The novels show that anxiety is unjustified as there is a mechanism to resolve it, as long as constitutional actors invoke it in good faith. Where bad-faith actors are unwilling to trust the Amendment's process, two presidents trying to exercise the same powers and duties create confusion, a point Chapters 2 and 3 will revisit.

The novels, as a group, also assert the changes in the design and execution of the presidency. They integrate the rise of the imperial presidency and presidential power.¹³⁷ In doing so, they highlight the challenges of retaining power during, and in the case of *Full Disclosure* and *Father's Day* after, a health crisis. Whether a president has stepped aside, under Section 3 or for the duration of a Section 4 challenge, 'effective personal influence is a risky thing — hard to consolidate, easy to dissipate, rarely assured'.¹³⁸ All suggest that where the president's health issues create a power vacuum, using the Amendment can seal it. The novels largely foreground a president's role in the contingency plan for his inability and indicate the Amendment's role in peacefully transferring his presidential responsibilities.

Both *Full Disclosure* and *Father's Day* depict in detail the role of the president as a constitutional actor in Sections 3 and 4 and show the institutional legitimacy of their decisions under these sections. But of greater importance to the confidence in presidential power is that four of the fictional presidents depicted in the eight novels studied here surpass their roles as constitutional actors under the Amendment to fulfil their oath of office and resign, using Sections 1 or 2 to confirm the legitimacy of their successor. Fulfilling such roles contrast with bad-faith actors unwilling to rely on the Amendment's processes driving Garland's military attempt to retain power through an autogolpe in *Father's Day*. The following chapters develop this point further.

A president may be unwilling to recognise that he cannot fulfil his presidential responsibilities. He may not act with constitutional morality or challenge its meaning, even

¹³⁷ Schlesinger, *The Imperial Presidency*, Rossiter, *The American Presidency*.

¹³⁸ Neustadt, *Presidential Power*, ix.

in good faith. One example is *Father's Day's* portrayal of Jay's failure to resign earlier than he does. The Amendment recognises the need to ensure constitutional actors take decisions on presidential inability thoughtfully and in accordance with the checks and balances in the US system of government. The Constitution gives other *dramatis personae* clearly defined responsibilities. It is to these other constitutional actors that the next chapter will turn.

Chapter 2 Constitutional Actors and the 25th Amendment

Introduction

‘Don’t Just Sit There, Do Something!’¹

This chapter asks how the eight novels illuminate the first aspect of the Amendment; who has constitutional duties to do something about presidential inability if a president is unwilling or unable to step aside or challenges claims of his inability? The Constitution defines a role for three actors: the vice president, the Cabinet, and Congress.² The text thus provides a basis for both institutional and procedural legitimacy in defining those with the institutional authority and providing the process they must follow, contributing to the public legitimacy of their decision.

After establishing the roles of the vice president, the Cabinet and Congress in the context of the 25th Amendment, this chapter examines how the novels portray them, with a section on each. As surrogate contingency plans, the novels involve those with the constitutional authority to act, show their relationship with each other and demonstrate the boundaries of their institutional legitimacy. Viewing presidential inability as a problem narrative, whoever is institutionally permitted to solve it may face claims of usurpation. Regarding the vice presidency, this chapter considers whether the novels reflect its increase in significance which started before the publication of the earliest novels and accelerated over the period of their publication, 1965-2014. A vice president is the pre-eminent actor under the Amendment. They are the beneficiaries of Sections 1 and 3, elevating them as president and acting president, respectively. They are also co-decision-maker to invoke Section 4 and its beneficiary as acting president. Appropriate portrayals of a vice president’s selection, activities and relationships anticipate their contingent role. Simply put, do the novels reflect developments in the vice presidency, with the later novels portraying fictional vice presidents who are ready to take on the powers and duties of the presidency? Where these vice presidents are *de facto* or *de jure* acting presidents or accede to the

¹ Brian C. Kalt, *Unable: The Law, Politics, and Limits of Section 4 of the Twenty-fifth Amendment* (New York: Oxford University Press, 2019), 153.

² US Constitution, amend 25, secs. 3-4, Appendix A.

presidency, the novels accept them as legitimately holding those constitutional responsibilities.

Two mutually reinforcing developments improved the real-life readiness of vice presidents to step up to presidential responsibilities and are reflected in fictional portrayals.³ The increased prestige of the office led to an acceptance of the vice presidency as a source of both delegated and contingent power and influenced the Amendment's drafters.⁴ In turn, the vice presidency has increased in status because of its role in the Amendment. For example, *Camp David*, *Plane*, *Kidnapping* and *Full Disclosure*, published between 1965 and 1977 (the earlier four novels), portray vice presidents who are either poorly prepared or do not have the support of their president, although two become acting presidents (Madigan, Nichols) and one becomes president (O'Malley). The later four fictional vice presidents, in *Negotiator*, *Fourth K*, *Father's Day* and *WH Storm* published between 1989 to 2014 (the later four novels), are much better prepared and have, at least initially, presidential support. All become either *de facto*, if not *de jure*, acting president or president. Fiction lags real life in its representation of the vice presidency.

But a vice president cannot act alone on a presidential inability. All eight novels portray their Cabinet's involvement in presidential inability. Not defined in the Constitution, every incoming president designs his Cabinet according to his needs, and today it encompasses many positions beyond the 'principal officers of the executive departments'.⁵ Nominated by the president and subject to appointment 'by and with the Advice and Consent of the Senate', this group of principal officers also has constitutional duties to determine presidential inability under Section 4.⁶ A simple majority is required, with vice presidential concurrence. Yet while Section 4 of the Amendment creates institutional legitimacy for the Cabinet, this legitimacy is untested in real life. The novels, therefore, take on the mantle of shaping this legitimacy in their Cabinet portrayals. Identifying correctly, who is a Cabinet member for its sole constitutional purpose, states its role in contingency planning. The

³ Joel K. Goldstein, "History and Constitutional Interpretation: Some Lessons From the Vice Presidency", *Arkansas Law Review* 69, no.3 (2016): 647-694.

⁴ Birch Bayh, *One Heartbeat Away* (Indianapolis, IN: The Bobbs-Merrill Company, Inc., 1968), 142, John D. Feerick, *The Twenty-fifth Amendment: Its Complete History and Applications* (New York: MJF Books, 2014), 31.

⁵ US Constitution, amend. 25, sec. 4, Appendix A.

⁶ *Ibid.*, art. 2, sec. 2.

Amendment's drafters required a majority and the concurrence of the vice president to temper public anxiety of usurpation.

Congress's role as the final arbiter of a president's presumption of power under the 25th reflects the importance of elected representatives and the checks and balances inherent in the US system of government. In addition, the senior congressional officers have a passive role as the addressees of 'written declarations' under Sections 3 and 4.⁷ Section 4 also allows Congress to replace the Cabinet with another body to decide, again with vice presidential concurrence, on removing a president from his presidential responsibilities.⁸ *Fourth K* portrays Congress potentially creating such a body.⁹ In *Camp David*, the conclusions of CACTUS indicate that involving another body simply moves the challenge of decision elsewhere and shows the impossibility of a perfect solution.¹⁰ To date, Congress has created no such body and has never arbitrated a Section 4 challenge. Its role in Section 4 confirms the strength of its institutional legitimacy as an elected body. Congress is also the means of countering public anxiety about usurpation by a vice president and the Cabinet.

By giving all three constitutional actors clearly defined roles in Section 4, the Amendment's drafters honoured the concept of separate institutions sharing power. They reinforced the importance of accord to mitigate fears of usurpation.¹¹ Real life has only required presidential responsibilities of a vice president under Section 3 on four occasions, each for only a few hours, and Congress's under Section 2 twice.¹² Their Section 4 responsibilities are, as yet, unused. The role of each of these three constitutional actors has evolved in different ways, which reflects how scholarship contributes relevant points for interpreting each in the novels.

⁷ US Constitution, amend. 25, secs. 3-4, Appendix A.

⁸ *Ibid.*, amend. 25, sec. 4, Appendix A.

⁹ Puzo, *Fourth K*, 207.

¹⁰ Knebel, *Camp David*, 97.

¹¹ Alexander Hamilton, *The Federalist*, Number 32, Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers*, ed. Lawrence Goldman (Oxford: Oxford University Press, 2008), 150, Bayh, *One Heartbeat Away*, 68, *Cong. Rec.*, 89th Cong., 2nd sess., vol. 110, pt, 17, 28 September 1964, 22990.

¹² Feerick, *The Twenty-fifth Amendment*, 196-200, chps. 10, 12, Physician to the President, The White House, memorandum from Kevin C. O'Connor to Jennifer R. Psaki, 19 November 2021, "President Biden's Current Health Summary".

The constitutional actors and their influence on the novels

The corpus of the novels draws on institutional developments in the vice presidency, the Cabinet and Congress for their portrayals of their roles in the 25th. This section illustrates the reasons for the Amendment's drafters' choice of these three constitutional actors, covering each in turn. The arc of the novels shows that the vice presidency 'is no longer the office the framers created' and supports scholarly touting of developments in the office as 'the major recent success story of American governmental Institutions'.¹³ All eight novels portray the Cabinet as a body. The first complete history of its formation, published only in 2020, extends knowledge of the Cabinet's purpose.¹⁴ While three of the novels depict Congress's Amendment role, only *Full Disclosure* and *Father's Day* portray the challenges of its acting swiftly and its role as the ultimate arbiter of presidential inability.

The vice presidency in three of the earlier four novels (*Plane*, *Kidnapping*, *Full Disclosure*) echoes the historical disdain for the office. Congress did not see filling a vice presidential vacancy as an issue needing a constitutional fix until it passed the Amendment in 1965.¹⁵ Since 1789 the vice presidency has been vacant 16% of the time, including six months taken by Congress to confirm the only two uses of Section 2 to date, Ford in 1973 and Rockefeller in 1974. No president or vice president has died in office since 1963 or resigned since 1974.

Both chronological and thematic approaches counter the problem narrative of usurpation by a vice president, aid understanding of the role of the vice presidency in the 25th and, therefore, how the novels portray their vice presidents. This fear of usurpation underpinned debates at the Constitutional Convention in 1787 and remained a concern during the Amendment's legislative journey.¹⁶ Yet the historical timidity of vice presidents was

¹³ Goldstein, "History and Constitutional Interpretation", 652. Research is aided by The Presidential Records Act 1978, 44 US Code §§ 2201-2209. § 2207 defines vice presidential records as the same as presidential records, except that a non-Federal archive may be used as the depository with the agreement of the Archivist of the United States.

¹⁴ Lindsay M. Chervinsky, *The Cabinet* (Cambridge, MA: The Belknap Press of Harvard University Press, 2020).

¹⁵ Feerick, *The Twenty-fifth Amendment*, 32.

¹⁶ *Hearings Before the Subcommittee on Constitutional Amendments of the Committee on the Judiciary, Presidential Inability and Vacancies in the Office of the Vice President, Senate, 88th Cong., 2nd sess., 24 January 1964, testimony of Herbert Brownell, 135, 136, http://ir.lawnet.fordham.edu/twentyfifth_amendment_congressional_materials/7.*

recognised as the default position during the drafting process.¹⁷ The fictional vice presidents span the division of the forty-seven holders of the vice presidency (up to and including then-Vice President Biden) into three or four eras, including a ‘transitional era’ moving to a ‘modern era’ that started around 1974, some seven years after the Amendment’s ratification.¹⁸ Fictional vice presidents in the earlier three novels (*Camp David, Plane, Kidnapping*), published 1965-1974, sit as ‘transitional era’ and the later five (*Full Disclosure, Negotiator, Fourth K, Father’s Day, WH Storm*), published 1977-2014, in the ‘modern era’. But fiction lags real life with analysis suggesting the first of the modern era fictional vice presidents (*Full Disclosure’s* Nichols) sit more readily with their real-life transitional peers. This categorisation of the fictional vice presidents supports views of the office’s utility in each era and individual vice presidents’ achievements (or lack thereof).¹⁹

Categorising real-life vice presidents in these ways shows the influence of the office on its occupant, the occupant on the office, the presidents served, and their utility to the nation. Such linear approaches highlight the passivity of the vast majority of vice presidents in influencing either the president they serve or their office at all, a significant contributor to a counter-problem narrative of passivity in the vice presidency, including, to date, under Section 4. Seven of the eight novels, *Father’s Day* is the exception, echo this passivity to different extents. Only the four later novels, including *Father’s Day*, portray a vice president who actively influences the debate on presidential inability. In *Father’s Day* and *WH Storm*, the fictional vice presidents fulfil their constitutional duty in challenging their presidents’ inabilities. In *Negotiator* and *Fourth K*, they exercise discretion and influence the Cabinet, or their decision as vice president is not to invoke.

While not all eight novels result in their vice presidents becoming president or acting president, they all explore one thematic context: the vice presidency as a springboard to the presidency. The arc of the novels traces a line of certain Chief Ghosts as heirs apparent, using the concept of political time to understand how some candidates make good use of

¹⁷ Bayh, *One Heartbeat Away*, 67.

¹⁸ Jody C. Baumgartner with Thomas F. Crumblin, *The American Vice Presidency From the Shadow to the Spotlight*, (London: Rowman & Littlefield, 2015).

¹⁹ Joel K. Goldstein, *The Modern American Vice Presidency* (Princeton, NJ: Princeton University Press, 1982), Baumgartner with Crumblin, *The American Vice Presidency*, Joel K. Goldstein, *The White House Vice Presidency: the Path to Significance, Mondale to Biden* (Lawrence, KS: University Press of Kansas, 2016). As yet there is little scholarship on the forty-eighth or forty-ninth vice presidents, Mike Pence (2017-2021) and Kamala Harris (2021-to date (September 2022)).

their apprenticeship to succeed to the presidency.²⁰ None of the fictional presidents was previously vice president. Instead, they were state governors (Hollenbach, Haines, Ericson, Cormack, Jay, Davidson) or congressmen (Scott, Kennedy). Considerations of how, when, and why the quality of candidates improved draw on quantitative analyses of the selection processes adopted and the influence of vice presidential candidates on electoral success.²¹ Such themes reflect the development and institutionalisation of the vice presidency, identify, and suggest solutions to the constitutional issues that arise, including vice presidential inability, which the 25th does not cover. There has been only one high-profile symposium solely about the vice presidency, including minority views favouring its abolition as the office is ‘beyond redemption’ and serves no meaningful function.²² Such critics view its current staffing and budget as duplication and its increased prestige as unconstitutional and of no utility.²³ While critical of their fictional vice presidents, none of the novels is critical of the office. All eight novels draw on the vice president as an essential character, recognising their contingent role.

The fictional arc therefore strengthens and legitimises the vice presidency, while the early novels show the consequences of excluding a vice president from proximity to presidential power. For example, the vice presidents in the earlier four novels show vice presidents kept at a distance by their presidents. The latter four, published from 1989 to 2014, have vice presidents more involved in delivering the president’s agenda. The role has found meaning, utility, and institutional legitimacy in ‘liquidation through practice’, including, as argued here, in fiction.²⁴ Of the earlier four novels, all, bar *Full Disclosure*, acknowledge that their presidents could use their vice presidents more constructively. At the same time, the later

²⁰ Stephen Skowronek, *The Politics Presidents Make: Leadership from John Adams to George Bush* (Cambridge, MA: The Belknap Press of Harvard University Press, 1993), Charles O. Jones, “Vice Presidents and Other Heirs Apparent: The Historical Experience of Experience”, *Presidential Studies Quarterly* 38, no.3 (September 2008): 422-432, <https://www.jstor.org/stable/41219688>, Donald A. Zinman, *The Heir Apparent Presidency* (Lawrence, KS: University Press of Kansas, 2016).

²¹ Mark Hiller and Douglas Kriner, “Institutional Change and the Dynamics of Vice Presidential Selection”, *Presidential Studies Quarterly* 38, no.3 (September 2008): 401-421, <https://www.jstor.org/stable/41219687>, Bernard Grofman and Reuben Kline, “Evaluating the Impact of Vice Presidential Selection on Voter Choice”, *Presidential Studies Quarterly* 40, no.2 (June 2010): 303-309, <https://www.jstor.org/stable/23044822>, Jody C. Baumgartner, “Polls and Elections: Under the Radar: Public Support for Vice Presidents”, *Presidential Studies Quarterly* 47, no.4 (December 2017): 777-788, <https://doi.org/10.1111/psq.12381>.

²² Michael Nelson, *A Heartbeat Away: Twentieth Century Fund Task Force Report on the Vice Presidency* (New York: Priority Press Publications, 1988). See dissenting members’ comments at 17, by Arthur M. Schlesinger Jr., H. Hechlo and Henry F. Powell.

²³ Ibid.

²⁴ Goldstein, “History and Constitutional Interpretation”, 656, drawing on James Madison, *The Federalist*, Number 37, Hamilton, Madison and Jay, *The Federalist Papers*, 177.

four novels share vice presidents better prepared to undertake presidential responsibilities. In any invocation of Sections 3 and 4, whether real life or fictional, these developments anchor the procedural and public legitimacy of their actions in the institutional legitimacy of the vice presidency.

Fictional Cabinets play to the ‘myth of an ideal Cabinet’ in using debates on presidential inability to illustrate the variety of views held and highlight its lack of familiarity with what the 25th requires.²⁵ The Cabinet’s role is understood through its development as a ‘product of tradition and hope’ within the executive branch, questioning whether it has any role in setting policy initiatives or is merely a group with managerial oversight of their departments.²⁶ Its collective role is primarily a myth, as research covering issues such as the roles played in each administration’s major crises administration shows.²⁷ The Cabinet’s constitutional responsibility, designed to retain the separation of powers and enhance public confidence, recognises that their president likely has their loyalty. The resulting conflict of interest, and interaction with the vice president, is the first guard against usurpers.²⁸ The Cabinet’s role in the novels, therefore, is unfamiliar but vital to how inability scenarios play out. These eight novels use the Cabinet to explore the differences in knowledge about a president’s well-being, differing opinions about what a Cabinet can and should do about its concerns, and the challenges of building consensus on the political issue of presidential inability.

The 25th Amendment novels use the topography of Washington D.C. as both a location and a mindset to display power, with Congress, ‘the inevitable body to cut the Gordian knot of any extended controversy between the President and Vice President’ distant, but

²⁵ Janet M. Martin, “Frameworks for Cabinet Studies”, *Presidential Studies Quarterly* 18, no.4 (Fall 1988), 802, <https://www.jstor.org/stable/40574731>, Safire, *Full Disclosure*, 162, 204, Napier, *WH Storm*, 184.

²⁶ James Q. Wilson, *American Government* (Boston, MA: Houghton Mifflin Company, 2000), quoted in Martin, “Frameworks for Cabinet Studies”, 800.

²⁷ Richard F. Fenno, *The President’s Cabinet* (Cambridge, MA: Harvard University Press, 1959), R. Gordon Hoxie, “The Cabinet in the American Presidency, 1789-1984”, *Presidential Studies Quarterly* 14, no.2 (Spring 1984): 209-230, <https://www.jstor.org/stable/27550068>, James W. Riddlesperger Jr. and James D. King, “Presidential Appointments to the Cabinet, Executive Office, and White House Staff”, *Presidential Studies Quarterly* 16, no. 4 (Fall 1986): 691-699, <https://www.jstor.org/stable/40574417>, Martin, “Frameworks for Cabinet Studies”, Keith Nicholls, “Presidential Cabinets: The Politics of Selection from Washington to Reagan”, *Congress and the Presidency* 16, no.2 (Autumn 1989): 103-119, <https://doi.org/10.1080/07343468909507927>, Chervinsky, *The Cabinet*.

²⁸ *Hearings*, 24 January 1964, testimony of Herbert Brownell, 136, 139.

not too distant from the White House.²⁹ In addition, the constitutional issues that arise from congressional leaders being in the line of succession and the challenges of Congress's inability to act swiftly mean Congress's role in the Amendment is not without its critics.³⁰ Such literature as there is on the Cabinet or Congress in fiction places works utilising either or both within the broader genre of 'the Washington novel'.³¹

If the arc of the eight novels reflects the increased recognition of the vice presidency and correctly identifies the Cabinet's and Congress's roles, then the novels illuminate the correct *dramatis personae* in the contingency plan of the 25th Amendment. While *Kidnapping* and *Fourth K* question the role the Amendment allocates to these three constitutional actors, they draw out the lack of familiarity of their Amendment role rather than challenging it as less than apposite. Instead, the novels strengthen the institutional legitimacy of all three actors in their portrayals. As the only other individual apart from the president to have Amendment authority, the decision facing a vice president is the most personal of the three.

The vice presidency

Constitutionally, the whole purpose of the vice presidency is its contingent role. This section explores how fiction illuminates three critical features of readiness to act as president, selection, the roles and duties they undertake, and the personal and working relationship with their president. The vice president is the pre-eminent constitutional actor under Section 4 as a joint decision-maker and the potential beneficiary, a role that reflects the Amendment's importance and interpretations assigned to the office. Broader fictional representations beyond the 25th Amendment novels tend to present venal, unprincipled, ambitious, corrupt, disloyal, or power-hungry vice presidents.³² But few real-life vice

²⁹ *Hearings Before the Committee on the Judiciary, Presidential Inability and Vacancies in the Office of the Vice President*, House, 89th Cong., 1st sess., 9 February 1965, testimony of Hon. Michael A. Musmanno, 218, http://ir.lawnet.fordham.edu/twentyfifth_amendment_congressional_materials/8.

³⁰ *Hearings Before the Subcommittee on Constitutional Amendments of the Committee on the Judiciary, Presidential Inability and Vacancies in the Office of the Vice President*, Senate, 88th Cong., 2nd sess., 25 February 1964, testimony of James McGregor Burns, 115, John C. Fortier and Norman J. Ornstein, "Presidential Succession and Congressional Leaders", *Catholic University Law Review* 53, no.4 (Summer 2004): 993-1014, <https://scholarship.law.edu/lawreview/vol53/iss4/5>.

³¹ Myles L. Clowes and Lorin Letendre, *Understanding American Politics Through Fiction* (New York: McGraw-Hill Book Company, 1973), Roger Kaplan, "Allen Drury and the Washington Novel", *Policy Review* 97 (Oct/Nov 1997): 67-74, Warren G. Rochelle, "The Literary Presidency", *Presidential Studies Quarterly* 29, no.2 (June 1999): 407-420, <https://www.jstor.org/stable/27551996>.

³² For example, Tom Clancy, *Debt of Honor* (New York: G.P.Putnam's Sons, 1994), George Bernau, *Promises to Keep* (London: Macmillan, 1988).

presidents evidence this narrative of a ‘dangerous office’ abetted by the broader cultural portrayals: they have not sought to usurp.³³ Only *Father’s Day* adapts this narrative to satirical effect as a critique of the 25th. Garland does not rely on the constitutional process to retain the acting presidency but fosters an autogolpe to assassinate Jay if he does not resign. The other seven novels echo real life before and after the Amendment and show the vice president more as a loyal courtier, none initiate discussions on their president’s inability. These seven retain something of the tranquillity of the office: it is not a dangerous office in any of them; rather, these fictional portrayals illustrate real life.³⁴

As the novels portray the recent evolution of the vice presidency, some historical context aids in understanding these three features and their fictional portrayals. These features also highlight the fictional tension between loyalty and usurpation. The butt of many jokes, the vice presidency has no direct counterpart in any other nation’s system of government.³⁵ Indeed, its formation in the United States was an afterthought, designed to ensure electors did not always favour their home state candidate.³⁶ In 1787, the Constitution’s drafters allocated the vice president only two constitutional functions. The first function is to succeed to the powers and duties of the presidency ‘in Case of the Removal of the President from Office or of his Death Resignation or Inability’.³⁷ The second function is presiding over the Senate, casting a vote only to resolve a tie.³⁸ In strict constitutional terms, the vice presidency sits within the legislative branch, with only the contingency of becoming president linking it to the executive branch, where, organisationally, the office now sits.³⁹ No real-life vice presidents have come close to grabbing power, mounting a coup d’état, or have otherwise *in extremis* made any decision affecting the administration, including influencing a president’s view of his impairment. The novels, therefore, refer

³³ George S. Sirgiovanni, “Dumping the Vice President: An Historical Overview and Analysis”, *Presidential Studies Quarterly* 24, no.4 (Fall 1994): 765-782, <https://www.jstor.org/stable/27551324>, Goldstein, *The Modern American Vice Presidency*, 311, Jules Witcover, *The American Vice Presidency from Irrelevance to Power* (Washington D.C: Smithsonian Books, 2014).

³⁴ Thomas Jefferson to Benjamin Rush, 22 January 1797, <https://wwwFOUNDERS.archives.gov/documents/Jefferson/01-29-02-0216>, accessed 7 January 2020.

³⁵ Baumgartner with Crumblin. *The American Vice Presidency*, box 1.1, Andrew Roberts, *George III: The Life And Reign of Britain’s Most Misunderstood Monarch* (London: Allen Lane, 2021), 31, briefly compares the role of the Prince of Wales with that of the vice president.

³⁶ See Feerick, *The Twenty-fifth Amendment*, 27, Hamilton, *The Federalist*, Number 68, Hamilton, Madison, and Jay, *The Federalist Papers*, 336.

³⁷ US Constitution, art. 2, sec.1, amend. 25, sec. 2, Appendix A.

³⁸ US Constitution, art. 1, sec. 3.

³⁹ Charles O. Jones, *The American Presidency: A Very Short Introduction* (Oxford, Oxford University Press, 2007), table 5.3.

mainly to those real-life vice presidents, such as Truman or both Johnsons, who succeeded to the presidency after the death of the incumbent.⁴⁰ Less frequently, the novels refer to the loyal courtiers, such as Thomas Marshall, Wilson's vice president.⁴¹ There is little use for vice-Chief Ghosts in the novels, emphasising their contingent role and their history of passivity in the face of presidential inability.

Preparedness is the whole point of the 25th. A presidential candidate's selection of an appropriate running mate is a solid start to ensure a vice president's all-round ability to fulfil the contingent role. However, surveys show that voters do not care about the second slot on the ticket unless their view is unfavourable, suggesting the electorate pays little attention to the contingency of their becoming president.⁴² The eight novels span a fifty-year period during which party structures' influence on vice presidential candidates continued to reduce. The selection of a running mate became the sole bailiwick of the presidential candidate after securing his party's nomination.⁴³ Thus, the quality of candidates improved, giving a vice president at least the veneer of full presidential support. Some have barely survived the experience, yet potential candidates have rarely refused the office.⁴⁴ The novels generally refer to why the presidents chose their running mates.

The novels create more than a back story by referencing selection at all. They raise suitability issues in positioning the characters of a president and vice president as friends and colleagues or strangers and adversaries. For example, in *Plane*, the first of the novels published after ratification, party nominee Haines' running mate Madigan is selected after fourteen roll-call votes failed to break the deadlock between two preferred (and presumably higher quality) candidates.⁴⁵ Haines was 'reluctant to exercise the presidential candidate's prerogative of choosing his running mate'.⁴⁶ The party chairman makes the choice and offers the second slot to Madigan.⁴⁷ Madigan is not Haines' helpmeet or

⁴⁰ For example, Napier, *WH Storm* on Truman, 21, and on Johnson, 24. Templeton, *Kidnapping*, 145-8, covers all the accidental presidents up to Johnson.

⁴¹ Knebel, *Camp David*, 182, Safire, *Full Disclosure*, 108.

⁴² Grofman and Kline, "Evaluating Impact of Vice Presidential Selection".

⁴³ See Marie D. Napoli, *American Prince American Pauper* (Westport, CT: Greenwood Press, 1985), 23, for a description of the 'restricted free choice' of a nominee of his vice presidential running mate.

⁴⁴ Examples are Vice Presidents Hubert Humphrey and Nelson Rockefeller. See Richard Moe, "The Making of the Modern Vice Presidency A Personal Reflection", *Minnesota History* (Fall 2006), *WFMP*, on Humphrey, Gerald R. Ford, *A Time to Heal*, (New York: Harper & Row, 1979), 143-6 on Rockefeller.

⁴⁵ Serling, *Plane*, 26.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

confidante. Roberts in *Kidnapping* proactively sought the vice presidential nomination. Roberts believes his ability to deliver Electoral College votes would give him ‘clout’, while recognising his seeking to do so was ‘irregular. . . and it could militate against him’.⁴⁸ Scott wants to select his running mate after he has secured the nomination, yet has to accept Roberts to secure it. Compromising on the quality of their running mate has severe consequences for the nation and the trust Haines and Scott have in their vice presidents when crises hit.

The novels illustrate the importance of vice presidential selection to their ability to step up as acting president or president if required. In *Full Disclosure*, a letter to its author articulated the character of the vice president thus as the novel was in its embryonic stage:

The Vice President is a zero. He looks like [President Warren G.]Harding and has the intellectual capacity of a Gerald Ford and is totally unfit to run the country. He is honest (perhaps too honest) and was selected to run for vice president because he was the one man in the party who wouldn’t give anybody any trouble.⁴⁹

In the earliest of the first four novels, *Camp David*, Senator McVeagh has access to information on Hollenbach’s health only because he is considered a potential second-term running mate.⁵⁰ In choosing a replacement for the politically embarrassed incumbent, O’Malley, Hollenbach privately prizes fealty to his vision for America over anything else. More publicly, he emphasises the ‘all-round ability to assume the office of President of the United States at a moment’s notice’ as the basis for his selection.⁵¹ The mediocrity of three of these four fictional vice presidents (Roberts, Madigan, and Nichols) reflects anxiety over their abilities to act as president. It suggests that the Cabinet might use discretion to allow the president to continue rather than have a mediocre acting president, except in *Plane*, Haines is missing, possibly dead, so there is no discretion available to its Cabinet. This mediocrity marks a discrepancy with contemporary real-life vice presidents, as at publication dates. Hollenbach had side-lined O’Malley after a campaign finance issue came to light; before that, he and Hollenbach were close associates. Roberts, Madigan and Nichols owe more to their predecessors in Cold War fiction.⁵² By making poor selections

⁴⁸ Templeton, *Kidnapping*, 188, 190.

⁴⁹ Letter from Bill Adler to William Safire, 29 July 1974, *WSP Syracuse*.

⁵⁰ Knebel, *Camp David*, chp. 4.

⁵¹ *Ibid.*, 60-61, chp. 4.

⁵² Jeff Smith, *Presidents We Imagine: Two Centuries of White House Fiction, On the Page, On the Stage, Onscreen and Online* (Madison, WI: University of Wisconsin Press, 2009), Paul Boyer, *By The*

as their running mate, the fictional presidents increase the jeopardy to the nation should inability strike and fail to address the contingent importance of the vice presidency.

In contrast, in the four later novels, the choice of running mate reflects the vice presidential candidate being the personal choice of the party's nominee. Future fictional selections benefitted from Carter's approach to choosing Walter Mondale. Carter's prerogative extended into a formal and well-organised search.⁵³ *Negotiator's* Odell is 'personally chosen' by Cormack as his background, skills, and political base form a counterpoint to Cormack's own.⁵⁴ There is a strong working partnership that weathers the potential exercise of Section 4.⁵⁵ While neither female vice president, DuPray in *Fourth K* nor Queenan in *WH Storm*, is part of their president's inner circle, both are savvy and experienced political operators and have their presidents' trust.⁵⁶ They are both well-placed to step up to the presidency when circumstances dictate.

Father's Day opens with Garland already in place as acting president. Garland became the number two on the Jay ticket as the defeated candidate in the Californian primary.⁵⁷ Garland's potential nominees for the vice presidential vacancy are more relevant to the study here, should Jay succumb to political pressure and resign or the planned assassination of Jay succeed. In either case, Garland would become president under Section 1 and use Section 2 to fill the role of vice president. If Congress upholds Garland's Section 4 challenge, he will remain vice president and acting president unless Jay forces his resignation. Illustrating the possible transactional nature of such appointments, Garland plans to nominate General Lucius Sensenbrenner, the Chairman of the Joint Chiefs of Staff. The latter plans and leads the autogolpe, as Garland wagers 'all the power of the White House in exchange for the capability of the Pentagon'.⁵⁸ Garland also offers the vice presidency to the House Majority Leader Jesus Magellan as a throwback to the ticket balancing era. Magellan believes he is the better candidate as 'how many electoral votes...

Bomb's Early Light: American Thought and Culture at the Dawn of the Atomic Age (New York: Pantheon Books, 1985).

⁵³ Jimmy Carter, *Keeping Faith* (London: Collins, 1982), 35-36.

⁵⁴ Forsyth, *Negotiator*, 75.

⁵⁵ *Ibid.*, 57, 75, 76.

⁵⁶ Puzo, *Fourth K*, 25, Napier, *WH Storm*, 250.

⁵⁷ Batchelor, *Father's Day*, 171.

⁵⁸ *Ibid.*, 142.

did a uniform [Sensenbrenner] have?’⁵⁹ Garland also considers Senate Minority Leader Jean Motherwell. Should Motherwell accept, her husband, the Governor of Maine, would not run for the opposing party in the following year’s quadrennial election. Garland recognises that a bipartisan team would help unite the nation after Jay’s prolonged absence followed by his resignation or death.⁶⁰ Motherwell sees the offer as proof of Garland’s involvement in the planned autogolpe and negotiates considerable influence should she accept.⁶¹ *Father’s Day* highlights the options available in selection, whether as a reward, to side-line a potential opponent, or to acknowledge the contingent importance of Garland’s choice. The novels that draw on a backstory show selection as an important starting point in preparing a vice president to undertake presidential responsibilities, but merely having a suitable running mate is not enough.

Suppose the first feature, selection, is not right. In that case, readiness to assume powers and duties is hard to correct, making it difficult for a vice president to form a vital part of the administration and gain appropriate experience. But such experience is not merely a question of delegation, as a president cannot legally delegate many of his roles and duties.⁶² Beyond the three constitutional roles (succeeding the president, presiding over the Senate, and invoking Section 4), anything else a vice president does is gifted to him by the president. Their influence, if any, lies in being ‘a special sounding board’.⁶³

The four earlier novels portray vice presidents who do little to fulfil any meaningful function beyond being a heartbeat away from the presidency. These presidents exclude their vice presidents from the workings of the administration, although Hollenbach did involve O’Malley before scandal side-lined him.⁶⁴ Even with the weight of institutional and procedural legitimacy in their favour, Roberts, Madigan and Nichols struggle when their president’s inability or absence requires them to step up. The fictional vice presidents recognise the problem but excluded from information and influence; they cannot readily create either during a crisis, as *Plane* and *Kidnapping* particularly acknowledge. The later published four novels reflect the increased importance of the office and the prominence of

⁵⁹ Batchelor, *Father’s Day*, 175.

⁶⁰ *Ibid.*, 35, 474.

⁶¹ *Ibid.*, 478.

⁶² The Contingency Plan, apps. 5-6.

⁶³ Richard E. Neustadt, “Memo 16 The Role of the Vice President”, in Charles O. Jones ed., *Preparing to be President: The Memos of Richard E. Neustadt* (Washington D.C.: The AEI Press, 2000).

⁶⁴ Knebel, *Camp David*, 81.

the roles undertaken by a vice president. But the lack of a personal mandate remains; these roles are the president's gift. From the Amendment's ratification, the institutional legitimacy of the vice presidency was grounded in the constitutional authority to assume presidential responsibilities. Yet vice presidential behaviour has not changed: vice presidents remain unwilling to exert the authority entrusted to them, whether formally under the Amendment or supra-constitutionally through a letter agreement with their president. A decade before the ratification of the Twenty-fifth Amendment, Eisenhower instructed Nixon on the circumstances in which he should assume the role of acting president by letter, a practice that seems to have continued at least into the 1960s. The Contingency Plan acknowledges the lack of evidence beyond those released to the public.⁶⁵ An unwillingness to create a precedent, and the deliberate flexibility in the Amendment of the circumstances in which a vice president should become acting president under Sections 3 or 4, have led to more recent vice presidents continuing their predecessors' behaviour as respectful courtiers, not usurpers. The difference is that they increased their political capital in so doing.⁶⁶

Fiction conveys the impact, or not, of more prestigious roles and duties of the vice presidency by using symbols of power, including the ultimate symbol of the White House itself. As acting president, Garland resides in the White House with his wife and views the Oval Office as a performative space, preferring the president's private office for work in *Father's Day*.⁶⁷ Other symbols, such as a Seal of Office, the official residence in the Naval Observatory, the aircraft call sign Air Force Two or Marine Two, aides, Secret Service staff, and office accommodation, require a willing Congress to allocate a budget. Until Kennedy offered Johnson office accommodation in the former Executive Office Building in 1960, few resources were available to a vice president. In 1971, Congress granted a budget for the vice president's staff, research, and travel.⁶⁸ An official residence followed in 1976 with the allocation of the former Naval Observatory to Rockefeller.⁶⁹ *Full Disclosure* and *WH Storm* use the Naval Observatory to highlight the distance of their vice

⁶⁵ The Contingency Plan, app. 17, Memorandum from Robert Toricelli to Michael Berman, 20 March 1978. Chapter 5 of this thesis will return to this point.

⁶⁶ Hendrick Smith, "Starting As An Outsider Bush is now A Star Among Team Players", *NYT*, 5 April 1981.

⁶⁷ Batchelor, *Father's Day*, 143.

⁶⁸ Baumgartner with Crumblin, *The American Vice Presidency*, chp. 5.

⁶⁹ Kate Anderson Brower, *First in Line: Presidents, Vice Presidents, and the Pursuit of Power* (New York, Harper Collins, 2018), chp. IV.

presidents from their presidents' inner circles rather than their independence.⁷⁰ *Father's Day* humorously references the confusion that the Amendment might cause when an acting president is in place and a president has declared his Section 3 inability ended, but the Section 4 challenge has yet to start by referencing Garland's flight as Air Force One-Half.⁷¹ The novels rarely portray other symbols of the vice presidency. Instead, the contrast is in their absence, emphasising that access to power is through the presidency and proximity to, or use of, its symbols of power.

WH Storm recognises the vice president's constitutional role as President of the Senate and the ceremonial duties that a president can allocate to his vice president thus: 'with the Senate out of session for the moment and no pressing overseas funerals or coronations requiring her presence, Vice President Joan Queenan allowed herself unstructured time to catch up on national and world events.'⁷² Davidson has scaled back the vice presidency in *WH Storm*, deliberately reversing the real-life expansion in vice presidential roles and duties while acknowledging the problems that might create.⁷³ Davidson 'felt strongly, or so he claimed, that previous vice presidents had been allowed to creep into the chain of command where the vice president had no constitutional role. At the same time, he did not want to risk her [Queenan] becoming another Harry Truman.'⁷⁴ Odell in *Negotiator* deputises for Cormack in greeting foreign heads of state.⁷⁵ Involving their vice presidents as a valued part of the executive branch is the best preparation for the contingency of presidential inability, as *Camp David* and the later four novels show. Where the fictional vice presidents have experience within the White House and duties beyond their constitutional allocation, the novels establish them as better placed to step up when needed.

The personal and public relationship between the vice president and president also indicates readiness. Uniquely, of those serving a president, a vice president cannot be fired, but presidents can 'ignore or haze' their vice president by denying them access to resources and information.⁷⁶ Some relationships are structured around weekly lunches, as Mondale

⁷⁰ Safire, *Full Disclosure*, 85, Napier, *WH Storm*, 109.

⁷¹ Batchelor, *Father's Day*, 263.

⁷² Napier, *WH Storm*, 21.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Forsyth, *Negotiator*, 356.

⁷⁶ Richard E. Neustadt, "Memo 17 Rules of Thumb (Based on Historical Experience)", in Jones, ed., *Preparing to be President*.

insisted, or become more partnership in nature, such as that between Obama and Vice President Biden. Beyond the corpus of the novels, fiction depicts the latter affectionately as a crime-busting duo.⁷⁷ While the duties and responsibilities requested of a vice president are likely to influence their working relationship strongly (and vice versa), personal chemistry, mutual respect, and trust also act as determinates. The use of ‘requested’ in this context might seem a curious choice of verb. Considering that putting a vice president to work breaches the constitutional separation of powers, Eisenhower was careful to ‘request’ that Nixon undertook specific roles at his direction.⁷⁸ This protocol has disappeared with the allocation of budget and resources, and the vice presidency is recognised organisationally as within the executive branch. Notwithstanding that the roles and duties undertaken by a vice president remain firmly in the president's gift, the experience that matters to voters seems to be that ‘realized in, not near, the Oval Office.’⁷⁹ History suggests that an incumbent president has a better chance of staying in office than a challenger has of winning it, regardless of how they attained the presidency. Fifteen real-life vice presidents have attained the presidency, nine of them as accidental presidents.⁸⁰ Using depictions from the historical record sets the fictional scene for the Amendment’s use and consequences from a vice president’s point of view. It also counters the problem narrative of the vice presidency as nascent leaders of coups d’état, as no real-life vice president has sought power through usurpation. While O’Malley (*Camp David*) has made it clear that he will only be a caretaker president, DuPray (*Fourth K*) and Queenan (*WH Storm*) have the opportunity to build on their accidental presidency to win the office in their own right.

While a president cannot fire his vice president, he can attempt to force their resignation, as *Kidnapping’s* Scott and *Full Disclosure’s* Ericson do to Roberts and Nichols, respectively.⁸¹ Only two real-life vice presidents, John Calhoun in 1832 and Agnew in 1973, have resigned, and only eight vice presidents have experienced the ignominy of dumping.⁸² A first presidential term is the setting for all eight novels, so the prospect of being dumped is a genuine threat. For example, with O’Malley under investigation for

⁷⁷ Walter F. Mondale, Memorandum to Jimmy Carter on the Role of the Vice President in the Carter Administration, 9 December 1972, *WFMP*, Andrew Schaffer, *Hope Never Dies* (Philadelphia, PA: Quirk Books, 2018), Andrew Schaffer, *Hope Rides Again* (Philadelphia, PA, Quirk Books, 2019).

⁷⁸ Goldstein, *The White House Vice Presidency*, 24.

⁷⁹ Jones, “Vice Presidents and Other Heirs Apparent”.

⁸⁰ My workings, based on Kathryn Moore, *The American President* (New York: Sterling, 2018).

⁸¹ Templeton, *Kidnapping*, 28, Safire, *Full Disclosure*, 489.

⁸² Sirgiovanni, “Dumping the Vice President”. 8 out of 45 vice presidents at the time of his article. It is still 8 at the time of writing, now out of 48.

federal contract misfeasance, Hollenbach has not sought his resignation but actively seeks a new running mate in *Camp David*.⁸³ Should Jay succeed in his Section 4 challenge to reclaim his presidential responsibilities in *Father's Day*, he could not work again with Garland, all trust being exhausted. Jay would seek Garland's resignation and run with another candidate for a second term, most likely Speaker Luke Rainey.⁸⁴ Rockefeller is the only real-life vice president dumped from his party's ticket over the period of the novels' publication.⁸⁵ The novels portray changes in relationships between a president and vice president in ways we can learn from.

With the executive power of the vice president constitutionally contingent, a vice president can only seek to influence. The novels portray a wide range of relationships between a president and vice president. In *Camp David*, Hollenbach shows no empathy for his compromised vice president, who had previously been 'part of the family'; instead, he believes O'Malley is deliberately damaging him.⁸⁶ In *WH Storm*, the relationship is competitive and paternal, but Davidson supports his vice president, especially when presidential ill-health becomes a concern.⁸⁷ Kennedy/DuPray in *Fourth K* and Cormack/Odell in *Negotiator* are good examples.⁸⁸ Empathetic to the plight of their stricken Chief Executive with the murder of an only child, both vice presidents protect, and therefore buy time, for their president to recover. Neither seeks power nor even encourages their president to use Section 3.⁸⁹ In both novels, the vice president has the leading crisis management role in the geopolitical issues that led to the murders and in mediating the consequences but does not take over as *de jure* acting president. Not surprisingly, the novels portray the relationship as more collegial and supportive, where the fictional president has selected his vice president.

The four earlier novels show their vice presidents with little influence and deliberately excluded from an inner circle. Three of the four (Roberts, Madigan, Nichols) are treated

⁸³ Knebel, *Camp David*, 59.

⁸⁴ Batchelor, *Father's Day*, 160, 334.

⁸⁵ Formally Rockefeller declined to have his name placed in nomination, at the request of Ford. an action he later called an act of political cowardice, Ford, *A Time to Heal*, 327-8.

⁸⁶ Knebel, *Camp David*, 16-17, 81.

⁸⁷ Napier, *WH Storm*, 115.

⁸⁸ Puzo, *Fourth K*, 205, Forsyth, *Negotiator*, 356.

⁸⁹ 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): 463-464.

disrespectfully by those holding Cabinet rank. And in *Kidnapping* and *Plane*, the presidents they serve later see that this disdain is wrong, harmful to the nation and seek to improve engagement. In *Camp David*, Hollenbach acknowledges that O'Malley is well placed to take over on his resignation but knows that O'Malley will not seek the party's nomination in the forthcoming election. The president lobbies for and obtains Nichols' resignation in *Full Disclosure* as the condition for his own resignation.⁹⁰ The novels show that the direction of the relationship between a president and vice president is in the former's gift; steps to change it will happen only at a president's behest.

Notwithstanding the roles and duties gifted, a vice president is unlikely to accrue political capital if the personal and working relationship is poor. The strength of their partnership ideally 'evidences the close and trusting relationship', providing confidence in a crisis and enhancing public legitimacy by familiarity with the president's trust in the vice president's leadership qualities.⁹¹ In the later four novels, the vice presidents have more active roles in the administration, meaning they are more familiar with policy and its execution. In *Negotiator*, at the request of the distraught president, Odell chairs the Crisis Management Committee, symbolically taking the central chair (by tradition the president's seat) in the Cabinet Room, and becomes the key contact with the professional negotiator of the title for the release of Cormack's son.⁹² By contrast, DuPray, in similar circumstances in *Fourth K*, is initially silent, attending Cabinet and inner circle meetings but making no contribution to the debate. Later, critical of the response of the president's closest aides to the crisis, she expresses her views privately to Kennedy while remaining publicly loyal.⁹³ The contrast is between a vice president treated as part of a president's inner circle (Odell) with respect by other members and one who is not (DuPray).

Rarely is a vice president portrayed as the president's friend in the novels. How each addresses the other expresses an underlying formality. The fray of a contested Section 4 invocation would test any friendship. In *Negotiator*, for example, Odell is close enough to Cormack to call him by his first name in private.⁹⁴ In *Father's Day*, Garland 'liked the general [Sensenbrenner, Garland's prospective vice president], but not as a friend.'⁹⁵ When

⁹⁰ Safire, *Full Disclosure*, 484.

⁹¹ The Contingency Plan, app. 17, 5.

⁹² Forsyth, *Negotiator*, 122, 240.

⁹³ Puzo, *Fourth K*, 26, 200-205, 369.

⁹⁴ Forsyth, *Negotiator*, 81.

⁹⁵ Batchelor, *Father's Day*, 147.

Jay and Garland meet, each addresses the other as ‘Mr. President’, which also highlights the potential confusion the Amendment might cause.⁹⁶

One indicator of the strength of the relationship is whether a president sees the vice president as his natural successor. A vice president’s key objective is probably to remain on the ballot for a second term or run for the presidency in their own right. None of the earlier four novels sees their vice presidents in this light. Allegations of undue influence on placing a federal contract compromise *Camp David’s* O’Malley.⁹⁷ Haines in *Plane* eventually acknowledges his error in excluding his vice president: “‘I haven’t let you be a good Vice-President. . . I’ve paid only lip service to training you, preparing you for the presidency.’”⁹⁸ The ambiguity inherent in Haines’ statement does not resolve whether he sees Madigan as his successor or merely better prepared to occupy the role one heartbeat away. In a similar vein, *Kidnapping’s* Scott has forced a resignation letter from Roberts, but at the novel’s end, the issue is unresolved, with both parties reconsidering.⁹⁹ *Full Disclosure’s* Nichols, who is in cahoots with the powerful Treasury Secretary, thinks he will be too old to run as a second-term vice president, even if he had Ericson’s confidence, which he does not.¹⁰⁰ In the later four novels, the presidents see their vice presidents as natural successors. However, in *Father’s Day*, Jay, as he plans to return from his self-imposed Section 3 exile, must look to the line of succession, perhaps to bring Speaker Rainey on board as vice president. Had Garland accepted Jay’s Section 3 return and not issued a Section 4 challenge, he would probably remain on the ticket for the next election — but then *Father’s Day* would have a very different plot. Odell has Cormack’s confidence, especially after his astute crisis handling in *Negotiator*. Kennedy in *Fourth K* and Davidson in *WH Storm* see their female vice presidents as successors. Kennedy initially committed to a single term and encourages DuPray: “‘I want you to prepare to make your run for the Presidency’”.¹⁰¹ Such support, while welcome, comes with the recognition by DuPray that it would be of more value in a second-term presidency and ‘not [from] a President who is chased out of Office by his own Democratic Congress.’¹⁰² Davidson lauds Queenan as he resigns, “‘I picked her because I knew. . . that she could do

⁹⁶ Batchelor, *Father’s Day*, 152.

⁹⁷ Knebel, *Camp David*, 31.

⁹⁸ Serling, *Plane*, 287.

⁹⁹ Templeton, *Kidnapping*, 172, 284.

¹⁰⁰ Safire, *Full Disclosure*, 85, 88. Nichols is in his ‘late sixties’.

¹⁰¹ Puzo, *Fourth K*, 26.

¹⁰² *Ibid.*

the job””.¹⁰³ The later four novels mirror real-life developments with vice presidents capable of stepping up and being accepted as legitimately exercising presidential responsibilities.

The historical record favours accidental presidents. Four of the five twentieth-century accidental presidents retained the presidency at a quadrennial election, only Ford, elevated to the presidency on Nixon’s resignation did not. *Full Disclosure* acknowledges this record.¹⁰⁴ A vice president is more vulnerable during a first term than a second term. There are five potential outcomes based on his working and personal relationship with his president during the first term, as *Fourth K’s* DuPray acknowledges.¹⁰⁵ Firstly, to continue on the ticket for a second term; secondly, to break with their president, seek the nomination and be elected in their own right; thirdly, to step aside; fourthly, to change roles; or fifthly, to be dumped from the ticket.¹⁰⁶ Since 1836 only one vice president has immediately succeeded the president under whom they served until George H.W. Bush broke the ‘Van Buren Jinx’ in 1988.¹⁰⁷ Nixon achieved the presidency eight years after the vice presidency, Biden after twelve years, and Mondale and Vice President Al Gore lost their elections. Of the eight fictional presidents, only Kennedy sees his first term to its conclusion in the novels. Still, Hollenbach plans to dump O’Malley, Ericson would probably not run again with Nichols, and Jay almost certainly would drop Garland should he have the opportunity.¹⁰⁸ Kennedy retains DuPray in *Fourth K*, and their presidents look likely to retain Roberts, Madigan, Queenan and Odell.¹⁰⁹ While a president cannot fire his vice president, the novels as a group illustrate that their political viability depends on the president they serve and their response to their president’s inability.

¹⁰³ Napier, *WH Storm*, 250.

¹⁰⁴ Safire, *Full Disclosure*, 85.

¹⁰⁵ Puzo, *Fourth K*, 26.

¹⁰⁶ While former vice presidents have served future presidents as ambassadors for example, I have found no vice presidents that changed roles within the same administration. Examples are Mondale, as Clinton’s Ambassador to China and Charles Dawes, as Hoover’s Ambassador to the United Kingdom. See Bill Clinton, *My Life* (London: Hutchison, 2004), 708, Witcover, *The American Vice Presidency*, 279.

¹⁰⁷ George Sirgiovanni, “The “Van Buren Jinx”: Vice Presidents Need Not Beware”, *Presidential Studies Quarterly* 18, no.1 (Winter 1988): 61-76, <https://www.jstor.org/stable/27550532>.

¹⁰⁸ Knebel, *Camp David*, 16, Safire, *Full Disclosure*, 489, Batchelor, *Father’s Day*, 226.

¹⁰⁹ Serling, *Plane*, 287, Templeton, *Kidnapping*, 284, Forsyth, *Negotiator*, Puzo, *Fourth K*, 496, *WH Storm*, 250.

Presidential candidates can address the first line of defence required for good contingency planning.¹¹⁰ Collegial and supportive working relationships where a vice president has access to resources, information, and a direct channel to the president are vital to vice presidential preparedness and, therefore, to a successful implementation of the contingency plan of the 25th. Today, the vice presidency may be a less tranquil office than the framers intended. Its problem narrative as a source of usurpation remains, yet the historical record and seven of these eight fictional portrayals counter that narrative; *Father's Day* is the exception. But no matter how ready a vice president is to assume presidential responsibilities, they cannot decide on presidential inability alone: 'the combination of the judgement of the Vice President and a majority of the Cabinet members appears to furnish the most feasible formula without upsetting the fundamental checks and balances between the executive, legislative and judicial branches of the Government.'¹¹¹ The decision of a 'majority of the principal officers', colloquially the Cabinet (or the support of 'such other body as Congress may by law provide') is required.¹¹²

The Cabinet

The novels showcase the challenges of reaching a political decision to resolve a medical issue by who they portray in their Cabinets as willing to explore their 25th responsibilities. The Constitution does not refer to a 'Cabinet'. Yet, custom and practice recognise the term and its role as 'an influential creation' even as it adds to the misunderstanding of the offices included for a Section 4 invocation, most commonly including a vice president or others of Cabinet rank in the Cabinet for Section 4.¹¹³ This section explores the Cabinet's unique constitutional role in Section 4 of the 25th and how it is a keystone of legitimacy in a Section 4 invocation. This section considers the use of the Cabinet in the novels by considering firstly what the Cabinet is and is not, through its purpose and, secondly, which positions are included in a Cabinet so far as the Amendment is concerned. Thirdly and finally, this section reflects on the concurrence of the vice president with a Cabinet majority.

The novels highlight that a collective Cabinet decision also creates individual political risk: a president or acting president can fire a Cabinet member, but a vice president cannot. The

¹¹⁰ Carter, *Keeping Faith*, 36.

¹¹¹ *Hearings*. 24 January 1964, testimony of Herbert Brownell, 136.

¹¹² US Constitution, amend. 25, sec. 4, Appendix A.

¹¹³ Chervinsky, *The Cabinet*, 309.

real-life example drawn on in the novels is the attempt of Secretary of State Robert Lansing to have Vice President Thomas Marshall act as president under Article II of the Constitution in 1919 in the aftermath of Wilson's incapacitating stroke. Wilson dismissed Lansing in February 1920.¹¹⁴ *Full Disclosure* draws on Lansing's fate during a discussion between two Cabinet members in the home of the Treasury Secretary to highlight the personal consequences should they fail to convince a majority of their colleagues to invoke Section 4.¹¹⁵ *Full Disclosure* also acknowledges the Cabinet's risk of impeachment should they not act.¹¹⁶

All eight novels refer to 'the Cabinet', exploring what it is and is not.¹¹⁷ Section 4 mirrors the constitutional wording in referring to 'the principal officers of the executive departments'.¹¹⁸ A president appoints such principal officers who serve subject to Senate approval and hold office at the president's discretion. The executive departments have expanded as dictated by government needs from the initial four created by Washington in 1789 to fifteen today.¹¹⁹ Every principal officer is a member of the Cabinet. Still, not all Cabinet members are principal officers, for example, the vice president, the White House Chief of Staff, or the Ambassador to the United Nations.¹²⁰ This thesis refers to 'the Cabinet' as a grouping of the principal officers, defined by the Amendment, rather than as shorthand for all those holding Cabinet rank. The 1947 Presidential Succession Act reflects seniority within the Cabinet by the date of the founding of the executive departments, so State, Treasury, Defense, and Justice remain the senior departments.¹²¹ Where the novels

¹¹⁴ Arthur Link, "Woodrow Wilson: A Cautionary Tale?", *Wake Forest Law Review* 30, no.3 (1995): 585-592.

¹¹⁵ Safire, *Full Disclosure*, 209.

¹¹⁶ *Ibid.*, 368.

¹¹⁷ Knebel, *Camp David*, 51, Serling, *Plane*, 99, Templeton, *Kidnapping*, 30, Safire, *Full Disclosure*, 86, Forsyth, *Negotiator*, 74, Puzo, *Fourth K*, 103, Batchelor, *Father's Day*, 102, Napier, *WH Storm*, 174.

¹¹⁸ US Constitution, art. 2, sec. 2, US Constitution, amend. 25, sec. 4, Appendix A. Section 4 contains the only typographical error in the Constitution, where the second mention of 'executive departments' is in the singular. Correcting the error would require a further constitutional amendment. Minutæ that Safire, *Full Disclosure*, 220, notes.

¹¹⁹ 'The Cabinet', accessed 23 August 2022, <https://www.whitehouse.gov>. See Jones, *The American Presidency*, table 4.1, for the combining of departments. The Postmaster General lost Cabinet rank in 1970 under the Postal Reorganisation Act, when the US Postal Service became an executive agency. *Statutes at Large*, 84, 719.

¹²⁰ 'The Cabinet', accessed 23 August 2022, <https://www.whitehouse.gov>, shows Biden's Cabinet including all three of these positions, and others..

¹²¹ The 1947 Presidential Succession Act. Jones, *The American Presidency*, table 4.1. Legislative attempts have been made to move the Department of Homeland Security to a higher place in succession table. See *Hearing Before the Subcommittee on the Constitution of the House Committee on the Judiciary*, Presidential Succession Act, House, 108th Cong., 2nd sess., 6 October 2004.

portray these four offices of state, they show them as more likely to be known to the public and the international community. Seniority has no impact on voting for the purpose of Section 4. The Amendment's drafters chose the Cabinet as 'the best possible body to assist him [the vice president] in making the determination', and as a body that would generate public confidence in the legitimacy of any decision made on presidential impairment.¹²²

The Cabinet's Section 4 purpose is constitutionally unique and untested. There is no requirement for, or tradition of, collective Cabinet responsibility in the US system and no constitutional role for its collective decision-making other than under Section 4. Although part of the executive branch, organisationally, the Cabinet is not an institution in its own right.¹²³ So, what Section 4 requires of a Cabinet is at odds with the original constitutional duty of each head of an executive department to provide a president with 'the Opinion, in writing...upon any Subject relating to the Duties of their respective Offices'.¹²⁴ There is no equivalent elsewhere in the executive branch that requires collective decision-making, nor is there institutional memory of the Cabinet so doing as Section 4 is unused. The novels reflect this lack of tradition in their depictions of Cabinet deliberations on presidential inability, a point which the next chapter will explore.¹²⁵

Habit and practice mean that each president forms his Cabinet based on balancing patronage, loyalty, and expertise when using 'highly competent and experienced cabinet members may be as much for the sake of symbolism as for concerns of management control'.¹²⁶ Historically a Cabinet's role has been to respond to, rather than determine, presidential inability. Individual rather than collective loyalty to the president who appointed them has shaped its deliberations, confirmed in the lack of use of Section 4. Many real-life presidents met only irregularly with their principal officers collectively. Few real-life presidents have used a Cabinet in any meaningful sense as a deliberative decision-making body with collective responsibility. Kennedy, for example, thought it

¹²² *Hearings*, 24 January 1964, testimony of John D. Feerick, 151, Kalt, *Unable*, 61.

¹²³ Hoxie, "The Cabinet in the American Presidency", 226.

¹²⁴ US Constitution, art. 2, sec. 2.

¹²⁵ See in particular, Serling, *Plane*, 99, 125-6, Templeton, *Kidnapping*, 156. Chapter 3 of this thesis covers this point.

¹²⁶ Riddlesperger and King, "Presidential Appointments to the Cabinet", Nicholls, "Presidential Cabinets".

‘useless’.¹²⁷ Cabinet traditions and precedents (if any) do not extend beyond the administration it serves. Fiction, therefore, takes on the role of creating traditions.

The novels use a range of principal officers (and others of Cabinet rank) in their fictional Cabinets to present differences of opinion over issues of presidential inability to which Section 4 might apply and to show what information might influence a Cabinet member to change their mind. For example, *Full Disclosure*'s reduced Cabinet of only six (a previous administration had scaled back a real-life twelve to Attorney General, Secretaries of State, Treasury, Defense, Natural Resources and Human Resources) illustrates issues of establishing a majority and Cabinet members' response to political persuasion when opinion divides the Cabinet.¹²⁸ A full complement of principal officers at the date of publication of the first novel in 1965 was eleven, although *Camp David* is light on Cabinet portrayals. Except for the Secretary of Defense, reliance is on party insiders and ranking members of the legislature and judiciary to persuade O'Malley that he must take the issue of Hollenbach's seeming disability to the entire Cabinet.¹²⁹ Both *Plane* and *Kidnapping*, which deal with an absent president, accurately portray a full Cabinet of twelve and eleven, respectively.¹³⁰ However, although Madigan in *Plane* views calling a full Cabinet meeting as ‘a little presumptuous,’ it becomes active as a deliberative body as Haines' whereabouts remain unknown.¹³¹ The novels engage with the concept of a Cabinet to explore how those with information on presidential inability engage with that knowledge.

The support of the ranking Cabinet members makes it less likely that a decision on presidential inability will raise claims of usurpation. *Negotiator* portrays only an inner Cabinet comprising the Secretaries of State, Treasury and Defense plus the Attorney General, and constitutionally irrelevant for this purpose, the National Security Advisor, a Cabinet member, but not a principal officer.¹³² In *Father's Day*, Garland initially maintains Jay's Cabinet of fifteen.¹³³ While *Fourth K* only mentions the ranking Cabinet members by

¹²⁷ Hoxie, “The Cabinet in the American Presidency”, 224.

¹²⁸ Safire, *Full Disclosure*, 138, Jones, *The American Presidency*, table 4.1.

¹²⁹ Knebel, *Camp David*, chp. 14.

¹³⁰ Serling, *Plane*, 269-277, published in 1967, a full Cabinet would be twelve. Templeton, *Kidnapping* 154, 172, 234. *Kidnapping* gets the number of the Cabinet right at eleven but excludes a Secretary of Transport, added 1966, and includes a Postmaster General, a role that lost Cabinet rank in 1970 under the Postal Reorganisation Act, when the US Postal Service became an executive agency, *US Statutes at Large* 84 (1970), 719.

¹³¹ Serling, *Plane*, 99, 269-271.

¹³² Forsyth, *Negotiator*, 457.

¹³³ Batchelor, *Father's Day*, 103.

name, although Cabinet meetings do take place, *Fourth K* does not state the number in the Cabinet. *WH Storm* has a Cabinet of sixteen, although it is unclear if the number includes the vice president.¹³⁴ Where the novels accurately portray the composition of the Cabinet, they lay the groundwork to show who will decide and the information it might seek in any Section 4 deliberations.

Each extant executive department has one equal vote in a Cabinet decision on Section 4. But a significant uncertainty remains in whether acting and deputy heads of departments can vote or not: there are constitutional arguments on both sides.¹³⁵ The uncertainty is a real-life concern, as the Trump administration had five out of fifteen acting secretaries at one point.¹³⁶ Such uncertainty does not aid the institutional or procedural legitimacy of a decision to invoke. The novels play with this uncertainty, in shaping the legitimacy of Cabinet decisions and in the optics of presidential (and acting presidential) power to dismiss any principal officer. For example, *Plane* shows Madigan mulling over which of Haines' Cabinet he will ask to resign.¹³⁷ In contrast, *Kidnapping's* Secretary of Agriculture resigns as he opposes the motion to pay the ransom.¹³⁸ Ericson fires Treasury Secretary Bannerman in *Full Disclosure*, and by the final Cabinet vote, his replacement is ill, but his deputy votes.¹³⁹ *Full Disclosure* recognises the importance of the issues as the Dean of Yale Law School is asked, 'did the Cabinet member have the franchise personally or did that vote belong to the department, with the requirement that it be cast?'¹⁴⁰ Attorney General Emmett Duparquet believes it does and uses the legislative history as his evidence.¹⁴¹ Ericson's reduced Cabinet of six illustrates the constitutional arithmetic of the challenges of a close vote. If an acting secretary cannot vote, reducing the denominator, the number needed for a majority also reduces. For example, in *Full Disclosure*, only one

¹³⁴ Napier, *WH Storm*, 194.

¹³⁵ See Kalt, *Unable*, 150 for how there might more technically be a vacancy in the role rather than an acting head, and 150-151 on the arguments for and against inclusion of acting heads. See also the Contingency Plan, app.14, 2.

¹³⁶ John Rogan, "Trump has a lot of temps in top jobs. Would they get a say in removing him from his?", *Washington Post Blogs*, 28 August 2019, Anne Joseph O'Connell "Acting leaders: recent practices, consequences and reforms", <https://www.brookings.edu/research/acting-leaders/>, accessed 21 February 2022.

¹³⁷ Serling, *Plane*, 270.

¹³⁸ Templeton, *Kidnapping*, 262.

¹³⁹ Safire, *Full Disclosure*, 251, 435-6.

¹⁴⁰ *Ibid.*, 210.

¹⁴¹ Safire, *Full Disclosure*, 233. Committee on the Judiciary, *Report on Presidential Inability and Vacancies in the Office of the Vice President*, HR Rep. 89-203, 89th Cong., 1st sess., 24 March 1965, 3, http://ir.lawnet.fordham.edu/twentyfifth_amendment_congressional_materials/14.

person might need to change their opinion as three out of five would form a majority, not four out of six. The novels reflect several real-life concerns in their Cabinet portrayals and highlight why these issues matter.

In *Kidnapping*, the Secretary of Commerce is absent dealing with family illness; the Commerce Department has no other representative present.¹⁴² Jay's Cabinet is reduced to fourteen with Garland's firing of the Treasury Secretary in *Father's Day* and includes one deputy standing in for a terminally ill Secretary of State.¹⁴³ As in *Full Disclosure*, whether acting heads of executive departments can vote is pertinent.¹⁴⁴ The firing of Cabinet members in proximity to a decision of presidential inability is likely to raise the stakes on the legitimacy of any decision, in terms of who made it, the motive for doing so, and with what consequences. It also potentially increases the spectre of presidential (or vice and acting presidential) impeachment, a dilemma *Full Disclosure* recognises.¹⁴⁵ In *Fourth K*, Kennedy's Cabinet is intensely loyal to him. Still, their position starts to change as Kennedy becomes increasingly hubristic and threatens to fire his entire Cabinet bar one, although it is unclear if he does.¹⁴⁶ By raising the issue of voting by acting heads of departments and the firing of Cabinet members by an acting president, the novels go beyond concerns of institutional legitimacy to procedural legitimacy issues in how a Cabinet reached a Section 4 decision, including acting presidential overreach of his presidential responsibilities.

The Amendment's drafters included both the vice president and Cabinet to 'guard against any such rash action or any danger that the decision might be made by persons who are unfriendly to the President', reflecting the fear of usurpation.¹⁴⁷ The novels show how they interact. *Full Disclosure* shows the challenge as Treasury Secretary Bannerman and Defense Secretary Hubert Reed, both hostile to Ericson, confer to estimate how their Cabinet of six might vote, believing there is a 3-3 tie and who, therefore, they might influence to change their vote.¹⁴⁸ The crucial interaction of the Cabinet and the vice president is also made clear in *Full Disclosure* as Secretary of State George Curtice and

¹⁴² Templeton, *Kidnapping*, 155.

¹⁴³ Batchelor, *Father's Day*, 98, 103, 281.

¹⁴⁴ *Ibid.*, 309.

¹⁴⁵ Safire, *Full Disclosure*, 431, 476.

¹⁴⁶ Puzo, *Fourth K*, 217.

¹⁴⁷ *Hearings*, 24 January 1964, testimony of Herbert Brownell, 139.

¹⁴⁸ Safire, *Full Disclosure*, 139.

Secretary of Natural Resources Mike Fong, both loyal to Ericson, question: ‘did they have the Vice President’s vote?’¹⁴⁹ Fong notes that ‘the Vice President did not consider it appropriate for the man who would take the President’s place to influence the Cabinet’s decision, and he would not veto any action of the majority’.¹⁵⁰ Nichols’ view of going along with any Cabinet majority emphasises his lack of independence and reliance on the patronage of Treasury Secretary Bannerman. Ericson’s Cabinet airs the need for a united front. The focus is on the need for the vice president to concur: if the vice president does not support a challenge under Section 4, it would be more than embarrassing; it would question the legitimacy of a Cabinet decision, which is of no effect without Nichols’ concurrence.¹⁵¹ Ericson retains his presidential responsibilities. *Full Disclosure* demonstrates how crucial the interaction is as a counter to usurpation and a building block of legitimacy in the decision to invoke.

The novels, with minor exceptions, portray the composition of the Cabinet correctly for a Section 4 decision, thus setting up its institutional legitimacy. While some of the novels do not reflect real-life principal officers and their departments at publication date, they serve a wider purpose in illuminating the constitutional challenges involved. In exploring the different opinions of Cabinet members on a president’s inability, the novels emphasise the difficulties of deciding in all but the most straightforward cases of inability (in *Plane*, a voluntary but unpublicised absence rather than disease). With the lack of real-life precedent, it is fictional portrayals that show the Cabinet’s decision-making challenges and how it leverages its institutional legitimacy under Section 4 to generate the procedural legitimacy of its decision. But even if the Cabinet and vice president concur on presidential inability, should the president dispute their opinion, Congress becomes the final defence of a president’s presumption of power.

Congress

Congress’s role depends on how a president reacts to moves by his Cabinet and vice president to displace him. It has institutional decision-making roles under Sections 2 and 4 of the Amendment, but the Constitution confines Congress’s first-mover role in displacing a president to impeachment.¹⁵² Congress cannot raise proceedings against an unable

¹⁴⁹ Safire, *Full Disclosure*, 166.

¹⁵⁰ *Ibid.*, 166-7.

¹⁵¹ *Ibid.*, 204, the Contingency Plan, tab D.

¹⁵² US Constitution, art 1, sec. 2.

president under Section 4. The 1970s provided two tests of Congress's Section 2 role, and the congressional review showed full engagement in the confirmation process.¹⁵³ In Section 2, both Houses have active roles, as both must confirm a replacement vice president by a majority.¹⁵⁴ While *Father's Day* flirts with it, none of the novels deal with a vice presidential vacancy during the quadrennial term and therefore do not portray Congress's Section 2 role. Regarding Section 4, Congress's role is untested, but its role conveys institutional legitimacy on the decisions of the other constitutional actors, a point *Full Disclosure* acknowledges.¹⁵⁵ This section explores the novels' portrayals of Congress's role in Section 4 but will firstly explore the constitutional roles of the congressional leaders in Sections 3 and 4 before, secondly, examining its potential to be 'a great public brawl' of unreconcilable views on presidential inability.¹⁵⁶

The critical point in exploring the constitutional role of the Speaker and the President pro tempore of the Senate in Sections 3 and 4 is that they are passive. Their sole role is as the recipients of formal declarations of presidential inability and no inability from the other constitutional actors. *Full Disclosure*, *Father's Day* and *WH Storm* all portray the transmission of the 'written declaration' to the Speaker and President pro tempore, under Section 4 in all, and for reclaiming of powers under Section 3 in *Father's Day*.¹⁵⁷ As significantly, the novels recognise that the roles of the Speaker *qua* House Majority Leader and the Senate Majority Leader, rather than the President pro tempore, and the Minority Leaders of both Houses, are politically significant. For example, in *Camp David*, Speaker William Nicholson, a Democrat like Hollenbach, attends the meeting to discuss whether O'Malley should call a full Cabinet meeting.¹⁵⁸ Jay's champions bring congressional leaders into a close circle of party and public opinion influencers in *Father's Day*.¹⁵⁹ The Senate Minority Leader, a Republican unlike Jay and Garland, is a crucial supporter as Jay

¹⁵³ *Hearing on S.J. Res.26 Before the Subcommittee on Constitutional Amendments of the Committee of the Judiciary Examination of the First Implementation of Section Two of the Twenty-fifth Amendment*, Senate, 94th Cong., 1st sess., 25 February 1975, http://ir.lawnet.fordham.edu/twentyfifth_amendment_congressional_materials/10. Voting for Gerald Ford to replace Spiro Agnew was 92/3 in the Senate and 387/35 in the House, and for Ford's nominee as vice president, Nelson Rockefeller 90/7 in the Senate and 287/128 in the House. See Feerick, *The Twenty-fifth Amendment*, chp. 10 on Ford, chp. 12 on Rockefeller.

¹⁵⁴ US Constitution, amend. 25, sec. 2. Appendix A.

¹⁵⁵ Kalt, *Unable*, 62, Safire, *Full Disclosure*, 474.

¹⁵⁶ *Hearings*, 25 February 1964, testimony of James McGregor Burns, 115.

¹⁵⁷ US Constitution, amend. 25, secs. 3-4, Appendix A, Safire, *Full Disclosure*, 447, Batchelor, *Father's Day*, 67, Napier, *WH Storm*, 195, 200, 211.

¹⁵⁸ Knebel, *Camp David*, 297.

¹⁵⁹ Batchelor, *Father's Day*, chp. 28.

tries to reclaim his presidential responsibilities.¹⁶⁰ So, while the constitutional roles allocated to congressional leaders are passive, their political significance and influence are not, as the novels show.

Congress must arbitrate between a president claiming no inability exists against the disagreement of his vice president and a Cabinet majority under Section 4. A dispute will likely lead to potential issues over evidence, creating a maximum of twenty-three days of uncertainty regarding who will then exercise presidential responsibilities.¹⁶¹ An incumbent president seeking to reclaim presidential responsibilities requires one-third of those present and voting in both Houses to sustain his challenge.¹⁶² *Camp David, Negotiator* and *Kidnapping* make no detailed mention of Congress, as discussions on inability do not progress beyond an informal group in the first, beyond the Cabinet in the second, and Congress is not in session over the short period of the third.¹⁶³ *WH Storm* does not require congressional involvement as Davidson changes his mind, does not challenge the inability determination, and resigns.¹⁶⁴ The remaining four novels reference Congress's Section 4 role, but only two, *Full Disclosure* and *Father's Day*, get it right. *Plane* gets Congress's role in Section 4 wrong in stating, 'the law provides that a special congressional commission adjudicate the conflict between the two men with the aid of proper psychiatric advice'.¹⁶⁵ Section 4 allows Congress to replace the role of the Cabinet by creating 'another body' to call out presidential incapacity with the concurrence of the vice president.¹⁶⁶ Congress has created no such body to date, although several recommendations for improvements to the Amendment suggest one, as Chapter 5 will review. *Fourth K* misrepresents both the Amendment and impeachment. In combining these as one sanction against an unable, but in this case, highly popular, president, *Fourth K* cannot avoid conflating the roles of Congress and the Cabinet. Congress votes to impeach Kennedy, but *Fourth K* makes no distinction between the very different functions of the House, the

¹⁶⁰ Batchelor, *Father's Day*, chp. 28.

¹⁶¹ US Constitution, amend. 25, sec. 4, Appendix A.

¹⁶² Ibid.

¹⁶³ Templeton, *Kidnapping*, 229-231 does illuminate other constitutional points, of Congress's role in setting the dates for federal elections, by statute, and the meaning of 'assembled' for Congress, US Constitution, art. 1, sec 4.

¹⁶⁴ Napier, *WH Storm*, 249-250.

¹⁶⁵ Serling, *Plane*, 126.

¹⁶⁶ US Constitution, amend. 25, sec. 4, Appendix A.

Senate, and the Cabinet. The fictional Kennedy survives the impeachment challenge as Congress annuls its own decision to later win a second term.

While misrepresentation in this way also serves to illuminate real-life issues with the Amendment, portraying the roles incorrectly or conflating them breaks the steps in the legitimacy of their fictional actors. Suppose institutional legitimacy is lacking from the use of the wrong constitutional actors. In that case, they cannot then act with procedural legitimacy and expect public legitimacy of the consequences, creating jeopardy for the nation as the inability remains unresolved by constitutionally appropriate means. Congress in *Full Disclosure* is ‘the last watertight door’ for the presumption of Ericson’s hold on the presidency.¹⁶⁷ Lucas Cartwright, Ericson’s Chief of Staff, believes that “[Treasury Secretary] Bannerman thinks he can get two-thirds of both houses of Congress to agree that the elected President should be deprived of his office”, but that Congress will not go along as it is a “Crazy scheme, never happen”.¹⁶⁸ *Father’s Day* has Congress’s role clearly stated, including the significance of the timing in Section 4.¹⁶⁹ Where the novels show Congress’s role in Section 4, their portrayals of the suite of constitutional actors are complete, emphasising the drafters’ faith in US government institutions and putting institutional legitimacy at the heart of the Amendment.

Where the novels correctly portray Congress’s role, the institutional and procedural legitimacy inherent in their decision supports the legitimacy of the holder of presidential responsibilities, whether an acting president continuing as such or a president who has successfully reclaimed them. Illuminating the broader political roles of crucial congressional leaders is a bonus. The novels that portray a Section 4 challenge bring in Congress’s role as their plots build to their *dénouements*. *Full Disclosure* and *Father’s Day* both emphasise its role as the final decision maker and highlight the risks to the political viability of a president even if he succeeds in his Section 4 challenge.

Conclusion

Each novel raises the question of who has responsibility for acting on presidential inability and answers it correctly, except for *Fourth K*. All eight novels suggest that the Amendment entrusts the correct institutions with presidential inability. This chapter focused on the

¹⁶⁷ Safire, *Full Disclosure*, 154.

¹⁶⁸ *Ibid.*, 161-162.

¹⁶⁹ Batchelor, *Father’s Day*, 103.

institutional legitimacy of the constitutional actors. It showed that except for *Fourth K* and some minor exceptions, the novels portray the roles of the correct constitutional actors in the vice president, the Cabinet, and Congress. In portraying the roles for these constitutional actors, the novels go beyond merely representing the right ones to show the institutional legitimacy of their decisions and create a solid basis for the procedural legitimacy of any decision that follows.

The arc of the eight fictional representations reflects real-life developments in the vice presidency, although fiction lagged. Three of the first four novels portray vice presidents as compromise choices, and all four vice presidents are peripheral to the administration during the novels. Therefore, all four are of little use when the contingency of presidential inability crystallises, and none of the four drives the inability discussions. The narrative of the vice presidency in these four novels magnifies more than just the anxiety of presidential inability because the vice president is inept or politically tainted. It reflects the historical record of unsuitability for the presidency of many real-life vice presidents. While these vice presidents are unfit for the presidency, the novels show that they realise their limitations either in claiming procedural legitimacy to the office (*Camp David* and *Kidnapping*) or public legitimacy through their lack of skills or knowledge (*Plane* and *Full Disclosure*), but they are not nascent usurpers. In the later four novels, the vice president provides an initial sense of continuity in a crisis and projects competence (*Negotiator*, *Fourth K* and *WH Storm*). *Father's Day* is the outlier, but it resolves the problem narrative of usurpation by autogolpe by turning on its perpetrator leading to the acting president's assassination. In illuminating the role of the vice president in presidential inability, these fictional accounts reflect the increased prestige of the office, better selection processes, and more engaged vice presidents. The later four fictional vice presidents are better placed to succeed, both to the presidency and as president. They tell us that selecting an appropriate running-mate and involving them in their administration is crucial to the contingency of presidential inability.

Fiction teases out the importance of the personal and working relationship between the only two officials elected by the nation in nuances relevant to an exercise of the 25th as it would in real life. Using dialogue between them shows the tone of the relationship and how freely they express their views to each other. How each talks about the other to third parties also demonstrates the relationship. From the point of view of contingency planning, a vice president, should the need arise, must anticipate wide acceptance of his legitimacy as acting president or president. The president, where present and conscious, can play a

role in creating that acceptance, as Hollenbach does for O'Malley in *Camp David*, and where he is not by praising his vice president after his return, as Jay initially does in *Father's Day*, and Haines and Scott recognise in *Plane* and *Kidnapping*.¹⁷⁰ In the absence of significant real-life examples, fiction once again helps understand the importance of the vice presidency as the core contingent role in the US system of government. While the arc of the eight novels reflects the increase in the value bestowed on the vice presidency, it also reflects concerns on readiness for the presidency.

Since the Amendment's ratification in 1967, none of the eleven vice presidents has sought to invoke Section 4; at least one had clear opportunities to do so.¹⁷¹ The chances of succeeding to the presidency are more likely should an elected president meet with a fatal accident, assassin's bullet, or a significant health challenge. Fifteen real-life vice presidents have ascended to the presidency, nine of them as 'accidental presidents'. Election as an heir apparent is far from automatic as only ten out of forty-eight vice presidents have won a presidential election in their own right.¹⁷² Since 1836 only one vice president won an election as the immediate successor to the president they served.¹⁷³ While these novels reference real-life events as a way of anchoring the world of the West Wing, their portrayals may also rely on the absurd, on conspiracy, and paranoia to generate the motivations of why a vice president would, given the historical record, move to oust his president. *Father's Day* does so as a critic of the Amendment. The eight fictional vice presidents seem keener than their real-life predecessors in carrying out their constitutional duty and illustrate how different scenarios help explain the mechanics of the 25th and suggest its limitations.

Public knowledge often misconstrues the role of the Cabinet and its composition. Personal loyalty might suggest an unwillingness (in part through unfamiliarity and lack of precedent) for Cabinet engagement with its sole constitutional role. By illuminating the principal officers' role and showing their institutional challenges in deciding on presidential inability, individually and collectively, the novels dispel this unwillingness. The novels also correctly portray the roles of the Speaker and the President pro tempore in

¹⁷⁰ Knebel, *Camp David*, 333, Batchelor, *Father's Day*, 153, Serling, *Plane*, 283-4, Templeton, *Kidnapping*, 283.

¹⁷¹ See Kalt, *Unable*, 67-71, on George H.W. Bush.

¹⁷² As at 1 September 2022, my workings based on Moore, *The American President*.

¹⁷³ *Ibid.*

Sections 3 and 4. Finally, two novels, *Full Disclosure* and *Father's Day*, illuminate the role of Congress as the final arbiter of presidential inability.¹⁷⁴

In summary, except for *Fourth K*, the novels individually and as a group identify the correct constitutional actors, with very few errors or misconceptions. The illumination provided goes beyond merely correct portrayals and shows the vital institutional legitimacy of their roles and what enhances or erodes it. Sections 3 and 4 do not explain how and when constitutional actors should consider its use. But in trusting the constitutional *dramatis personae* as good-faith actors, prepared to talk truth to power, the narrative of usurpation abates, as the arc of the novels suggests. Even *Father's Day's* would-be usurping acting president gets his comeuppance. With better selected, better prepared, and more engaged vice presidents, the novels' endings echo real life and suggest that the problem narrative of usurpation is outmoded and that constitutional trust in the vice presidency is not misplaced. The novels show the Cabinet's role in supporting the vice president and Congress as the ultimate arbiter of their decision. They illuminate the significance of a president's presumption of power. Recognising the roles of the constitutional actors under the Amendment lays the foundation for the institutional legitimacy of their decisions and outcomes. But adapting Brownell's idea of constitutional morality of the Amendment's use also depends on the legitimacy of the process used.

¹⁷⁴ Safire, *Full Disclosure*, 449, 463-475, Batchelor, *Father's Day*, 389.

Chapter 3 Wording and Processes of the 25th Amendment

Introduction

‘Fashioning language to do what we have in mind, particularly when we are subject to the requirement of compression for constitutional amendment purposes, is certainly not an easy undertaking.’¹

This chapter asks how the eight novels illuminate the Amendment’s language. The chapter will discuss the processes and outcomes of invoking it, moving the discussion about how the novels illuminate the 25th, from who can invoke it to how they do so. The emphasis thus shifts in this chapter from the institutional legitimacy of the correct actor to the procedural legitimacy of the correct process. The chapter highlights the deliberate flexibility of interpretation created by its drafters in the compression of the wording adopted and the ambiguity it creates. The study examines how the Amendment should operate by exploring two of its four key aspects, the 25th’s wording and how fiction deploys it, and its processes.² Focusing on the use of language emphasises fiction’s role as an educational platform. Using the appropriate constitutional process for the circumstances faced supports the legitimacy of the decisions taken and helps frame the actions of good-faith constitutional actors within Brownell’s idea of constitutional morality.³ The 25th requires a functioning vice president before a president can invoke Section 3, or a vice president and Cabinet can invoke Section 4. Understanding the 25th’s processes is vital to how each constitutional actor fulfils their role

This chapter is the first exploration of fiction’s use of the Amendment’s wording in the broader literature about the 25th and the first detailed review of fictional portrayals of the Amendment’s processes.⁴ The first section outlines the high-level issues the novels utilise in their portrayals of the Amendment’s language and processes. It outlines the existing

¹ *Cong. Rec.*, 89th Cong., 1st sess., vol. 111, pt. 11, 6 July 1965, 15591.

² US Constitution, amend. 25, Appendix A.

³ *Hearings Before the Subcommittee on Constitutional Amendments of the Committee on the Judiciary*, Presidential Inability and Vacancies in the Office of the Vice President, Senate, 88th Cong., 2nd sess., 24 January 1964, testimony of Herbert Brownell, 136, http://ir.lawnet.fordham.edu/twentyfifth_amendment_congressional_materials/7.

⁴ Both Brian C. Kalt, *Unable: The Law, Politics, and Limits of Section 4 of the Twenty-fifth Amendment* (New York: Oxford University Press, 2019), chp. 7, John D. Feerick, *The Twenty-fifth Amendment: Its Complete History and Applications* (New York: MJF Books, 2014), chp. 16 have some references to the processes in fiction.

literature drawn on in the analysis of the novels in this chapter, thereby highlighting the gap in the existing scholarship that this chapter fills. The second section discusses how the eight novels deploy the Amendment's wording. The remaining sections adopt the Amendment's structure to cover Sections 1, 2, and 3's processes and consequences, followed by the unused Section 4 processes available to the vice president and the Cabinet and the novels' use of Section 4 processes available to the president and Congress. After considering the 25th's processes, the four sections of this chapter show how the novels deploy the correct constitutional actors to resolve the inability portrayed.

The 25th's processes

Two issues identified from the novels also inform real-life learning and the aims and structure of this section. The first issue is the success of the real-life uses of Sections 1 and 2. The second is the contrast between Sections 3 and 4 processes. Discussion of these issues follows the Amendment's Section structure to highlight its real-life uses to date and the relevant matters that the novels use their plots to explore. In this way, the novels sit as part of the hypothetical situations that constitutional scholars develop to illustrate the Amendment's strengths and weaknesses as 'often the best time to analyze tough legal questions is when they are still only hypothetical.'⁵

The eight novels trump real life with four resignations, each portraying a different approach to resignation formalities even as they adhere to its statutory, not constitutional, process.⁶ Congress viewed the one real-life use of Sections 1 and two uses of Section 2 as early successes that raised public awareness of the Amendment.⁷ As a reminder, Section 1 confirms that the vice president succeeds to the office of the president upon a president's removal, death, or resignation.⁸ Nixon's 1974 resignation is the sole real-life use of this section to date, and only *Full Disclosure* and *Father's Day* refer to the precedent created.⁹ Section 2 allows no vacancy in the vice presidency other than the time for congressional

⁵ Kalt, *Unable*, 2.

⁶ Resignation or Refusal of Office, 3 US Code §20 ch 644.

⁷ Feerick, *The Twenty-fifth Amendment*, chps 9-11, *Hearing on S.J. Res 26 Before the Subcommittee on Constitutional Amendments of the Committee of the Judiciary*, Examination of the First Implementation of Section Two of the Twenty-fifth Amendment, Senate, 94th Cong., 1st sess., 25 February, 26 February and 11 March 1975, https://ir.lawnet.fordham.edu/twentyfifth_amendment_congressional_materials/10.

⁸ US Constitution, amend. 25, sec.1, Appendix A.

⁹ Nixon resigned and Ford took the oath of office on 9 August 1974. Safire, *Full Disclosure*, 127, 495, Batchelor, *Father's Day*, 521.

confirmation. Under Section 2, the president nominates a vice president subject to congressional approval, as Nixon and Ford did in 1973 and 1974, respectively.¹⁰ Fiction aids understanding of the resignation process and the formalities that surround it.

Two novels consider the use of Section 2, but neither *Kidnapping's* nor *Father's Day's* portrayal anticipates any issue with its use should circumstances require it. In both real-life uses of Section 2, bipartisan and bicameral consultation on appropriate and acceptable criteria for the vice presidential nominee resulted in only minor congressional dissent.¹¹ Power transitioned peacefully, partly because Section 2 assured party continuity in the White House. The process and its result were accepted as legitimate, emphasised by Ford's public swearing-in by Chief Justice Warren Burger before both Houses.¹² The real-life use also helped cement some public knowledge of the 25th, only seven years after its ratification. Senate review of the uses of Section 2 suggested that, on the whole, the Amendment had worked well and that there was 'no serious question in the public mind of President Ford's legitimacy'.¹³ However, Ford faced at least one public challenge, claiming that as the nation did not elect him to either office, he was not a legitimate president because the 25th Amendment had elevated him to the presidency.¹⁴ By not requiring Section 2 in their storylines, the novels highlight the importance of a functioning vice president to the contingency of the 25th.

The 'several layers of external review' and the timeline to invocation ensure that the burden of proof is on a president's challenger, all suggesting that Section 4 is only appropriate for severe or prolonged circumstances, as illustrated by the definition of Senator Birch Bayh as Chairman of the Senate Judiciary Subcommittee on Constitutional Amendments and the debates within *Plane*, *Full Disclosure*, *Negotiator*, and, *Father's*

¹⁰ Ford was nominated as vice president on 12 October 1973 and confirmed on 6 December 1973. Rockefeller was nominated on 20 August 1974 and confirmed on 19 December 1974. Feerick, *The Twenty-fifth Amendment*, 138, 169, 187.

¹¹ Feerick, *The Twenty-fifth Amendment*, chps. 10 -11.

¹² Ibid., 157, 165, Joel K. Goldstein, 'Taking From The Twenty-fifth Amendment: Lessons in Ensuring Presidential Continuity', *Fordham Law Review* 79, no.3 (December 2010): 1028, <https://ir.lawnet.fordham.edu/flr/vol79/iss3/10>.

¹³ *Hearing*, 25 February 1975, 16.

¹⁴ An Alabama court case referenced Ford's birth name, Leslie King, as another way of drawing attention to his legitimacy as president. See United States District Court of the Southern District of Alabama, Civil Action File No. 74-401-H, Philip Buchen Files, The Gerald R. Ford Museum and Library. I have been unable to find the Department of Justice's response to the court to establish how the case was dismissed.

Day.¹⁵ The novels explore this issue in the difference between the voluntary and involuntary uses of the 25th. The wording ‘unable to discharge the powers and duties of the office’ is identical in Sections 3 and 4. But accepting the meaning of the wording as consistent is argued as too straightforward an approach.¹⁶ While standard wording is one way of encouraging presidential use of Section 3, the argument highlights structural issues in applying it, reflecting the difference in processes available to the constitutional actors.¹⁷ For example, presidents have created Section 3 precedents for short periods of only a few hours, suggesting that a vice president and Cabinet could use Section 4 in those same circumstances should a president not invoke Section 3. Such circumstances are, for example, from real-life precedent, when a president is under anaesthesia for an elective medical procedure.¹⁸ Instead, this debate on hypothetical uses of the Amendment should acknowledge that Sections 3 and 4 ‘encompass only disabilities that would not qualify under the other’, emphasising the drafters’ intent.¹⁹ However, there is common ground among scholars in not wishing to inflame the problem narratives of anxiety and usurpation and using the 25th to calm it through applying constitutional morality to its use. Should a president abuse Section 3 by multiple or inappropriate uses, the House could consider impeachment as the remedy for this ‘misdemeanor’.²⁰ For a legitimate Section 4 invocation, this argument states a president must be unable to make or communicate a rational decision to step aside temporarily under Section 3.²¹ If a president has rationally decided not to use Section 3, then his vice president and Cabinet cannot invoke Section 4.²²

Any discretion exercised by a vice president and Cabinet then becomes one of interpreting whether a president is then rational rather than unable. Interpreting the meaning of Sections 3 and 4 in the same way also counters the legislative record that ‘the flexibility of meaning

¹⁵ Adam R.F. Gustafson, “Presidential Inability and Subjective Meaning”, *Yale Law & Policy Review* 27, no.2 (Spring 2009): 474-475, <https://www.jstor.org/stable/40239719>. Bayh, *One Heartbeat Away* (Indianapolis, IN: The Bobbs-Merrill Company, Inc., 1968), 271.

¹⁶ US Constitution, amend. 25, secs. 3 and 4, Appendix A, Gustafson, “Presidential Inability”.

¹⁷ Feerick, *The Twenty-fifth Amendment*, 113, Gustafson, “Presidential Inability”, 463.

¹⁸ As all four of the real-life uses of Section 3 were. George W. Bush’s uses, and Biden’s, were each for approximately two hours. Reagan’s ambiguous use was for ‘several hours’. See Feerick, *The Twenty-fifth Amendment*, 196-197, 202-203, Physician to the President, The White House, memorandum from Kevin C. O’Connor, to Jennifer R. Psaki, 19 November 2021, “President Biden’s Current Health Summary”, at 7 “Colon Cancer Screening, Routine”.

¹⁹ Gustafson, “Presidential Inability”, 462.

²⁰ US Constitution, art. 2, sec. 4.

²¹ Gustafson, “Presidential Inability”, 462.

²² *Ibid.*, 482.

that is an asset in Section 3 would be a terrible liability in Section 4', a dilemma that *Full Disclosure* and *Father's Day* acknowledge.²³ While these arguments help understand the challenges in applying Section 4, the point the novels portray is that the constitutional actors interpret what presidential inability means in the circumstances extant. The novels highlight the difficulties of using Sections 3 and 4's wording in all but the most straightforward cases. In doing so, the novels illustrate how the 25th's open wording fuels fictional intrigue.

Flagging or flouting: wording and intent

If the novels illuminate the Constitution, then their close reading should reveal the use of the Amendment's wording to explain its drafters' intent of ensuring a president retains his primary claim on the office. The novels evidence language and intent by portraying 'the burden. . . upon the Vice President and the Cabinet to prove the continuance of the disability and not on the President who has the primary claim to the office'.²⁴ At 394 words, the Amendment is one of the longest sections of the Constitution. Its wording is used in the novels to anchor the real-world and flag the novel's aims. This section explores how and why the eight novels deploy the language of the 25th. This thesis shows the ways in which the 25th Amendment novels can educate the public. As Kalt extrapolates from media and social media commentary on presidential inability, from the lack of real-life usage of Section 4 and its widespread misrepresentation across popular culture media that, 'millions of people's understanding of Section 4 is defined by how they have seen it portrayed, inaccurately, in fiction'.²⁵ Many more people have viewed film and TV representations of the 25th than have consumed its portrayal in novels. Novels have an advantage over other fictional depictions in that they can set out the wording of the Amendment in print as if it is a source of reference for the fictional characters: a simple and effective way of both illuminating the 25th and providing an aide to understanding it in the context of the fictional plots.

While the constitutional language does not create complex processes, the issues it raises are potentially complex. The Constitution briefly sets out what key actors must do after they decide to invoke the 25th but gives no guidance on the steps required to make this

²³ Gustafson, "Presidential Inability", 483, *Cong. Rec.*, 89th Cong., 1st sess., vol.111, pt.11, 30 June 1965, 15378-15392, 6 July 1965, 15583-15596.

²⁴ *Cong. Rec.*, 89th Cong., 1st sess., vol.111, pt.6, 19 April 1965, 7943.

²⁵ Kalt, *Unable*, 76.

decision. Using the appropriate constitutional process for Sections 3 and 4 supports the procedural legitimacy of any actions taken and their responses. The president is the only constitutional actor who can use Sections 3 and 4's processes. Scholarship on the processes is plentiful within more expansive commentaries on the Amendment, and the legislative history also provides a valuable source of intent.²⁶

The eight novels use the wording of the Twenty-fifth Amendment in different ways that add depth to Kalt's division of fictional portrayals into two categories, a division this section reflects in its structure.²⁷ The first category is where 'the Section 4 process itself becomes part of the plot'.²⁸ Five of the eight novels, *Camp David*, *Kidnapping*, *Full Disclosure*, *Father's Day*, and *WH Storm*, are in this category. This first category typically has the wording of the Amendment in a prominent place, in sections or chapters labelled as 'The Twenty-fifth Amendment', in lengthy dialogue or exposition exploring its interpretation, in references to constitutional scholars, Attorneys General, and media commentaries in addition to the constitutional actors. The second category comprises those novels 'in which Section 4 is just something that happens — uneventfully — in a story about something else'.²⁹ Such novels typically only flag the Amendment's significance through exposition or short dialogue among constitutional actors and presidential advisors. The remaining three, *Plane*, *Fourth K*, and *Negotiator*, are in this second category. There is a third category, not reflected in Kalt's definition or in the eight novels selected but spotted in applying the selection criteria, where a plot uses the principles of the Amendment but fails to refer to it in any way that identifies its constitutional importance. I suggest that these may be copycat adaptations of more successful novels.³⁰

²⁶ Feerick, *The Twenty-fifth Amendment*, Kalt, *Unable*, Brian C. Kalt, "The Limits of the 25th Amendment", *National Affairs*, Fall 2018, <https://www.nationalaffairs.com/publications/detail/the-limits-of-the-25th-amendment>, accessed 27 September 2018, Goldstein, "Taking From The Twenty-fifth", Akhil Reed Amar, "Applications and Implications of the Twenty-fifth Amendment", *Houston Law Review* 47, no. 1 (2010):1-39, Joel K. Goldstein, "Akhil Reed Amar and Presidential Continuity", *Houston Law Review* 47, no.1 (2010): 67-104, Gustafson, "Presidential Inability", Scott E. Gant, "Presidential Inability and the Twenty-fifth Amendment's Unexplored Removal Provisions", *Law Review of Michigan State University Detroit College of Law*, no.4 (Winter 1999): 791-808, and, for example, *Cong. Rec.*, 89th Cong., 1st sess., 13 April 1964, vol.111, pt.6, 7931-7970, *Cong. Rec.*, 89th Cong., 1st sess., vol. 111, pt. 11, 29 June 1965, 15212-15216, 30 June, 1965, 15378-15392, and 6 July 1965, 15583-15596.

²⁷ Kalt, *Unable*, 75.

²⁸ *Ibid.*

²⁹ Kalt, *Unable*, 75.

³⁰ For example, Henry A. Milton, *The President is Missing* (New York: Banner Books, 1967).

Novels in the first category are identified by having parts, sections, or chapters headed ‘the Twenty-fifth Amendment’ or similar by setting out the entire Amendment or Section 4 verbatim and then going beyond this to articulate the Amendment’s importance in resolving presidential inability. Exploring the five novels in this first category, in chronological order, shows how the use of the Amendment’s wording evolved. The earliest published, *Camp David*, is the outlier, containing neither precise language nor sections and chapters labelled with the 25th. Written as the Amendment was proceeding through Congress but published before Congress’s vote and set in a near-future from its 1965 publication date, it does not even mention what became the Twenty-fifth Amendment by name. Instead, its constitutional relevance is flagged when the protagonist, Senator Jim MacVeagh, decides ‘he ought to know precisely what the law and the custom was in cases where a president's physical or mental condition was called into question’.³¹ He has no ready source for the wording. MacVeagh asks his contact at ‘the legislative reference service of the Library of Congress’ (today the Congressional Research Service) for ‘whatever you've got on the subject of presidential disability’.³² MacVeagh's approach to O'Malley recognises the 25th’s application to his concerns over Hollenbach's mental health: “‘You're the one man who can invoke the disability clause.’” “‘Clause ?’” asked O'Malley. “‘You mean the disability thing in the amendment we put through a few years ago ?’”³³ Dialogue is another way the novels flag the importance of the 25th to their plots.

The first novel published after the Amendment’s ratification, *Kidnapping*, recognises its appropriateness to the situation faced thus:

The men who had drafted the Constitution — even those who in the 1960s had written the 25th Amendment, providing as it did for the possibility of the President's being incapacitated — had never, he was certain, so much as considered a circumstance in which on election day the President would be held hostage in a booby-trapped armoured truck by some refugee from the loony bin!³⁴

Kidnapping's following chapter outlines the Amendment’s history and states the wording of Sections 3 and 4 verbatim and the purpose of Sections 1 and 2.³⁵ *Kidnapping* takes the

³¹ Knebel, *Camp David*, 118.

³² Ibid.

³³ Ibid., 177.

³⁴ Templeton, *Kidnapping*, 133.

³⁵ Ibid., chp. 10.

use of the wording forward from what *Camp David* was able to do and names the Amendment, highlighting its purpose and importance.

Published some ten years after ratification and some three to four years after the first real-life uses of Sections 1 and 2, *Full Disclosure* flags the Amendment extensively. Its prologue anchors the purpose of the 25th, setting out the correct wording of all four Sections of the Amendment in full. The prologue also shows its historical significance as the answer to the question posed at the Constitutional Convention in 1787: ‘what is the extent of the term ‘disability’ and who is to be the judge of it?’³⁶ *Full Disclosure’s* structure also reflects the Amendment. Part Two is titled ‘The Twenty-fifth Amendment’ and runs to 100 pages. Throughout *Full Disclosure*, there is extensive dialogue and exposition of the 25th’s constitutional interpretation by fictional constitutional scholars, journalists, and critical characters. *Full Disclosure’s* fulsome use of the Amendment’s wording sets it apart from the earlier three novels. Doing so draws out the flexibility, ambiguity, and scope for differences of opinion by the constitutional actors.

Similarly, in *Father’s Day*, the 221 pages-long Part Two is titled ‘The Twenty-fifth Amendment’.³⁷ The novel’s prologue sets the scene where Jay has, five months earlier, invoked ‘the Twenty-fifth Amendment, “Presidential Vacancies, Disability, and Inability,”’ putting the Amendment at the heart of its plot.³⁸ While never setting out its wording verbatim, the novel has plentiful references to the Amendment, particularly in dialogue between significant characters on their observations of Jay’s frailty and Garland’s actions. The unrelenting references to the 25th in *Father’s Day* create a litany of the more undesirable political consequences of reclaiming political presence. With some of the offices of state not occupied by men of good faith as envisaged by both the framers of the Constitution and the drafters of the Twenty-fifth Amendment, *Father’s Day* sets out to criticise the 25th.³⁹

WH Storm introduces the need for the Twenty-fifth, but not by name, and does not include the wording verbatim, thus: ‘the president has a problem . . . he may be seriously ill. Who

³⁶ Safire, *Full Disclosure*, prologue, *Notes on Debate in the Federal Convention 1787 By James Madison* (New York: W.W. Norton & Company, 1987), 536.

³⁷ Batchelor, *Father’s Day*, 31-254.

³⁸ *Ibid.*, xi.

³⁹ Letter from former President Dwight D. Eisenhower to the Honorable Birch Bayh, 2 March 1964, 3, The National Archives Center for Legislative Archives, Unpublished Committee Records, Subcommittee on Constitutional Amendments, S.J. Res 1/H.J. Res.1, 89th Cong.

decides that? When does it become a matter for the Vice President to handle?’⁴⁰ The first mention of the 25th by name occurs with the chapter title referencing how those with suspicions of presidential inability might deal with it (‘Hot Potato’), following Colonel Sam Chin's reading of reports confirming Davidson has Alzheimer's disease.⁴¹ The question arises of what he should do with this information: “‘ under the Twenty-fifth Amendment, it's between the Cabinet and the Vice President. I'll take it to the Secretary of State and the Vice President. They can figure out what to do with it [the ‘Hot Potato’ of presidential inability] if they want to do anything at all.’”⁴² As concerns over Davidson's health increase and the Cabinet meets, the chapter labelled ‘Twenty-fifth Amendment’ summarises the processes of Section 4 correctly.⁴³ Using the wording of the Amendment throughout the novels fulfils more than an educational role; they also signpost different interpretations and demonstrate that constitutional actors may not have full knowledge of the 25th.

Turning to the three novels in the second category, also in chronological order, *Plane* was published just after ratification but provides no detail on the Amendment and does not refer to it by name, only as ‘the revised constitutional amendment on succession’.⁴⁴ In *Fourth K*, a congressman's aide reads the wording of Section 4 as ‘the pertinent sentences of the Twenty-fifth Amendment’ but then refers to the process as impeachment, a conflation that continues throughout the novel.⁴⁵ *Negotiator* first mentions the Amendment by name when Cormack's grief has become debilitating.⁴⁶ But Cormack comes to terms with losing his son, and Odell and the Cabinet do not invoke the Amendment. The blurb on the rear of *Negotiator* refers to ‘a ruthless plan to force the President of the United States out of office’ but does not mention how constitutionally the instigators of the plan attempt to do so.⁴⁷ The three novels in this second category may lack full engagement with the 25th's wording, but there are other ways this category of novels illuminates the 25th.

⁴⁰ Napier, *WH Storm*, 99.

⁴¹ *Ibid.*, 122.

⁴² *Ibid.*, 122-123.

⁴³ *Ibid.*, 183-190.

⁴⁴ Serling, *Plane*, 125.

⁴⁵ Puzo, *Fourth K*, 193.

⁴⁶ Forsyth, *Negotiator*, 456.

⁴⁷ *Ibid.*, back cover. Forsyth used the example of how the Twenty-fifth Amendment could play out using Jane Mayer and Doyle McMahon, *Landslide: The Unmaking of the President 1984-1988*. (Boston, MA:

The five novels in the first category use the Amendment's wording prominently and go beyond anchoring Section 4 in their plots. Their use of its wording clarifies the significance of contingency plans for presidential inability and shows how constitutional actors interpret Section 4's use differently, even when there is agreement on the facts of a president's condition. Except for *Fourth K*, none of the novels flouts the Amendment's wording. Kalt's groupings suggest one way of comparing and contrasting the 25th Amendment novels and using these groupings in this thesis underpins a structured approach to analysing the fictional representations.⁴⁸ The language's use and flexibility also highlight the 25th as a political solution to a medical issue. The novels' use of the 25th's language illuminates how its interpretation shapes, or counters, the problem narrative of anxiety and usurpation and their resolution, as *Kidnapping*, *Full Disclosure*, and *Father's Day* demonstrate, that is, there is a constitutional process to resolve it. Despite not mentioning the Amendment by name *Camp David* deserves a place in the first group as it describes the procedure prescribed by the 25th for the political resolution of Hollenbach's medical issues. In the three novels where the 25th is uneventful because the novels are about something else, and they do not use its language, they may still illuminate its processes in other ways.

Sections 1, 2 and 3 processes

Fiction trumps real life with five uses of Section 1 across the eight novels to create a *dénouement*, but none draw extensively on Sections 2 or 3.⁴⁹ As the first detailed analysis of fiction's portrayal of the 25th, this section looks at the novels' use of the processes in Sections 2 and 3 of the 25th for completeness of its study of the Amendment. In real life, no presidents died in office since the Amendment's ratification, and one resigned.⁵⁰ The Constitution provides for presidential resignation but does not state the process.⁵¹ Instead, it is in statute, and Nixon's precedent of a simple one-sentence letter addressed to his Secretary of State.⁵² Before the 25th, no president had resigned, and Nixon's advisers

Houghton Mifflin, 1988 and Los Angeles, CA: Greymalkin Media LLC, 2018, Kindle), which documents Reagan's staff considering the Amendment in 1987, *FFP*.

⁴⁸ Kalt, *Unable*, 75.

⁴⁹ Knebel, *Camp David*, Safire, *Full Disclosure*, Puzo, *Fourth K*, Batchelor, *Father's Day*, Napier, *WH Storm*.

⁵⁰ Nixon resigned on 9 August 1974.

⁵¹ US Constitution, art.2, sec.1, Appendix A.

⁵² Resignation letters are addressed to the Secretary of State as one of their residual administrative functions, see 3 US Code §20, Richard M. Nixon's Resignation Letter, 9 August 1974, accessed 17 May 2022,

considered the mechanism Section 3 provided to step aside before confirming his decision to resign.⁵³ Nixon had announced his resignation to the nation in a televised address the evening before.⁵⁴

Fictional use of Section 1 follows from either presidential resignation or assassination. The processes are different in the four novels where the president resigns. Each reflects Section 1's simplicity and communications relevant to the fictional president's circumstances, but only *Full Disclosure* and *Father's Day* reflect the Nixon precedent.⁵⁵ However, *Father's Day* gets the procedure wrong, using resignation letters like 25th Amendment letters, suggesting the resignee addresses them to the Speaker and President pro tempore rather than the Secretary of State as statute requires.⁵⁶ Published before Nixon's resignation, *Camp David's* Hollenbach resigns to the nation on television, noting that “the official papers under the law and Constitution as we understand them, are now being prepared by the Attorney General and will be signed shortly”.⁵⁷ In the first of the novels published after Nixon's resignation, initially, *Full Disclosure's* Ericson does not distinguish between the use of Section 3 to step aside and resignation: “So ‘stepping aside’... is a nice way of saying — ‘get out for good’”.⁵⁸ Ericson only starts to contemplate resignation after Congress upholds his Section 4 challenge but realises Congress has the votes to impeach him and that public opinion has moved against him.⁵⁹ His decision is predicated on his vice president resigning first, ensuring the inept Nichols, controlled by the former Treasury Secretary, does not become president. Ericson resigns by letter, noting the precise time, and hands it directly to his Secretary of State as ‘the one authorized to receive our resignations’.⁶⁰ The plural pronoun reflected the vital timing, and had Nichols not resigned before Ericson, Nichols would have become president under Section 1. There is no reference to Agnew's real-life vice presidential resignation, but *Full Disclosure* shows

<https://www.archives.gov/historical-docs/todays-doc/?dod-date=809/>, initialled by Secretary of State Kissinger at 11.35 am.

⁵³ Feerick, *The Twenty-fifth Amendment*, 161.

⁵⁴ Richard Nixon, *RN: The Memoirs of Richard Nixon* (London: Book Club Associates by association with Grosset & Dunlop, Inc., 1978), 1057-1063.

⁵⁵ Knebel, *Camp David*, 332, Safire, *Full Disclosure*, 127, 495, 500, Batchelor, *Father's Day*, 521, 524, Napier, *WH Storm*, 250.

⁵⁶ Batchelor, *Father's Day*, 521.

⁵⁷ Knebel, *Camp David*, 333.

⁵⁸ Safire, *Full Disclosure*, 126.

⁵⁹ *Ibid.*, 463, 466, 477, 480.

⁶⁰ *Ibid.*, 494-5.

Nichols' resignation too and portrays the challenges with its wording to ensure Ericson's resignation is not the precondition for Nichols' and potentially creates procedural and public legitimacy issues.⁶¹ There is no address to the nation. These fictional presidents go beyond the political imperative of resigning to show the importance of the due process of resignation.

Davidson in *WH Storm* resigns in front of a joint session of Congress without providing a letter of resignation.⁶² After a failed suicide attempt, Jay's family persuade him to resign in *Father's Day*. Jay resigns by letter, but the novel does not mention its wording or addressee, and Jay, by the novel's end, seriously and possibly terminally ill, does not address the nation.⁶³ For completeness, in *Fourth K*, the fifth novel to draw on Section 1, DuPray succeeds to the presidency after Kennedy's assassination.⁶⁴ Under Section 1, the vice president becomes president on taking the oath of office, not just acting president and continues as such until the subsequent quadrennial election.⁶⁵ However, an address to the nation emphasises the peaceful transition of power and the institutional and procedural legitimacy of the decision to step down. And more importantly, it highlights the successor's legitimate claim on the office. Again, the 25th's open wording allows wide latitude in fictional portrayals of resignation to confirm the legitimacy of a successor's assumption of the presidency.

None of the novels deals with a vacancy in the vice presidency other than in tandem with the president's resignation. The novels portray Section 2 rarely, and none reference either of its two real-life uses.⁶⁶ Constitutionally, the president must submit a sole nominee for Congress to approve.⁶⁷ However, *Father's Day* references Jay's requirement for Garland's resignation should Jay resume his presidential responsibilities but does not draw upon

⁶¹ Safire, *Full Disclosure*, 499-500. Agnew's resignation letter to Secretary Kissinger on 10 October 1973 is missing, see Albin Krebs, "Agnew Resignation is Missing", *NYT*, 12 November 1974.

⁶² Napier, *WH Storm*, 250.

⁶³ Batchelor, *Father's Day*, 524.

⁶⁴ Puzo, *Fourth K*, 496.

⁶⁵ US Constitution, amend. 25, sec. 1, Appendix A. The Constitution does not prescribe an oath for a vice president, the first was created by act of Congress in 1789, for all government officers, see Oath of Office 5 US Code §3331.

⁶⁶ Feerick, *The Twenty-fifth Amendment*, chps. 10-11, *Hearings*, 25 February, 26 February and 11 March 1975.

⁶⁷ US Constitution, amend. 25, sec. 2, Appendix A, Feerick, *The Twenty-fifth Amendment*, chps. 10-11.

process or precedent.⁶⁸ By not requiring Section 2 and always having a vice president in office, the novels honour the keystone of the 25th: a functioning vice president.

Camp David, *Full Disclosure* and *Father's Day* portray at least a discussion on the use of Section 3. Real-life uses of Section 3 include one ambiguous use by Reagan as he claimed not to invoke it, two by George W. Bush, and one to date by Biden.⁶⁹ The constitutional process is simple, requiring a 'written declaration' to be transmitted by the president to the Speaker and the President pro tempore stating that 'he is unable to discharge the powers and duties of his office'.⁷⁰ A further written declaration to the contrary is required to reclaim his powers and duties.⁷¹ Only *Father's Day* uses Section 3 in its plot to determine whether Jay is fit to return, creating the basis for Garland's Section 4 challenge. As Jay has stepped aside before the novel starts, the transmittal of his first written declaration has already taken place. *Father's Day* shows Jay's second declaration to reclaim his presidential responsibilities correctly with letters to Speaker Luke Rainey and President pro tempore Yamamoto.⁷² *Camp David* and *Full Disclosure* reflect on Section 3 as a possible option but do not portray the process.⁷³ For example, MacVeagh says of Hollenbach "“Perhaps, who knows, with some expert treatment, he'll be as good as new when he returns.”"⁷⁴ O'Malley makes this statement before Hollenbach resigns, but *Camp David* states no process for how he leaves or returns. In *Full Disclosure*, Chief of Staff Cartwright first raises the prospect of Ericson 'stepping aside, temporarily' to Secretary of State Curtis while they are still in the Soviet Union. For Ericson, it is not an option: "“this business of 'stepping aside' is a lot of crap. When you're out, you're out.”"⁷⁵ In doing so, Ericson highlights the challenges of an acting president running the country with the incumbent's team and making presidential decisions that may have a long-term impact.

The novels deploy Section 1 to resolve their inability crises with the requisite sense of constitutional morality, and they rarely use Sections 2 and 3. These three Sections do not

⁶⁸ Batchelor, *Father's Day*, 226.

⁶⁹ Feerick, *The Twenty-fifth Amendment*, 196-200, Katie Rogers and Lawrence K. Altman, "Biden Declared 'Healthy' and 'Vigorous' After His First Presidential Physical", *NYT*, 19 November 2021.

⁷⁰ US Constitution, amend. 25, sec.3, Appendix A, The Contingency Plan includes draft letters, apps. 7-12.

⁷¹ *Ibid.*

⁷² Batchelor, *Father's Day*, 78, 103.

⁷³ Safire, *Full Disclosure*, 146, Knebel, *Camp David*, 328.

⁷⁴ Knebel, *Camp David*, 328.

⁷⁵ Safire, *Full Disclosure*, 125-126.

create much scope for fictional intrigue or tension as these simple processes resolve each contingency they address. The use of Section 1 following a resignation in the novels allows their presidents to exit office as good-faith actors doing the right thing for the stewardship of the presidency and the nation. Following the fictional Kennedy's assassination, Section 1 provides a basis for reflection by DuPray on the challenges she faces.⁷⁶ Section 4 requires much more of its constitutional actors, and its resulting potential for political intrigue and constitutional mischief is at the core of the 25th Amendment novels. Where a president is unwilling or unable to declare his inability, the Amendment requires that the other constitutional actors do so and invoke Section 4 to challenge a president's presumption of power because of his inability.

Section 4 for the vice president and the Cabinet

A vice president and Cabinet face a political decision to deal with a medical issue, including whether using discretion or not to invoke is the better political decision, when 'leaving an impaired President in control is better than the alternative'.⁷⁷ This section examines the process available to a vice president and the Cabinet, as the novels portray by highlighting four issues: the potential conflict of interest of a vice president, the necessary interaction and agreement of a vice president and Cabinet, how the novels portray Cabinet meetings or other deliberations, and finally, the formal procedural step of transmittal of declarations of inability to the two congressional leaders. The next chapter delves deeper into the vice president and Cabinet deliberations in considering the evidence of presidential inability.

Kidnapping and *Fourth K* portray the dilemma facing the vice president and the personal conflict this political decision brings. The personal stakes for the vice president highlight the issue. For example, using Roberts' thinking about whether to support paying the ransom as a proxy for Scott's inability shows Roberts' conflict of interest before he decides to put the nation first.⁷⁸ Roberts does not exercise his vote, does not declare his conflict (the Cabinet does not know that Scott has asked Roberts to resign), and has no intention of deciding unless he has no option.⁷⁹ From his confinement, Scott mulls over whether his vice president's conflict of interest means he will not resolve the ransom in Scott's favour.

⁷⁶ Puzo, *Fourth K*, 496-7.

⁷⁷ Kalt, *Unable*, 41.

⁷⁸ Templeton, *Kidnapping*, 234-237.

⁷⁹ *Ibid.*, 172-173.

DuPray in *Fourth K* also ponders the conflict of her decision which might make her acting president.⁸⁰ Both novels highlight the drafters' intent in requiring a Cabinet majority to calm concerns of a conflict of interest leading to usurpation by illustrating a vice president's potential for conflict of interest.

Section 4 requires the vice president and the Cabinet to confirm separately their views of presidential inability to create a defence against usurpation. The vice president does not vote as a Cabinet member for this purpose. Section 4 does not guide how a vice president or a Cabinet might choose their decision-making support and does not determine how they interact or consult. While the vice president seeks extra-constitutional support by consulting with party leaders or the president's family in two novels (*Camp David*, *Fourth K*), *Camp David* does not show the vice president consulting with the Cabinet as he believes the president will step aside (presumably by invoking Section 3).⁸¹ O'Malley does, however, recognise the role of the Cabinet in supporting him: “How would I ever convince a majority of the Cabinet on the evidence you have ?”⁸² Public legitimacy, too, is added, should it be needed, to persuade O'Malley that he has to take the issue of the president's seeming disability to the entire Cabinet by possibly broadcasting the issue of Hollenbach's inability to the nation.⁸³ In *Fourth K*, it is Kennedy's political family that takes on the mantle of decision. His political family is his key Cabinet and White House staff, so their views on his inability carry weight and are presumed loyal to Kennedy but do not convince DuPray.⁸⁴ The novels show that different groups are close to a president depending on his personal circumstances and how he runs his administration. Such groups can provide evidential support to a vice president and Cabinet.

In contrast, in *Full Disclosure*, a Cabinet member takes the lead in considering Ericson's inability. Treasury Secretary Bannerman emphasises to Nichols that he needs to have his own opinion separately from the Cabinet on Ericson's disability.⁸⁵ Bannerman then anchors his persuasion of Nichols in history, referencing Wilson's and Franklin Roosevelt's illnesses and their reluctance to surrender power. Bannerman's persuasion also references Eisenhower's precedent as the process Nichols should adopt as *de facto* acting president

⁸⁰ Puzo, *Fourth K*, 201-205.

⁸¹ Knebel, *Camp David*, 324.

⁸² *Ibid.*, 178.

⁸³ Knebel, *Camp David*, 301.

⁸⁴ Puzo, *Fourth K*, 203-205.

⁸⁵ Safire, *Full Disclosure*, 87-89.

under his letter agreement with Ericson.⁸⁶ As Bannerman seeks to rally the other Cabinet members, *Full Disclosure* again states the crucial interaction of the Cabinet and the vice president: ‘Did they have the Vice President’s vote?’⁸⁷ Nichols would not veto any majority decision. Ideally, the Cabinet should present a united front.⁸⁸ Emphasis is on the need for the vice president’s presence and agreement. If the vice president does not support a Cabinet majority seeking to invoke Section 4, it would be politically embarrassing for those moving to oust the president. It may lead to their removal as Cabinet members by the president. Without the vice president’s concurrence, the president remains in office and can exercise its powers and duties.⁸⁹ The novels highlight how the responses of a vice president and Cabinet might increase or diminish claims of usurpation by showing their interactions on a spectrum where one acts on instruction of the other (*Father’s Day*) to a more deliberative approach where a vice president at least appears to keep their own counsel (*Full Disclosure, Fourth K*).

Fictional portrayals of a Cabinet’s deliberations on presidential inability echo the flexibility in how a president works with his Cabinet. There is no constitutional weight given to any process within the Cabinet. While the Cabinet cannot act alone under Section 4, as all the novels portray correctly, its inclusion is a potential counterweight to vice presidential ambition, yet the problem narrative of usurpation remains.⁹⁰ This issue is the primary focus of this section, the Cabinet decision-making processes between their awareness of a president’s inability and the formal transmission of an inability declaration. That is, Cabinet meetings and how these are used in the novels to raise or counter the problem narrative of usurpation. For example, *Full Disclosure*’s Ericson does not attend, seeing it as ‘inappropriate and undignified’ as the presumption of power rests with him.⁹¹ A Cabinet’s decision on presidential inability is political. It needs to ensure presidential, congressional or public reactions do not question its legitimacy, ideally by demonstrating the fairness and transparency of, and accountability for, their decision, including any later criticism of discretion not to invoke. Seven of the eight novels, *Camp David*, is the exception, illuminate formal Cabinet meetings as the necessary procedural step to

⁸⁶ Safire, *Full Disclosure*, 87-89. See Chapter 5 of this thesis on the use of the letter agreements prior to the 25th and a proposed continuing role.

⁸⁷ Safire, *Full Disclosure*, 166

⁸⁸ *Ibid.*, 166, 167, the Contingency Plan, tab D.

⁸⁹ Safire, *Full Disclosure*, 204.

⁹⁰ Feerick, *The Twenty-fifth Amendment*, 59.

⁹¹ Safire, *Full Disclosure*, 181.

emphasise its Section 4 decision's procedural legitimacy. Except for *Father's Day*, the novels that portray Cabinet meetings show their vice president in attendance and chairing the meeting. In *Father's Day*, Garland is still acting president, and his absence adds to the procedural legitimacy of the Cabinet's decision and softens the fear of usurpation, even as the autogolpe is the mechanism planned to usurp Jay.

The procedure adopted for calling any such Cabinet meeting and its location is highly symbolic. Section 4 requires the Cabinet to act in a way it has no protocol or collective memory of doing.⁹² Acting in such a collegial and consultative way is alien to how the president they seek to challenge has administered his principal officers. A fictional Attorney General or another character advising Cabinet members of their role is a common way the novels set out this unfamiliarity while educating them on their Amendment role. For example, the Attorney General in *WH Storm* notes to the Cabinet that it does not operate:

“ . . . under formal rules that specify or require a quorum present. However, either to act under the Twenty-fifth Amendment, we must either act with the President's acquiescence or with a majority of the department heads, regardless of how many are present. A majority of the total members, not a majority of those present.”⁹³

Of the eight novels, only the first published, *Camp David*, portrays no meaningful Cabinet involvement in the potential invocation of Section 4. MacVeagh needs to convince the politically compromised O'Malley of Hollenbach's mental health challenges, thus recognising the primacy of the vice president's involvement. No formal Cabinet meeting occurs at any point in the narrative, either on or off the page. In its place, there are gatherings of key political players, party grandees, Speaker William Nicolson, Secretary of Defense Karper, and a couple of senior Senators under the ægis of Chief Justice Grady Cauvanagh.⁹⁴ While only Karper and Nicholson have constitutional roles under Section 4, the importance of broad support across the branches of government highlights and adds institutional legitimacy to protect the presidency. But the location of these meetings in private homes, rather than, more symbolically, in the Cabinet Room within the White House, echoes their lack of constitutional standing and raises concerns of usurpation.

⁹² The Contingency Plan, app 18, 5, recognises the lack of analogous processes available to a Cabinet. For its early history see Lindsay M. Chervinsky, *The Cabinet* (Cambridge, MA: The Belknap Press of Harvard University Press, 2020).

⁹³ Napier, *WH Storm*, 184.

⁹⁴ Knebel, *Camp David*, chp. 14.

Intrigue in *Camp David* is associated with the physical location of these meetings being apart from the spaces associated with the exercise of presidential power as a conscious removal by the characters debating Hollenbach's mental health. The novels, therefore, use Cabinet meetings and their settings as the primary claim for the procedural legitimacy of their decisions, including, as the first such meeting in *Full Disclosure* shows, the exercise of their discretion.

To add procedural and public legitimacy to Cabinet decisions, however, *Full Disclosure* highlights the importance of the ranking Cabinet officers, those holding the original four offices of state, and therefore those with national and international profiles, to attend any Cabinet meeting. Ericson instructs Secretary of State George Curtis to remain in the Soviet Union: ““they'd need him to call a Cabinet meeting here.””⁹⁵ The novel draws out the flexibility of how a Cabinet reaches its Section 4 decision. A decision reached in the absence of any ranking Cabinet members may increase the threat of the challenge of usurpation.⁹⁶ A point *Negotiator* also reflects, with Odell meeting with an ‘inner five’, comprising the Attorney General, Secretaries of State, Defense, and Treasury, and the National Security Adviser.⁹⁷ The latter holds Cabinet rank and is of political importance but is not a principal officer of an executive department and, therefore, would have no vote in consideration of Section 4.⁹⁸ This vote only provides a deadline for Cormack's return to his presidential responsibilities, failing which the Cabinet and vice president will invoke Section 4.⁹⁹

While most of the novels show only one Cabinet meeting dealing with the inability question, or two in quick succession if some Cabinet members have yet to return to Washington D.C. by the time of the first meeting, *Full Disclosure* shows how a Cabinet meeting supportive of their president might not fully resolve the issue of presidential inability. As positions become entrenched and the political issues mount, it is clear that Ericson no longer has the support of all six of his Cabinet. *Full Disclosure* uses a constitutional scholars' talking heads segment on a TV news programme to highlight the flexibility and discretion in the Cabinet's ‘extraordinary leeway’ to state an inability, not

⁹⁵ Safire, *Full Disclosure*, 99.

⁹⁶ *Ibid.*, 162.

⁹⁷ Forsyth, *Negotiator*, 456-457.

⁹⁸ US Constitution, amend. 25, Appendix A, Charles O. Jones, *The American Presidency: A Very Short Introduction* (Oxford: Oxford University Press, 2007), table 4.1.

⁹⁹ Forsyth, *Negotiator*, 457.

just in the ‘gravest case of obvious inability’.¹⁰⁰ *Full Disclosure* raises the political stakes of a Cabinet decision; if there is no clear majority to invoke Section 4, withdrawing the motion would better serve the nation.¹⁰¹ At this first meeting, the vote is 5-1 not to invoke Section 4, with only Treasury Secretary Bannerman voting in favour.¹⁰² By showing more than one Cabinet meeting, *Full Disclosure* shows Cabinet discretion and that views of presidential inability can change, even with the same medical facts.

Full Disclosure also draws out how influence plays into intrigue. Between two Cabinet meetings, the principal officers seek to influence each other and Ericson. As the Cabinet becomes aware that Ericson did not disclose the previous, temporary incident of blindness when campaigning for office and conflicting reports of what happened in Yalta, a further Cabinet meeting is inevitable. Fired by Ericson, Bannerman proposes encouraging Congress to impeach Ericson, recognising this is only a threat as Ericson has committed no impeachable offence.¹⁰³ The Cabinet’s second vote ties at 3-3 several weeks after the first meeting before Secretary of Human Resources Fong changes his vote, making it 4-2 to invoke Section 4.¹⁰⁴ Ericson refuses to resign, making Nichols the acting president.¹⁰⁵ *Full Disclosure* highlights that a decision on presidential inability is not a one-off and that the Cabinet does not exercise discretion without due consideration. If concerns exist, the constitutional actors must keep the inability under review, and formally reconsider their opinions as necessary. As the previous chapter also showed, exploring changes in information and opinions highlights issues of the procedural legitimacy of Cabinet decisions, whether acting secretaries can vote, and the shifts in public mood over time.

The unanimity of the Cabinet, or failing that, a clear majority, is desirable to reinforce the procedural legitimacy of their decision.¹⁰⁶ *Father’s Day* indicates the challenges of debating such a crucial issue as the president’s mental health over a three-hour meeting.¹⁰⁷ The time taken highlights Cabinet members’ doubts in deciding and supports that, ideally, they consulted Jay’s medical records, which are available to them, to support their

¹⁰⁰ Safire, *Full Disclosure*, 208.

¹⁰¹ *Ibid.*, 232, the Contingency Plan, tab D.

¹⁰² Safire, *Full Disclosure*, 238.

¹⁰³ *Ibid.*, 251, 368, US Constitution, art. 2, sec. 4.

¹⁰⁴ Safire, *Full Disclosure*, 431, 432, 436.

¹⁰⁵ *Ibid.*, 436.

¹⁰⁶ The Contingency Plan, tab D.

¹⁰⁷ Batchelor, *Father’s Day*, 309.

decision.¹⁰⁸ But Garland treats Jay's medical records as a theatrical prop and the Cabinet decides without apparently consulting the thick files available, or questioning a relevant medical professional, weakening their decision's procedural legitimacy and highlighting a limitation of the 25th. Instead, *Father's Day* relies on convincing one Cabinet member, Dr Goldie Klingelhofer, a qualified physician. The questions she raises, and any answers, are not portrayed, further weakening procedural legitimacy.¹⁰⁹ The novel does not depict the voting of Jay's Cabinet. Still, their decision is urgent, as only twenty-four hours of the four-day challenge remain, and Garland has already fired and not replaced one Cabinet member.¹¹⁰ Garland, correctly, does not vote *in officio* and without a Cabinet majority, his view is not immediately relevant. Having excused himself, ostensibly on the grounds of his apparent conflict, Garland seeks a unanimous mandate from the Cabinet.¹¹¹ There is no commentary in the novel of Jay seeking to meet with his Cabinet after launching his Section 4 rebuttal to convince them that he is fit to return. Even with a president's presumption of power, there is an arrogance in Jay's failure to involve his Cabinet in his attempted return. Garland gets the mandate he desires, but by driving the start of the Section 4 invocation without relevant medical input, he has both exploited Section 4's timeline and rendered the Cabinet decision flawed should Congress challenge the basis of their decision. *Father's Day* draws out these points as criticisms of the Amendment.

The remaining novels highlight different points of interest in their portrayal of Cabinet meetings. *Kidnapping* shows the speed of the Cabinet's response as the initial meeting takes place within two hours of Scott's abduction and primarily discusses whether to accede to the kidnappers' demands and pay the ransom.¹¹² The confined Scott is concerned about a Cabinet quorum: if the Cabinet's vote is a proxy for Section 4, all principal officers have a vote regardless of physical presence. This Cabinet meeting in *Kidnapping* takes place in the Cabinet Room in the White House, where Roberts takes the president's physical chair at the middle of the table.¹¹³ While taking the president's chair emphasises the meeting's legitimacy, signifying that the office is present and the chair's occupant exercises its powers, in real life, each Cabinet member has a dedicated chair marked by a plaque. In Roberts' swaggering way, taking the president's chair symbolises the threat of

¹⁰⁸ Batchelor, *Father's Day*, 308.

¹⁰⁹ *Ibid.*, 307-308.

¹¹⁰ Batchelor, *Father's Day*, 309.

¹¹¹ *Ibid.*, 310, 315, 319.

¹¹² Templeton, *Kidnapping*, 156.

¹¹³ *Ibid.*, chp. 11.

usurpation, especially as Roberts is not even acting president.¹¹⁴ The Cabinet of ten present cannot agree on paying the ransom. Even after the remaining two Cabinet members arrive, their votes do not resolve the deadlock, forcing Roberts to choose: ultimately in the nation's interests and not his own.¹¹⁵ Again, using the ransom vote as a proxy for Section 4, the vice president's view is moot if there is no Cabinet majority.¹¹⁶ In its proxy debates, *Kidnapping* highlights interesting procedural points that can impact how procedural legitimacy is enhanced or eroded by the constitutional actors' actions.

As *WH Storm* shows, cabinet discussions on presidential inability can occur in meetings with another purpose. A meeting of military leaders and the Secretary of State chaired by Queenan to discuss the intelligence on a potential coup d'état by a rogue general first raises the need for the Cabinet to meet and make Queenan acting president by invoking Section 4.¹¹⁷ Davidson is at the Cabinet meeting as the Secretary of State hands out medical information on Davidson's early-stage Alzheimer's diagnosis.¹¹⁸ All Cabinet members, bar one, are present and call on Davidson to step aside.¹¹⁹ Davidson's impairment is apparent in his inability to respond. Although the Secretary of Defense seeks further medical evidence, a 10-6 vote (presumably including Queenan, which is incorrect although it makes no difference to the outcome) confirms Queenan as acting president.¹²⁰ The dissenting Cabinet members sign the written declaration to show their agreement to the process, not the decision.¹²¹ Here, the lack of unanimity emphasises the importance of the legitimacy of the decision-making process on the Cabinet's role as a collective body, even if individual members dissent.

In *Fourth K*, Kennedy's Cabinet proposes winning public legitimacy before taking action against Kennedy by releasing television slots stating that the president is undergoing psychiatric evaluation.¹²² Kennedy's Cabinet's loyalty starts to change with his increasing

¹¹⁴ By tradition, at the end of each Cabinet member's term of service the other Cabinet members purchase the chairs from the government and gift them to the retiring member, 'The Cabinet Room', accessed 17 September 2019, www.whitehousemuseum.org/west-wing/cabinet-room.htm.

¹¹⁵ Templeton, *Kidnapping*, 245.

¹¹⁶ US Constitution, amend. 25, sec. 4, Appendix A.

¹¹⁷ Napier, *WH Storm*, 174.

¹¹⁸ *Ibid.*, chp. 38. The miscalling of the Amendment as the Twenty-sixth Amendment serves to illuminate, briefly, another part of the Constitution, correctly identifying its purpose as reducing the voting age to 18.

¹¹⁹ Napier, *WH Storm*, 184, 190, 192, 194.

¹²⁰ *Ibid.*, 185, 190, 193.

¹²¹ *Ibid.*, 199.

¹²² Puzo, *Fourth K*, 187.

use of presidential authority, unchecked by Congress, and his disproportionate responses to his daughter's slaying.¹²³ While a Cabinet majority believes that Kennedy is unable, DuPray disagrees.¹²⁴

Cabinet meetings are where the novels engage with the procedural legitimacy of their decisions on presidential inability and show that such decisions are not necessarily straightforward and without challenge. The novels add to the fear of usurpation where they paint a sense of conspiracy around Cabinet meetings, with a fictional president appearing suddenly at the door, as in *Camp David* and *Plane*, or attendees overstepping their position by taking a chair at the table other than their own.¹²⁵ But the novels recognise that the Cabinet's and vice president's judgement should be that of 'reasonable men' and that discretion may play an essential role in a decision.¹²⁶

The final issue portrayed in the novels is the sole formal procedural step required by Section 4, the transmittal of declarations of presidential inability from the vice president and Cabinet to the Speaker and the President pro tempore. The vice president becomes acting president on sending of these letters, not on their receipt.¹²⁷ With the Capitol less than two miles from the White House and electronic communications now an option, as Section 4 does not state a mode of transmission, sending and receipt should be near-simultaneous. As a practical contingency planning step, the vice president would locate the Speaker and President pro tempore and advise them that transmission was imminent. In addition, the relevant constitutional actors should note the timing of despatch and receipt in case of any dispute or issues of legitimacy over actions taken by the acting president or of a president before he is aware that he no longer has presidential responsibilities. Ideally, the vice president and Cabinet would transmit one declaration, but counterparts would suffice.¹²⁸ The seemingly straightforward transmission process requires some planning to ensure its completion without creating further jeopardy.

¹²³ Puzo, *Fourth K*, 204.

¹²⁴ *Ibid.*, 197-205.

¹²⁵ Knebel, *Camp David*, 312, Serling, *Plane*, 275.

¹²⁶ Committee on the Judiciary, Report on Presidential Inability and Vacancies in the Office of Vice President, S. Rep. 89-66, 89th Cong., 1st sess., 10 February 1965, 13, http://ir.lawnet.fordham.edu/twentyfifth_amendment_congressional_materials/13.

¹²⁷ Kalt, *Unable*, 22.

¹²⁸ The Contingency Plan, tab D, 2.

While *Full Disclosure* and *Father's Day* portray the sending of the inability declarations required by Section 4 to congressional leaders, *WH Storm* is the only novel to flag the jeopardy of transmittal not giving rise to proximate sending and receipt.¹²⁹ *Father's Day* uses the sending of the letters to highlight when the congressional clock starts ticking.¹³⁰ *Full Disclosure* makes a rare error in noting it is on receipt of the letters by the Speaker and the President pro tempore that the president surrenders his powers and duties, an error *WH Storm* echoes.¹³¹ Immediately following the decision of the Cabinet and the vice president to invoke Section 4, a security emergency occurs, and Secretary of State Romulet cannot transmit the declaration letters to the Speaker and President pro tempore.¹³² Queenan is not yet acting president because Romulet has not transmitted the declarations. But in misrepresenting the starting point of an acting presidency, *WH Storm* highlights the potential for the jeopardy transmittal difficulties could cause. Such jeopardy lies in both or neither president and vice president; however temporarily, exercising the presidential responsibilities in the period before the Speaker and President pro tempore receive the declarations. *WH Storm* emphasises the point by demonstrating who else needs to know immediately that presidential power has transferred, showing the problem with lack of clarity in the chain of command for military decisions, and other nations to know with whom they are dealing. Critically, military staff directing the coup d'état to remove Davidson do not know he can no longer exercise presidential responsibilities.¹³³ The points made in the novels are not hypothetical: widespread knowledge of who has presidential responsibilities at any time matters. The novels also highlight the practical issues in ensuring the inability declarations are promptly sent and received.

The novels show that behind the simplicity of the Section 4 process lie several vital issues that support the procedural legitimacy of a vice president and Cabinet decision. Failure to address them might create jeopardy. By countering the potential for conflict of a vice president by requiring a separate Cabinet majority to decide on presidential inability, Section 4 sets out to mitigate the problem narrative of usurpation. By implying good-faith actors will act with the requisite sense of constitutional morality in reaching their decision, the drafters left Section 4 flexible in how they run their decision-making process. The

¹²⁹ Safire, *Full Disclosure*, 446-447, Batchelor, *Father's Day*, 103, Napier, *WH Storm*, 200, 220.

¹³⁰ Batchelor, *Father's Day*, 103.

¹³¹ Safire, *Full Disclosure*, 446, Napier, *WH Storm*, 199.

¹³² *Ibid.*, 195, 200.

¹³³ Napier, *WH Storm*, 203.

novels helpfully portray a variety of ways the Cabinet might decide. The next chapter of this thesis will discuss the evidential basis for that decision. With the inability declarations despatched to the congressional leaders, a president has the right to respond. The Section 4 process then lands with Congress to arbitrate between the two procedurally legitimate claims.

Section 4 for the president and Congress

The Amendment's drafters designed Section 4's process to ensure the presumption of power remains in a president's favour. Procedural legitimacy follows from the constitutional actors applying its stated and implied processes. This section links the process available to a president under Section 4 to Congress's process as the final arbiter on a president's presumption of power. This section will first explore the process available to the president in the novels and, second, their portrayals of congressional processes. It concerns the process for a president to challenge a Section 4 invocation by his vice president and Cabinet. Congress may question or confirm the procedural legitimacy of both decisions as part of its deliberations. While all eight novels consider the use of Section 4, only *Full Disclosure*, *Father's Day*, and *WH Storm* invoke it, and only *Full Disclosure* and *Father's Day* require a congressional vote.

The sole process available to a president under Section 4 is to challenge an invocation by his vice president and a majority of his Cabinet by providing the Speaker and the President pro tempore with his 'written declaration that no inability exists'.¹³⁴ Absent his vice president and a Cabinet majority sustaining their challenge, the president resumes his presidential responsibilities at the end of the four-day period or earlier if the vice president and Cabinet confirm they will not raise a further challenge.¹³⁵ To maintain their challenge, the vice president and Cabinet must again transmit a written declaration of presidential inability within four days to the two congressional officers.¹³⁶ The Cabinet, vice president, and the president can repeat this cycle of declarations indefinitely as there is no limit to the number of declarations and counter declarations. However, even two attempts, let alone a prolonged battle, would raise legitimacy issues, concerns over good-faith actors, and their actions adhering to constitutional morality, a point *Full Disclosure* recognises.¹³⁷ The issue

¹³⁴ US Constitution, amend. 25, sec. 4, Appendix A.

¹³⁵ US Constitution, amend. 25, sec. 4, Appendix A.

¹³⁶ Ibid.

¹³⁷ Safire, *Full Disclosure*, 466, 505.

of who has presidential responsibilities until the four-day period has expired is unclear from the Amendment's wording.¹³⁸ *Full Disclosure*, *Father's Day* and *WH Storm* all adopt the legislative history favouring an acting president continuing until the four days have expired.¹³⁹ This approach avoids a further change in the holder of the powers and duties of the presidency should the Cabinet and vice president sustain their challenge.¹⁴⁰

Full Disclosure's Ericson's challenge succeeds, and the novel portrays the process correctly. Former Senator Apple advises Ericson as he transmits his written declaration that no inability exists to the congressional officers.¹⁴¹ Apple is a fictional Birch Bayh. *Camp David* and *Father's Day* also acknowledge Bayh's role in the Amendment, another anchor of the novels into the reality of the 25th's creation.¹⁴² Jay appears disorganised and ambiguous about returning to the White House in *Father's Day*; he does not have his written declarations to hand as he announces his return to the nation.¹⁴³ Jay creates no sense of urgency to his return, suggesting his uncertainty over reclaiming his powers and duties. Notwithstanding a president's presumption of power, the novels are concerned with the good faith of their presidents' decisions, highlighting both its procedural legitimacy and the public legitimacy of acceptance of their decision and its consequences. For example, in *Full Disclosure*, Ericson's Cabinet considers whether he is substantively the same person voters elected only some six months previously or if he has lost his mandate to govern because of his disability.¹⁴⁴ In his due consideration of whether he strengthens or weakens the office by the precedent of challenging the invocation of Section 4, he transmits his declaration that no inability exists to Congress.¹⁴⁵ In contrast, *Father's Day* shows circumstances where a president, weakened by mental health issues, compromises his health by seeking to return from a voluntary Section 3 absence and fails to recognise that his prolonged absence has rendered him politically impaired.

For the novels to portray Congress's process, there must be at least the prospect of a dispute between the president and his vice president and Cabinet on his inability for

¹³⁸ Feerick, *The Twenty-fifth Amendment*, 118-119, *Cong. Rec.*, 89th Cong., 1st sess., vol.111. pt.11, 29 June 1965, 15214.

¹³⁹ *Cong. Rec.*, 89th Cong., 1st sess., vol.111. pt.11, 29 June 1965, 15214.

¹⁴⁰ *Ibid.*

¹⁴¹ Safire, *Full Disclosure*, 447.

¹⁴² Knebel, *Camp David*, 119, Batchelor, *Father's Day*, 308.

¹⁴³ Batchelor, *Father's Day*, 53, 67.

¹⁴⁴ Safire, *Full Disclosure*, 226

¹⁴⁵ *Ibid.*, 447.

Congress to arbitrate. Section 4 grants Congress twenty-one days from transmission of the president's declaration that no inability exists to decide, if it is in session.¹⁴⁶ Congress has forty-eight hours to assemble if it is not in session.¹⁴⁷ Two-thirds of each House is needed 'to override the President's prerogative of office' should the vice president and the Cabinet sustain their position on presidential inability.¹⁴⁸

Like the other constitutional actors, Congress too has discretion in its process. The Houses vote separately; each needs two-thirds of those present and voting.¹⁴⁹ Each House's rules require a quorum and determine the voting protocols.¹⁵⁰ Congress has three options: to uphold the challenge of the vice president and Cabinet, dismiss their challenge in favour of the president, or not decide at all, either as discretion or by letting the twenty-one-day period simply expire.¹⁵¹ In the first option, the vice president remains acting president; in the latter two possibilities, the president resumes his presidential responsibilities at the end of twenty-one days at the latest. While *Fourth K's* conflation of impeachment and the 25th show confusion around Congress's process, *Full Disclosure* and *Father's Day* portray the detail of its Section 4 process. The contrast is that in *Father's Day's*, Jay has reclaimed his powers under Section 3 only to face an immediate Section 4 challenge. *Full Disclosure's* Ericson faces a slowly building Section 4 challenge over some weeks. Of the other novels, only *WH Storm* briefly mentions Congress when Davidson orally states to Congress that no inability exists. Davidson's rebuttal does not follow Section 4's procedural requirement, but Davidson changes his mind and resigns.

With the failure of *Fourth K's* Cabinet and the vice president to agree on his inability, Congress considers impeaching Kennedy. Congress also debates creating another body to consider Kennedy's mental health.¹⁵² While Congress is within its constitutional rights to consider impeachment, if Congress sets up another body to consider Kennedy's health, it would replace the Cabinet. However, DuPray's concurrence is still required, which is

¹⁴⁶ US Constitution, amend. 25, Appendix A

¹⁴⁷ Ibid..

¹⁴⁸ Napier, *WH Storm*, 191, US Constitution, amend. 25, Appendix A.

¹⁴⁹ Feerick, *The Twenty-fifth Amendment*, 120.

¹⁵⁰ Ibid.

¹⁵¹ Ibid., 119.

¹⁵² Puzo, *Fourth K*, 207, 217.

unlikely.¹⁵³ This mashup is a significant error in *Fourth K*'s portrayal of the Amendment but highlights essential real-life issues of Congress's role.

Fiction draws out the nuances and consequences of the president's challenge and shows where issues of legitimacy and power concern the constitutional actors. *Full Disclosure's* Treasury Secretary Bannerman explains the timeline and process to his wife: "then it goes to the Congress to decide the issue. If we get two-thirds of the Congress to agree that the President is unable to function within a three-week deadline, then he's out".¹⁵⁴ Bannerman does not distinguish between the holder of the presidency and its powers and duties. Ericson triggers the congressional process by declaring that no inability exists to the Speaker and the President pro tempore, shortly after his vice president's and Cabinet's transmission.¹⁵⁵ Congress's consideration of the issue is explored through Ericson's meetings with groups of congressmen to make his pitch that he can carry out his presidential responsibilities.¹⁵⁶

As *Full Disclosure* shows, the media also plays an essential role in informing the public, using the president's daily press briefing to show the difference in opinion as the press sets out the consequences of a Section 4 challenge for public information.¹⁵⁷ These are: Congress's twenty-one-day period delays a swift resolution, and a president, vice president and Cabinet can raise multiple challenges. Both have the potential for paralysing government and creating confusion about who is exercising the powers and duties of the office.¹⁵⁸ Congress takes the full twenty-one days to decide, having formed a Select Committee on the Disability of the President to report back. The committee provides each member of Congress with its report, transcripts of committee hearings, legal memoranda, and briefs provided by the president's counsel.¹⁵⁹ The congressional committee considered the process used by the vice president and Cabinet and confirms their decision was arrived at 'in proper order and good-faith, reflecting the intent of the amendment's framers as expressed in the Legislative History'.¹⁶⁰ It also considered that the president's opinion on

¹⁵³ Puzo, *Fourth K*, 207. US Constitution, amend. 25, sec. 4, Appendix A.

¹⁵⁴ Safire, *Full Disclosure*, 204.

¹⁵⁵ *Ibid.*, 435-7, 447.

¹⁵⁶ *Ibid.*, 463.

¹⁵⁷ *Ibid.*, 465.

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid.*, 473.

¹⁶⁰ Safire, *Full Disclosure*. 474.

his inability was ‘lawfully arrived at’, thereby confirming the procedural legitimacy and the constitutional morality of the actions taken by the other constitutional actors.¹⁶¹ Going beyond constitutional illumination, *Full Disclosure* emphasises Congress’s role as the ‘last watertight door’ for the presumption of presidential retention of his powers and duties in portraying Congress’s roll-call voting procedure.¹⁶² The House votes first and restores Ericson to his presidential responsibilities by the thinnest of margins, five votes more than the 144 he needed.¹⁶³ A Senate vote is not therefore required. *Full Disclosure* looks behind the constitutional arithmetic to show the procedural legitimacy of Congress’s decision. In showing how Congress might choose to interpret and perform its Section 4 responsibilities, *Full Disclosure* emphasises Congress’s institutional legitimacy, the procedural legitimacy of its decision and its bestowing of procedural legitimacy on the other constitutional actors.

Father’s Day correctly states the steps for a president to reclaim his powers and duties under Section 3 in the letters sent to the Speaker and the President pro tempore.¹⁶⁴ These letters trigger the Cabinet and Garland raising their Section 4 challenge and for Jay to counter that no inability exists: “‘the letters were what started the clock on the cataclysmic section four of the Twenty-fifth’”.¹⁶⁵ A challenge which now must, eventually, play out in Congress to keep Garland acting president: ‘the letters to the Hill. The ninety-six-hour clock. The challenge. The cabinet vote. The House vote. The Senate vote. The presidency.’¹⁶⁶ *Father’s Day* illustrates Congress’s vital sole role as arbitrator in sustaining or upholding a challenge by the incumbent president under Section 4. The novel shows the two-thirds necessary for Congress to remove a president from his presidential responsibilities: in the House vote of 399/26 in favour of the vice president remaining as acting president and that ‘he [the vice president] probably had the Senate’.¹⁶⁷ In contrast to *Full Disclosure*, the Senate needs to vote in *Father’s Day* as the House did not find in favour of the elected president. *Father’s Day* further expands on the technicalities of a president reclaiming his powers and duties under Section 3 five months after relinquishing them. In a TV appearance, Jay flags to the nation his intention to reclaim his presidential

¹⁶¹ Safire, *Full Disclosure*, 474.

¹⁶² *Ibid.*, 154, 474-5.

¹⁶³ *Ibid.*, 475. Congress can adopt any rules it wished. See *Cong. Rec.*, 89th Cong., 1st sess., vol.111, pt.11, 30 June 1965, 15385.

¹⁶⁴ Batchelor, *Father’s Day*, 67.

¹⁶⁵ *Ibid.*

¹⁶⁶ *Ibid.*, 71.

¹⁶⁷ *Ibid.*, 389, 392.

responsibilities: “I must return to my duty”.¹⁶⁸ But Acting President Garland has received no private communication of this intention, seeing the news on screen at a baseball game, emphasising the strained relationship between Jay and Garland.¹⁶⁹ The real-life issues illustrated in *Father’s Day* show the technicalities and protocols that can add to the procedural legitimacy of the constitutional actors’ decisions.

The threat, as a minimum, of a Section 4 invocation and, therefore, of Congress’s involvement is at the heart of 25th Amendment novels. It is there that the contingency of presidential inability plays out. The novels, particularly *Full Disclosure* and *Father’s Day*, use Section 4’s processes extensively and correctly for the most part. They also suggest information a more detailed contingency plan might contain on the processes required, as evidenced by the Contingency Plan. Most of the novels go beyond portraying the process to illustrating how the Cabinet and vice president might approach making their decision and the influence of other constitutional and non-constitutional actors. *Full Disclosure*, in particular, shows that the power to influence and control the agenda matter when the inability decision is by no means clear.

Conclusion

No one novel illuminates the specific wording and processes of the 25th fully. A novel would need a convoluted plot and a very unfortunate president to explore the full range of procedures. Rather than view this as a limitation of the novels, it reflects the scope of the contingencies for the transfer of presidential power. The novels’ flexible use of Sections 3 and 4, particularly on involuntary removal under Section 4, emphasises constitutional actors’ differing points of view based on the same facts and how they resolve them to reach a consensus. As part of any contingency plan, it is essential that the wording of the Constitution, related processes and their implications are set out and understood by those charged with executing them. The novels portray the processes available to the constitutional actors. Except for *Fourth K’s* mashup with impeachment and some issues around the precise time a president surrenders his powers and duties, they do so correctly. But illumination of the Amendment, while aided by, does not solely depend on, the novels getting it right. Had *Father’s Day’s* vice president trusted in the Section 4 process, Garland would have remained as acting president for the remainder of Jay’s term and was well-

¹⁶⁸ Batchelor, *Father’s Day*, 53.

¹⁶⁹ *Ibid.*, 62.

positioned to gain the presidency in his own right at the quadrennial election. His unwillingness to adhere to the constitutional morality expected from the norms of political behaviour that rely on reverence for the Constitution creates his downfall. In the detail of Cabinet debate, acknowledging issues of legitimacy, and the influence of public acceptance through fictional opinion polls, movement in Stock Market indices, and concern over allies' reactions, *Full Disclosure*, *Fourth K* and *Father's Day* illustrate the issues a vice president and a Cabinet confront before deciding to invoke Section 4. Considering how issues of legitimacy might manifest may lead to their discretion in leaving an impaired president with presidential responsibilities, as DuPray's decision in *Fourth K* indicates.

In exploring the different opinions of Cabinet members on a president's inability, the novels show the challenges of deciding in all but the most straightforward cases of inability (in the novels, *Plane's* voluntary but unpublicised absence). The novels illuminate Section 1 in their *dénouements* to resolve the political aspects of the inability issues and use Section 2 to highlight poor presidential and vice presidential relationships. One novel, *Father's Day*, highlights the Section 3 process. All eight earned inclusion in this thesis because they depict at least the threat of Section 4, and *Father's Day* and *Full Disclosure* show the processes and consequences of Section 4 in considerable detail. The level of discussion that is likely to occur within the Cabinet, both formally and informally, and with other political stakeholders adds to how these two novels illustrate the Amendment. In doing so, *Full Disclosure* and *Father's Day* emphasise a president's presumption of power, and the flexibility of the Amendment requires both the Cabinet and Congress to adopt whatever support for their decision-making process they might require in the circumstances faced.

However, getting the processes right is only one, albeit the second important, step in ensuring the legitimacy of any decision in both the real world and its fictional counterpart. It is also vital that presidential absence or health circumstances align with Section 3 or 4 invocation requirements. The next chapter thus turns to the when of the Amendment, including the flexibility afforded to the constitutional actors in reviewing the circumstances that might trigger invocation.

Chapter 4 The Presidents' Bowels and the 25th Amendment

Introduction

'This sickness doth infect
The very life-blood of our enterprise'.¹

No president has died in office since 1963, the most prolonged period of its kind in the history of the United States. The US Secret Service reports five assassination attempts on presidents since the ratification of the 25th Amendment in 1967, Reagan's resulting in potentially life-changing injuries.² Since 1967, presidents from Johnson to Trump have suffered severe health incidents where the constitutional actors should, at least, have considered Sections 3 or 4.³ Medical scholarship suggests Johnson was bipolar and suffered from depression and chronic heart disease. Nixon may have suffered alcoholism, depression and paranoia. In addition to the assassination attempt on him, Reagan underwent surgery for colon cancer, and some commentators believe he exhibited the start of dementia. George H. W. Bush suffered from Grave's disease, heart arrhythmia and a very public bout of severe food poisoning. A positive Covid-19 test was the cause of Trump's hospitalisation.⁴ The threat of an impaired Chief Executive to the enterprise of the United States remains. Biden is seventy-nine years old as of September 2022, and speculation about his health will likely continue for the remainder of his term. Yet the only real-life uses of Section 3 to date relate to routine colonoscopies or colon cancer surgery: a president's bowels are indeed a constitutional concern.⁵

The history and consequences of past cover-ups provide helpful indications and precedent for fiction to draw on and suggest content for a real-life contingency plan.⁶ Cover-ups of presidential ill-health have continued since George Washington's administration

¹ William Shakespeare, *Henry IV, Part I* Act 4, Scene 1, lines 29-30.

² See Congressional Research Service *In Focus, U.S. Secret Service: Threats to and Assaults on Presidents and Vice Presidents*, 15 January 2021, table 1.

³ See for example, John R. Bumgarner, *The Health of the Presidents: the 41 U.S. Presidents Through 1993 From A Physician's Point of View* (Jefferson, NC: McFarland, & Company, Inc., Publishers, 1994).

⁴ Yasmeen Abutaleb and Damian Paletta, *Nightmare Scenario: Inside the Trump Administration's Responses to the Pandemic That Changed History* (New York: HarperCollins Publishers, 2021), chp.20.

⁵ George W. Bush's two uses and Biden's sole use to date relate to routine screening. Reagan's ambiguous use was for colon cancer surgery.

⁶ Bumgarner, *The Health of the Presidents*, Edward B. MacMahon and Leonard Curry, *Medical Cover Ups in the White House* (Washington D.C: Farragut Publishing Company, 1987).

demonstrating that many such incidents were not well known contemporaneously.⁷ While today an annual medical evaluation of a president is commonly made public, not every detail of presidential health is shared.⁸ Any president has personal and political reasons for non-disclosure of his medical issues, including why his medical affairs should be subject to a lower standard of confidentiality afforded to a private citizen and whether disclosure might reduce his power. At the personal-political interface, the tension created fuels national anxiety, generates more than prurient curiosity about a president's well-being, and contributes to the problem narrative of presidential inability. Research using just one newspaper, *NYT*, shows that comments on individual presidents' ill health continue far beyond their demitting office and even long after their deaths, another measure of the presidential role as Chief Ghost, this time in real life.⁹ The regular *NYT* articles by Lawrence Altman, a New York University Medical School professor, link the provision of information and a place for public debate on presidential health to the scholarly investigation.¹⁰

This chapter moves from the who and how of the Amendment to considering when the constitutional actors should at least discuss invoking Sections 3 or 4. While primarily concerned with the institutional and procedural legitimacy of the constitutional actors' deliberations, the chapter will also consider the public legitimacy of their decisions in light of the president's circumstances. It will show how the flexibility of meaning is both a strength and a weakness by exploring how the eight novels interpret the constitutional meaning of 'unable' in different medical and political circumstances. The Amendment does not define inability beyond the phrase 'unable to discharge the powers and duties' of the presidency. With the wide range of academic commentary on presidential ill health, it is surprising that so little of it proposes a structured approach to assist the constitutional actors in their decision or suggests steps for contingency planning. While a structured approach should not replace thorough deliberation of a president's situation, decision-making aids can support the constitutional actors in considering the political aspects of presidential inability created by the medical evidence. Such aids could assist constitutional actors in exercising discretion for a sudden-onset inability and when the presentation is

⁷ MacMahon and Curry, *Medical Cover Ups*.

⁸ For example, Physician to the President, The White House, memorandum from Kevin C. O'Connor, to Jennifer R. Psaki, 19 November 2021, "President Biden's Current Health Summary".

⁹ I used a simple keyword search based on "health" + "president's name" between Roosevelt's death in 1945 and 1 December 2019 on the *NYT* archive. While some of these mentions would relate to political policies such as Medicare, the vast majority were about individual's health issues.

¹⁰ For biographical details on Lawrence K. Altman, see www.wilsoncenter.org.

more gradual, allowing them to measure progression and revisit their decision. With no known real-life application of such aids, this chapter adapts Schuker's framework to explore the eight fictional representations of presidential inability.¹¹ This adaptation combines Schuker's considerations of 'severity' and 'spatial' as one consideration of 'gravity'.¹² As the novels reflect three temporal features in their portrayals of presidential inability, the adaptation also expands the 'temporality' dimension beyond the probable duration of inability to include two other temporal factors, the lapsed time for decision-making and the political timing, for example, proximity to an election. The chapter introduces 'exigencies' as a third consideration to reflect the importance of the external environment during presidential inability.

This chapter starts by exploring the contribution of scholarship to understanding presidential ill health. In adapting Schuker's framework here, the first consideration is the gravity of a president's physical or physiological circumstances. Such circumstances may be challenging to separate from one or more temporal factors, the second consideration. The broader domestic and geopolitical context forms the third consideration of exigencies, creating urgency in resolving presidential inability. This chapter has a section on each of these three considerations to parse the eight novels better. The chapter concludes that in fiction, just as in real life, it may be challenging for constitutional actors to separate the three considerations of presidential ill-health.

Presidential well-being and the meanings of "unable"

This section fills a gap in the literature by offering what fictional representations add to our understanding of presidential ill health. The novels' storylines reveal the tension in interpreting the meaning of unable by showing scenarios where it is unclear whether the president's circumstances satisfy the 25th's intention. This section explores two themes: how the novels draw on studies of presidential health and the challenges of defining presidential inability, where 'the chief difficulty with such an attempt is the ominous portent of an under-inclusive description'.¹³

¹¹ Daniel J.T. Schuker, "Burden of Decision: Judging Presidential Disability Under the Twenty-fifth Amendment." *Journal of Law and Politics* 30 (2014): 97-140.

¹² Ibid.

¹³ The Contingency Plan, 10, 2, app. 18, 2, Memorandum from Frank Wiggins to Mike Berman "The 25th Amendment and Beyond".

Medical analyses of presidents' health not only document ailments but diagnose the possible impact on their presidency and add to their reputation or demolish legend.¹⁴ Real-life examples of this are Kennedy's multiple chronic health conditions, which were unknown to the public during his lifetime but now contrast with his renowned vigour.¹⁵ In addition, there remains speculation about when Reagan's Alzheimer's disease was apparent.¹⁶ The novels draw on historical examples to anchor a reality and to contrast the gravity, temporality, and exigencies faced by their fictional presidents, their primary use of Chief Ghosts. For example, *Camp David* and *Plane* use Wilson's 1919 stroke, and *Full Disclosure* references the subsequent failure of Congress to support the United States joining the League of Nations as a contributing factor to World War II.¹⁷ *Plane* and *Full Disclosure* also cover Eisenhower's health generally.¹⁸ *Negotiator* and *WH Storm* reference the speculation that Reagan's post-term Alzheimer's diagnosis was evident during his second term.¹⁹ Indeed, non-fiction portrayals of Reagan's lack of engagement with the daily business of governing influenced the plot of *Negotiator*.²⁰ In showing the political impact of cover-ups on policy decisions, strands of scholarship also articulate the 'questionable and incompetent treatment' of a president and political battles a president refused to surrender to urgent medical treatment or public disclosure.²¹

While fiction plays on the obsession with a president's well-being for its market, it also provides a platform for public debate about the transparency between situations where

¹⁴ Rudolph Marx, *The Health of the Presidents* (New York, G. P. Putnam's Sons, 1960), Sigmund Freud and William C. Bullitt, *Thomas Woodrow Wilson: A Psychological Study* (London: Weidenfeld and Nicolson, 1967), Herbert L. Abrams, *The President Has Been Shot: Confusion, Disability, and the Twenty-fifth Amendment* (Stanford, CA: Stanford University Press, 1994), Bumgarner, *The Health of the Presidents*, Jonathan R.T Davidson and Kathryn M. Connor, "The Impairment of Presidents Pierce and Coolidge after Traumatic Bereavement", *Comprehensive Psychiatry*, 49, (2008): 413-419. Autobiography and biography also provides insights. Some examples: Dwight D. Eisenhower, *Mandate for Change* (London: Heinemann, 1963), Gerald R. Ford, *A Time to Heal* (New York: Harper & Row, 1979), Ronald W. Reagan, *Ronald Reagan: An American Life* (New York: Simon & Schuster, 1990), Frederik Logevall, *JFK* (London: Viking, 2020).

¹⁵ Robert Dallek, "The Medical Ordeals of JFK", *Atlantic Monthly*, December 2002, <https://www.theatlantic.com/magazine/archive/2002/12/the-medical-ordeals-of-jfk/305572/>.

¹⁶ Jane Mayer and Doyle McMahon. *Landslide: The Unmaking of the President 1984-1988* (Boston, MA: Houghton Mifflin, 1988 and Los Angeles, CA: Greymalkin Media LLC, 2018. Kindle).

¹⁷ Knebel, *Camp David*, 181-182, Serling, *Plane*, 20, Safire, *Full Disclosure*, 88, 221.

¹⁸ Serling, *Plane*, 20, Safire, *Full Disclosure*, 153.

¹⁹ Forsyth, *Negotiator*, 456, Napier, *WH Storm*, 8.

²⁰ FFP. Mayer and McMahon, *Landslide*.

²¹ Robert H. Ferrell, *Ill Advised: Presidential Health and Public Trust* (Columbia, MO: University of Missouri Press, 1992), MacMahon and Curry, *Medical Cover Ups*, Kenneth R. Crispell and Carlos E. Gomez, *Hidden Illness in the White House*, (Durham, NC: Duke University Press, 1988), 4, Robert E. Gilbert, *The Mortal Presidency: Illness and Anguish in the White House* (New York: Basic Books, 1992).

anxiety over a president's well-being is justified and when it is not. The endings of these eight novels reimagine the anxiety of presidential inability because the Amendment provides a mechanism to deal with it, thus resolving one facet of the problem narrative. The history of cover-ups creates an expectation of low transparency, diminishes public trust and contributes to national anxiety, all leading to a national obsession with a president's well-being. The nation may view a successor to the office or its powers and duties as an 'accidental president' and question his institutional and public legitimacy, even while not questioning the procedural legitimacy that raised them to the presidency.²²

The deliberately flexible meaning of unable, with or without a medical diagnosis, is at the heart of the novels' use of Sections 3 and 4. This flexibility creates the ambiguity that shapes the novels' use of the 25th. While the Amendment's legislative history creates persuasive, if not mandatory, legal authority, literature about presidential ill health contributes to the wrangling over the meaning of unable, as the novels seek to do to create tension in their plots.²³ Therefore, any discussion of presidential ill-health requires an understanding of the meaning intended by several keywords that shape the paradox of the Amendment: the more serious the medical issue, the less of a political problem results.²⁴ Both fiction and academic literature rely on words closely similar in meaning when exploring the Amendment's keyword, unable. Disability, inability, incapacity, impairment, and their paronyms all reflect the problem narrative of presidential inability to indicate an abuser of power, or sometimes pejoratively, judging political viability and suggesting usurpation. For example, in *Full Disclosure*, dealing with a physical issue, even Ericson's opponents choose their words carefully, referring mainly to Ericson's 'inability' or 'disability' in the factual sense of his blindness. Using relatively neutral language, *Full Disclosure* uses the nuances of the Amendment to question whether Ericson's disability renders him unable. In contrast, *Camp David* refers to Hollenbach's cognitive issues as 'insane', 'a severe mental ailment' and 'paranoid reactions', among others.²⁵

²² Philip Abbott, *Accidental Presidents: Death, Assassination, Resignation, and Democratic Succession* (New York: Palgrave Macmillan, 2008), chp. 8, Jared Cohen, *Accidental Presidents: Eight Men Who Changed America* (New York: Simon & Schuster Paperbacks, 2019).

²³ For commentary on the status of a legislative history, see Georgetown Law Library, Legislative History Research Guide, https://guides.ll.georgetown.edu/legislative_history, accessed 22 October 2020.

²⁴ James F. Toole and Robert J. Joynt, eds., *Presidential Disability, Papers, Discussions and Recommendations on the Twenty-fifth Amendment and Issues of Inability and Disability Among Presidents of the United States* (Rochester, NY: University of Rochester Press, 2001), 52.

²⁵ Knebel, *Camp David*, 90, 111, 171.

Yet the medical and popular meaning of such terms changes over time, reflecting medical advances and acceptance of disabilities. The novels, mainly *Camp David*, *Father's Day* and *WH Storm*, show this change as they deal with cognitive issues. The first, *Camp David*, does not name Hollenbach's condition, but *Father's Day* and *WH Storm* do as dysphoria and Alzheimer's disease, respectively.²⁶ The current American Medical Association (AMA) definition of disability is: 'activity limitations and/or participation restrictions in an individual with a health condition, disorder, or disease'.²⁷ In contrast, the AMA's previous medical definition was: 'the alteration of an individual's capacity to meet personal, social or occupational demands, or statutory or regulatory requirements because of an impairment.'²⁸ The AMA currently defines impairment as 'a significant deviation, loss, or loss of use of any body structure or body function in an individual with a health condition, disorder, or disease'.²⁹ A further definition of presidential inability that underpins the novels' portrayals is by reference to political exigencies: 'any *de facto* inability, whatever the cause or duration if it occurs at a time when the urgency of public business requires executive action'.³⁰ Silva articulated her definition a generation before the ratification of the Amendment. While definitions and widespread usage indicate how constitutional actors might interpret presidential inability in the circumstances they face, there remains no one source for them to consult beyond the legislative history. But the decision, and accountability for it, is theirs alone.

By declining to define unable beyond what a president is unable to do (to 'discharge the powers and duties of his office') rather than tying it to causes, symptoms, and treatment, the drafters intentionally future-proofed their Amendment and unintentionally created a source for fictional mischief.³¹ Subject to considerable debate during its legislative journey, the most unambiguous indication of intent is from Senator Birch Bayh, chairman of the committee responsible for drafting the Amendment and shepherding it through Congress:

The word 'inability' and the word 'unable' as used in sections 4 and 5 of this article, which refer to an impairment of the President's faculties, mean that he is unable either to make or communicate his decisions as to his own competency to execute the powers and the duties of his office. I should like for

²⁶ Batchelor, *Father's Day*, 51, Napier, *WH Storm*, 121.

²⁷ Christopher R. Brigham, *AMA Guides to the Evaluation of Permanent Impairment Sixth Edition: Evolving Concepts, Challenges and Opportunities*. American Medical Association, (2011), chp. 14, 11. www.6thedition.com

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ Ruth C. Silva, *Presidential Succession* (Ann Arbor, MI: University of Michigan Press, 1951), 111.

³¹ US Constitution, amend. 25, secs. 3-4, Appendix A.

the record to include that as my definition of the words ‘inability’ and ‘unable’.³²

What the novels draw upon principally from Bayh’s definition is the ambiguity around ‘unable to make’, where a president is unwilling, rather than unable, to do so and the response of the other constitutional actors to his unwillingness. The ‘unable to communicate’ is drawn on in *Plane* and *Kidnapping* for their absent presidents. *Full Disclosure* could also have used it in the aftermath of the ambush while Ericson was unconscious. Definitions also help understand the possible distinction of applying Sections 3 and 4 of the Amendment. Stepping away from a ‘simplistic understanding’ of presidential inability, as the previous chapter discussed, Section 4 has, some believe, a ‘much narrower construction’ of the inability provision available to a vice president and Cabinet, as compared to a self-enacted Section 3.³³ The words are identical in each Section, but interpreting the two Sections in the same way, creates issues of procedural legitimacy. In this view, simply put, a president has to be able to communicate to use Section 3, and his invocation of Section 3 is not subject to review. Section 4, subject to congressional review if challenged by a president, must therefore require a president to be unable to make decisions or to communicate them, as indicated by Bayh’s definition.

Applying the vocabulary suggested in Schuker’s framework to the analysis of the eight novels illustrates one aspect of its utility as a contingency planning tool for presidential ill health.³⁴ The lack of an agreed detailed definition is a strength of the Amendment. Still, words matter and a common language to contextualise presidential inability would go some way to resolve the problem narrative of anxiety that a president might make suboptimal decisions due to his health. This chapter deploys Schuker’s use of impairment and incapacity to indicate the gravity of a president’s condition and temporary, persistent, and permanent describe temporal factors.³⁵ For exigencies, the matters requiring presidential attention and decisions range from inessential to urgent to emergency. With a

³² Birch Bayh, *One Heartbeat Away* (Indianapolis, IN: The Bobbs-Merrill Company, Inc, 1968), 271. Bayh chaired the Senate Judiciary Committee’s Sub Committee on the Constitution. The drafts of the proposed Amendment, as S.J. Res 139, S.J. Res 1 and H.J. Res 1 over the 88th and 89th Congresses were reduced to the four sections passed on 6 July 1965 and ratified on 10 February 1967. For the changes in the wording during the Amendment’s legislative journey see John D. Feerick, *The Twenty-fifth Amendment: Its Complete History and Applications* (New York: MJF Books, 2014), app. A.

³³ Adam R.F. Gustafson, “Presidential Inability and Subjective Meaning”, *Yale Law & Policy Review* 27, no.2 (Spring 2008), 462, <https://www.jstor.org/stable/40239719>.

³⁴ Schuker, “Burden of Decision”, 101.

³⁵ *Ibid.*, 117, 119.

vocabulary proposed to describe consistently the spectrum of the three considerations of a president's medical challenges, all that is missing is the president's political influence. The table below plots these terms against the seriousness of the concerns before the rest of the chapter explores each in turn. This thesis uses viability to question the possible weakening of an incumbent's political influence and authority to direct and respond to 'the urgency of public business', which might apply in conjunction with any of the three criteria.³⁶

Table 2 Terms describing inability

Criteria	← Inability: less to more serious concerns →		
Gravity	Impairment		Incapacity
Temporality	Temporary	Persistent	Permanent
Exigencies	Inessential	Urgent	Emergency

Source: adapted and expanded from Schuker.³⁷

Gravity: (un)conscious and (in)capable?³⁸

The eight novels depict various logistical and physiological episodes of presidential inability. By questioning what renders a president unable, seven novels (*Plane* is the exception) show presidents who are conscious and seemingly capable of declaring their own inability. In doing so, the novels have much to add to illuminating constitutional intent, potential real-life use, and the importance of planning in controlling the narrative of a president's health, as 'any discussion about the president's health starts rumours.'³⁹ Managing that narrative may involve medical choices on diagnostic procedures or treatment as, for example, Clinton, Obama and Trump did to avoid anaesthesia for a leg injury or colonoscopies.⁴⁰ The legislative record shows the drafters' concern is in determining when a president is 'not the man, from a substantive point, who was

³⁶ Silva, *Presidential Succession*, 111.

³⁷ Schuker, "Burden of Decision".

³⁸ The Contingency Plan, tab B, 1.

³⁹ Barbara Bush, *A Memoir* (New York: St Martin's Paperbacks, 1994), 300, John D. Feerick, "Presidential Succession and Inability: Before and After the Twenty-fifth Amendment", *Fordham Law Review* 79, no. 3 (December 2010): 931, <https://ir.lawnet.fordham.edu/flr/vol79/iss3/8>. Biden invoked it in November 2021 also while undergoing a colonoscopy, Physician to the President, memorandum, 19 November 2021.

⁴⁰ Bill Clinton, *My Life* (London: Hutchison, 2004): 748-749, Meredith McGraw, "The inside scope: how ego led Trump to hide a colonoscopy", *Politico*, 7 October 2021, Dan Childs, "President Obama's Physical: Doctors Pick Apart Results", 1 March 2010, accessed 21 March 2022, <https://abcnews.go.com/Health/WellnessNews/president-barack-obama-checkup-doctors-scrutiny/story?id=9982428>.

previously elected to that office'.⁴¹ This section shows that the novels demonstrate the difficulties of the constitutional actors in applying the drafters' concerns to the fictional situations faced as surrogates for real-life situations. This section's structure will follow three causes of presidential inability portrayed in the novels, mental health, absence, and physical disability.

The five novels that deal with cognitive issues, including grief, ask how impaired a president needs to be before he should be relieved of the powers and duties of his office. Such was the topicality of that concern in 2018 that the earliest of the eight novels, *Camp David*, was republished.⁴² While several individual presidents may have suffered from some temporary psychological impairment due to grief, bipolar disorders, or alcohol or drug use that may have led to sub-optimal decisions, there has, as yet, been no certifiably insane office holder.⁴³ Indeed, the lack of a shared language on cognitive issues can emphasise the problem. As Senator MacVeagh realises that Hollenbach is 'insane' (a term with legal but not medical meaning), *Camp David* echoes the anxiety of a madman in the Oval Office.⁴⁴ Yet Hollenbach is, for the most part, lucid and functioning. As a member of CACTUS, which attempts to de-risk the process for a nuclear launch, MacVeagh is aware of the challenges of determining and the jeopardy that flows from an impaired president. This issue remains a real-life concern.⁴⁵ No medical professional in *Camp David* diagnoses Hollenbach's mental condition, but he is unquestionably impaired and is moving towards incapacity. Cabinet members and the vice president rightly consider invoking Section 4 to remove him, as good-faith actors focusing on due process to legitimise their actions.⁴⁶ Hollenbach is aloof but popular: the spectre of a shift in public opinion challenging his

⁴¹ *Cong. Rec.*, 89th Cong., 1st sess., vol.111, pt.11, 6 July 1965, 15593.

⁴² Alexandra Alter, "Still Too Plausible For Comfort", *NYT*, 10 November 2018.

⁴³ See Robert E. Gilbert, "Calvin Coolidge's Tragic Presidency: The Political Effects of Bereavement and Depression", *Journal of American Studies* 39, no.1 (2005): 87-109, <https://www.jstor.org/stable/27557598>, Davidson and Connor, "The Impairment of Presidents", Jonathan R.T. Davidson et al, "Mental Illness In U.S. Presidents Between 1776 and 1974: A Review of Biographical Sources", *The Journal of Nervous and Mental Disease* 194, no.1 (January 2006): 47-51, <https://www.doi.org/10.1097/01.nmd.0000195309.17887.f5>, Robert E. Gilbert, "Presidential Disability and the Twenty-fifth Amendment: The Difficulties Posed by Psychological Illness", *Fordham Law Review* 79, no.3, (December 2010): 843-880. <https://ir.lawnet.fordham.edu/flr/vol79/iss3/5>.

⁴⁴ Knebel, *Camp David*, 90. For legal definition of insanity see <https://definitions.uslegal.com> 'a mental illness of such a severe nature that a person cannot distinguish fantasy from reality, cannot conduct his/her affairs due to psychosis, or is subject to uncontrollable impulse behavior', accessed 22 June 2021.

⁴⁵ Louis Cholden-Brown, et al. "Protecting Against an Unable President: Reforms for Invoking the 25th Amendment and Overseeing Presidential Nuclear Launch Authority", *Democracy and the Constitution Clinic, Fordham University School of Law*, (January 2020,) https://ir.lawnet.fordham.edu/twentyfifth_amendment_reports/11.

⁴⁶ Knebel, *Camp David*, 301.

legitimacy does not arise in *Camp David*. Instead, Hollenbach cements his legacy by resigning, using the deterioration of a pre-existing but undisclosed heart condition, a reason that mitigates public anxiety about the madman in the White House.⁴⁷

In portraying Section 4 as usurpation, *Father's Day* challenges both the veneer of objectivity of one's medical condition and the presumption of power of an elected president. *Father's Day* shows Jay's medically diagnosed dysphoria (a form of depression) as treatable and possibly temporary.⁴⁸ The cause and effect of the presidency on his personal life is severe, hinting that the condition was probably already present at his election but not disclosed. Having stepped aside under Section 3, Jay believes he has recovered and starts to reclaim his presidential powers and his estranged family but cannot conjure the energy or commitment to undertake sustainably either challenge. Jay's treatment includes a pharmacopœia of drugs to improve and stabilise his mental state, raising questions of whether the treatment renders him impaired, an issue that echoes real-life concerns as Trump's Covid-19 treatment illustrates.⁴⁹ Jay's medical impairment, including his reliance on prescription drugs, is more than sufficient to warrant questioning his political viability. He relies on his political opponents to ensure a smooth transfer of power back to him using a Section 4 challenge. With Jay's stroke, his move to incapacity is complete. He was correct in standing aside under Section 3. His vice president and Cabinet's challenge of Jay's return under Section 4 is appropriate, but rather than an autogolpe they should have trusted the Section 4 process.

WH Storm uses Davidson's declining cognitive capacities to excuse his memory loss or 'pulling a Reagan'.⁵⁰ Davidson's Alzheimer's diagnosis is only known to the Chairman of the Joint Chiefs of Staff, Gus Caesare, and senior military officers who plan to exploit this knowledge. Davidson's cognitive abilities deteriorate rapidly over the short period portrayed in *WH Storm*. By the novel's *dénouement*, Davidson experiences frequent 'fugue states'.⁵¹ The initial knowledge of his Alzheimer's diagnosis creates tension in the plot by reflecting both facets of the problem narratives of presidential inability: the anxiety of the

⁴⁷ Knebel, *Camp David*, 332.

⁴⁸ For a definition of dysphoria see, <http://www.verywellmind.com>.

⁴⁹ Batchelor, *Father's Day*, 56, Rose McDermott, "Trump's COVID-19 diagnosis and presidential illness", *Politics and the Life Sciences* 40, no.1 (6 November 2020), <https://doi.org/10.1017/pls.2020.28>.

⁵⁰ Napier, *WH Storm*, 8.

⁵¹ *Ibid.*, 170. See Robert E. Gilbert, "The Politics of Presidential Illness: Ronald Reagan and the Iran-Contra Scandal", *Politics and Life Sciences* 33, no.2 (Fall 2014): 58-76, <https://www.jstor.org/stable/24893594>.

madman in control and usurpation as senior military officers plan to exploit their knowledge. Davidson is impaired, moving to incapacity as his condition deteriorates. Queenan becomes acting president under Section 4. Davidson is, initially, unwilling to give up power and immediately counters with an oral Section 4 declaration that his inability has ended. At this point, Davidson discovers his medical diagnosis and resigns, so his failure to observe the constitutional process does not matter.⁵² Davidson's slowly progressing and episodic illness shows how difficult it is to reach the constitutional tipping point of 'whenever' as he moves from impairment to incapacity.⁵³

The cognitive issues in *Camp David*, *Father's Day*, and *WH Storm*, published in 1965, 1994, and 2014 respectively, are portrayed differently, reflecting advances in diagnoses and public understanding, particularly with the naming of conditions in the two later novels.⁵⁴ All three echo the anxiety of cover-ups of presidential ill-health, even in *Father's Day*. The public knows of Jay's dysphoria but does not know of his reliance on pharmacopœia or his later rapid mental and physical deterioration and stroke. Despite medical advances in diagnoses and treatment, broader public acceptance of disabilities, and the toll the office takes on an individual, it remains moot whether the public would ever accept a physically or mentally declining president in the Oval Office. Jay's unsuccessful reliance on procedural and public legitimacy to sustain his attempted return to presidential responsibilities is portrayed in contrast to Garland's resort to an autogolpe to maintain his institutional legitimacy and questions the fitness for office of both. Neither is in office by the novel's end, Garland dies by assassination, and Jay has resigned.

Cormack's grief is an excellent example of when a president should have used Section 3. *De facto* executive branch control is with his vice president.⁵⁵ "We have half a president, maybe less", reflects Attorney General Bill Walters of Cormack in *Negotiator*. Some five weeks after his son's kidnapping and murder, Cormack struggles.⁵⁶ Cormack's psychiatrist explains to the Cabinet that post-traumatic stress disorder is 'depriving him of the will to continue.'⁵⁷ His grief incapacitates Cormack, and he should have invoked Section 3. Yet

⁵² Napier, *WH Storm*, 250.

⁵³ US Constitution, amend. 25, sec. 4, Appendix A.

⁵⁴ Dysphoria, a form of depression, in Batchelor, *Father's Day*, prologue, Alzheimer's disease in Napier, *WH Storm*, 121.

⁵⁵ Forsyth, *Negotiator*, 312.

⁵⁶ *Ibid.*, 178.

⁵⁷ *Ibid.*, 357.

with the resolution of the political motivation behind his son's murder, including identifying those within his own Cabinet who were responsible, Cormack recovers and continues as president. The novel ends with Cormack addressing the nation on TV, his mental capacities restored. Cormack signals to the country that grief is no longer medically impairing him by using the Oval Office for the first time in seventy-three days.⁵⁸ The use of the Oval Office also shows Cormack moving to restore his political viability by being visible in the presidency's main working space. But by not using Section 3, *Negotiator* illustrates the dilemma. Odell and the Cabinet failed in their constitutional duty to invoke Section 4, particularly given the political crisis created by the stalled Nantucket Treaty. Yet, by exercising the discretion Section 4 tacitly grants, they scupper the objectives of the president's son's killers. The identification of his son's killers restores Cormack to health and *de facto* to the power and duties of his office.⁵⁹ *Negotiator* shows that constitutional actors' ability to exercise discretion is a vital interpretation of Section 4.

In contrast, in *Fourth K*, Kennedy's grief conflates his personal humiliation with the nation's in 'allowing terrorists to take his daughter'.⁶⁰ But Kennedy channels his grief to a resolve that quickly turns hubristic, as revenge on his daughter's killers becomes a mission. As his hubris turns messianic, Kennedy's Cabinet attempts to remove him from office 'by reason of his personal vendetta which shows a temporary imbalance of the mind.'⁶¹ The lack of proportionate response in retaliation shows 'a mind temporarily unbalanced by his personal tragedy'.⁶² Like *Negotiator*, what *Fourth K* adds to the debate on the gravity of a president's inability is the need for discretion. Leaving an impaired president to exercise presidential responsibilities may be the better option, evidenced by Congress's annulment of the attempt to remove Kennedy.⁶³ Cabinet and Congress try to remove Kennedy using his overreach of power in place of medical evidence to question Kennedy's mental impairment. His hubris leads indirectly to his assassination on inauguration day.⁶⁴ In Kennedy's mental state, the persistence of hubris leads the Cabinet and Congress to raise a

⁵⁸ Forsyth, *Negotiator*, 506.

⁵⁹ Outline for chp. 19 of *Negotiator*, *FFP*.

⁶⁰ Puzo, *Fourth K*, 155-158.

⁶¹ *Ibid.*, 186. David Owen and Jonathan Davidson, "Hubris Syndrome: An Acquired Personality Disorder? A Study of US Presidents and UK Prime Ministers over the last 100 years", *Brain* 132, no.5 (May 2009): 1396-1406, <https://doi.org/10.1093/brain/awp008>, Puzo, *Fourth K*, 263.

⁶² Puzo, *Fourth K*, 194.

⁶³ Brian C. Kalt, *Unable: The Law, Politics, and Limitations of the Twenty-fifth Amendment* (New York: Oxford University Press, 2017), 41.

⁶⁴ Puzo, *Fourth K*, 494.

Section 4 challenge. Yet Kennedy's political viability lies in his hubris as events overwhelm the nation. Kennedy should have stepped aside using Section 3, and his vice president and Cabinet were correct to consider invoking Section 4.⁶⁵ Kennedy's subsequent landslide election to a second term shows that his health has not caused the public to question his institutional or procedural legitimacy.

An absent president should be an obvious trigger for the invocation of Section 4. In *Plane*, Haines' whereabouts are unknown, and in *Kidnapping*, terrorists hold Scott in a booby-trapped truck in the middle of Manhattan. *Plane* uses Section 4 to make Madigan acting president as it is unknown if Haines survived the crash of Air Force One.⁶⁶ Haines' absence permits the constitutional actors to treat him as incapacitated. Roberts and the Cabinet consider it in *Kidnapping* but using the ransom discussion as a proxy for Scott's inability never resolves their debate. Scott can make and communicate decisions orally from the truck but cannot transmit the declarations required by Section 3.⁶⁷ Based on the gravity of Scott's situation, his Cabinet and vice president should have invoked Section 4. The temporal factor of the looming midterm elections creates discretion for them.

At the beginning of *Full Disclosure*, Ericson is unconscious and out of contact after Soviet army officers ambush him resulting in his hospitalisation in the Soviet Union. The Cabinet and Nichols should have invoked Section 4 due to Ericson's incapacity and deployed Ericson's letter agreement with Nichols to bolster any gainsaying of Nichols' legitimacy as acting president, however briefly he may hold presidential responsibilities.⁶⁸ Ericson's blindness, triggered by his injuries, is a disability that renders him impaired, not incapacitated. The Amendment's drafters considered temporary blindness as requiring its use.⁶⁹ It is Ericson's political viability that becomes the issue. It is interesting to consider how *Full Disclosure* may have developed had the Cabinet and vice president invoked Section 4 after the ambush with Ericson hospitalised in an enemy nation and Ericson subsequently declaring that inability ended. As president, he has the presumption of power, the presidency's institutional legitimacy, and would probably retain procedural legitimacy

⁶⁵ For this chapter, *Fourth K's* conflating of impeachment with the 25th is ignored. See Chapter 5 of this thesis.

⁶⁶ Serling, *Plane*, 120, 125.

⁶⁷ Templeton, *Kidnapping*, 142.

⁶⁸ Safire, *Full Disclosure*, 58. See Chapter 5 of this thesis.

⁶⁹ *Cong. Rec.*, 89th Cong., 1st sess., vol. 111, pt. 6, 13 April 1965, 7938, Feerick, *The Twenty-fifth Amendment*, 115.

in recovering his presidential responsibilities through Section 4. Ericson would likely maintain public legitimacy as the nation's sympathy is with its stricken commander in the immediate aftermath of his ambush.

Except for Haines' absence in *Plane*, by not using clear-cut examples from Bayh's definition, the novels illuminate the deliberate flexibility of the constitutional meaning of unable and the weight of the decision entrusted to the constitutional actors. The novels explore the challenges of identifying the point at which the man serving is not the man elected and whether, as *Father's Day* has it "He's [Jay] not much, but he's what we elected, and that makes him the only president we've got."⁷⁰ The alternative depends on the broad discretion of the vice president and Cabinet in giving real-life meaning in real-time to the meaning of unable. In the absence of a detailed constitutional definition, or the adoption of any recommendations discussed in the next chapter, procedural legitimacy is less of an issue in considering health on its own than good-faith actors demonstrating the constitutional morality of their decision. Regarding Section 4, constitutional morality means public understanding that the constitutional actors are applying the tenets of the Constitution's and the Amendment's drafters' intent correctly and in good faith, including a president resigning when he can no longer fulfil his oath of office.⁷¹ In contributing to the narrative of an impaired president, by showing all three presidents with mental health issues resigning and both of the grief-stricken continuing in office, the novels reimagine the office as one where resignation is acceptable and resolve the narrative of fear of the madman in control. Where the impairment is physical, *Full Disclosure* shows the political challenge of losing public legitimacy as declining political viability results in a *de facto* withdrawal of a president's mandate.

In their depictions of ill health and absence, the novels also show how difficult it is to separate temporal issues from the 'urgency of public business' where the president is concerned. The novels explore how long a vice president and Cabinet should wait before

⁷⁰ Batchelor, *Father's Day*, 101.

⁷¹ *Hearings Before the Subcommittee on Constitutional Amendments of the Committee on the Judiciary, Presidential Inability and Vacancies in the Office of the Vice President, Senate, 88th Cong. 2nd Sess., 24 January 1964, testimony of Herbert Brownell, 136, http://ir.lawnet.fordham.edu/twentyfifth_amendment_congressional_materials/7, the Contingency Plan, tab B, 3, Bayh, *One Heartbeat Away*, 67, Safire, *Full Disclosure*, 208.*

invoking Section 4, where ‘every sensible and sympathetic construction favouring his continued performance of presidential duties should be accorded him’.⁷²

Temporality: duration, decision points, and the political calendar

The novels portray three temporal factors, the duration of inability, how long a vice president and Cabinet might take to reach the Amendment’s decision point of ‘whenever’, and when inability strikes on the political calendar.⁷³ While the gravity of a president’s logistical or physiological condition alone might lead a president to invoke Section 3 or a Cabinet and vice president to invoke Section 4, how long any impairment or incapacity might last is the first temporal factor for constitutional actors to consider. More broadly, the duration of impairment may influence the president’s ongoing public legitimacy. Opinion polls illustrate Ericson’s declining support in *Full Disclosure*. Odell and the inner Cabinet debate Cormack’s position in *Negotiator*.⁷⁴ A spectrum of temporary to persistent to permanent is appropriate for temporality considerations. Any void in decision-making creates jeopardy, or competition between a president and an acting president exercising the same presidential responsibilities creates confusion. However, only one can legitimately do so at any time. Where there is ‘sufficient time before a president becomes unconscious or unable to understand’, a president should use Section 3. As a voluntary act with a clear route to reclaiming his presidential responsibilities, Section 3 is less likely to impact his political viability in the short term.⁷⁵

Camp David, *Father’s Day* and *WH Storm* feature the fear of a mentally impaired, if not yet incapacitated, president and explore the significance of duration. As the previous section highlighted, all three demonstrate the difficulties of spotting the onset of mental disorders, the transient nature of symptoms, the speed of deterioration, and its impact on presidential performance. Both *Camp David* and *WH Storm* portray the anxiety of those with knowledge of an incumbent president with less than complete control over his mental state and, therefore, his political responses. Neither novel shows the cognitive issues faced

⁷² Committee on the Judiciary, Report on Presidential Inability and Vacancies in the Office of Vice President, 89th Cong., 1st sess., 10 February 1965, S.Rep. No. 89-66, 23, https://ir.lawnet.fordham.edu/twentyfifth_amendment_congressional_materials/13.

⁷³ US Constitution, amend. 25, sec. 4, Appendix A.

⁷⁴ Safire, *Full Disclosure*, for example, 399, 463, Forsyth, *Negotiator*, 457.

⁷⁵ The Contingency Plan, tab B, 1.

by Hollenbach and Davidson, respectively, as widely known. Institutional legitimacy is unlikely to be questioned, and procedural legitimacy is challenged by what a vice president and Cabinet did not do, doing nothing versus active deliberation resulting in discretion. But public legitimacy might influence their decision where the duration of the president's condition, or sense of a prolonged absence from the rituals of the office, has started to reduce public confidence in whether a president reclaiming power can sustain his return, as happens to Jay in *Father's Day*. Simply put, the nation might have moved on.

As MacVeagh's informal investigation into Hollenbach's mental health continues, the variability in Hollenbach's temperament and delusions of omnipotence increase in frequency and push his cognitive decline from temporary towards persistent.⁷⁶ Yet Hollenbach remains lucid enough to be aware that his 'mind is under question' and eventually resigns.⁷⁷ Section 3 anticipates such objectivity in response, which requires a president to be mindful of his condition and able to communicate. Hollenbach interrupts the meeting where a mixture of party luminaries and others debate his mental stability. He reflects on the enormity of presidential decisions and the impact of such pressure on any individual's well-being.⁷⁸ O'Malley prepares to convince the Cabinet to invoke Section 4, suggesting time limits to their willingness to allow Hollenbach to continue to exercise his powers and duties, given a crucial summit meeting is imminent.⁷⁹ Off-page, Hollenbach brings objectivity to his situation. In planning 'a long vacation', *Camp David* hints Hollenbach would invoke Section 3.⁸⁰ In resigning, rather than stepping aside, Hollenbach confirms his reputation and, referencing the Constitution and his letter agreement with O'Malley, dismisses any suggestion that O'Malley's claim on the office is less than legitimate.⁸¹

Similar themes play out in both *Father's Day* and *WH Storm*. As *Father's Day* starts with Jay five months into his Section 3 absence, Jay's diagnosis is public, whereas Davidson's condition is not, even to himself, for most of the novel. *WH Storm* flags Davidson's deterioration throughout the novel. At the novel's start, he muses, 'I don't know when I started noticing changes . . .', but as his mental lapses increase, *WH Storm* portrays them

⁷⁶ Knebel, *Camp David*, 295.

⁷⁷ *Ibid.*, 315, 332.

⁷⁸ *Ibid.*, chp. 20.

⁷⁹ *Ibid.*, 298.

⁸⁰ *Ibid.*, 324.

⁸¹ Knebel, *Camp David*, 333.

from others' perspectives.⁸² This shift suggests that Davidson's awareness of his condition has lessened as he moves from temporary to persistent lapses. *WH Storm* describes Davidson's decline at a stage where the 25th's political decision is needed to resolve his medical deterioration as 'the earliest deficits of Alzheimer's disease —defects in imagination, complex reasoning, or the ability to shift attention —strike at the core skills of political leadership'.⁸³ *WH Storm* appropriately uses Section 4 to indicate when Davidson's condition will likely become permanent.

In *Plane*, Haines is missing for less than a week. Yet, Madigan investigates having him declared legally dead despite invoking Section 4: a sign of Madigan's concern over his legitimacy as acting president.⁸⁴ Scott, in *Kidnapping*, is held for some fifteen hours before he will either be assassinated or released.⁸⁵ *Full Disclosure* is the only novel to use a physical disability as its significant medical condition. Ericson's blindness is undoubtedly persistent, probably permanent, yet he is in 'excellent physical and mental health but for one defect.'⁸⁶ Ericson's refusal to resign because of his blindness shows him fulfilling his oath and as hubris in portraying himself in contrast to his inept vice president, using discretion on himself as the better alternative.⁸⁷ As it becomes more likely that Ericson's blindness will be persistent, if not permanent, and his failure to disclose a previous, temporary episode incurred during the campaign becomes public, his Cabinet members increasingly favour invoking Section 4. Paradoxically, his political viability wanes as he becomes more confident in dealing with his disability. His disability does not render Ericson any more than impaired. *Full Disclosure* shows he can carry out his powers and duties. *Full Disclosure*, therefore, asks, notwithstanding congressional intent on blindness: to what extent do changes in the Chief Executive's health after an election rightfully raise questions of public legitimacy?⁸⁸ Ericson loses his ability to govern as congressional, and public confidence in him erodes, confirmed by the narrowness of Congress's Section 4 vote returning his presidential responsibilities to him. Although Ericson has the institutional legitimacy of his office and the procedural legitimacy of the Amendment's

⁸² Napier, *WH Storm*, 3, 25, 116

⁸³ Steven Miles, MD, "Presidential Disability and the Twenty-fifth Amendment", letter to the Editor, *Journal of the American Medical Association* 274, no.10 (13 September 1995): 799, <https://www.doi.org/10.1001/jama.1995.03530100037028>.

⁸⁴ Serling, *Plane*, 214.

⁸⁵ Templeton, *Kidnapping*, 67, 282.

⁸⁶ Safire, *Full Disclosure*, 75.

⁸⁷ *Ibid.*, 126, 190.

⁸⁸ *Cong. Rec.*, 89th Cong., 1st sess., vol. 111, pt.6, 13 April 1965, 7938.

processes, he fails at maintaining his public legitimacy. The answer in *Full Disclosure* is that Ericson resigns with opinion polls and the constitutional mathematics of the difference between Section 4 and impeachment as proxies for withdrawing his mandate.⁸⁹

Beyond the probable duration of any inability, the novels illustrate the lapse in the time needed for constitutional actors to reach the constitutional decision point of ‘whenever’, notwithstanding the spectre of a weakening government.⁹⁰ As the pre-eminent constitutional actor, a vice president needs some indefinable period to consult with others and justify their decision, and so does the Cabinet. As real-life examples illustrate, Section 3 situations are likely to be time-bound: Reagan’s ambiguous use when undergoing colon cancer surgery in 1987, George W. Bush’s two uses when under anaesthesia for colonoscopies in 2002 and 2007, and Biden’s in November 2021 were all for just a few hours.⁹¹ In addition to duration acting as bookends within the storyline in all eight novels, *Full Disclosure* and *Father’s Day* illustrate how momentum and tolerance can shift as information is gathered and shared, and Cabinet, congressional, and public sentiment towards the elected president changes.⁹² Public sympathy for the president’s human plight may remain, but the waning of viability is hard to reverse. In recognition, both novels portray resignation as actions by good-faith actors fulfilling their oath of office.

Fourth K’s Kennedy’s grief is only temporarily incapacitating. It is in hubris that his mental state becomes persistent. His Cabinet and Congress challenge Kennedy’s view of his inability.⁹³ *Negotiator’s* Cormack is out of action for over seventy-three days before recovering. Neither invokes Section 3. Odell and most of the Cabinet support their grief-stricken president. Having twice deferred full consideration of invoking Section 4 by using their discretion, and as pressure mounts for Senate ratification of the Nantucket Treaty, the constitutional actors finally agree to a time limit on Cormack’s recovery. Some three weeks after Simon Cormack’s funeral, they vote and agree to inform Cormack on Christmas Eve (still some weeks away) that they will invoke Section 4 on New Years’

⁸⁹ Safire, *Full Disclosure*, 501. US Constitution, amend. 25, sec. 4, Appendix A, requires a two-thirds vote in both Houses of Congress. US Constitution, art. 2, sec. 4, impeachment requires a majority vote in the House, and two-thirds in the Senate: a difference of 73 votes in the House. See Chapter 5 of this thesis.

⁹⁰ US Constitution, amend. 25, sec. 4, Appendix A.

⁹¹ Feerick, “Presidential Succession and Inability”, Physician to the President, memorandum, 19 November 2021.

⁹² Safire, *Full Disclosure*, 464, Batchelor, *Father’s Day*, 400.

⁹³ Puzo, *Fourth K*, 161, 201, 205, 255.

Day.⁹⁴ Allowing Cormack yet further time is justified by the precedent of Section 4 remaining uninvoked during Reagan's colon cancer surgery and recovery. Cormack's Cabinet's interpretation of the Iran/Contra affair as a consequence of Reagan's mental confusion post-anæsthesia highlights the political risk of not invoking. In allowing a delay, the Cabinet also recognises the importance of public legitimacy in their decision to invoke Section 4 or not, referencing Cormack's continuing but wavering popular support.⁹⁵

The final temporal issue is the political timing of when presidential inability strikes. While the Amendment is presidential term-blind, the proximity to a subsequent campaign influences the practicalities of a response, and acceptance, in the use of the Amendment, as the novels show. *Negotiator's* referencing a looming election highlights the influence of temporary to persistent to the permanent duration of inability on the quadrennial presidential term: a core tenet of the US system of government.⁹⁶ In viewing how these novels illuminate broader constitutional issues, fictional representations of where an incumbent is in his elected term are worth mentioning. The point is recognised by Ericson in *Full Disclosure*: ““once people get the idea that Presidents they don't like should resign, or don't think they are doing the job should resign, then the four-year term starts crumbling at the edges. . . a President's duty is to stay in office””.⁹⁷ The Amendment's drafters held fast to that principle. However, some scholars believe that the wording of Article II, Section 1 envisaged a special election as the mechanism to replace a fallen Chief Executive.⁹⁸ All eight fictional presidents are in their first term, and Scott, Ericson, and Jay have half that term or more still to serve. The remaining five, Hollenbach, Haines, Kennedy, Cormack, and Davidson, are within a year of an election. The point in time at which the duration of impairment (or even incapacity) may become a sharper focus may depend on proximity to an election, certainly for presidential but also for midterm elections, as *Kidnapping* shows. Time remaining on the quadrennial clock may influence whether Congress, media or the public treat the administration of a president who has stepped aside under Section 3 or who challenges Section 4 as a lame-duck. The vice president may also wish to run for office in their own right. The public might accept

⁹⁴ Forsyth, *Negotiator*, 457.

⁹⁵ *Ibid.*, 456.

⁹⁶ Forsyth, *Negotiator*, 363. See William Michael Treanor. “The Case of the Dishonest Scrivener: Gouverneur Morris and the Creation of the Federal Constitution.” *Michigan Law Review* 120, no.1 (October 2021): 79, <https://doi.org/10.36644/mlr.120.1.case>, on whether a special election was intended.

⁹⁷ Safire, *Full Disclosure*, 126.

⁹⁸ See Feerick, *The Twenty-fifth Amendment*, 284-289 for the proposals for a special election.

impairment, anxiety of presidential inability notwithstanding, when an election is looming, regardless of duration, and the decision on a president's removal becomes democratic, either by failure to obtain his party's nomination or defeat at the ballot box. The final chapter of this thesis will return to these issues by exploring fictional representations of alternative means of replacing a president.

In illuminating the importance of duration, the novels show that in the absence of a catastrophic episode determining the constitutional decision point is likely to require some indeterminate period for the constitutional actors to consult medical experts and deliberate. The novels also highlight the subjective nature of medical opinion and those charged with anticipating its political consequences. In tackling temporal issues, the novels also emphasise that, without control over the timeline and messaging, public opinion may shift from empathy for the president as an individual to an erosion of confidence in him as the officeholder. The same is likely to happen with a prolonged, or time-bound, Section 3 step aside. Unless the Cabinet and vice president know that the gravity of the president's condition impacts one or more of the temporal factors, it is problematic to consider either separately from the matters that require a president's urgent attention and, therefore, the speed of their political decision. While the constitutional actors are unlikely to invoke Sections 3 or 4 for exigencies alone, its combination with either gravity or any of the temporal issues may make it necessary.

Exigencies: is half better than two?

This section explores how the novels use their broader political context to illustrate their Section 4 circumstances, although crises alone would not be grounds for invoking Sections 3 or 4. Instead, the intersection of crisis with gravity brings temporality issues into focus, as James Hagerty's comment on Eisenhower's 1955 heart attack shows: 'if he [Eisenhower] had to have a heart attack, he couldn't have picked a better time'.⁹⁹ The legislative record and the Contingency Plan confirm the importance of the national and international political climate to any assessment of circumstances where a president must consider Section 3, and his Cabinet and vice president must consider Section 4.¹⁰⁰ For the

⁹⁹ James C. Hagerty, Oral history interview by Ed Edwin on 2 March 1967, 31 January, 2 February, 6 February, 16 April, 17 April 1968. Columbia Center for Oral History, Columbia University. <https://dx.doi.org/10.7916/d8-j9r4-t815>, 301, Kalt, *Unable*, 115.

¹⁰⁰ The Contingency Plan, tab B, 3, for example, *Cong., Rec.*, 89th Cong., 1st sess., vol.111, pt.11, 30 June 1965, 15381, Akhil Reed Amar, "Applications and Implications of the Twenty-fifth Amendment:",

25th, the events requiring presidential involvement matter. The physical absence of the fictional presidents in *Plane*, *Kidnapping*, and, initially, in the ambush in *Full Disclosure* show presidents unable to communicate, all at times of global and domestic challenges. The historical assumption was that a vice president would exercise the powers and duties of the office in a president's absence because communications were slow and uncertain; one reason why the first president to travel outside of the USA was as late as Theodore Roosevelt's journey to Panama in 1906.¹⁰¹ The health issues of the presidents in *Camp David*, *Full Disclosure*, *Negotiator*, *Fourth K*, *Father's Day*, and *WH Storm* question whether their presidents are unable to make decisions on their competency. This section will consider the novels in two groups, those with some urgency of executive business and those where a president can manage his presidential responsibilities. This section will explore the impact of exigencies in the novels by examining whether the crises deployed change the narrative of the 25th. Exigency for this purpose reflects Silva's sense of 'the urgency of public business requires executive action'.¹⁰² Where such executive action is required, the novels generate more fear of abuse of presidential power with an impaired president, 'half a president', than a dispute over who, legitimately, exercises presidential responsibilities raising the spectre of two presidents or usurpation.

Fictional representations use exigencies to go beyond creating a source of tension in the plots, as circumstances threaten effective government, the survival of the United States, or US hegemony to emphasise how such exigencies interact with presidential inability. The Amendment's Cold War origins make this consideration impossible to ignore and illuminate its role in the national security aspects of government continuity.¹⁰³ Silva's definition is reflected in the Contingency Plan and shows the challenges of excluding the external context:

Once one gets beyond a comatose state, or perhaps, massive paralysis, defining inability is likely to necessitate some reference to the urgency of surrounding circumstances . . . Even if one were to conclude that reference to outside events could somehow be elided, charting disabling occurrences would have a chance at sufficient breadth only if it took the form of a schedule of capabilities necessary to conduct of presidential duties. And measuring those capabilities

Houston Law Review 47, no.1 (2010), 2. Amar revisits the argument that Clinton could have used Section 3 while preparing his impeachment defence.

¹⁰¹ Garrett M. Graff, *Raven Rock* (New York: Simon & Schuster Paperbacks, 2017), 164.

¹⁰² Silva, *Presidential Succession*, 111.

¹⁰³ Davidson et al, "Mental Illness In U.S. Presidents", 47-51.

against the huge number of combinations of afflictions which might come into play would be a difficult, exhausting, and somewhat macabre affair.¹⁰⁴

The fictional exigencies faced range from an imminent summit with the Soviet Union in *Camp David* and the crash of Air Force One while the president is secretly at Camp David to negotiate a treaty with the Soviet Union in *Plane* to global terrorism in *Kidnapping* and support for a new regime in the Soviet Union in *Full Disclosure*. In both *Negotiator* and *Fourth K*, the geopolitical climate has led to an oil crisis where the Middle East is an area of conflict with the Soviet Union. US oil industry elites try to scupper presidential control over resolving the conflict. *WH Storm*'s background is cyber-security breaches in warfare. In the fictional presidents' 'capacities to manage and respond,' the constitutional actors need to consider exigencies.¹⁰⁵ Such capacities will vary depending on each impaired president's treatment, adjustments, and personal style; the constitutional actors need some discretion in applying Sections 3 and 4.

Camp David plays out with the work of CACTUS, foregrounding the concerns over control of a nuclear launch and the background of Hollenbach's proposal to increase surveillance of all US citizens.¹⁰⁶ Hollenbach conceives a super-union involving Canada and Scandinavia to embed his imperial ambitions on the international order.¹⁰⁷ With Hollenbach's sudden announcement of a summit meeting with the Soviet Premier to discuss the mutual interest in containing the threat from Communist China, MacVeagh finally decides he must convince O'Malley of the jeopardy that Hollenbach's mental frailty could bring.¹⁰⁸ The exigency of the summit meeting creates momentum for resolving Hollenbach's inability.

Full Disclosure portrays well the capacity to manage and respond to the constraints imposed by a physiological condition. Safire planned the disability of the fictional president as sudden onset blindness from the start to contrast with his otherwise robust physical health.¹⁰⁹ Ericson is collateral damage in *Full Disclosure*'s opening ambush in

¹⁰⁴ The Contingency Plan, app. 18, 3 memo from Wiggins to Berman.

¹⁰⁵ Schuker, "Burden of Decision", 130.

¹⁰⁶ Knebel, *Camp David*, 12.

¹⁰⁷ *Ibid.*, 84-85.

¹⁰⁸ Knebel, *Camp David*, chp. 11.

¹⁰⁹ Letter from Bill Adler to William Safire 29 July 1974, *WSP Syracuse*. See also the outline for the novel, then tentatively entitled 'Visionary', or 'Shades of Grey', where Safire shows he is using his fiction to question when a leader should step down, *WSP LoC*.

which Soviet troops assassinate their ageing and intransigent premier. Rather than repair the US/Soviet Union alliance as Ericson's visit hoped to do, Premier Kolkov sought broader influence within Asia, against the wishes of his protégé and likely successor, Foreign Minister Vasily Nikolayev. In the resultant unstable political situation, Ericson does not know if Nikolayev has consolidated his position or is side-lined.¹¹⁰ *Full Disclosure* challenges the legislative record on blindness by raising questions of when impairment becomes incapacity and when 'close personal observation and practical considerations' create uncertainty about a president's ability to continue. The novel shows Ericson with dark glasses covering his eyes, with tools and techniques to improve his ability to deal with daily life. Ericson's physical disability has rendered him impaired, but he can carry out the duties of his office. He can set policy, make appointments, chair meetings, undertake press conferences, meet with leaders, and sign bills into law. He can and has made adjustments to cope. The structural argument between Sections 3 and 4 emphasises that, as Ericson is conscious and has rationally decided not to invoke Section 3, his vice president and Cabinet have no grounds for invoking Section 4, despite the legislative history.¹¹¹ The question *Full Disclosure* asks, and answers, is whether Ericson can carry out the powers of the office where his political viability is waning. By showing how the power to influence can erode, *Full Disclosure* portrays the importance of Cabinet and congressional support and public opinion. The solution is for public opinion to make its view known through party conventions and at the ballot box, should Ericson stand for a second term. But Ericson's term still has three years to run, and in the absence of Cabinet and congressional support, it is near-impossible for Ericson to govern.

Full Disclosure also raises questions of legitimacy through the lens of the confusion and resulting jeopardy of another nation lacking clarity of who is in command in the United States.¹¹² Jeopardy is greatest where the novels portray changes in the world order, where a vacuum in the presidency would diminish US hegemony. For example, *Plane* deals with the growing nuclear threat of 'Red China'.¹¹³ Haines is missing while negotiating a bilateral treaty with a known enemy against a common threat. Madigan as acting president nearly starts a war with China while Haines is secretly at Camp David to negotiate the agreement

¹¹⁰ Safire, *Full Disclosure*, 18-26, 209.

¹¹¹ Gustafson, "Presidential Inability".

¹¹² Safire, *Full Disclosure*, 127, 137.

¹¹³ Serling, *Plane*, 3.

that would avoid the very conflict Madigan seems keen to start.¹¹⁴ *Plane* also highlights the risk of two competing claims for presidential powers and duties, where the acting president sets his policies in opposition to those of his absent president.

The crisis turns domestic in *Kidnapping*, with mid-term elections occurring the day after guerrillas hold Scott for ransom. The use of midterm elections is another example where the novels do not stay within the confines of the 25th, widening their illumination. *Kidnapping* explores constitutional questions of whether Congress can postpone federal elections and of, how Congress can assemble, and how it can communicate.¹¹⁵ While in *Negotiator*, by contrast, the geopolitical situation is tense because the Soviet Union is forecast to run out of oil and needs to reduce its military budget to develop its domestic oil industry. Cormack's Nantucket Treaty brings arms reduction, but US oil interests try to force Congress's rejection of it and seek to control oil prices by installing a US puppet in Saudi Arabia. By Cormack's failure to step aside and Odell and the Cabinet not invoking Section 4, the United States has 'half a president, maybe less' at a critical time.¹¹⁶ Using the structural argument that if a president is conscious and able to communicate and chooses not to invoke Section 3, then a vice president and Cabinet cannot invoke Section 4, the novels would suggest that only *Plane's* use of Section 4 is appropriate. But the novels draw out the argument for invoking Section 4, where a president is able but unwilling to recognise his inability.

In *Father's Day*, US troops are part of a peacekeeping force in Moldova. Military leaders call upon these troops to support an autogolpe by assassinating Jay, thus making Garland president under Section 1 and as an insurance policy against Jay's unlikely Section 4 restoration. There is no threat portrayed to the US beyond the autogolpe. Yet, *Father's Day* questions whether the US could handle two presidents. When an elected president seeks restoration to the powers and duties of the office, and an acting president and Cabinet immediately counter with a Section 4 challenge: even short-term confusion about who is in charge is problematic, as the novel illustrates. When those close to power do not understand the processes sufficiently well, claims of illegitimate decisions are too easy to sustain. Although Garland would have all three types of legitimacy in his favour to

¹¹⁴ Serling, *Plane*, 260.

¹¹⁵ Templeton, *Kidnapping*, 229, 231. US Constitution, art. 1, sec. 4. The date of Federal Elections are set by statute not the Constitution, US Constitution, art. 1, sec. 4, 3 US Code §1 and 2 US Code §7. On Congress assembling, US Constitution, art. 1, sec. 5.

¹¹⁶ Forsyth, *Negotiator*, 178.

continue as acting president and applying constitutional morality suggests Jay should resign, Garland is unwilling to risk returning to the *status quo ante*. As Jay attempts his political comeback, Garland fails to trust the Amendment's process, which would enhance his legitimacy.

Fourth K's Kennedy draws on historical parallels with Carter's failure to win a second term due to his inability to free the hostages held in the US Embassy in Tehran during 1978-80.¹¹⁷ Kennedy's plans to deal with the terrorists after his daughter's death are a disproportionate response and are used to question his hold on the office.¹¹⁸ *WH Storm* takes a secular revolution in Persia (formerly Iran) and its developing nuclear capability as the setting for responding to the growing influence of China and the struggle for Russia to maintain its influence in the Middle East. In its use of rogue military officers and the capability of cyberattacks to illustrate how vulnerable presidential power is to a communication blackout, *WH Storm* shows the confusion that the Section 4 process might create. With the military chain of command recognising one president and foreign powers a different one, the resulting chaos takes the nation to the 'cusp of a dangerous military confrontation'.¹¹⁹ The discretion that 'whenever' gives to the vice president and Cabinet permits taking the exigencies facing the nation into account.

The novels show the importance of the Amendment where the public business of the US government is urgent and where any gap (or overlap) in the exercise of presidential powers and duties may threaten the interests of the United States. Much of the machinery of government would, of course, simply continue. Where a president has set his policy, the legislative agenda is moving, and Congress has approved a budget, not every decision requires a 'conscious and capable' president, as the novels, especially *Negotiator*, show.¹²⁰ In none does the governing of the United States come to a grinding halt. There are distinctions between the powers a president can (and does) delegate (predominantly those derived from statute) and those from the Constitution, which he cannot. Other than the president, only an acting president appointed under due process of Sections 3 and 4 can exercise constitutional powers. This distinction is evident in the Contingency Plan.¹²¹

¹¹⁷ Puzo, *Fourth K*, 142.

¹¹⁸ *Ibid.*, 163.

¹¹⁹ Napier, *WH Storm*, 189.

¹²⁰ The Contingency Plan, tab B, 1. For example, Forsyth, *Negotiator*, 121-122, 356.

¹²¹ The Contingency Plan, apps. 5 and 6 show the extracts from the US Code as examples.

Fiction illuminates the difficulties in determining the point at which presidential inability creates jeopardy. Using cases where the gradation of gravity and duration of the cause of inability is open to interpretation, the novels highlight the need for clarity of who is legitimately exercising executive power and is Commander-in-Chief.¹²²

Conclusion

Contingency planning for presidential inability should consider how the constitutional actors will achieve trust and transparency of the circumstances of inability for any Section 3 or 4 decisions. With the continuing national obsession over presidential ill health, achieving public trust through transparency is vital to the public legitimacy of a Section 4 invocation. The three uses of Section 3 by Bush and Biden go some way towards normalising its voluntary, short-term use. Still, the debate continues over the meaning and application of ‘unable’ to specific circumstances. The novels helpfully move beyond the Amendment’s real-life use for situations involving a president’s bowels to highlight the potential gravity of appropriate circumstances and the challenges of deciding whether Section 4 is reasonable and necessary. Such fictional cases expand the reach of Sections 3 and 4 beyond total presidential incapacity and an inability to communicate and, in doing so, expose the use of these Sections beyond the drafters’ intent.

Some interpretations of the Amendment challenge the implicit confidentiality of the doctor-patient relationship.¹²³ The role of several White House physicians in the history of cover-ups emphasises a significant tenet of medical practice.¹²⁴ Clearly, *qua* patient, a president should be treated with the same dignity and confidentiality as any other patient. But as the novels show, any contingency plan must recognise the roles of a president, his advisers, and the constitutional actors in creating trust around the provision of information: a notable lacuna in the Contingency Plan.¹²⁵ Thought must also be given to countering media speculation long before a candidate becomes his party’s nominee, a point the final

¹²² The Contingency Plan, tab B, 2.

¹²³ Aaron Seth Kesselheim, “Privacy Versus The Public’s Right to Know — Presidential Health and The White House Physician”, *Journal of Legal Medicine* 23, no.4 (2002): 523-545, <https://www.doi.org/10.1080/01947640290050328>.

¹²⁴ Crispell and Gomez, *Hidden Illness*. See also Chapter 5 of this thesis.

¹²⁵ The Contingency Plan. A summary of Executive branch planning for succession undertaken by Fordham Law School indicates no mention of a communication plan for health issues, who would be responsible, who would take questions etc. I am indebted to Professor John Rogan of Fordham Law School for providing this summary early in my research. Now available as, John D. Feerick and John Rogan, “The Twenty-fifth Amendment: Law, History, and Recommendations for Reform” (2019), https://ir.lawnet.fordham.edu/twentyfifth_amendment_miscellaneous/3.

chapter will revisit. The novels suggest that Bayh's definition and that in the Contingency Plan are at the extreme end of how constitutional actors might interpret its use. The novels use less than obvious cases to highlight scenarios where the public might anticipate a Section 4 invocation.

In portraying the uncertainties of diagnoses and progression of diseases and infirmities, the temporal issues from sudden onset to chronic and increasingly debilitating, and the influence of external circumstances, all eight novels cast light on when the constitutional actors should at least consider the Amendment. Perhaps the most significant contribution of the novels is to show when the constitutional actors should start to consider Sections 3 and 4 rather than delay until the decision is urgent. They also offer the challenges of discretion in getting the timing right on disclosure and highlight their role as surrogate contingency planning manuals. *Full Disclosure* and *Father's Day* illustrate how making adjustments to their working methods might allow a president to function sustainably under job pressures and could allow him to retain his powers and duties. The only situation where a decision is beyond question is when a president is unconscious or unable to communicate. Even then, the constitutional actors might consider duration and exigencies, as *Kidnapping* shows.¹²⁶ The novels show how difficult it is to clarify whether a medical condition is persistent or progressive but may respond sustainably to medical care and treatment. The novels also illustrate the importance of clear leadership, and not half a president, or worse, the perception that there are two. By presenting these issues the novels show the application of discretion in ways we can learn from.

The novels also reflect both facets of the problem narrative of anxiety over abuse of power by the incumbent and usurpation by a constitutionally-designated successor to take advantage of the national obsession with presidential ill health for their plots. The novels bring human frailties back into public awareness in service of that obsession and as suggestions for contingency planning. By using the 25th, the novels highlight the legitimacy of public concerns about presidential ill health beyond prurient curiosity.

Using a framework to support the constitutional actors and a range of common words in established ways avoids the need for standard definitions of meaning while honouring the Amendment's flexibility and intent. Adapting Schuker's framework to analyse the novels

¹²⁶ The Contingency Plan, tab B.

shows the utility of decision-making aids by applying it to how constitutional actors could interpret fictional scenarios using its adapted tripartite structure. The framework highlights where the interface of the types of issues faced lies. However, an invocation of Section 4 in a time of extreme partisanship invites speculation, conspiracy, and legitimacy challenges. A framework may support the constitutional actors' explanations and accountability. Failure to plan thoroughly and execute consistently can deepen the crises faced, as examples from the assassination attempt on Reagan in March 1981 and Trump's admission to Walter Reed Army Medical Center in October 2020 demonstrate. The former could have resulted in Section 4, and the latter in Section 3, or more likely, Section 4, invocations.¹²⁷ Consistency of accurate messaging as the essence of good communication is emphasised in the novels, particularly in *Full Disclosure*, when Ericson admits the cover-up of the previous incident of temporary blindness and a downward spiral of public trust ultimately results in his resignation.

The novels suggest that the public does not need 'to know, down to the smallest personal detail, when the subject of their trust is incompetent to carry it out.'¹²⁸ Instead, the procedural legitimacy created by Sections 3 or 4 counters the need for sharing unnecessary medical minutiae. The real-life uses of Section 3 and health screening protocols for the age group any president is likely to fit within make a president's bowels a constitutional issue, if a routine one.¹²⁹ With the presumption of power under the Amendment remaining with the incumbent and the constitutional authority to gainsay that presumption granted to the other constitutional actors, public trust can only come from transparency. Following recognised guidelines, frameworks, or plans and sharing appropriately framed information on health diagnoses, treatment, and prognosis can legitimise claims on the office. However, political rivals will exploit such transparency as a weakness, especially in a climate of extreme partisanship. Any contingency plan must outline who will manage the narrative of an individual president's ill health.

While the novels' treatment of the three considerations draws out both facets of the problem narratives of anxiety over abuse of power and usurpation, they all dissipate these fears in their endings as the constitutional actors demonstrate a sense of constitutional

¹²⁷ Feerick, *The Twenty-fifth Amendment*, chp. 13, Kalt, *Unable*, 70, on Reagan. Alexander Haig, *Caveat* (London: Weidenfeld & Nicolson, 1984), Tim Alberta, "How Mark Meadows Became the White House's Unreliable Source", *Politico*, 4 October 2020.

¹²⁸ Ferrell, *Ill Advised*, ix.

¹²⁹ The American Cancer Association adopts a risk based approach to screening protocols based on age and other risk factors, see <https://www.cancer.org>.

morality in their decisions. The oath sworn on inauguration binds a president to ‘preserve, protect and defend the Constitution.’¹³⁰ Resigning or stepping aside under Section 3 may be constitutionally appropriate actions to honour that oath.

The novels illuminate the considerations of gravity, temporality and exigencies in the constitutional actors’ deliberations and draw out the 25th’s flexibility. While the ambiguity that such flexibility creates may help the constitutional actors’ decision, the novels, particularly *Full Disclosure* and *Father’s Day*, also show such flexibility can create a separate crisis from that of presidential health by questioning the legitimacy of his remaining in office. The Amendment’s recognised limitations and the recommendations made over decades to improve its processes suggest that more detail, by statute and planning for inability within each administration, would support the various constitutional actors in deciding what unable means in real time while retaining the Amendment’s strengths. Increasing clarity and support mechanisms could add to the legitimacy of a Section 4 decision. But congressional will to introduce further statutes is low. Each administration depends on robust contingency planning, and the Contingency Plan is a starting point. The final chapter will turn to how the novels work with these limitations and recommendations and consider other means of removing a president.

¹³⁰ US Constitution, art. 2, sec. 1.

Chapter 5 Improvements and Alternatives to the 25th Amendment

Introduction

‘We are like the old Bourbon kings. We learn nothing, and we forget nothing.’¹

The 25th Amendment is not perfect. Its drafters believed it was the best available solution to presidential inability, given the constraints of the US system of government.² The Amendment’s sponsors responded to the national anxiety of an unable president, fuelled by the emotion of the loss of a young and apparently healthy president.³ It took over 174 years for Congress to expend political capital on resolving the problem narrative of presidential inability, only to find that narrative continues in the attempts to change the Amendment and its fictional representations.

This final chapter explores the last two features of fiction’s use of the Amendment that bookend discussion of its four aspects. The chapter asks how the eight novels use their public platform to illuminate the issues raised by the ongoing debates on improving the 25th and related presidential succession issues. That is, how does fiction flag the Amendment’s limitations?⁴ Contrasting the 25th with other means of removing a president, as the novels do, goes beyond the need for a *dénouement* and is another way of demonstrating what the Amendment’s purpose is not. This chapter, therefore, also considers what other means of removing an elected president are available and how (and why) the eight novels engage with such other means.

Articulating concerns about the Amendment’s limitations in these eight novels places them as part of the debate. A measure of the public debate is that scholars publish books for a

¹ *Cong. Rec.*, 102nd Cong., 1st sess., vol.137, pt.13, 22 July 1991, 19195. Rep Henry Gonzales (D-TX), “Resolution Repealing the 25th Amendment to the Constitution”.

² *Cong. Rec.*, 89th Cong., 1st sess., vol. 111, pt. 11, 6 July 1965, 15584.

³ Rose McDermott, “The Politics of Presidential Medical Care: The Case of John F. Kennedy”, *Politics and the Life Sciences* 33, no.2 (Fall 2014): 77-87, <https://www.jstor.org/stable/24893595>, Rebecca C. Lubot, “A *Dr Strangelove* Situation: Nuclear Anxiety, Presidential Fallibility and the Twenty-fifth Amendment”, *Fordham Law Review* 86, no. 3 (December 2017): 1175-1198, <https://ir.lawnet.fordham.edu/flr/vol86/iss3/8>.

⁴ William F. Baker and Beth A. FitzPatrick, “Presidential Succession Scenarios in Popular Culture and History and the Need for Reform”, *Fordham Law Review* 79, no.3 (December 2010): 835-842, <https://ir.lawnet.fordham.edu/flr/vol79/iss3/4>.

non-expert audience on issues of presidential inability and succession.⁵ Historians, constitutional scholars, and medical professionals publish articles while symposia, conferences, working groups, and law school clinics engage with presidential inability and succession matters.⁶ Congressional hearings and attempts at legislative change on topics central to succession and inability are more formal forums. Such debates focus on the Amendment's limitations to suggest recommendations for improving the constitutional means of dealing with presidential inability and the associated succession issues, either through adherence to custom and practice or through statute to embed change. In addition, the novels raise awareness of what the Amendment's drafters did not intend it for.⁷ However, certain fictional representations have created misconceptions. Compared to film or TV representations of the Amendment, these eight novels are lesser culprits, although *Fourth K* is not immune from this criticism.⁸

The first section of this chapter reviews sources on the debate, based on the novels' raising of three broad themes, the wider line of succession, identifying presidential ill-health, and planning for presidential inability, establishing what remains unsettled about presidential

⁵ For example, Brian C. Kalt, *Unable: The Law, Politics, and Limits of Section 4 of the Twenty-fifth Amendment* (New York: Oxford University Press, 2019), David Priess, *How To Get Rid of A President: History's Guide to Removing Unpopular, Unable or Unfit Chief Executives* (New York: Public Affairs, 2018), Cass R. Sunstein, *Impeachment: A Citizen's Guide* (Cambridge, MA: Harvard University Press, 2017), Jared Cohen, *Accidental Presidents: Eight Men Who Changed America* (New York: Simon & Schuster Paperbacks, 2019), *Yale Law School Rule of Law Clinic, The Twenty-fifth Amendment to the US Constitution: A Readers' Guide, 2018*, (the Yale Guide), <https://law.yale.edu/yls-today/news/rule-law-clinic-releases-readers-guide-25th-amendment>.

⁶ The Miller Center, "Report of The Miller Center Commission on Presidential Disability and the Twenty-fifth Amendment" (the Miller Report), in Kenneth W. Thompson, ed., *Papers on Presidential Disability and the Twenty-fifth Amendment by Six Medical, Legal and Political Authorities* (London: University Press of America, 1988), The Working Group on Presidential Disability (the Working Group Report) see James F. Toole and Robert J. Joynt, eds., *Presidential Disability, Papers, Discussions and Recommendations on the Twenty-fifth Amendment and Issues of Inability and Disability Among Presidents of the United States* (Rochester, NY: University of Rochester Press, 2001), Continuity of Government Commission, The Brookings Institution, and American Enterprise Institute, *The Presidency: Preserving our Institutions: the Second Report of the Continuity of Government Commission: Presidential Succession*, June 2009 (the CoP Report), https://ir.lawnet.fordham.edu/twentyfifth_amendment_reports/2, Fordham School of Law Clinic, reported in "Presidential Succession: Ensuring the Stability of Presidential Succession in the Modern Era", *Fordham Law Review* 81, no.1 (2012):1-173, (the First Clinic Report), <https://ir.lawnet.fordham.edu/flr/vol81/iss1/1>, Fordham Law School and Fordham Law Review, Report on the Second Law School Clinic, "Fifty Years After the Twenty-fifth Amendment: Recommendations for Improving the Presidential Succession System", *Fordham Law Review* 86, no. 3 (December 2017): 917-1025, (the Second Clinic Report), <https://ir.lawnet.fordham.edu/flr/vol86/iss3/3>. See also for example, Congressional Research Service, *Presidential Succession: Perspectives, Contemporary Analysis, and 110th Congress Proposed Legislation*, 3 October 2008,

⁷ Kalt, *Unable*, 76, John D. Feerick, *The Twenty-fifth Amendment: Its Complete History and Applications* (New York: MJF Books, 2014), 254-61. Both Kalt and Feerick praise Safire, *Full Disclosure*.

⁸ Kalt, *Unable*, chp. 7. Kalt uses film, television, and five of the eight novels analysed in here as illustrations, showing that four of five novels are lesser culprits.

inability and the related issues of succession. Some of the eight novels go beyond the confines of the 25th to contrast Section 4 with other means of removing a president, such as impeachment and assassination. The final section will review how and why they do so.⁹

Beyond the elected roles of president and vice president, the continuity of presidential power relies on the 1947 Presidential Succession Act, creating an unreconcilable tension in the design of the US system of government. As a result, scholars consider that knowledge of the line of succession is necessary to understand the 25th's limitations.¹⁰ The novels echo this knowledge as *Full Disclosure*, *Fourth K* and *Father's Day* do not stay within the lines of the 25th, illuminating the significance of a vice presidential vacancy. The novels suggest that only good-faith actors operating with the requisite constitutional morality can, pragmatically, reconcile the contrast of a democratic (in some way) resolution versus the practicalities required by crisis management and contingency planning. The ongoing debate portrayed in five novels where the 25th is central to its plot highlights constitutional actors' practical issues in invoking Sections 3 or 4 of the Amendment. This debate remains the backdrop since the publication of the first of the eight novels and the Amendment's ratification.

The ongoing debate

The eight novels raise three broad themes that highlight the Amendment's limitations. This section draws out the broad connections in these three themes to recommendations emerging from symposia, conferences, working groups, legal clinics, and academic articles that suggest improvements to the 25th. This section also considers congressional reports on the Amendment, its impact on the continuity of government planning, and the legislative branch's attempts at change. While most of the academic colloquia and congressional reports post-date all but the later published novels, there is no evidence that any of the authors used any of these reports as sources.¹¹ The similarity of the issues the novels raise suggests how fiction uses its public platform to illuminate the debate.

⁹ Impeachment in Safire, *Full Disclosure*, Puzo, *Fourth K*. Assassination in Safire, *Full Disclosure*, Puzo, *Fourth K*, Batchelor, *Father's Day*.

¹⁰ For example, Feerick, *The Twenty-fifth Amendment*, 242-245, Kalt, *Unable*, 20-21.

¹¹ That is to say that none of the colloquia or congressional reports are referenced in any of the eight novels, nor is there evidence in the authors' archives (where available) that any of the authors consulted such reports.

Since 1988 three influential groups have contributed ideas for improving issues that surround presidential inability, each focused on a different area, depending on their brief and sponsor's agenda. First, in 1988, The Miller Center Commission reported on Presidential Disability and the Twenty-fifth Amendment (the Miller Report). The W. Alton Jones Foundation funded its publication.¹² Senator Birch E. Bayh and Herbert Brownell were the Miller Center Commission's co-chairs. As chairman of the Senate Subcommittee on Constitutional Amendments, Bayh was the Amendment's primary sponsor. Brownell was Attorney General in the Eisenhower administration, responsible for the letter agreement between Eisenhower and Nixon. The Miller Center at the University of Virginia administered the project. The Miller Report's recommendations cover better information to the public, more regular use of the Amendment, better planning, and improved public knowledge of contingency plans, including clarity of roles for those closest to a president and why that role matters.

The Working Group Report recommended formal contingency planning and guidelines to determine presidential ill health. Created in 1994 with former President Carter's support, The Working Group on Presidential Inability met on three occasions over several days in 1995-96. Carter attended, and Clinton received its report in the White House. Wake Forest University's medical faculty supported the group, which included scholars, medical professionals, and former White House staff.¹³ The Dana Foundation underwrote the Working Group Report, its chairman at the time was William Safire, author of *Full Disclosure*.¹⁴ Ford, Clinton and Bayh attended, and the Wake Forest Law Review published the papers presented to the Working Group. Several sessions were open to the public, and C-SPAN broadcast some of them.¹⁵

The Continuity of Government Commission (CoGC) looked more widely at ensuring the continuity of the presidency as part of its review of all three branches of government in the aftermath of the horror of 9/11. Its June 2009 Continuity of the Presidency Report (the CoP Report) covered succession issues, improving processes to recognise impairment and the weak spot of a president-elect's inability to cover the period between an election in early

¹² The W. Alton Jones Foundation appears to have been concerned with environmental issues. It was dissolved in 2001, www.philanthropynewsdigest.org.

¹³ Toole and Joynt, eds., *Presidential Disability*.

¹⁴ See letters and memos from William Safire on The Dana Foundation letterhead regarding distribution of the Working Group Report, *WSP Syracuse*.

¹⁵ Robert E. Gilbert, ed., *Managing Crisis: Presidential Disability and the Twenty-fifth Amendment* (New York: Fordham University Press, 2000), 223.

November and inauguration in late January.¹⁶ The CoGC was a private American Enterprise Institute and Brookings Institution commission funded by three charitable foundations.¹⁷ Presidents Carter and Ford were the CoGC's honorary co-chairs, and its members included former attorneys general, members of Congress, and scholars.¹⁸ This chapter refers to the reports of the Miller Commission, CoGC, and the Working Group as the Three Groups. Their reports individually and collectively reflect that 'ultimate objective of the Twenty-fifth Amendment' is the orderly transition of presidential power and demonstrate that debates about the Amendment cannot stay within its strict confines.¹⁹

Notwithstanding the privately funded nature of their investigations, the recommendations of the Three Groups add to the civic debate, inform potential legislation, and suggest customs and practices for presidential administrations to adopt in their contingency planning.²⁰ In addition, clinics at a leading law school, Fordham University School of Law, in 2012 and 2015 (the Clinics), and Yale Law School Rule of Law Clinic's 2018 Readers' Guide (the Yale Guide), further explore the Amendment's limitations.²¹ Finally, in January 2021, three separate teams from across the political spectrum produced revised constitutions under the National Constitution Center's Constitutional Drafting Project (the NCC Project) in a project with a wider brief than the Amendment. With three teams covering the political spectrum proposing no changes to the Amendment, perhaps bipartisan support for Section 4's use might achieve some consensus.²² The Amendment's shortcomings remain topical and in the public domain.

Beyond the Three Groups, the Clinics, the Yale Guide and the NCC Project, scholars continue to explore the Amendment's inherent flexibilities and ambiguities. Scholars have contributed suggestions for guidelines or framework support for the constitutional actors

¹⁶ The CoP Report, Gilbert, ed., *Managing Crisis*, John D. Feerick and John Rogan, "The Twenty-fifth Amendment: Law, History, and Recommendations for Reform" (2019), https://ir.lawnet.fordham.edu/twentyfifth_amendment_miscellaneous/3.

¹⁷ The Carnegie, Hewlett-Packard, and MacArthur Foundations.

¹⁸ See The CoP Report, 7-15.

¹⁹ Gilbert, ed., *Managing Crisis*, 226.

²⁰ Damien Van Puyvelde, "Intelligence Accountability and the Role of Public Interest Groups in the United States", *Intelligence and National Security* 28, no.2 (2013), 144, <https://doi.org/10.1080/02684527.2012.735078>.

²¹ The First Clinic Report, The Second Clinic Report, The Yale Guide.

²² See The Constitution Drafting Project, <https://constitutioncenter.org/blog/new-project-allows-scholars-to-reconsider-the-constitution>, accessed 27 January 2021. Two of the three teams incorporated the 25th's wording into Article II, each team 'included prominent scholars and legal commentators affiliated with their respective camps', 2.

through statute or embedded customs and practices, such as the Schuker framework adapted in the previous chapter to illustrate its utility. Supporters of the Amendment believe that its reliance ‘upon the integrity and good sense of the men elected to high office’ will be honoured.²³ Some critics would repeal the 25th, going as far as proposing abolishing the vice presidency.²⁴ The broader line of succession beyond the vice president remains a significant concern among the Amendment’s supporters, who argue that the 1947 Presidential Succession Act is unconstitutional and that the order of succession does not address the practicalities of government.²⁵ Scholarship on the broader line of succession helps understand the potential challenges to the legitimacy of anyone of lower rank elevated to the presidency or to its powers and duties as acting president: a concern reflected in *Full Disclosure* and *Father’s Day*, where the Speaker succeeds to the presidency.

The three core principles underpinning the Amendment’s drafting remain relevant to any recommendations. The first principle is that the determination of presidential inability remains within the executive branch. The second and third principles honour an elected president’s presumption of power and the separate institutions sharing powers.²⁶ Continuity of executive power is vulnerable to a dual vacancy as the determination of vice presidential inability is not addressed in the Constitution, the Amendment, or statute. Even absent challenges to legitimacy, practical and policy issues could arise from the current congressional line of succession, especially in an era of increased partisanship.²⁷ Issues of succession below the vice presidency and suggestions to support a bipartisan determination of presidential (and vice presidential) inability are two perennials of the inability debate.²⁸

²³ *Cong. Rec.*, 89th Cong., 1st sess., vol.111, pt.11, 6 July 1965, 15584.

²⁴ Arthur M. Schlesinger, Jr., “On the Presidential Succession”, *Political Science Quarterly* 89, no.3 (Autumn 1974): 475-505, <https://www.jstor.org/stable/2148451>.

²⁵ See the debate in Akhil Reed Amar, “Applications and Implications of the Twenty-fifth Amendment”, *Houston Law Review* 47, no.1 (2010): 1-29, Akhil Reed Amar and Vikram David Amar, “Is the Presidential Succession Law Constitutional?”, *Stanford Law Review* 48, no.1 (November 1995): 113-139, <https://www.jstor.org/stable/1229151>, Joel K. Goldstein, “Akhil Reed Amar and Presidential Continuity”, *Houston Law Review* 47, no.1 (2010): 67-104.

²⁶ Birch Bayh, *One Heartbeat Away* (Indianapolis, IN: The Bobbs-Merrill Company, Inc., 1968), 32, 59.

²⁷ For example, Akhil Reed Amar and Vikram David Amar, “Constitutional Accidents Waiting to Happen — Again: How We Can Address Tragedies Such As Political Assassinations and Electoral Terrorism”, *Findlaw Blog*, 6 September 2002, <https://www.supreme.findlaw.com/legal-commentary/constitutional-accidents-waiting-to-happen-again.html>, accessed 30 April 2020, *Hearing Before the Subcommittee on the Constitution of the House Committee on the Judiciary*, Presidential Succession Act, 108th Cong., 2nd sess., 6 October 2004, testimony of Akhil Reed Amar, 33-37, https://ir.lawnet.fordham.edu/twentyfifth_amendment_congressional_materials/1.

²⁸ Robert E. Gilbert, *The Mortal Presidency: Illness and Anguish in the White House* (New York: Basic Books, 1992), Gilbert, ed., *Managing Crisis*, Robert E. Gilbert, “Psychological Illness in Presidents: A Medical Advisory Commission and Disability Determinations”, *Political Psychology* 27, no. 1 (2006):

The Three Groups and the Clinics make a total of forty-four recommendations.²⁹ Ten general recommendations include three that fiction plays a role in achieving, providing information on, education about, and publicising the Amendment. Books, articles and social media posts aimed at a non-academic audience also have roles with these three recommendations.³⁰ Four further general recommendations suggest embedding customs and practices into real-life use of the 25th, and three propose changes to political parties' rules to cover the period from election to inauguration. The remaining thirty-four recommendations suggest detailed improvements to the Amendment and associated succession issues. Influenced by issues raised in the novels, grouping these thirty-four recommendations inform the structure of this chapter with three sections covering: succession issues (seventeen), health (seven), and planning (ten).³¹

By adopting guidelines or frameworks, White House planners can implement recommendations in their contingency plans without waiting for congressional action. Creating statutory change to implement recommendations requires political will and the spending of bipartisan and bicameral political capital. The sheer number of unsuccessful attempts in Congress to gain support for legislation suggests a lack of political will. Since ratification in 1967, Congress has held two congressional hearings and considered around sixty bills on issues central or peripheral to the 25th, including two proposed constitutional amendments to abolish it.³² Fiction plays a role beyond the three general recommendations of informing, educating, and publicising the 25th. Fiction does so by going beyond the

55-75, <https://www.jstor.org/stable/3792383>, Robert E. Gilbert, ““The Contemporary Presidency”: The Twenty-fifth Amendment: Recommendations and Deliberations of the Working Group on Presidential Disability”, *Presidential Studies Quarterly* 33, no.4 (December 2003): 877-888, <https://www.jstor.org/stable/2755241>, Roy E. Brownell II, “The Law: Vice Presidential Inability: Historical Episodes That Highlight A Significant Constitutional Problem”, *Presidential Studies Quarterly* 46, no.2 (June 2016): 434-456, <https://doi.org/10.1111/psq.12277>, Joel K. Goldstein, “History and Constitutional Interpretation Some Lessons From the Vice Presidency”, *Arkansas Law Review* 69, no.3, (2016): 647-694, *Hearing*, 6 October 2004, testimony of Thomas Neale (Project Management Coordinator, Government and Finance, Congressional Research Service, Library of Congress), 4.

²⁹ Feerick and Rogan, “The Twenty-fifth Amendment”.

³⁰ See Kalt, *Unable*, Priess, *How To Get Rid of A President*, Sunstein, *Impeachment*, Cohen, *Accidental Presidents*.

³¹ Feerick and Rogan, “The Twenty-fifth Amendment”. My categorisation.

³² *Joint Hearing Before the Committee on the Judiciary and the Committee on Rules and Administration*, Ensuring the Continuity of the United States Government: the Presidency, Senate, 108th Cong., 1st sess., 16 September 2003, https://ir.lawnet.fordham.edu/twentyfifth_amendment_congressional_materials/2, and, *Hearing*, 6 October 2004. I compiled the list of legislative attempts using www.congress.gov, and cross checked references to proposed legislation from articles and books back to that source. It is 61 bills up to and including 31 January 2022. The list is probably complete from the 93rd Cong., (1973-74), some six years after ratification of the Amendment to 31 January 2022. It is unlikely that there were attempts to amend the Twenty-fifth Amendment prior to the first uses of Section 2 in 1973 and 1974.

presentation of the Amendment's core facts to 'include moral reasoning' such as might provide information on any invocation of the 25th and public response to it.³³ Fiction therefore provides another public platform for the novels to explore the Amendment's limitations.

Despite the academic and legislative 'continued interest and efforts to change', Congress's only formal change has been to amend the 1947 Presidential Succession Act in response to the administrative needs of the government, and some proposed legislation suggests re-ordering the line of succession.³⁴ The roles, skills, and knowledge some departments require of their principal officer may better serve the nation in a time of crisis than the head of an earlier created department.³⁵ The novels contribute to this debate in their portrayals of the political gifts, skills, and character of those below a vice president, thus raising questions about the line of succession. For example, *Full Disclosure* portrays its Treasury Secretary as more politically gifted and *Plane*, its Secretary of State more trusted by Haines than the vice presidents.

The absence of a real-life invocation of Section 4 explains why there has been a lack of political will to effect any change for over fifty years. Its invocation would go a long way to show which changes, if any, are required to embed Section 4's process to reinforce the institutional, procedural, and public legitimacy of the person exercising the presidential responsibilities.³⁶ Paradoxically, as the novels show, an invocation of Section 4 in circumstances where a president's inability is open to debate may yield greater public engagement with any changes required. With considerable intellectual heft highlighting lacunæ and the Three Groups, and the Clinics highlighting the Amendment's shortcomings but with no legislative response to their recommendations, how do the novels illuminate this debate? The first grouping of recommendations suggested by the analysis of the novels and illustrated by the recommendations from the Three Groups and the Clinics are succession issues.

³³ Manjana Milkoreit, "Imaginary Politics: Climate Change and Making the Future", *Elementa: Science of the Anthropocene* 5, no.62 (2017), 5.

³⁴ Feerick, *The Twenty-fifth Amendment*, 2014, pt. IV, see also the Miller Report, the Working Group Report, the CoP Report, the First Clinic Report, the Second Clinic Report.

³⁵ See S.920, The Presidential Succession Act 2007, 109th Cong. 1st sess., 27 April 2004, H.R. 540, The Presidential Succession Act 2007, 110th Cong. 1st sess., 17 January 2007.

³⁶ Kalt, *Unable*, 165-167.

Succeeding at succession

The novels studied here address the lack of interaction between the Amendment and the 1947 Presidential Succession Act and the impossible task of reconciling the principles of government involved, highlighting a significant limitation of the Amendment as a contingency plan. More real-life recommendations address this issue than any other. *Camp David*, *Full Disclosure*, *Fourth K*, *Father's Day*, and *WH Storm* all end with a different president or acting president than the president they start with. *Full Disclosure* and *Father's Day*, draw on the 1947 Presidential Succession Act to do so. While *Full Disclosure* acknowledges the debate about the 1947 Presidential Succession Act, neither novel shows a negative outcome on the exercise of presidential power and legitimacy. Given the wide range of fictional representations that include the broader line of succession in their plots (beyond the corpus of novels at the core of this study), this is an area for further research.³⁷

Since the ratification of the Amendment, there is no constitutional doubt about the succession of a vice president to the presidency under Section 1, as *Camp David*, *Fourth K* and *WH Storm* show. The process to fill a vice presidential vacancy under Section 2 is not in constitutional doubt either. Still, it is used briefly in the novels to reflect on the need for a new vice president or to highlight strained president/vice president relationships. Likewise, Sections 3 and 4 clarify that an acting president only has the powers and duties of the office, not the office itself. But the existence of a president who still holds the office and an acting president exercising its responsibilities may confuse the chain of command or, more generally, if communication is not clear and consistent as 'when it comes to Presidents, one is good, more is not better.'³⁸ However, the 25th is of no assistance in a dual vacancy, which triggers the 1947 Presidential Succession Act.

Recommendations to change the line of succession arise from two real-life issues. The principle of separation of powers suggests the 1947 Presidential Succession Act is unconstitutional, with debate over the constitutional meaning of 'Officer' and its consequences for elevation to the acting presidency. That debate adds to public anxiety and usurpation narratives of presidential inability by creating uncertainty about the legitimacy

³⁷ For example, Michael Avalone, *Missing!* (New York: Signet, 1969), Brian Garfield, *Line of Succession* (New York: Dell Publishing Co. Inc., 1972), which explore the issues arising from a missing president-elect, and the Twentieth Amendment, Tom Clancy, *Executive Orders* (London: Putnam, 1996) where a caretaker vice president is catapulted to the presidency with no line of succession behind him.

³⁸ *Hearing*, 6 October 2004, testimony of Rep Brad Sherman (D-CA), 44.

of his successor and any motives behind a decision on presidential inability that, as a consequence, requires the 1947 Presidential Succession Act.³⁹ Some scholars also believe that the Constitution's framers intended a special election if a president died, resigned, or impeachment removed him.⁴⁰ However, such an interpretation today would remove the primacy of quadrennial elections. The 25th honours that primacy.

The 1947 Presidential Succession Act might lead to a change of party control of the White House, raising legitimacy concerns as the electorate did not choose that party at the quadrennial elections. In theory, should circumstances render an elected president and vice president incapacitated immediately on their inauguration, the opposing party could hold the acting presidency and the powers and duties for the four-year term. The concern is not merely hypothetical. Since the Amendment's ratification in 1967, only two (Johnson and Carter) of the ten presidential administrations up to and including Trump's have faced both a Senate and a House of the same party as the president throughout their terms.⁴¹ In addition, different parties have controlled the Senate and the House twenty-two per cent of the period since ratification, raising the possibility, however remote, of the presidency changing party hands several times in four years.⁴² However, the age of Presidents pro tempore, a position awarded by seniority and averaging 80.5 years in the twenty men who have held the role since ratification, is relevant to succession issues, as with age comes an increased likelihood of health issues and death.⁴³ Of the two novels that show the Speaker acceding to the White House, only *Full Disclosure* has a change of party. The embattled Ericson knows Speaker Mortimer Freulinghausen is ideologically close to his agenda.⁴⁴ In *Father's Day*, Speaker Luke Rainey is of the same party as Jay and Garland, and his legitimacy is accepted.⁴⁵ Secretary of State Alexander Haig's real-life example in the immediate aftermath of the assassination attempt on Reagan showed that misconceptions

³⁹ See Amar "Applications and Implications", James E. Fleming, "Presidential Succession: the Art of the Possible", *Fordham Law Review* 79, no.3 (December 2010): 951-958, <https://ir.lawnet.fordham.edu/flr/vol79/iss3/9>.

⁴⁰ See Feerick, *The Twenty-fifth Amendment*, 282-289.

⁴¹ Goldstein, "Taking From the Twenty-fifth Amendment: Lessons in Ensuring Presidential Continuity", *Fordham Law Review* 79, no.3 (December 2010): 1028, <https://ir.lawnet.fordham.edu/flr/vol79/iss3/10>, my updates for the Obama administration (2010-2016), and the Trump administration (2017-2021), now thirty-six out of fifty-two years.

⁴² Calculated from <https://history.house.gov/Institution/Presidents-Coinciding/Presidents-Coinciding/>, accessed 20 May 2022.

⁴³ Goldstein, "Taking From the Twenty-fifth", 1030, my updates from www.senate.gov. The range in age of Presidents pro tempore since ratification is 67 to 98 years of age.

⁴⁴ Safire, *Full Disclosure*, 490, Batchelor, *Father's Day*, 339, 526.

⁴⁵ Batchelor, *Father's Day*, chp. 45.

over who is next in line are a genuine concern.⁴⁶ Such misconceptions could interfere with the integrity of the chain of command, as exploited in *Father's Day's dénouement*. The military officer instructed to kill the president assassinates Garland as acting president, not Jay as the office holder.⁴⁷ Both *Full Disclosure* and *Father's Day* show presidential power transferring peacefully. Neither novel challenges the institutional legitimacy of a former Speaker as (acting) president nor the procedural legitimacy that elevated them. However, in a rare error for both, the Speakers are described as president rather than an acting president, a point the 1947 Presidential Succession Act makes clear. Four possible situations trigger the 1947 Presidential Succession Act, as the Contingency Plan acknowledges and the table below summarises.⁴⁸

Table 3 Triggers for the 1947 Presidential Succession Act

Order	Status of President	Status of Vice President
1 Simultaneously or sequentially	Temporarily disabled	Temporarily disabled
2. Sequentially	Temporarily disabled	Resigns, dies or is removed by impeachment
3. Sequentially	Resigns, dies or is removed by impeachment	Temporarily disabled
4. Sequentially (Vice President first)	Resigns, die or is removed by impeachment	Resigns, dies or is removed by impeachment

Source: adapted and summarised from The Contingency Plan.⁴⁹

The only situation shown in *Full Disclosure* and *Father's Day* is the fourth, where the vice president resigns or dies, and then the president resigns. In both novels, resignation is their *dénouements*. The use of the 1947 Presidential Succession Act may shift the narrative of a peaceful transfer of power and test the pressure gauges in the US system.⁵⁰ Therefore, what

⁴⁶ Alexander Haig, *Caveat* (London: Weidenfeld and Nicholson, 1984), chp. 8.

⁴⁷ Batchelor, *Father's Day*, 525-528.

⁴⁸ The Contingency Plan, tab G.

⁴⁹ *Ibid.*

⁵⁰ It is not of course the only test of a peaceful transfer of power as the Capitol insurrection of 6 January 2021 emphasises. Quadrennial transitions between administrations matter too.

the nation accepts as the basis of legitimacy for a presidential successor is not without its challenges. It is not as simple as *Father's Day* would have it: 'the presidency probably belonged to the one who said he was the president, as long as someone else didn't say he was president too'.⁵¹ The selection mechanism for succession and its practical application must adhere to the sense of constitutional morality for public acceptance.⁵²

In the absence of a special election, the choice is stark. *Full Disclosure* and *Father's Day* both end with their Speakers becoming acting president under the 1947 Presidential Succession Act. Because this occurs at novels' endings, both novels elide the argument that a congressional leader has greater legitimacy as an elected officer than unelected but Senate-confirmed Cabinet members. However, their selection creates issues with the separation of powers. Both novels portray their Speakers as accepted by the public. Still, experience within the executive branch means Cabinet members as acting president provide policy continuity and stability in a crisis.⁵³ The latter approach honours the purpose of presidential succession and the role of the Amendment in contingency planning. In particular, *Full Disclosure* and *Father's Day* draw on these arguments to highlight the challenges of ensuring the legitimacy of anyone, vice president, congressional leader, or Cabinet officer, succeeding to the powers and duties of the office.

The seventeen recommendations dealing with succession from the Three Groups and the Clinics flow from this debate between a Cabinet, or the current congressional, line of succession. The CoP Report and the Clinics would remove congressional leaders from the line. Further recommendations would break the tradition of Cabinet members ordered by the date of formation of the department they head by moving the Secretary of Defense and the Attorney General behind the Secretary of State, displacing the Treasury Secretary to fourth.⁵⁴ Other recommendations recognise the vulnerability of geographical location by replacing lower-ranking Cabinet officers with state governors or ambassadors residing outside of Washington D.C.⁵⁵

⁵¹ Batchelor, *Father's Day*, 258.

⁵² *Hearings before the Subcommittee on Constitutional Amendments of the Committee on the Judiciary, Presidential Inability and Vacancies in the Office of the Vice President*, Senate, 88th Cong. 2nd sess., 24 January 1964, testimony of Herbert Brownell, 136, http://ir.lawnet.fordham.edu/twentyfifth_amendment_congressional_materials/7.

⁵³ The argument continues. See for example, Goldstein, "History and Constitutional Interpretation".

⁵⁴ Feerick and Rogan, "The Twenty-fifth Amendment".

⁵⁵ *Ibid.*, 14, as "Continuity of Government Commission", (2009), recs. 4 and 5.

By portraying the wider line of succession, *Full Disclosure* and *Father's Day* highlight the constitutional limitations of the 25th and its extension into controversial statute. In doing so, these novels broaden their arc of illumination. These two novels show that the 25th does not address vice presidential inability and its possible consequences for the legitimacy of anyone holding the powers and duties of the office under the 1947 Presidential Succession Act. Any challenge to the constitutionality of the 1947 Presidential Succession Act would be a matter for the Supreme Court. Such considerations may well bear on the decisions of a vice president and Cabinet, or indeed of Congress, in whether to exercise discretion and leave an impaired president, other than in the most unavoidable of medical cases, with the powers and duties of the presidency. Discretion might avoid increasing the jeopardy to the nation of an untested and much-criticised statute. While two novels portraying the use of the 1947 Presidential Succession Act are alert to its issues, both adhere to constitutional norms, with due reverence shown to the Constitution and result in the peaceful transition of presidential power: an unlikely outcome in today's highly partisan environment.

The processes set out by the Amendment's drafters ensure that presidential responsibilities are always exercisable and the vice presidency quickly filled.⁵⁶ Yet 'several scenarios of needless vulnerability' remain unresolved, including the potential constitutional crisis a precedent-setting use of the 1947 Presidential Succession Act might create.⁵⁷ Both novels that draw on the broader line of succession in their *dénouements* illustrate the challenges. Both resolve it by showing the legitimacy and acceptance of the Speaker becoming acting president. To support the institutional and procedural legitimacy of actions that lead to the replacement of a president, temporarily, voluntarily or otherwise, the basis for the inability decision must be clear. The novels suggest a second broad grouping of recommendations about evidence and support for the constitutional actors' roles in invoking Section 4.

Supporting evidence and the supporting cast

Section 4 of the Amendment does not specify who the vice president and Cabinet should rely upon for evidence of presidential inability. Still, six novels reflect a vice president's and Cabinet's need for medical expertise to support their decision. *Plane* and *Kidnapping*, which deal with their presidents' physical absence, are ignored here as they do not deal

⁵⁶ Birch E. Bayh, "The Twenty-fifth Amendment" in Thompson, ed. *Papers on Presidential Disability*, 4.

⁵⁷ Amar and Amar, "Constitutional Accidents Waiting to Happen", 1.

with medical reasons to invoke the 25th. This section sets out recommendations to identify a president's medical challenges, based on the ten recommendations by the Three Groups and the Clinics as illustrated by six of the novels. Those who spend the most time with a president may also have a role, as George H.W. Bush's White House physician advised President Bush's closest family, aides and friends.⁵⁸ Some of the ten recommendations suggest formalising the roles of the White House medical team, White House staff, and the president's family in determining presidential inability. *Camp David*, *Full Disclosure*, *Father's Day*, and *Negotiator* portray the president's medical team and the conflicts and challenges of their role in the medical determination of inability.⁵⁹ *Camp David*, *Negotiator*, and *Father's Day* utilise close family to emphasise the humanity of their ailing presidents through their familial responsibilities and to draw out the concerns over their ability to undertake the powers and duties of the office. All six novels portray close associates of their fictional presidents contributing to inability discussions.

Absent catastrophic presidential incapacity, any invocation of Section 4 will likely require medical evidence to underpin the political decision. The involvement of a small, discrete cast to support the constitutional actors bolsters procedural legitimacy through reliance on appropriate professional expertise and personal knowledge. The three issues considered in this section reflect the challenges raised in the novels and the recommendations of the Three Groups and the Clinics, all in the interest of creating procedural legitimacy in the constitutional actors' decision to invoke Section 4. The three issues are: who should identify impairment, patient confidentiality, and evidencing presidential ill-health.

The novels ask who is responsible for identifying a president's potential medical problem. In doing so, they highlight some of the Miller Report's and the Working Group Report's recommendations, which suggest an increased role for the White House physician. Medical disclosure about a president's health is the bailiwick of the White House physician.⁶⁰ *Camp David* identifies these challenges as MacVeagh having 'reached the conclusion that the President of the United States was insane' struggles with what to do with his suspicions.⁶¹

⁵⁸ Barbara Bush, *A Memoir* (New York: St. Martin's Books, 1994), 300.

⁵⁹ For a fictional portrayal where the White House doctor is the central character, see Michael Palmer, *The First Patient* (London: Arrow Books, 2008).

⁶⁰ Knebel, *Camp David*, 171, Safire, *Full Disclosure*, 207, Forsyth, *Negotiator*, 358, Puzo, *Fourth K*, 195, 207, Batchelor, *Father's Day*, 52-6, Napier, *WH Storm*, 95, Feerick and Rogan, "The Twenty-fifth Amendment", 13, as "The Miller Commission on Presidential Disability and the Twenty-fifth Amendment (1988)", rec. 6, as "Working Group on Presidential Disability", recs. 6 and 7.

⁶¹ Knebel, *Camp David*, 90.

Initially, he takes Paul Griscom, lawyer and party grandee, into his confidence before turning to the vice president. Only when MacVeagh notices that Defense Secretary Karper may have the same concerns does he share his suspicions with a Cabinet member. Together, they create momentum for a resolution involving the White House physician, Brigadier General Maury Leppert, and his diagnosis of Hollenbach's deteriorating heart condition.⁶² *Camp David* shows that those without a constitutional role can and should raise suspicions and that the president's physician's role is crucial.

The role of the White House Doctor requires 'astute clinical judgement and considerable courage'.⁶³ A personal appointment by a president but paid by the government, the president's doctor leads the White House Medical Unit and has ready access to the best consultants in any field.⁶⁴ The White House Doctor should be 'the source of medical disclosure when considering imminent or existing impairment'.⁶⁵ Yet the role is a 'tenuous marriage of secrecy and openness', fraught with potential personal and professional conflicts of interest, particularly where the physician is a serving military officer, responsible to and for his Commander-in-Chief.⁶⁶ With their historic role closely linked in the public's mind to covering up presidential inability, only a president can authorise such medical disclosure, or presumably, *in extremis*, a vice president and Cabinet.

Fiction draws on the historical record of physicians to Chief Ghosts. For example, *Camp David* notes Dr Cary Grayson's overreach of his White House role during Wilson's stroke, supporting Edith Wilson as gatekeepers to the stricken president and ensuring Wilson retained the presidency.⁶⁷ In *Full Disclosure*, the consequences of making the wrong appointment are severe. Dr Herb Ableson is Ericson's close friend and chose a career as a medical editor rather than as a practising physician.⁶⁸ Ableson recognises that he does not have the medical skills or experience for the role.⁶⁹ As part of Ericson's inner circle,

⁶² Knebel, *Camp David*, 90, 96, 263, 308-312.

⁶³ Lawrence C. Mohr, "The White House Physician: Roles, Responsibilities and Issues", *Political Psychology*, 16, no.4 (December 1995), 785, <https://www.jstor.org/stable/3791893>.

⁶⁴ Mohr, "The White House Physician".

⁶⁵ Feerick and Rogan, "The Twenty-fifth Amendment", 14, as "Working Group on Presidential Disability (1995)", rec. 6.

⁶⁶ Aaron Seth Kesselheim, "Privacy versus the Public's Right to Know — Presidential Health and the White House Physician", *Journal of Legal Medicine* 23, no.4 (2002): 525, <https://doi.org/10.1080/01947640290050328>.

⁶⁷ Knebel, *Camp David*, 182.

⁶⁸ Safire, *Full Disclosure*, 53.

⁶⁹ *Ibid.*, 53.

Ableson advocates for Ericson's resignation and later dies by suicide in remorse for covering up then-candidate Ericson's previous, temporary, loss of sight.⁷⁰ With Ericson's blindness and failure to disclose a previous episode, *Full Disclosure* shows the Cabinet using a report by Dr Henry Fowler, a blind psychiatrist assisting Ericson to adjust to his disability, to consider whether they have discharged their constitutional duty by seeking expert advice.⁷¹ In *Negotiator*, Dr Nicholas Armitage, a behavioural psychiatrist, has been brought in to support Cormack and his wife in their grief. He also advises Odell and the inner Cabinet members on Cormack's prognosis.⁷² The novels that reflect on the role of the White House physician illustrate the importance of their medical competence and of managing the public-private conflict inherent in dealing with the contingencies of presidential health.

A supporting cast is likely to involve the White House Doctor as a minimum, plus close associates of a president, such as his political family or blood family members. The Miller Report and the Working Group Report both recommend formalising the role of family and close associates in providing 'valuable information which contributes to a medical judgment'.⁷³ Three of the six novels considered here have divorced or widowed presidents and only one has a living adult-aged child beyond the beginning of the storyline.⁷⁴ Close associates assume the role of a political family. *Camp David* charts Hollenbach's mental decline. His son, Mark Hollenbach Jr., shares his concerns with his father's close political associates providing evidence of Hollenbach's mental health. O'Malley's views of Hollenbach's fitness to continue to exercise presidential responsibilities change as a result.⁷⁵ The divorced and childless Ericson relies on his lover, the White House physician and his Special Counsel to keep the previous incidence of blindness secret in *Full Disclosure*.⁷⁶ Cormack's wife wants him to resign from the presidency in *Negotiator* following the loss of their son.⁷⁷ *Father's Day's* First Lady Connie Jay is a physician and

⁷⁰ Safire, *Full Disclosure*, 53, 149, 225, 364.

⁷¹ *Ibid.*, 225.

⁷² Forsyth, *Negotiator*, 177, 357.

⁷³ Feerick and Rogan, "The Twenty-fifth Amendment", 13, as the "Miller Commission on Presidential Disability and the Twenty-fifth Amendment (1988)", rec. 4, "Working Group on Presidential Disability (1995)", rec. 4.

⁷⁴ Ericson is divorced, Kennedy and Davidson are widowers. Only Hollenbach has a living adult-aged child beyond the beginning of the novels.

⁷⁵ Knebel, *Camp David*, 307-8.

⁷⁶ Safire, *Full Disclosure*, 55, 62, 63, 101.

⁷⁷ Forsyth, *Negotiator*, 467.

takes over President Jay's primary care as he tries to reclaim his powers and duties. She recognises her conflict of interest in doing so, even as she supports Jay's attempts to return while recognising his impairment is moving towards incapacity.⁷⁸ The novels show that family and close associates are essential in providing evidence of a president's health. What they do with that evidence makes the difference, whether they proactively volunteer it to a vice president or Cabinet or are reactive, only answering questions when asked. The novels suggest that family and close associates should share that information with constitutional actors because of these conflicts, not despite them. That is, the conflict adds weight to their knowledge and opinion.

While a White House physician, family, and close associates are sources of evidence of a president's health, the Amendment allows Congress to designate 'such other body' to deal with presidential impairment to replace the Cabinet's role.⁷⁹ Of the novels, only *Fourth K* suggests this, stating Congress 'must designate a body or itself to declare the president unfit'.⁸⁰ The CoP Report recommends that Congress establish a permanent body for a vice president to consult, ready to deliberate but acting only when the Cabinet was unavailable. A permanent body avoids the delay in setting one up under Section 4 in the heat of the circumstances that require it.⁸¹ Some scholars favour a medical panel to operate permanently in addition to the Cabinet.⁸² *Camp David* (published in 1965) suggested 'a constitutional amendment creating the office of psychiatrist general who would have broad powers to delve into the mental state of all top government officials'.⁸³ The variety of roles family and close associates play in the novels highlight complexity of the problem of presidential inability.

The Amendment's drafters recognised the limitation of patient confidentiality. Even when oversight of presidential medical care is appropriate, the dilemma of balancing patient confidentiality with the nation's interest remains as the doctor-patient relationship makes it

⁷⁸ Batchelor, *Father's Day*, 260, 270, 389, 391, 395.

⁷⁹ US Constitution, amend. 25, Appendix A.

⁸⁰ Puzo, *Fourth K*, 207.

⁸¹ Feerick and Rogan, "The Twenty-fifth Amendment", 14, as "Continuity of Government Commission (2009)", rec. 6.

⁸² 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, no.3 (1995): 592-616, Robert E. Gilbert, "The Twenty-fifth Amendment and the Establishment of Medical Impairment Panels: Are the Two Safely Compatible?", *Fordham Law Review* 86, no.3 (December 2017): 1111-1135, <https://ir.lawnet.fordham.edu/flr/vol86/iss3/6>.

⁸³ Knebel, *Camp David*, 97.

hard to go against the wishes of the president *qua* patient.⁸⁴ The Working Group Report places responsibility for public disclosure on the president or those designated by him.⁸⁵ Planning must recognise the complexity of the White House physician's role: 'they have a responsibility for the president as an individual patient, and a responsibility to the nation through the care they provide'.⁸⁶ The AMA permits a breach of patient confidentiality if the law requires or if the patient is likely to harm third parties.⁸⁷ Again, the historical example used in the novels is Dr Grayson, Wilson's physician, who rebutted any consideration of his patient's fitness for the office.⁸⁸ More recently, Dr Daniel Ruge, Reagan's White House Physician, stated that he would have discussed any concerns with his patient first, only taking any remaining problems to the Attorney General.⁸⁹ *Full Disclosure* highlights the issue thus: Chief of Staff Cartwright speaks to Abelson about "a matter that could affect your patient's health". Dr Abelson replies, "the doctor-patient privilege is thereby invoked".⁹⁰ Dr Perry Lilith, the ophthalmologist in *Full Disclosure*, breaches patient confidentiality by holding his own, unauthorised press conference, explaining that he would have treated Ericson differently had he known about his previous temporary sight loss. As a result, Lilith contributes to Ericson's eventual downfall, as expected by Bannerman in using his influence to advance Lilith's career.⁹¹ Ericson's physician Abelson's suicide note shows the dilemma: 'I put politics ahead of medicine'.⁹² As the novels indicate, a White House physician's role requires a clear understanding with the president on what steps they will take on medical disclosures and to whom, other than the president, they will take their concerns.

Constitutional actors should seek evidence of presidential inability, where Section 4 might be under consideration. Section 3 is self-certifying, and a president does not need to provide evidence to any one of the reasons for invoking it. While Park and Dallek support the creation of a medical panel to provide evidence of presidential ill-health, the Three

⁸⁴ Unattributed comment in Bayh, "The Twenty-fifth Amendment", in Thompson, ed. *Papers on Presidential Disability*, 25.

⁸⁵ Feerick and Rogan, "The Twenty-fifth Amendment", 14, as the "Working Group on Presidential Disability (1995)", rec. 8.

⁸⁶ Mohr, "The White House Physician", 777.

⁸⁷ AMA Code of Medical Ethics Opinion E3.2.1, <https://www.ama-assn.org>, accessed 21 July 2021.

⁸⁸ Kenneth R. Crispell and Carlos E. Gomez, *Hidden Illness in the White House* (Durham, NC: Duke University Press, 1988), chp. 2.

⁸⁹ Bayh, "The Twenty-fifth Amendment", in Thompson, ed. *Papers on Presidential Disability*, 25.

⁹⁰ Safire, *Full Disclosure*, 174.

⁹¹ *Ibid.*, 380-1.

⁹² *Ibid.*, 364.

Groups and the Clinics make no such recommendation.⁹³ *Camp David, Full Disclosure* and *Father's Day*, illustrate the problem a panel could create. The work of CACTUS in *Camp David* shows the limitations of any individual or panel in establishing beyond doubt a president's mental health.⁹⁴ *Full Disclosure* recognises the inherent tension of such a panel, as the Cabinet faction becomes more opposed to Ericson's staying in office has "a panel of psychiatrists . . . standing by, in the waiting room of the West Wing". Attorney General Emmett Duparquet, supportive of Ericson, believes "that's demeaning the office as well as the man".⁹⁵ *Full Disclosure* also explores the political optics of an incumbent president turning away such an examination as contributing to claims of a cover-up.⁹⁶ *Father's Day* takes the debate around a medical panel further by noting the difficulties of reaching an objective and consensual decision when multiple people are involved in presidential impairment, thereby illustrating why the Three Groups and the Clinics rejected the concept of a medical panel.⁹⁷

The procedural legitimacy of a vice president and a Cabinet decision to invoke Section 4 is enhanced when they seek medical evidence to support their political decision and minimise the challenge of usurpation. *Fourth K* raises the limitation: 'the Twenty-fifth Amendment to the Constitution doesn't specify medical evidence' while the burden of proof lies with the Cabinet (and vice president) to legitimise their decision.⁹⁸ *WH Storm* emphasises the need for evidence, recognising the challenges of who should provide it, given the intermittent episodes related to Alzheimer's disease, identified by Davidson's Chief of Staff Tammany Dreidel and, separately, by Queenan.⁹⁹ *WH Storm* also indicates the burden of proof is with the Cabinet: but here, it has medical evidence to support the procedural legitimacy of its decision.¹⁰⁰ Jay sought professional diagnosis and treatment for his dysphoria in *Father's Day* before invoking Section 3. Still, Jay's TV appearance and evidence readily available to the First Lady, who has taken over Jay's medical care as a

⁹³ Park, "Protecting the National Interest", Robert Dallek, "Presidential Fitness and Presidential Lies: The Historical Record and a Proposal for Reform", *Presidential Studies Quarterly* 40, no.1 (March 2010): 9-22, <https://www.jstor.org/stable/23044892>.

⁹⁴ Knebel, *Camp David*, chps, 5, 16.

⁹⁵ Safire, *Full Disclosure*, 221.

⁹⁶ *Ibid.*, 222.

⁹⁷ Batchelor, *Father's Day*, 309.

⁹⁸ Puzo, *Fourth K*, 195, 203-204.

⁹⁹ Napier, *WH Storm*, 95, 136, 183.

¹⁰⁰ *Ibid.*, 183-185.

practising physician, shows Jay is unfit to resume office.¹⁰¹ Jay's medical files are available to Garland, but it is unclear whether the Cabinet seeks evidence from them beyond their sheer bulk.¹⁰² With no public noting of what the Cabinet has or has not based its decision on, Senate Minority Leader Jean Motherwell notes her surprise 'that the Cabinet didn't ask for more facts' casting doubt on the legitimacy of the Cabinet's decision to invoke Section 4. Motherwell poses her rhetorical question to her interviewer and, therefore, her TV audience, spreading doubt on the legitimacy of the Cabinet's decision.¹⁰³ As the arbiter of a Section 4 challenge, Congress should require medical evidence from both sides. Even a president's ability to provide such evidence strengthens his claim to retain presidential responsibilities. *Full Disclosure* portrays the detailed information considered by the congressional Select Committee on the Disability of the President to confirm the procedural legitimacy of the vice president's and Cabinet's invocation and the president's challenge. The information provided also supports Congress's decision-making process.¹⁰⁴ *Full Disclosure's* Select Committee is similar to the Clinics' recommendation of a 'twelve-member joint bipartisan committee' formed from Congress's existing committees responsible for presidential succession.¹⁰⁵ As *Full Disclosure* shows, medical evidence bolsters the procedural legitimacy of the vice president's, the Cabinet's or Congress's decision.

Section 4 is silent on the need for a vice president and Cabinet to seek medical evidence. The Three Groups' and the Clinics' recommendations go beyond medical evidence to include staff, family and friends as those with frequent presidential contact. An inclusion that the novels also reflect. Finally, the novels also illuminate the importance of appropriately credentialed medical evidence in underpinning the legitimacy of the constitutional judgement entrusted to the vice president and Cabinet under Section 4. Yet such decisions may need to be made in the urgency of any exigency and the heat of dissenting voices on the president's inability, including potentially from a president himself. A tailored contingency plan for each administration's need for the 25th can address many of these concerns.

¹⁰¹ Batchelor, *Father's Day*, 52, 99.

¹⁰² *Ibid.*, 307-308.

¹⁰³ Batchelor, *Father's Day*, 335.

¹⁰⁴ Safire, *Full Disclosure*, 473.

¹⁰⁵ Feerick and Rogan, "The Twenty-fifth Amendment", 15-18, as "Fordham University School of Law's First Clinic on Presidential Succession (2012)", rec. 4a.

Planning

A real-life plan that addresses the pitfalls of a lack of transparency, inconsistency of communications, and different protocols across presidential administrations while utilising the evidence from the history of presidential ill health could do much to change the problem narrative about the 25th. The extant Contingency Plan recognises most, but not all, of these issues, as do these novels. A precedent-setting first use of Section 4 applying the requisite sense of constitutional morality would also confirm their importance.

The two novels that use military simulations in plotting an autogolpe (*Father's Day*) or attempted coup d'état (*WH Storm*) demonstrate the consequences of failing to plan for inability. The Three Groups and the Clinics emphasise planning for presidential inability as key recommendations, while congressional hearings recognise the gaps that remain in planning.¹⁰⁶ Planning recommendations cover the election cycle from candidate to inauguration, emphasising its importance to the continuity of presidential power. The Miller Report and the Working Group Report recommended that the president-elect and his staff prepare an action plan for three medical contingencies, an emergency, a planned procedure, and a chronic condition that might affect the incoming president.¹⁰⁷ The CoP Report simply recommended that procedures for inability be clarified.¹⁰⁸ Recent scholarship has also proposed a framework to support vice presidential and Cabinet decision-making, as the previous chapter showed.¹⁰⁹ The Clinics expand on these broad recommendations, suggesting an incoming president creates a living will to define the situations where he might be unable to discharge his presidential responsibilities. Building on the pre-Amendment practice of letter agreements between a president and his vice president, a living will would reinforce the Amendment's expectation that a vice president and Cabinet would act if Section 4 becomes necessary.¹¹⁰ Publishing a living will might also enhance the legitimacy of any decision taken under it by the constitutional actors and improve public knowledge of the Amendment's uses. The novels emphasise three issues: the

¹⁰⁶ *Joint Hearing*, 16 September 2003, 2.

¹⁰⁷ Feerick and Rogan, "The Twenty-fifth Amendment", 13-14, as "Miller Commission on Presidential Disability and the Twenty-fifth Amendment (1988)", recs. 4 and 5, "Working Group on Presidential Disability (1995)", rec. 3.

¹⁰⁸ *Ibid.*, 14, as "Continuity of Government Commission (2009)", rec. 6.

¹⁰⁹ Daniel J.T. Schuker, "Burden of Decision: Judging Presidential Disability Under the Twenty-fifth Amendment", *Journal of Law and Politics* 30 (2014): 97-140, see Chapter 4 of this thesis.

¹¹⁰ Feerick and Rogan, "The Twenty-fifth Amendment", 15-18, as "Fordham University School of Law's First Clinic on Presidential Succession (2012)", recs. 1b, 4c, "Fordham University School of Law's Second Clinic on Presidential Succession (2017)", rec. 1.

consequences of failure to plan, the role for a living will or letter agreements between a president and his vice president, and the limits of planning. The congressional review emphasised the importance of the Amendment itself as the contingency plan: ‘while we all hope not to have to use the Twenty-fifth Amendment, having an established process that continues to guide administrations faced with unexpected events is essential for any functioning democracy’.¹¹¹

The stark contrast of the need for certainty in a military chain of command draws out the consequences of a failure to plan using the ambiguities inherent in Section 4. *Father’s Day* illustrates how bad-faith actors can choose to muddy the situation as Jay attempts to return from his Section 3 stand aside only to face a Section 4 challenge.¹¹² The military should follow the instructions of an acting president exercising the powers and duties of the office rather than those of a president subject to a Section 4 challenge, who has none. *Father’s Day* results in the military officer recognising his instructions to kill the president, assassinating the acting president. His acting Commander-in-Chief has effectively issued an order for his own slaying. *WH Storm* develops the scenario further by showing the consequent confusion the Amendment could cause regarding who is legitimately exercising the presidential responsibilities if communication systems fail. There is a discrepancy in whom different parties believe the powers and duties to be vested.¹¹³ The 25th initiates a transfer of presidential responsibilities to and from an acting president on the sending of letters, not their receipt, as Chapter 4 showed.¹¹⁴ The novels suggest that the failure to plan for presidential inability may raise the spectre of a coup d’état, where information is not shared, or processes and communications are not applied as intended. The failure to plan can also have consequences during the campaign and pre-inaugural periods. Challenges to a would-be candidate’s health record have led to real-life late withdrawal from the campaign or changes in a running mate, as medical records are weaponised by the opposition. Ericson feared this situation in the cover-up of his previous incident of sight loss.¹¹⁵ Professional medical associations guide their members.¹¹⁶

¹¹¹ *Cong. Rec.*, 115th Cong., 1st sess., vol. 163, pt.53, 28 March 2017, S2046, Senator Donnelly (D-IN), “50th Anniversary of the 25th Amendment and Tribute to Birch Bayh”.

¹¹² Batchelor, *Father’s Day*, pt. three.

¹¹³ Napier, *WH Storm*, 220.

¹¹⁴ *Ibid.*, 220.

¹¹⁵ Safire, *Full Disclosure*, 63.

¹¹⁶ For example, the AMA, see <https://www.ama-assn.org/delivering-care/ethics/confidentiality>, the American Psychiatric Association’s Ethics Annotation: “it is unethical for a psychiatrist to offer a professional opinion unless he or she has conducted an examination and has been granted proper authorisation for such a statement”, <https://www.psychiatry.org/newsroom/goldwater-rule/>. The rule is

Examples from *Full Disclosure* also show the potential consequences of this failure, but, perhaps surprisingly, none of the novels portrays the origins of, and reasons for, these rules.¹¹⁷ *Full Disclosure* also indicates the possible implications of this failure to plan.

The pre-Twenty-fifth Amendment practice of letter agreements might still have a role in planning, as the Clinics propose as a living will, as *Camp David* and *Full Disclosure* highlight.¹¹⁸ Attorney General Herb Brownell drew up a letter agreement between Eisenhower and Nixon. This response to Eisenhower's multiple chronic health conditions specified what Nixon was to do in the event of Eisenhower's inability and how the president would reclaim his role when that inability ended. This practice continued through the Johnson administration, endorsement added by a lengthy memo from Attorney General Robert Kennedy to President Kennedy.¹¹⁹ The Kennedy and Johnson administrations ensured public knowledge of this practice via press releases.¹²⁰ These letters influence the Amendment's drafters.¹²¹ While of no legal standing, these letters set out presidential intent and the institutional legitimacy of the practice and provided a stop-gap until the Amendment's constitutional solution. The Clinics' recommendations of a presidential living will is an update to such letter agreements, which would go further and reference prior known or prospective medical risks and set out a supporting cast for inability decisions, for example, a spouse, children, a Chief of Staff, or a personal physician, engaging with presidential inability as the novels illustrate.

Two novels reflect knowledge of the extra-constitutional status of these letter agreements. *Camp David*, for example, sets out the text of such a letter between Hollenbach and O'Malley verbatim, referencing 'the constitutional amendment', thus making it clear that

named after the 1964 Democratic Party candidate, Barry Goldwater, following publication of a survey of psychiatrists of whether he was 'psychologically fit' to serve as president. For current thinking, see Scott O. Lilienfeld, Joshua D. Miller, and Donald R. Lynam, "The Goldwater Rule: Perspectives from and Implications for Psychological Science", *Perspectives on Psychological Science*, 13, no.1 (2017): 3-27, www.doi.org/10.1177/1745691617727864.

¹¹⁷ James N. Giglio, "The Eagleton Affair: Thomas Eagleton, George McGovern, and the 1972 Vice Presidential Nomination" *Presidential Studies Quarterly* 39, no. 4 (December 2009): 647-676, <https://www.jstor.org/stable/41427414>.

¹¹⁸ Feerick and Rogan, "The Twenty-fifth Amendment", 15 as "Fordham University School of Law's First Clinic on Presidential Succession (2012), rec. 1bi.

¹¹⁹ Attorney General Robert F. Kennedy to The President, undated Department of Justice memo. www.jfklibrary.org, document identifier JFKPOF-080-015-p0001.

¹²⁰ Joseph A. Loftus, "Kennedy Provides That Johnson Will Act if He is Incapacitated", *NYT*, 11 August 1961 and, "Johnson Provides for a Disability", *NYT*, 6 December 1963.

¹²¹ Bayh, *One Heartbeat Away*, 39.

these instructions were to run with an invocation.¹²² *Camp David's* use contrasts with *Full Disclosure's*, where 'the Letter' is a sort of Amendment-lite, 'to be used before anything so drastic as the Twenty-fifth Amendment was even examined', presumably creating a *de facto* if not *de jure* acting presidency for Nichols.¹²³ The divorced and childless Ericson has an experienced D.C. insider as his Chief of Staff. Although theirs is not a close personal relationship, Ericson trusts him, rather than his vice president, not to use the Letter in the early aftermath of his ambush and injury.¹²⁴ However, any precedent such letters create is not without legal challenge and might create a *de facto* but not *de jure* acting president, like Odell in *Negotiator*. If the letter agreements or living wills are confidential, it is unlikely that Congress could have the knowledge of 'a systematic, unbroken, executive practice' as Congress would require before relying on the agreement in any arbitration of a Section 4 challenge.¹²⁵ But even where there are letter agreements in place, and the risks of failure to plan for presidential inability are recognised, there are limits to the fullest of contingency plans, not just the 'unknown unknowns' but their reliance on the key actors exercising constitutional morality.¹²⁶

As surrogate contingency planning manuals, novels also highlight the limits of planning when courage in facing the most personal challenges tips into foolhardiness or hubris.¹²⁷ In essence, all eight novels show this ethical dilemma resolved in favour of the nation, honouring the constitutional morality at the core of real-life contingency planning by offering men of good faith doing the right thing by resigning or continuing in office once the inability has passed, and those of bad faith failing in their attempts to use Section 4 for their own political ends.¹²⁸ Absent real-life precedent, examples from scholarship and fiction are all that is available, and the White House could make more of them in inability

¹²² Knebel, *Camp David*, 179.

¹²³ Safire, *Full Disclosure*, 58-65.

¹²⁴ *Ibid.*, 67.

¹²⁵ *Youngstown Steel & Tube Co.-v- Springer*, §343, U.S Code, 610-11. Roy E. Brownell II, "What to do if Simultaneous Presidential and Vice Presidential Inability Struck Today", *Fordham Law Review* 86, no.3 (December 2017), 1041, <https://ir.lawnet.fordham.edu/flr/vol86/iss3/4>.

¹²⁶ Donald H. Rumsfeld, Department of Defense Daily News Briefing, 12 February 2002.

¹²⁷ David Owen and Jonathan Davidson, "Hubris Syndrome: An Acquired Personality Disorder? A Study of US Presidents and UK Prime Ministers over the last 100 years", *Brain* 132, no.5 (2009): 1396-1406, <https://doi.org/10.1093/brain/awp008>, James F. Childress, "Presidential Illness", in Thompson ed., *Papers on Presidential Disability*, 125.

¹²⁸ The Contingency Plan, tab B, 3. Knebel, *Camp David*, 333, Safire, *Full Disclosure*, 208, Forsyth, *Negotiator*, 491, Batchelor, *Father's Day*, 507, Napier, *WH Storm*, 250.

planning, similar to the involvement of scriptwriters and other creatives in workshopping possible terrorist attacks and in war planning.¹²⁹

But for all the contingency planning that the White House may have undertaken, ultimately, it is confidence in Section 3 and 4 processes and trust in the good-faith of the constitutional actors that create public acceptance of the consequence as a legitimate outcome. Public evidence of planning for presidential inability contributes to establishing that confidence by creating an expectation of an outcome: a role the novels also perform. Constitutional actors drawing on such plans consolidate trust in their use of Sections 3 or 4, but as *Camp David* confirms: ““in any human endeavour there are some points that can’t be covered by law, and that is, in the last analysis, you’ve just got to trust the men involved””.¹³⁰ Acceptance of the legitimacy of the outcome of invoking the 25th also involves Sections 3 or 4 being the correct process in the extant circumstances. Some of the novels portray other ways of constitutionally removing a president for contrast and effect.

Unfit, unpopular, but not unable?

‘Behind the history of presidential defenestration is the more subtle question of *when* to eject a chief executive.’¹³¹

Not all the eight novels touch on a means of displacement beyond the 25th, but those novels where the Amendment is at the heart of their story do.¹³² Changes of Chief Executive are frequent in the US system of government through the quadrennial elections and, since 1951, the limit on a president serving two terms.¹³³ Less than 30% of the forty-five former presidents have served two consecutive terms.¹³⁴ Through four assassinations, four deaths in office, and one resignation, until January 2021, power has always

¹²⁹ Tricia Jenkins, “How the Central Intelligence Agency works with Hollywood: An interview with Paul Barry, the CIA’s new Entertainment Industry Liaison”, *Media Culture & Society* 31, no.3 (2009), <https://www.doi.org/10.1177/0163443709102721>, Philip Oltermann, “‘At first I thought, this is crazy’ the real-life plan to use novels to predict the next war”, *The Guardian*, 26 June 2021.

¹³⁰ Knebel, *Camp David*, 101-102.

¹³¹ Priess, *How to Get Rid of a President*, 220.

¹³² See Chapter 3 of this thesis for the groupings of fictional representations proposed in Kalt, *Unable*, 75.

¹³³ US Constitution, art. 2, sec.1, Appendix A, US Constitution, amend. 22, sec. 1. The maximum period an accidental president later elected in his own right could serve is therefore just under ten years, less than two years as a successor under amend. 25, sec. 1. and two elections in his own right.

¹³⁴ My calculation based on Priess, *How to Get Rid of a President*, chp. 8, Kathryn Moore, *The American President* (New York: Sterling, 2018).

transitioned peacefully, if not always timeously and effectively.¹³⁵ The established norms of reverence and respect for the Constitution, particularly during the presidential transition, are challenged only in *Father's Day's* cynical and satirical portrayal of Garland's actions and desire to gain the presidency. While other novels have characters critical of the Amendment, their fictional role is to draw out its limitations. Beyond removing an incumbent president, five real-life presidents failed to be re-nominated by their party, and the electorate rejected ten who were re-nominated.¹³⁶ While *Kidnapping*, *Full Disclosure*, *Fourth K* and *Father's Day* feature assassination threats, only *Fourth K* ends with its fictional president so removed. The nation has vilified the four real-life US presidents' assassins and deeply mourned their victims: it is not an acceptable means of removing a deeply unpopular president.¹³⁷ *Full Disclosure* and *Fourth K* draw on impeachment to illustrate when that should be the constitutional remedy, not the 25th. The constitutional illumination provided by the arc of the eight novels goes beyond the Amendment, even as *Fourth K's* conflation of impeachment and Section 4 contribute to public misconceptions about both. This section will explore the novels' use of the other constitutional means of removal, impeachment, and the shock of assassination.

The novels echo the peaceful change of executive power, suggest stability and that the pressure gauges built into the Constitution work as intended. While there are concerted attempts to disrupt a peaceful transfer in *Negotiator*, *Father's Day*, and *WH Storm*, none succeeds. Chief Ghosts, removed by assassination, appear in *Kidnapping* and *Fourth K*, in the former to highlight that anxiety of their replacement in the twentieth century is unfounded, in the latter to anchor Francis Kennedy in the mythology of John Kennedy's administration.¹³⁸ The novels, therefore, suggest that anxiety and fear of usurpation at the heart of the Amendment are resolvable. However, there is limited historical precedent of impeachment for the novels to use, with only one impeachment before Clinton's in 1998. Other ways of removing a president from the power of influence, such as by side-lining, by party conventions, or at the ballot box, are only briefly mentioned and explored more as potential threats to the incumbent's political power, especially as all are in their first term. The novels do not normalise assassination as a means of removal. While the Soviet military's ambush of Premier Kolkov may have resulted in Ericson's assassination in *Full*

¹³⁵ The Capitol insurrection of 6 January 2021 is another example.

¹³⁶ My calculation based on Priess, *How to Get Rid of a President*, Moore, *The American President*.

¹³⁷ Priess, *How to Get Rid of a President*, 6, Eric Rauchway, *Murdering McKinley: The Making of Theodore Roosevelt's America* (New York: Hill and Wang, 2003).

¹³⁸ Templeton, *Kidnapping*, 146-7, Puzo, *Fourth K*, 144.

Disclosure, he was not the target but planned collateral damage. In *Fourth K*, the assassin is a lone operator, consistent with the publicly available evidence in three of four real-life assassinations.¹³⁹

Impeachment is the constitutional remedy for ‘Treason, Bribery, or other high Crimes and Misdemeanors’, a breach of public trust.¹⁴⁰ As of their publication dates, the only historical example available to *Full Disclosure* and *Fourth K* was Johnson’s 1868 impeachment for firing a Cabinet member.¹⁴¹ Nixon chose to resign rather than face impeachment.¹⁴² Since 1994 the House has impeached two real-life presidents, one of them twice.¹⁴³ However, as with defining presidential inability, clarifying what activities the constitutional phrasing covers is fraught with ambiguity. An impeachable offence is accepted as ‘whatever a majority of the House of Representatives considers being at a given moment in history; conviction results from whatever offense or offenses two-thirds of the other body considers to be sufficiently serious to require removal of the accused from office.’¹⁴⁴ Both *Full Disclosure* and *Fourth K* contrast inability with such a breach of trust to illustrate the political calculation on the appropriateness of process, the constitutional arithmetic involved, and the consequences of the wrong constitutional choice: all adding to the constitutional illumination they provide.

In *Full Disclosure*, former Treasury Secretary Bannerman raises impeachment after a journalist releases false evidence of possible collusion between Ericson and the likely new Soviet Premier over the Yalta ambush.¹⁴⁵ *Full Disclosure* uses impeachment to highlight that Ericson’s disability does not render him unable to fulfil his presidential

¹³⁹ Priess, *How To Get Rid of A President*, 6, 113, Rauchway, *Murdering McKinley*.

¹⁴⁰ US Constitution, art. 2, sec. 4. Alexander Hamilton, *The Federalist* No. 68, Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers*, Lawrence Goldman ed. (Oxford: Oxford University Press, 2008), 321.

¹⁴¹ Sunstein, *Impeachment*, on Andrew Johnson, 104-106. Some years after the publication of *Full Disclosure*, the topic appears to have been the subject of a lunch between William Safire and John D. Feerick, see Memorandum from John D. Feerick to William Safire, 7 December 1987 enclosing an article on impeachment, *WSP Syracuse*.

¹⁴² Sunstein, *Impeachment*, 85-99, for Nixon’s potential impeachment.

¹⁴³ Sunstein, *Impeachment*, 99-104 on Clinton, Articles of Impeachment Against Donald John Trump, H.Res. 755, 116th Cong., 1st sess., (18 December 2019), Resolution Impeaching Donald John Trump, President of the United States, for high crimes and misdemeanors, H.Res. 24, 117th Cong., 1st sess., (25 January 2021). See also Brian C. Kalt, “Presidential Impeachment and Removal: From the Two-Party System to the Two-Reality System”, *George Mason Law Review* 27, no.1 (Fall 2019): 1-28.

¹⁴⁴ Gerald R. Ford, ‘Remarks by Rep. Gerald R. Ford (R-Mich), Republican Leader, prepared for delivery on the Floor of the U.S. House of Representatives’, 15 April 1970, <http://www.fordlibrarymuseum.gov>, accessed 29 July 2021.

¹⁴⁵ Safire, *Full Disclosure*, 335, 366, 368.

responsibilities. If he can defend impeachment proceedings, he is unlikely to be unable. *Full Disclosure* also illustrates the difference in political will needed through the congressional votes required to impeach compared to the votes needed for a successful Section 4 challenge. In doing so, it draws out the importance of procedural and public legitimacy to impeachment and Section 4 as constitutional means of removal and the matter of who controls media messaging. The constitutional arithmetic is the difference between two-thirds of both Houses needed for Section 4 and fifty per cent of the House and two-thirds of the Senate to convict for impeachment, a difference of seventy-two House votes.¹⁴⁶ Ericson's crime is his blindness, his 'misdemeanor', the cover-up of the pre-inauguration incident: neither is an obstruction of justice nor an abuse of power. By changing his vote in favour of invoking Section 4, one Cabinet member saves Ericson from impeachment as the House votes are sufficient. The threat of impeachment changes Ericson's mind about continuing in office. He recognises the loss of public confidence and questions his ability to govern.¹⁴⁷ The contrast between *Full Disclosure* and *Fourth K* is that their self-belief to fulfil presidential responsibilities is that of a steward of the presidency in the former but turns hubristic in the latter.

Congress believes Kennedy's disproportionate response to his daughter's killing shows he had abused his presidential responsibilities in *Fourth K*: 'Congress had just voted to impeach Francis Xavier Kennedy from the Presidency'.¹⁴⁸ A few minutes later, Congress 'annulled their vote impeaching Kennedy as he has declared martial law', rejecting their own decision as the US plunges into chaos when an atom bomb detonates in Manhattan.¹⁴⁹ Kennedy instructs retaliation on the Middle East without congressional support. *Fourth K's* conflation of impeachment and Section 4 is the major contributor to the misconceptions around the 25th amongst the eight novels. Greater care over the differing processes would have served the plot better as an increasingly popular but hubristic president seeks to consolidate his power. By showing, for example, the articles of impeachment agreed by and voted in the House, *Fourth K* would have focused on Kennedy's overreach of

¹⁴⁶ Safire, *Full Disclosure*, 477- 478. Since 1913 there have been 435 voting members in the House, the difference between a simple majority (218), and a two-thirds majority (290) is 72. The Permanent Apportionment Act of 1929, 71st Cong., 1st sess., 18 June 1929, *US Statutes at Large* chp. 28, 46 Stat. 21, 2 US Code, §2a.

¹⁴⁷ Safire, *Full Disclosure*, 478.

¹⁴⁸ Puzo, *Fourth K*, 261.

¹⁴⁹ *Ibid.*, 263. For fictional representation of impeachment see Bill Clinton and James Patterson, *The President is Missing* (London, Century, 2018).

presidential power as ‘high crimes and misdemeanors’ and separated the medical issues of grief and hubris. Instead, *Fourth K* requires assassination to remove its fictional president.

The failed assassinations in *Kidnapping*, *Father’s Day* and *Full Disclosure* require the presidents’ deaths as part of a ransom attempt, an autogolpe or a coup d’état, respectively. In *Kidnapping*, Scott faces assassination should his rescuers fail in removing him from the booby-trapped truck before it explodes. *Kidnapping* is correct that Roberts would immediately become president under Section 1 and states the Section’s wording involved.¹⁵⁰ *Father’s Day* seeks to assassinate Jay in Garland’s autogolpe as insurance against Section 4 failing to retain Garland as acting president. The attempted autogolpe in *Father’s Day* ends in Garland’s assassination, thus creating a dual vacancy as Jay immediately resigns due to his incapacitating health issues. Ericson survives the ambush and assassination of the Soviet Premier in *Full Disclosure*. The Soviet military plotters planned Ericson’s death as the first successful assassination of a US President on foreign soil. Still, *Full Disclosure* does not state the consequences should the plotters have succeeded. Having subjected Kennedy to a mashup of impeachment and the 25th, *Fourth K* ends with his assassination during his second inauguration at the hands of a radicalised student and portrays President Helen DuPray as his successor without stating the constitutional reason.¹⁵¹ Despite the frequency of assassination attempts across the novels, they do not show it as acceptable, other than in *Father’s Day* as a means of removing an acting president who has abused his powers and duties. Again, the use of assassination emphasises the importance of good-faith actors.

In using alternatives to Section 4 to remove a president from office, the novels go beyond highlighting the constitutional difference between occupying the office and carrying out its powers and duties as acting president. They also illustrate the difference between the medical evidence needed in Section 4 and the political calculus involved in an impeachment decision to remedy a breach of public trust. In doing so, the novels widen the beam of their constitutional illumination beyond the Amendment.

¹⁵⁰ Templeton, *Kidnapping*, 144-146.

¹⁵¹ Puzo, *Fourth K*, 494.

Conclusion

The many recommendations for improvements to the 25th Amendment recognise that decisions on presidential inability rely on more than a medical opinion. In doing so, they highlight its flexibility, ambiguity, and limitations. As the novels demonstrate, uncertainty about when the Amendment applies contributes to the problem narrative of presidential inability. In providing illustrative examples of its limitations, fiction acts as another public platform for the discussion on recommendations, such as the role of the White House doctor, the importance of family involvement, or the complexities of creating a medical panel. In the absence of real-life precedents, medical and political circumstances in fiction raise the possibilities of the Twenty-fifth Amendment and contribute to the role of the novels as surrogate contingency plans by indicating limitations that a real-life contingency plan should address.

By highlighting the importance of opinion polls and, as a proxy for such polls, stock market indices, the novels show invoking the Twenty-fifth Amendment ‘raises questions of interpretation and implementation’ and that ‘ability to govern is more than a medical judgement’.¹⁵² It is a public legitimacy issue, and therefore, its limitations matter. The US electorate and governments of other nations must perceive the appropriateness of using Section 4 as legitimate, honouring more than just the spirit of constitutional morality by actors interpreting their constitutional duty in good faith.¹⁵³ In *Father’s Day*, the only novel explicitly critical of the Amendment and in which its president has already stepped aside under Section 3, it is far from clear that Jay would be accepted back. Jay surrenders his presidential responsibilities for five months, and doubts remain about whether he is still incapacitated. By resigning, these fictional presidents honour their oath of office, creating the conditions for a peaceful transfer, and anchoring the legitimacy of their successor.

With clear recommendations from the Three Groups and the Clinics on the need for more expansive public knowledge of the Amendment, popular culture representations take on some of this mantle. While film and TV depictions are commonplace, there has only been one new novel central to the 25th published since 1994, *WH Storm*, which was self-published.¹⁵⁴ In increasingly partisan times, the public debate should welcome new novels

¹⁵² Thompson, ed., *Papers on Presidential Disability*, ix.

¹⁵³ Committee on the Judiciary, *Presidential Inability and Vacancies in the Office of the Vice President*, 89th Cong., 1st. sess., 10 February 1965, 13, the Contingency Plan, tab B, 18.

¹⁵⁴ Four of the five novels rejected for selection in the corpus of novels as not adding anything different for this thesis were published after 1994: Vince Flynn, *Transfer of Power* (London: Pocket Books, 1999),

that hinge on the Amendment. Presenting their use of the Amendment as accurately as possible and using misconceptions only to draw out and correct common misunderstandings, fictional representations can support the recommendations on educating and informing the public. At the same time, White House staff responsible for contingency planning should consider the approach of the intelligence services in scenario planning by workshopping inability scenarios with those in the creative industries.¹⁵⁵ Fiction explores a range of possibilities through the Amendment's flexibilities and ambiguities. While novels generally do not reach as large an audience as TV or film, analysing these eight novels' use of the Amendment demonstrates how fictional representations can serve as surrogate contingency planning manuals. These novels highlight the Amendment's limitations and possible solutions, illuminating the correct constitutional actors, processes, and appropriate circumstances.

Collectively and individually, the novels reinforce the narrative of a peaceful transfer of power within a stable democracy in circumstances of presidential inability but show that stability relies on good-faith actors adhering to norms of respect and reverence for the Constitution. Some of the novels also illuminate the safety valves of the other constitutionally appropriate remedy of impeachment. Also, the novels' use of Chief Ghosts in their plots does not normalise assassination. This chapter shows that all eight novels, to varying degrees, create a public platform to illuminate constitutional issues raised in the broader debate about recommendations for improving the 25th's processes by illustrating what happens if there is no planning for presidential inability or where there is a reluctance to use such plans as there are. The novels, therefore, have the potential to influence recommendations for improvements through fictional portrayals of issues such as the roles of the White House doctor and close associates and the challenges of the current line of succession. In displaying the challenges and consequences of an unanticipated presidential inability, the novels highlight the importance of planning for such incidents and emphasise their other role, as argued in this thesis, as surrogate contingency plans.

Brad Thor, *The Lions of Lucerne* (New York: Pocket Star Books, 2002), Michael Palmer, *The First Patient* (London: Arrow Books, 2008), Sam Bourne, *To Kill the President* (London: HarperCollins, 2017). The most recent film depiction was probably 2013's *White House Down*, directed by Roland Emmerich, Sony Pictures, released 28 June 2013. The most recent TV depictions of the 25th Amendment were probably in 2018: *Madam Secretary*, season 4, episode 12 "Sound and Fury" directed by Deborah Reinisch, first broadcast 8 February 2018, *Homeland*, season 7, episode 10 "Clarity" directed by Dan Atlas, first broadcast 1 April 2018, *Designated Survivor* season 2, episode 19 "Capacity", directed by David Warry-Smith, first broadcast 25 April 2018. See Kalt, *Unable*, 80, 90, 98, 100.

¹⁵⁵ Jenkins, "How the Central Intelligence Agency works with Hollywood", Oltermann, "'At first I thought, this is crazy'".

Beyond Safire's involvement with the Working Group Report, it is unknown to what extent the members of the Three Groups or the Clinics engaged with any of these novels.¹⁵⁶ By highlighting many of the issues raised by the recommendations, contrasting the Amendment with impeachment, reflecting on an assassination attempt, and ending with resignation, *Full Disclosure* covers a broader analysis and a deeper appreciation of the 25th than the other novels. Its more nuanced and detailed approach draws out Section 4's limitations, so constitutional actors must initiate its use thoughtfully and with discretion. *Full Disclosure* also highlights that impeachment is a different constitutional solution, designed for another purpose with its own ambiguities and flexibility. In contrast, *Fourth K* contributes to the misconceptions about the Amendment. In conflating impeachment with the Amendment, the reasons and, therefore, the solution for removing Kennedy is far from clear. Between *Full Disclosure* and *Fourth K* are the remaining six. None contributes as fully as *Full Disclosure*, but they avoid the errors of *Fourth K*. Rather, their contributions are valuable on the individual, particular points within the recommendations and alternatives.

¹⁵⁶ See letters and memos from William Safire on The Dana Foundation letterhead regarding distribution of the Working Group Report, *WSP Syracuse*, John D. Feerick, "Review of *Full Disclosure*", The Lawyer's Bookshelf, *New York Law Journal*. 29 July 1977.

Conclusion

This thesis demonstrated that the eight novels comprehensively illuminate the presidential inability provisions of the Twenty-fifth Amendment. Covering the Amendment's wording, its processes, the roles of those with constitutional authority, and the circumstances of its use, this study showed that novels go beyond illuminating the institutions created by the Constitution to offer a resolution to the problem narrative of presidential inability in ways that apply constitutional morality. By not staying within the strict confines of the Amendment, the novels illustrate the Amendment's wider consequences and link to core constitutional issues from impeachment to resignation and the line of succession. In posing different scenarios for their fictional presidents to confront, the novels make a distinctive addition to the use of the Constitution in fiction. By portraying inability issues from the perspective of the various constitutional actors, they engage with the debates over the 25th's limitations. They provide a public platform for the ongoing discussion and challenge the problem narrative surrounding real-life presidential inability. The novels are not all favourable to the Amendment throughout their depictions. Their plots and characters draw out the 25th's limitations through criticism and satire.

The structure of this thesis reflected its objectives. Chapter 1 linked novels with the more expansive genres they nest within as a type of fiction that illuminates the presidency and its incumbents. With presidential inability at their core, these novels also depict presidential power and weakness and a range of possible institutional responses to both. Chapter 1 also introduced the president as the first constitutional actor under the Amendment and showed that the novels go beyond portraying that role correctly. Chapter 2 explored how the novels present other constitutional actors, the vice president, the Cabinet and Congress and go beyond showing the right actors to emphasise the importance of their institutional legitimacy to the 25th's invocation. Chapter 3 showed that the novels surpass using the Amendment as a plot device to deploy it in their structure, exposition and dialogue, illuminating the Amendment's text as the basis for institutional legitimacy. By doing so, the novels foreground the 25th's processes to establish the procedural legitimacy of their constitutional actors' decisions. Chapter 4 started by reviewing the challenges of defining presidential inability. It adapted a framework proposed by recent scholarship to aid the constitutional actors' decision-making and applied it to fictional portrayals to illustrate the framework's utility. The study developed a common language for discussing presidential inability, building on the adapted framework. By depicting a range of presidential circumstances where inability is not beyond doubt, the novels show the flexibility and

ambiguity of Sections 3 and 4 and the considerations and challenges that constitutional actors face in deciding to invoke them or not.

Chapter 5 explained how the novels contribute to the ongoing debate about the Amendment's limitations. While the novels hinge on the Amendment's role as the constitutional contingency plan, they also highlight its limitations by showing what happens when there is no more detailed plan for the constitutional actors' reference and support. The novels illustrate that fiction also participates in that debate by representing many real-life expert recommendations for improving the Amendment. The novels highlight three principles underpinning the Amendment's drafting that remain relevant to any recommendations: determining presidential inability is an executive branch function, an elected president's presumption of power, and the separation of powers. Continuity of executive power is vulnerable to a dual vacancy as the determination of vice presidential inability is not addressed in the Constitution, the Amendment, or statute. Even absent challenges to legitimacy, practical and policy issues could arise from the current congressional line of succession, especially in an era of increased partisanship. As some of the novels indicate, matters of succession below the vice presidency and suggestions to support a bipartisan determination of presidential (and vice presidential) inability are two perennials of the inability debate. With Section 3 precedents only involving presidents' bowels and Section 4 of the Amendment still uninvoked, the novels create a shared experience in accurate and realistic detail in their layout, dialogue, and exposition.

While the novels illuminate the 25th as the political solution to a medical problem, the most crucial point they demonstrate is that the problem narrative is largely unfounded when the novels emphasise one significant condition. The constitutional processes rely upon good-faith actors honouring constitutional morality. In doing so, the novels highlight the importance of the Amendment to the US system of government and explore constitutional pressure valves working as intended as the fictional debate turns to what good faith means where there are differences of opinions and motives based on the same facts. They show that the ultimate test of good faith is the public legitimacy of a successor. Acting in good faith requires the constitutional actors to go beyond relying on the institutional legitimacy of their Amendment role to take steps to confirm the procedural legitimacy of their decision, all while adhering to expected norms of constitutional reverence. A further key issue the novels illustrate is that, beyond a catastrophic event of presidential inability, time is a factor. Time matters in understanding the duration of

inability, the lapsed time to decide to invoke, and when on the political calendar, inability strikes.

The novels' arc reflects wider developments in US society and government institutions, including the presidency and vice presidency. With clear recommendations from the Three Groups and the Clinics on the need for more expansive public knowledge of the Twenty-fifth Amendment, popular culture representations take on some of this mantle in addition to highlighting many of the recommendations made. The novels were not written, published or probably ever read as a group beyond this thesis. Presenting their use of the Amendment as accurately as possible and using misconceptions only to draw out and correct them, fresh or reissued existing, fictional representations in print or other media can continue to support the debate on improving the 25th.

Real-life problem narratives show that anxiety over presidential inability remains topical, and the Amendment remains a common plot device in popular culture. Let us suppose such representations reflect the state of the nation. In that case, it is perhaps not surprising that new TV and film representations of the Amendment continued until at least 2018, reflecting the deep partisan divisions and the many media concerns raised over Trump's actions and well-being. But, surprisingly, there was only one novel that hinges on the 25th Amendment analysed in this thesis published in recent years, self-published in 2014. I rejected one 2017 novel for inclusion in the corpus of novels.¹ Although it portrayed a 'volatile demagogue' as president, it did not represent the Amendment in sufficient detail to add to the analysis undertaken.² Since Trump's 2017 inauguration, the only other release mentioning the 25th was the reissue of *Camp David*, initially published in 1965.

This thesis does not claim to have identified and analysed every novel that hinges on the 25th. There may be other novels yet to discover, and there will undoubtedly be more where 'Section 4 is just something that happens — uneventfully — in a story about something else' as such novels are harder to identify.³ The novels demonstrate a fundamental belief in the institutions of governments and the basic decency of constitutional actors. By showing all the fictional presidents as men of good faith, and the challenges faced by a vice

¹ Sam Bourne, *To Kill the President* (London: HarperCollins, 2017). Sam Bourne is the pen name of journalist Jonathan Freedland.

² *Ibid.*, rear cover.

³ Brian C. Kalt, *Unable: The Law, Politics, and Limits of Section 4 of the Twenty-fifth Amendment* (New York: Oxford University Press, 2019), 75.

president, Cabinet and Congress in determining inability, the novels surpass mere illumination of the Constitution and the Amendment to demonstrate the constitutional morality that was the drafters' intent, and is reflected in the Contingency Plan contextualised in the Introduction and referred to throughout this thesis. While none of the fictional presidents is perfect, they eventually seek to put the office first. In the fictional arguments they raise, sometimes with themselves, they show the dilemma of disclosure of ill health versus discretion of invoking Sections 3 or 4 when continuing to exercise presidential responsibilities can be the right thing to do as stewards of both the presidency and the nation.

The lack of meaningful, precedent-setting use of Sections 3 and 4, coupled with the problem narrative's two facets of anxiety and usurpation, has led to many public misconceptions about the Amendment. Scholars criticise fictional representations for creating or adding to these misconceptions.⁴ This thesis suggested that this criticism is mainly unfair and unjustified where these novels are concerned. While there are factual errors, and some misrepresentation of how the use of Section 4 is likely to play out in real life, as a whole, the novels deploy the Amendment comprehensively. They depict conditions and circumstances when invoking Sections 3 or 4 that may or may not be appropriate and demonstrate the possibilities of the Amendment to resolve presidential inability. In the novels' debate about invocation and its consequences, they go beyond merely illustrating the Amendment's four key aspects to illuminate broader aspects surrounding presidential inability.

Of all the novels, *Full Disclosure* provides the greatest illumination. *Full Disclosure's* nuanced and detailed approach covers all four key aspects of the Amendment using a physical disability and one that the Amendment's drafters intended to disqualify a president from exercising presidential responsibilities. It also highlights the other three features of fiction's broader engagement with the 25th, representations of the presidency, suggesting improvements by depicting the Amendment's limitations, and exploring the alternatives of impeachment and resignation. It also features an unsuccessful assassination of the beleaguered Ericson. It is hard to disagree that *Full Disclosure* is the best novel about the 25th.⁵ Safire's legacy on the 25th also goes beyond that of the other authors. Some years after its publication, Safire used his *NYT* column to criticise the lack of real-

⁴ Kalt, *Unable* 76.

⁵ *Ibid.*, 85.

life use of the Amendment and under Safire's chairmanship, the Dana Foundation underwrote the Working Group Report.⁶

Representing presidential power and legitimacy

Going beyond stating what the novels get right and wrong about the 25th, this thesis showed how the eight novels use the Amendment to engage with power and legitimacy issues. They illustrate the impact of presidential inability on a president's power and, therefore, on how a president might respond to inability claims. By showing how a president builds, or draws on, a stockpile of influence and who he influences or is influenced by, the novels show the impact of actual or perceived inability on their presidents' exercise of power. The novels portrayed their constitutional actors as trying to do the right thing, and presidential power transfers peacefully. These eight political thrillers, therefore, highlight the importance of the 25th as a mechanism for the peaceful transition of power in a stable democracy.

The peaceful transition of executive power that the novels portray suggests stability and that constitutional safety valves work as intended. While there are serious attempts to disrupt a peaceful transfer in *Negotiator*, *Father's Day*, and *WH Storm*, none succeeds. However, no constitutional procedure can ensure the peaceful transition of power in a stable democracy. In the novels' calm endings where presidents continue in office or surrender their power and its trappings peacefully, the fictional presidents take their role as Chief Ghosts by acting with constitutional morality, fulfilling their oath of office to defend the Constitution, and thereby resolving the problem narrative of anxiety and usurpation. Whatever personal flaws and medical uncertainties may befall a president, there is a presumption in these fictional representations that they will act in the nation's interest. The fictional debate becomes more about what action is in the nation's interest and what the constitutional actors need to do to protect it, that is, whose views dominate.

The three forms of legitimacy that the novels draw on, institutional, procedural and public, confirm acceptance of the actions of constitutional actors but work together to shape how these political thrillers resolve both facets of the problem narrative of presidential inability. The novels' conclusions, firstly, show that anxiety over an unable president is unjustified because there is a means to address it. Secondly, the novels show that fear of usurpation is

⁶ William Safire, "Taking the 25th", *NYT*, 18 July 1985. Letter from William Safire as Chairman of The Dana Foundation to Edward Bleier, 5 November 2001, *WSP Syracuse*.

unjustified when the fictional constitutional actors adopt the sense of constitutional morality expected of those allocated constitutional duties to act in good faith.

By design and history, the US system of government fosters anxiety about its president's well-being. While playing to tropes that conflate the health of its chief executive with that of the nation, the tension between the two facets of anxiety and usurpation creates plenty of scope for fictional plots to portray the constitutional mischief that the Amendment, particularly Section 4, might invite. However, as Chapter 2 showed, fiction supports history to suggest the opposite: constitutional actors do not 'suborn their loyalty', and it is more likely that invocation will not occur when appropriate.⁷ Historical and fictional evidence does not provide a sufficient basis to resolve this problem narrative permanently. Uncertainty over who is unquestionably in control of government decisions requires a timeous response when a potential threat to national interests is unlikely to dissipate.

Fiction about the Amendment nests within wider genres of the political scenario novel, the Washington novel and the presidential novel and is a separate subgenre. Identifying this subgenre situates how these novels might illuminate the Constitution, showing how the institutions created by it and the relationships among them respond to the problem narrative of presidential inability. By exploring how the four key aspects of the Amendment—what, who, how and when—are portrayed, studying the novels illuminates the Amendment's purpose and its drafters' intent. The novels foreground the Amendment's contingency planning role. But this thesis also suggests that these novels, individually and collectively, are surrogate contingency planning manuals. The novels show the elements of such a plan in the actors' roles and how they respond to a crystallised contingency to ensure both power and legitimacy are maintained.

The structure of this thesis adopted four key aspects of the Amendment. Analysing the constitutional actors, the Amendment's wording, its processes, and the circumstances of its use allowed the exploration of the different types of legitimacy to each and how each builds to support the consequences of the Amendment to achieve a peaceful transition of presidential power and public acceptance. While this thesis went beyond the mere enumeration of what facts the novels got right or wrong, a subsidiary question was whether these eight novels are guilty of doing so. While some novels get individual points on the Amendment, or their interpretation wrong, these, largely minor, errors do not detract from

⁷ Safire, *Full Disclosure*, 140.

the overall illumination provided. This thesis finds them not guilty of adding significantly to the misconceptions, except for *Fourth K*. Still, even in *Fourth K's* mashup of the two constitutional processes of Section 4 and impeachment, this thesis observed valuable and interesting points that mirror real life. These eight novels as a group, therefore, help to highlight the Amendment's deliberate flexibilities as ambiguities.

This thesis observed the use of porous boundaries between facts and fictions in the novels. The novels draw on real-life facts not just in the service of the geopolitical and widespread anxieties about presidential inability that created political momentum to resolve the constitutional gap about presidential inability by passing the Amendment. They also depict familiar symbols and locations that are readily associated with the presidency and the exercise of its powers and utilise former presidents as Chief Ghosts. The novels use Chief Ghosts to present their fictional presidents in a near future, provide real-life examples of the causes and effects of presidential inability and portray relationships crucial to a successful invocation of the Amendment: all as ways of anchoring their fictional presidents in the historical record. These eight fictional representations allow the reimaging of the presidency to resolve the problem narrative of presidential inability from fear to public understanding and acceptance. In this way, the resolutions reached in the novels are 'retrospective prophecies.'⁸

Further research

Further research could apply the framework used here, weaving together concepts of presidential power and legitimacy and observing the porous boundaries between facts and fictions to anchor a reality, to analyse other fictional representations of the Amendment, including the myriad TV and film representations, and other genres, such as dystopian, science fiction and alternative history. Comparing and contrasting the Amendment's use across different popular culture media and genres could also apply this framework. The framework would only require minor adaptations to explore fictional representations of other aspects of the Constitution that concern presidential removal, impeachment, or the statutory line of succession only touched upon here and might include the pre-inauguration period. Research could apply the role of Chief Ghosts more widely to novels across the political scenario genre and its other subgenres. Analysis of real-life media and other commentaries on the Amendment could also apply this approach. Such further research

⁸ Peter Brooks, "Narratives of the Constitutional Covenant", *Daedalus, the Journal of the American Academy of Arts and Sciences* 141, no.1(Winter 2012), 48-49.

would also support the recommendations to improve public knowledge of the Amendment and may assist those charged with teaching the Amendment or with undertaking real-life contingency planning for presidential inability. There are also different approaches, beyond power and legitimacy, to analysing fictional portrayals that this thesis did not adopt. For example, the use of the language of disability or the analysis rotated and deepened to focus solely on the portrayals of one or more of the constitutional actors, for example, the vice president, which could also explore fictional depictions of these officeholders across the broader political scenario genre.

Concerns remain over any invocation of Section 4. Constitutional debate over the meaning of unable as applied to the president of the United States is at its most useful before an invocation is required. With the spectre of presidential inability likely to continue to haunt incumbents of the presidency and those seeking it, the gap in scholarship this thesis fills is an important and timely one, demonstrating how fiction uses the interplay of the principles of government to entertain while providing information. The novels tacitly echo recommendations that each presidential administration prepares a plan to apply the Amendment. The eight fictional vice presidents seem keener than their real-life predecessors in carrying out their constitutional duty, but there are no fictional plans for them to draw upon for guidance. This thesis concludes that fiction demonstrates that the political decision on presidential inability requires a delicate balance of disclosure and discretion that constitutional actors must keep under review if there is any question of an unable president. As the novels show, the actors must apply constitutional morality to their actions to win public legitimacy of the consequences of the Amendment's invocation. Good-faith actors emphasise both the institutional legitimacy of their office and the procedural legitimacy of their decisions in ways that demonstrate adherence to constitutional norms.

Appendix A- Constitutional Wording

Article 2, Section 1 (17 September 1789)

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.

Amendment 25 (Passed by Congress 6 July 1965, ratified 10 February 1967)

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.

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