



JOHN FEERICK: THE 25TH AMENDMENT WITH THE MAN WHO LIVED THROUGH IT ALL

MATTHEW DILLER

Last year marked the 50th anniversary of the ratification of the 25th Amendment to the U.S. Constitution. While many people know what the amendment sets forth—rules for presidential succession—fewer are aware of the personalities that made it happen. Chief among this amazing team of scholars, legislators, lawyers, and government officials is John D. Feerick. Feerick represents not only one of the principal players in the historical drama of the amendment but also the visionary who is shaping it for the 21st century.

In October 1963, a 27-year-old Feerick was working as an associate at Skadden, Arps, Slate, Meagher & Flom when he published a *Fordham Law Review* article titled “The Problem of Presidential Inability—Will Congress Ever Solve It?” At the time, the topic of presidential succession was not at the top of everyone’s mind; after all, the country had elected three years earlier a young and healthy John F. Kennedy. Nevertheless, Feerick, just two years out of Fordham Law School, argued that, Kennedy’s age notwithstanding, the issue demanded attention. With his characteristic determination, Feerick distributed his article to everyone he felt might have an interest, including the president himself, Attorney General Robert Kennedy, congressmen, and retired government officials.

The article advocated for the adoption of a constitutional amendment to resolve the ambiguities and gaps in the Constitution’s original succession provision—weaknesses that had been exposed in past cases where presidents were unable to fulfill their duties. To further bolster his amendment case, Feerick wrote a letter to the editor of the *New York Times* that insisted on the importance of the topic. “President Garfield’s shooting, President Wilson’s stroke, and Presi-

dent Eisenhower’s heart attack rendered each temporarily unable to exercise the powers and duties of his office,” Feerick wrote. “Despite this, Congress has consistently failed the American people by not acting to eliminate the possibility of a gap in the executive because of the confusion existing over the meaning of the succession provision of the Constitution.” The newspaper published Feerick’s letter on Nov. 17, 1963. Five days later, JFK was killed.

Kennedy’s assassination seared the issue of presidential succession into the public consciousness. Feerick’s article suddenly went from esoteric to essential. After Feerick assisted in the 25th Amendment’s drafting, the American Bar Association (ABA) tapped him to chair its Young Lawyers Committee, whose members helped persuade key federal and state lawmakers that they needed to act swiftly on lingering presidential succession questions. Feerick personally assisted lawmakers, such as Indiana Sen. Birch Bayh and Virginia Rep. Richard H. Poff, in the effort.

On July 6, 1965, Congress gave final approval to the proposed 25th Amendment; less than two years later, on Feb. 10, 1967, the amendment was ratified and became part of the Constitution. When

President Lyndon Johnson held a ceremony at the White House to formally proclaim its adoption, Feerick was present among the amendment's architects.

Alive and Kicking

The 25th Amendment is no fusty relic of constitutional history. Since its ratification, the amendment has been invoked six times, most recently in 2007 when President George W. Bush transferred power before a routine colonoscopy. Through all the times when the amendment has been used—through Ford and Nixon and Rockefeller and Reagan—Feerick has remained a national leader on presidential succession issues. In 1976, six years before he became dean at Fordham Law, he published the Pulitzer Prize-nominated book *The Twenty-Fifth Amendment*, hailed as the definitive account of the amendment's adoption and implementation. The book built on his earlier work, *From Failing Hands: The Story of Presidential Succession* (1965).

More recently, Feerick has engaged a new generation of legal professionals to continue the work that he began more than a half century ago. In 2010, he launched a presidential succession clinic at Fordham Law so that students could get involved and put their own stamp on the issue. In that first clinic, Feerick led nine students through careful analysis of the amendment to examine stubborn gaps and ambiguities that still exist in the procedures for handling presidential, and vice presidential, deaths and disabilities. The inaugural class published a report in the *Fordham Law Review*, "Ensuring the Stability of Presidential Succession in the Modern Era," and distributed it to officials in the White House, governmental and policy leaders, and every member of Congress.

This past academic year, Feerick re-established the clinic for the benefit of a new crop of students. In this second clinic, as the students wrestled with the amendment's thorny subtleties, they benefited from the counsel of distinguished guest speakers such as Fred Fielding, former White House counsel to Presidents Ronald Reagan and George W. Bush; Bernard Nussbaum, White House counsel to President Bill Clinton; and then-CIA Director John Brennan.

Students focused on a number of issues that could still arise in a case of presidential incapacity. They interviewed sources and reviewed scholarship in attempts to formulate contingency plans for circumstances such as the incapacity of a vice president alone and a situation where Congress needs to evaluate the president's fitness to govern. They also contributed scholarship to the debate concerning who should be included in the presidential line of succession.

The culmination of their work was "Fifty Years After the Twenty-Fifth Amendment: Recommendations for Improving the Presidential Succession System," a report published in the *Fordham Law Review* that proposes seven key recommendations to improve on what Feerick started. Last fall, the clinic students held a symposium to announce their recommendations. They also heard from key participants who helped draft and organize support for the amendment and gained insights from legal scholars of presidential and vice presidential succession.

One such scholar was professor Joel K. Goldstein of St. Louis University School of Law, who spoke generously of Feerick's impact. "Other than Sen. Bayh, there's nobody who played a bigger, more important role in the 25th Amendment becoming part of the Constitution," Goldstein said. "Nobody on the planet knows as much as Dean Feerick does about the subject."



Last year, Feerick worked with the Maloney Library at Fordham Law and adjunct professor John Rogan to create an online 25th Amendment archive for use by scholars, journalists, and citizens. The archive offers an interactive timeline of the history and events that prompted Congress to create the amendment; some of its materials are unavailable elsewhere. This past August, Feerick was awarded the ABA Medal, the highest honor given by the association; the medal recognizes exceptionally distinguished service to the cause of American jurisprudence, to the law, and to the legal profession.

Considering that 20 percent of our country's presidents did not finish their terms—and given the impassioned conversation surrounding our current president—the 25th Amendment is as timely and critical as ever. Feerick does not wade into those conversations. He is interested not in speculative political opinions but rather in a reliable, sustainable system of governance. As he himself said in a recent article, "The 25th Amendment is the safety net of the American Constitution. I hope we never have to use it."

It is uncommon for one individual and one law school to be so closely tied to a constitutional amendment. Fordham Law has John Feerick to thank for the connection. And thanks to him, the nation can breathe a bit easier. ☺



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