

## UNPREPARED

### WHY INAUGURATION DAY IS DANGEROUS

By Norman J. Ornstein

*The New Republic*

January 17, 2005

Traveling around Boston, Massachusetts, during the Democratic convention last summer wasn't easy. Fearing a terrorist attack, the Secret Service had ordered the closure of 40 miles of roads around the FleetCenter, where the convention was held, and 3,000 police were on duty to guard the site. The security measures taken during the Republican convention in New York City were even more extreme, with 10,000 police--many clad in riot gear--patrolling the streets immediately surrounding Madison Square Garden, seven police helicopters hovering overhead, and 26 police launches patrolling the Hudson and East rivers. There were stories everywhere about the potential threat to the conventions, leading the two parties to develop their own contingency plans. And, once the conventions passed without incident, federal and state officials began fretting over how to secure the nation's 193,000 polling places on November 2. After all, a presidential election seemed like a logical target for terrorists aiming to disrupt or devastate U.S. democracy.

Now consider the upcoming Inauguration Day on January 20. Washington, D.C. and the Department of Homeland Security plan to beef up security for the inauguration ceremony itself. But there has been almost no public discussion of the issue. I trust the security specialists have done what they can to prevent an attack. But I know that next to nothing has been done to minimize the disruption that will follow if there is an attack.

At noon that day, as specified in the Constitution, the president and vice president will be sworn in for four years in the White House. Over many decades, it has become a singular event, with a ceremony on the west front of the Capitol attended by thousands of people and televised to hundreds of millions around the world. Every second of the inaugural ceremony--from the entrance of the president to the benediction and the swearing-in by the chief justice--is carefully choreographed by a joint panel of congressional leaders. The inaugural address is one of the most significant speeches a president makes.

The whole spectacle is a celebration of our democracy.

It is also the single most vulnerable moment for our constitutional system--far more dangerous than either the conventions or the general election. Gathered on the west front terrace at the same time are the president and vice president (as well as the outgoing president and vice president in some years), the entire Supreme Court, the congressional leadership and most of the members of the House and Senate, the incoming Cabinet, and a slew of other dignitaries and high government officials.

Here is the nightmare scenario: Right at noon, a suitcase nuclear bomb goes off somewhere on the Mall--a bomb small enough to fit in a satchel but powerful enough to devastate six to ten square city blocks, or most of the area between the Capitol and the White House. (Such a bomb could easily wreak havoc even if outside the zone of protection contemplated by security authorities this year.)

The result would be mass chaos in Washington. There is no president to be sworn in at noon. The Presidential Succession Act of 1947 says that, after the president and vice president, next in line is the Speaker of the U.S. House of Representatives, followed by the president pro tempore of the Senate, followed by the Cabinet in order of the creation of each office. But there is no vice president, speaker, or president pro tempore; all are dead. This year, when some of President Bush's Cabinet secretaries are continuing on in the next administration, one of them might survive and be able to serve as president. But what if that weren't the case? And what would happen if an attack occurred during a year in which a new president assumed office? Who would be president then?

There would be many contenders, each eager, a la Al Haig, to be "helpful" by stepping into the vacuum to bring stability, including military leaders, surviving members of Congress, and maybe even outgoing Cabinet members who have forgotten to submit their letters of resignation--or at least who say they have. The House, if there were one, could appoint a new speaker. But the Constitution says that, to conduct any official business, the House must have a quorum of 218 of its 435 members. Since the Civil War, tradition has modified the quorum requirement to include half of the living

members, so if any members of Congress have survived the attack, they could band together and select a new speaker--who would then become president for the next four years. That could conceivably be done by a handful of representatives--if even three survived, two could make a quorum, choose a speaker and, thus, a president. But, if there is no way of determining for some time whether other members of Congress are still alive, the tiny quorum would be potentially unconstitutional. And who would serve as president in the meantime?

All these questions--Whose claims to be next in line prevail? When can a reduced Congress meet and make decisions under extreme conditions?--could normally be resolved by the Supreme Court. But all the justices, or at least enough to eliminate the statutory quorum requirement for the court of six justices, are gone under this scenario. The 13 federal courts of appeals would still be in existence (or, at least, all except perhaps the Washington, D.C. Circuit), but no method exists for making one of them, or some other body, the alternate Supreme Court if needed.

Of course, even if the handful of lawmakers choosing a president under these circumstances were somehow deemed legitimate, the new president could well be radically different in ideology from the deceased president-elect, thus reversing the will of the voters for a full four years; imagine, for example, if a Speaker Bernie Sanders came to replace Bush, or if Tom DeLay replaced a future incoming liberal Democrat.

Doomsday scenarios like this have been the stuff of science fiction and Tom Clancy novels. But now they are no longer fanciful or virtually impossible. Suitcase-size nuclear bombs exist and are supposedly being sought by terrorist operations.

What needs to be done? First, we need to be sure we can quickly reconstitute a representative and a functional Congress to prevent the specter of months of martial law and to make sure that a democratic body can resolve disputes over power or legitimacy that might be triggered by the disaster. To do so requires a constitutional amendment to provide for emergency interim appointments to the House in the event that a catastrophe kills many of its members, and such appointments for both houses

if a large number are incapacitated or missing, making a quorum of living members impossible.

Second, Congress and the White House need to revamp the presidential succession process to make sure that some figure from outside Washington is in line. A full reconsideration of the Presidential Succession Act of 1947 would remove members of Congress (the speaker of the House and president pro tempore of the Senate) from the line. Most constitutional scholars believe that it is unconstitutional for members of the legislative branch to be eligible for succession, which the Constitution limits to "officers" of the United States, meaning executive branch officials. Constitutional or not, it is simply unwise to allow the possibility of a speaker from a party different than that of the president-elect to assume the White House, or to have a senator high up in the line of succession whose main qualification for being president pro tempore is longevity (think Strom Thurmond).

Third, Congress and Bush should adopt an informal process for 2008 and any future instance when there is a change of administration, whereby the outgoing president nominates, on behalf of the president-elect, one or more of his or her Cabinet choices in December or early January, allowing the Senate to hold hearings and then vote to confirm the new Cabinet secretaries by the morning of January 20, with enough time for at least one of the secretaries to leave Washington by noon. Then, if there is a disaster at the inaugural, there is a clear alternative in the line of succession ready to step in with full legitimacy.

Fourth, we need an alternative Supreme Court in the event that our existing one is wiped out. The obvious solution is to allow for the creation of a temporary Supreme Court consisting of the chief judges of the 13 appeals courts, along with any surviving Supreme Court justices, whenever the Supreme Court drops to four or fewer members.

So which of these steps has been taken? None. Just as real and frightening as the prospect of doomsday is the lack of planning by our elected officials in the three-plus years since September 11 to cushion against the chaos such an event would trigger. With the exception of a handful of members of the House and Senate, in the three years since September 11,

both Congress and the Bush White House have reacted to this doomsday threat with yawns or annoyance that anyone would even mention the potential risk.

Why? Focusing on issues like these is like writing a will. It forces people to contemplate their own mortality and the difficult issues associated with it. Without leadership forcing lawmakers to take on these questions, rank-and-file members can easily rationalize doing nothing. And that is what they have done. Neither Speaker Dennis Hastert nor Senate Majority Leader Bill Frist has made any of these issues a priority. In the House, Hastert has been intimidated by Judiciary Committee Chair James Sensenbrenner, who opposes allowing emergency interim appointments on the grounds that the House should keep its tradition of selecting members only through elections (even if the alternative is no functioning House). And Congress has become only more complacent as the time without a terrorist attack on the United States has stretched beyond three years.

Homeland security, military, and Washington, law enforcement officials have put in place unprecedented security measures for this January 20. God willing, there will be no incident, and Bush and the country will have another wonderful demonstration of democracy in action. But that will not erase the threats to future inaugurations or to the larger vulnerabilities of our government in an age of terrorism.

*Norman J. Ornstein is a resident scholar at AEI.*