

The 12th and the 25th

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It is a dark, stormy night in early November, just a few weeks from now. The mid-term elections are just days away, and the race for the House and Senate is still very much in doubt. George Bush's political guru, Karl Rove, is sound asleep.

In fact, he is dreaming. His political subconscious is already looking ahead. It is dwelling on the presidential election of 2008, now less than two years off. In fact, in just a few months, the candidates will be streaming into Iowa and New Hampshire, gearing up for the primaries.

Karl is having one of his bad dreams. He is perusing the political calendar and he doesn't like what he sees. He sighs, "We've been in power nearly 8 years and we don't have a candidate. Dubya can't run and Cheney says he won't."

As Karl dreams on, his guardian angel appears. He has turned to her before and she looks much like the Wicked Witch of the West. Karl is asking for help. We gotta do something, we gotta shake things up. For the first time since World War II, we're leaving office without a candidate ready to run. What should we do? The Witch ponders a moment and then, with a sly grin, whispers. "The VP". "Do something about me Vice President." The vision disappears but Karl dreams on.

His senses are now alert. How did we get in this fix?

We do have a VP, highly visible, leaving office after 8 years, and he insists he won't run for president. In his dream, Karl wonders about a new fresh face in that office? Think of the jump start that might give the campaign. But what about Cheney? God knows he's had his medical problems. For a long time. Maybe he's sicker than I thought. So sick, he would have to resign. I need to talk to his doctor. And the dream fades.

Well, politicians have strange dreams. Karl Rove emerged from his with a new idea, the thought of how his chances for success in 2008 might improve with a fresh, new Vice President. But, during most of our nation's first 200 years, that idea would have been almost ludicrous. For most of that time, the nation's vice president has been just an after thought, often a joke.

There's an old story that tells it all. Once there were two brothers. One ran away to sea and the other became vice president. Nothing was ever heard of either of them again.

But clearly, there have been times in our past when the VP has been of enormous

importance. The most dramatic episodes, obviously, occurred with the death of the president. This has happened a total of 8 times. And there have been at least as many instances where health, resignation — or attempted assassination such as happened with Ronald Reagan — focused our attention on the vice president.

The Wicked Witch, when she whispered "the VP", was calling attention to the 25th amendment to our constitution. Like most people, she probably didn't know it. Prior to passage of the 25th, over 150 years earlier, another amendment, the 12th, also shaped our current views of the office of Vice President.

Tonight, we will try to keep you awake while we look at the role of the Vice Presidents in our past, and the impact of these two amendments on that office.

The Vice Presidency was enshrined in our original Constitution, though in such a way that its occupants almost dreaded serving. Our first VP, as we learned in school, was John Adams who served 8 years in the shadow of George Washington. He was followed for four years by Thomas Jefferson with Aaron Burr in that office during the next four. These three men were really political giants of our early history. Each had an impact on the way we regard the office today.

Poor John Adams. Like Washington, he was elected unanimously in the original electoral college system. He wasn't in office long before he described it thus: "my country has contrived for me the most insignificant office that ever the invention of man contrived – or his imagination conceived."

The duties, as set forth in the constitution, were pretty simple. Our second highest officer was — supposed to preside over the Senate, — vote to break ties when they occurred, — and stand ready to replace the President if he could not carry out his responsibilities. Adams, this giant of the revolution, who had served on that important mission to Paris, now found himself with virtually nothing to do. President Washington didn't ask him for much advice. So Adams stewed in office for eight years, waiting his turn to become president.

When Adams was elected President, he nearly didn't make it. His electoral margin over Thomas Jefferson was only 71-68. As then written, the Constitution provided that the person coming in second would become VP. Jefferson then found himself forced to work under Adams during the next four years. They did have major differences on foreign policy, primarily their views of the French revolution, but they managed to get along. And their later years created that celebrated series of letters that re-kindled their friendship. Jefferson thought

even less of the VP office than Adams, and he found ways to spend most of his elected time at Monticello. Also, he decided not to participate in Cabinet meetings which in future years further defined the limited role of the Vice Presidency.

As Jefferson made ready to become President — and you will note that our first two vice presidents moved up to become President — he faced a major challenge from Aaron Burr. Burr was a sort of child genius, graduated from Princeton at age 16 and later had distinguished service as colonel under Washington during the Revolutionary War. He had strong political ambition and considerable sectional support, particularly from the Northern states. When the votes were counted, Burr and Jefferson had equal first place votes in the electoral college— the famous tie. The law at that time called for the House of Representatives to break a tie and it was only after 36 ballots that Jefferson was declared winner. Burr then became Jefferson's Vice President, not a happy situation.

Burr, as we know was a real piece of work. It was during his term as VP that he killed Alexander Hamilton in a duel, and later, after leaving office, he was charged with treason for his adventures in the West, though not convicted. Ironically, this has made him one of our most famous Vice Presidents.

By now, it was clear that the established method for choosing a President needed to be changed. A system which gave the second office to the major opponent in the campaign simply would not stand the test of time.

These events gave birth to the passage of the 12th amendment to the constitution in 1804.

As originally established, the Electoral College was designed so that each elector cast two votes for President. When totaled, the idea was that the winner would be President with second place earning the Vice Presidency. This made some sense with such widely popular figures as Washington, Adams and Jefferson. But political parties soon emerged, changing the dynamic.

Under the 12th, this was changed, in the new system —still in use today, electors cast separate votes, one for President and one for VP.

While the 12th removed the possibility of another fiasco, such as the Jefferson - Burr tie, it had an unintended and long term impact as well. With the party system growing, the VP quickly became irrelevant. Party bosses took over selecting the running mate, often with very little involvement of the Presidential candidate. Geographic balance — East vs. West, North vs. South — became the guiding principle. Pure politics, rather than regard for ability,

developed as the general rule for balancing the ticket. It is small wonder, during the next 150 years, that we have had so many vice presidents most of us have never heard of.

So, the founders set up a vice presidential office with little if anything to do, and then they created a system destined to select, what one person described as "obscure men".

A noted scholar described the job as "the least understood, most ridiculed and ignored constitutional office in the federal government"

The Vice Presidency might also be described as the office we can do without. There have been a total of 14 presidencies where there was no vice president during at least part of the term. From 1850 to 57, a span of 7 years, we had a VP in office only 2 months. For 8 years leading up to 1889, we survived with a VP in office less than 9 months.

On the other hand, 9 VPs have become president by succession, as the result of death or resignation. And, over the span of years, VPs have cast over 230 tie breaking votes in the Senate. So, it is clear, that it does make a difference who occupies that office.

Despite these mixed readings, the disparagement of the office continued and grew. Woodrow Wilson's VP once told his secret service body guard, "Your labor is in vain. Nobody would ever be crazy enough to shoot a vice president."

Alben Barkley really wanted the job of running as veep along with Harry Truman. Beleaguered Alben was kept waiting while the party bosses offered the vice presidency to several others. He bemoaned that "the office was like a biscuit —which was passed around until it got cold."

Dick Nixon, who had been a VP himself, was now running on his own and had the nomination wrapped up. So, he did some polling to help decide who would be of the most help to him during the campaign. He tried 3 alternative running mates. In each case, Nixon found himself more preferred with no VP candidate than with any of the three.

And there is an entire book designed to underscore this concept — that VPs get no respect. Its title tells it all: Bland Ambition: The Cranks, Tax Cheats, Criminals and Golfers who made it to Vice President.

One item this author feels worth reporting covers William Rufus de Vane King. Most of us have never heard of Rufus. A southerner, he was put on the ticket by party leaders, ignoring his ill health, to provide that regional balance we mentioned. According to the author, King was an alcoholic, had tuberculosis, and was also rumored to be homosexual. Right after the election, he traveled to Cuba for medical reasons. While there, he was sworn in, the only person to do so outside the country. Rufus then died after serving only six weeks.

The office was left vacant for the next 3 years. Another reminder of why VPs have not been held in high esteem.

For one hundred years, then, we had a succession of these "obscure men" serving as vice president. And this inevitably led to water seeking its own level, so to speak, with highly capable people shunning the office. And that was the situation when Theodore Roosevelt first considered joining his party's ticket as vice president to William McKinley.

TR finally agreed to be part of the ticket as McKinley sought his second term in 1900. But he voiced great misgivings about the vice presidency. "I see nothing in it for me. It would be an irksome, wearisome place" he said.

As we know, he brought a huge level of energy and intensity to everything he tackled. His daughter, Alice, once described his compulsive need to be the center of things this way: "he wants to be the groom at every wedding and the corpse at every funeral". Such men did not usually end up as VPs.

Roosevelt had become Governor of New York, after his exploits on San Juan Hill in Cuba had made him a national celebrity. But his hold on the office was tenuous, in part because of his fractious relations with the party bosses in Manhattan.

While not certain of the nomination, his broad popularity galvanized the convention and he was nominated on the first ballot. There were dissenters. One party leader fretted "don't any of you realize there is only one life between this madman and the presidency"

He then went on to give the campaign a major boost, which helped assure McKinley a second term. Teddy then settled down for an expected life of boredom, and was actually planning to study for the bar. Suddenly, (that all changed when McKinley was shot, only 6 months into his term.

This reluctant Vice President then went on to create a record as one of our most accomplished leaders. Started our National Park system, Panama Canal, Nobel Prize. And we mustn't forget his place on Mt. Rushmore, that monument to 19th century presidents.

One might think that TR would have elevated the reputation of the vice presidency. But it didn't happen, at least right away. It was another 50 years before the office achieved much added prestige.

As we have known, over the years we have had dead presidents and dead vice presidents. Not a happy situation. Fortunately, we have not yet had both offices emptied out at the same time. But, after each death, or during a serious illness, the Congress had to face two questions: the first, how do we clarify, unmistakably, the proper steps for succession to the

presidency, and second, how do we arrange to fill an empty office of the vice president.

And, following each tragic event, the records are full of hearings and arguments about how to deal with the question of succession.

Finally, the national jolt of Jack Kennedy's assassination made it clear the problem could no longer be avoided. We were left with a new president, Lyndon Johnson, with a history of heart trouble. On top of that, there was still no provision for replacing the vice presidential vacancy. The existing Constitution provided as back ups, the leaders of the House and then the Senate, in that order. And one was 75 years old, and the other 86. Finally, that was enough to get Congress to move.

After many months of hearings, a new bill emerged which ultimately became the 25th amendment to the Constitution.

The prime thrust of the 25th was to clarify what would happen with the disability of the sitting president. It is one of our longest amendments — but it has only a brief Section II that deals with the Vice President,

The disability question had arisen many times in the past. Garfield lying in a coma for eighty days before succumbing to an assassin's bullet. Wilson an invalid for the last eighteen months of his term, the result of a stroke. Franklin Roosevelt suffering mental distress, during the last part of his 3rd term and into his 4th. Ike with a heart attack, and then in his second term, a mild stroke.

Over the years a series of unanswered questions arose, who was to determine the existence of an inability, one doctor or a team? what is the role of his wife? how was the matter to be handled if the President was mentally impaired but sought to continue? What was to happen if the President recovered — or thought he recovered?

Running through the deliberations was the nagging concern with a possible "conspiracy"; that is, the natural steps by a wife, or devoted staff, to keep a serious medical problem secret. Much in mind were such actions during the illness of Wilson, Roosevelt and Eisenhower.

Oversimplified, the 25th says this about disability: if the president transmits to congress that he is unable to perform — OR the VP and a majority of the Cabinet send the same message, then the VP becomes acting president. If, later, the president thinks he has recovered, but the VP and majority of the cabinet don't agree, then Congress decides the issue. But tonight, we are primarily concerned with Section n and how it might impact future vice presidential fortunes.

Section II is just one sentence and simply states:

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.

That's it. Incredibly, it is the first such statement since the original Constitution. There are two items here worth emphasis. The wording is SHALL nominate- to state clearly that the President has no option, this to avoid the possibility of political games by leaving the office vacant for awhile. And the other is MAJORITY VOTE. During the debate, there were arguments that a two thirds majority should be required to approve a nomination, much the same provision as for impeachment. But the fear was that such a provision would generate endless filibustering, so a simple majority was finally agreed upon.

We will note that the 25th devotes 3 sections to the inability of the president, but it apparently assumes the VP will never get sick. It leaves unresolved what happens if the VP has a serious illness which might stretch over many months. It does leave standing one other minor duty of the vice president — which is to preside over the outcome of the presidential vote by the Electoral College. This must have been inserted by a sadist who fore saw that Nixon, after losing, would be forced to announce Jack Kennedy's win. And the same for Gore with Bush II. A bitter pill. As vice presidents, they each had to pronounce wins for their opponents.

The 25th went into effect in 1967 and, remarkably it had to be invoked just six years later. When Spiro Agnew was forced out, it was Section n that came into play.

The Agnew affair actually began with the investigation into bribery of a minor official in the State of Maryland 10 years earlier. As the case broadened, Agnew soon was identified as receiving bribes, first as a Baltimore official, then while Governor of Maryland and finally in receiving \$10,000 in cash as a sitting vice president.

Agnew was forced to resign, and as we all witnessed, Nixon appointed Gerald Ford as VP and Congress easily approved him just two months later. You may have forgotten that the vote was by no means unanimous with 35 votes against in the House and 3 in the Senate.

And then we all endured the Watergate affair with Nixon resigning less than a year later. So, once again Section II came into use when new President Ford sent up the name of Nelson Rockefeller to become VP.

Rockefeller did not quite have Ford's smooth sailing when his name went to Congress. What a bizarre situation. We're asking a bunch of politicians of the opposite party to quickly approve a nomination to the 2nd highest office in the land. On top of it, Rockefeller had a strong national standing, maybe greater than Ford's, and was considered a very likely Presidential candidate. Democrats had little interest in confirming their next possible opponent.

His enemies rooted in every nook and cranny of Nelson's past. They seized on his huge wealth, and his record as governor of New York to stymie the proceedings. News emerged of a series of large financial gifts, smacking of corruption. Many other revelations followed and, at one point, the nomination seemed doomed. The process dragged on for five months. In the end, Rockefeller gained majority approval, though 128 voted against him in the House.

The message here, if you are Karl Rove's Wicked Witch, is that approval of a replacement for the current vice president would be no walk in the park.

So, the 25th came along in just the nick of time, so to speak. Never did the amendment's drafters conceive that we would end up with un-elected persons in our two highest offices. But, it may have been a god send as well. Experts speculate on the agony the country might have suffered if there had not been a vice president in waiting. With the office vacant, and the next person in line the Democratic Speaker of the House, it is possible Nixon might have been encouraged to tough it out and see if he could escape impeachment. We will never know.

The 25th may have been a savior to the country during those trying times around Watergate. But it did nothing to change the defined duties of the vice president. They remain essentially the same as they were 200 years ago. However, the office has undergone a sea change in its influence — and even power. Most of that process started after World War II.

The low prestige of the vice presidency carried right through the years of FDR. His first VP, John Nance Garner, was thoroughly disgusted. He felt his service was a complete mistake, describing the office "as not worth a pitcher of warm spit". He was from Texas and it's doubtful that spit was what he said, but we get the general idea.

But Lyndon Johnson, when he finally became president on his own, did not have FDR's problem of figuring what he wanted in a VP. What he wanted was loyalty. Lyndon had his own way of describing the loyalty he expected. In one of his calmer moments, the holder of the highest office in the land said, "I want him to kiss my ass in Macy's window at high

noon — and tell me it smells like roses"

But before long, that "pitcher of spit" tamed into something else: a real job.

There is some debate, but most observers believe the turning point began with Dwight Eisenhower. Ike had emerged from World War II after having led one of history's largest military operations. With his understanding of organization, he delegated significant duties to Vice President Dick Nixon. And he permitted Nixon to build a small staff of his own.

Of course, the Roosevelt treatment of Harry Truman was still fresh in mind. Though only in office a short time, Truman was completely out of the loop on virtually all significant issues facing the government. As we later learned, Harry did not even know about the atomic bomb when he was sworn in.

So, Ike gave Nixon more to do. Particularly in foreign relations. Nixon was all over me globe. You may recall his famous kitchen debate in Moscow with Nikita Khrushchev. Seldom did a VP have such great visibility.

With each new administration, the duties of the VP expanded a bit. Kennedy kept Lyndon Johnson well clued in on major issues.

Jimmy Carter continued, as did Ronald Reagan with his treatment of George Bush I. One of Bush's major jobs turned out to be representing the US at the funerals of foreign heads of state. Bush made a joke of it. He loved to describe his job this way: "You die — I fly". And we thought he didn't have a sense of humor.

The growing role of the VP continued with Bill Clinton and Al Gore. Gore stepped into a slew of major policy matters including strong support of NAFTA, which put him in that highly charged TV debate with Ross Perot; he led a major review of waste and fraud in the federal government; and he was the leader of the US delegation on global warming which produced the controversial Kyoto treaty, just to name a few. Certainly, a sharp contrast with the minimal role played by the likes of Harry Truman or even Theodore Roosevelt.

And today we have Richard B. Cheney. On paper, perhaps the most qualified of anyone who has held the office. Cheney served in Congress for six terms; then as Gerald Ford's chief of staff; and later became secretary of defense during the first Gulf War. On top of that, he was CEO of the giant Halliburton company, a member of P&G's board of directors and an outstanding fly fisherman. High qualifications, indeed.

During his six years as vice president, Cheney has led a major review of all intelligence capability; headed a major energy task force; and is regarded as one of the main architects of the response to 911 including the Iraq invasion. Some have even termed him the

"prime minister" of this administration, unusual recognition of the unique role played by this vice president.

But, what about Karl Rove's problem? What about 2008? Cheney has persisted in his original pledge that he has no plans to run for president. He has been consistent in his intentions, but he can also be cagey.

There was an incident while he was here in Cincinnati at the Netherland Hilton. It was back in the early days of the 2000 election— some of you may have been there. His talk was about the economy or something. At the time, there was much speculation that he might make a run for president.

I asked Rob Portman if Cheney was going to enter the race, and Rob said, "Why don't you ask him". So I did. This was a big audience. The room was filled, so don't get the notion this was a private little discussion between Cheney and me. But as we have seen many times, he cocked his head with that crooked smile and almost bashfully said "thanks for asking". And then he went on to say something like I am still considering it but haven't made up my mind.

And that may well reflect his thinking on this night in November when Karl Rove is dreaming.

You will recall, when we began this vice presidential journey, that we found the political genius in a very disturbing dream. He was perplexed over his party's lack of a clear presidential candidate for 2008. His angel, the Wicked Witch, was filling him with weird thoughts about the vice president. Might his health force him to resign? A replacement might invigorate the campaign.

Karl's Angel must have been reading some medical books. Cheney's health has certainly been an issue since well before he took office. He has had four heart attacks, the first at age 37. He has had quadruple bypass surgery and two angioplasties. He also has a pacemaker. And more recently, two stents were inserted in knee arteries to deal with an aneurysm. And he had a defibrillator implanted 5 years ago. Imagine getting him through airport security.

And yet, as recently as July, his doctors pronounced him in good health, with his pacemaker working properly. Their report stated that his "cardiac status remains stable".

So Karl and his angel may continue to dream, but it is more than likely that Cheney will finish out his term.

In fact, on this very same night, we have another person asleep. It shouldn't surprise you to learn that it is Vice President himself. And he is having his own dream. He's beginning

to wonder about his decision not to seek the presidency.

His heart specialist says that he is very fit. And, he muses to himself—look at my efforts these past few months. I've given over 60 speeches in 25 states. My approval ratings may be down, but they love me at those fundraisers. And those are the people who vote in primaries.

I need to rethink this next step. After all, I'm nearly 4 years younger than John McCain.

In his dream, Chaney has his own vision, and it is quite different from Karl's. More like a fortune teller. She reminds him of the VPs who have become president. She whispers the name of Teddy Roosevelt. Look what he accomplished. Then she mentions Dick Nixon. Sure, things didn't work out for Dick, but he did get elected president, twice. And there was Dubya's father. He jumped right into the White House after 8 years doing what you've been doing. And Al Gore nearly made it too.

Chaney's dream is interrupted for his regular 3:00 AM trip to the bathroom. The dream leaves him shaken and he begins to think Big Thoughts. Maybe it is too soon to retire. Our record on the economy is strong, and we put through that big tax reduction. Yeah, we've had some problems. Iraq hasn't gone too well, but we got rid of Saddam. I did tell that Senator to go screw himself. — Mustn't do that again. And there is that shotgun blast of my hunting friend. Maybe I should stick to fishing.

The VP is back in bed. And he quickly falls into another dream. Only this one has turned into a regular nightmare. Another vision appears, only this one is more like Darth Vader. Big, dark, dominating. He doesn't whisper. He virtually roars another name. It's Hillary! He doesn't have to ask Hillary who. Chaney recoils: we certainly can't let that happen. Maybe I should run. I really owe to the country. The vision disappears and in the morning the vice president awakes.

He begins to see his future in a new light. He mutters to himself, "I need to schedule another speech in Iowa."

"And just for me hell of it,— I think I'll go into Karl Rove's office and do a few push ups."

Thank you.

25th Amendment to the US Constitution

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

12th and 25th Bibliography

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