

WORST-CASE SCENARIO: THE U.S. HAS NONE

By Dana Milbank
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Imagine the unimaginable: The president, in the White House, the vice president, at the National Observatory, and all Cabinet members, in their respective agency headquarters, are killed in a terrorist attack on downtown Washington. So are all members of Congress, except the few who happen to be out of town.

What happens to the Republic? At the moment, the answer is alarming: chaos. The Sept. 11 attacks and subsequent release of anthrax on Capitol Hill have left many lawmakers and constitutional experts concerned that the federal government does not have adequate succession and continuity plans in place to recover from a catastrophic terrorist attack on Washington.

Current contingencies, designed during the Cold War and based on an intercontinental nuclear strike for which there would be warning, offer limited guidance for the government in the case of a nuclear, biological or chemical attack by terrorists that devastates all three branches.

The Sept. 11 attacks brought the problem to light. Although such an event is highly unlikely, there is no plan for replacing the president, the House of Representatives and the top echelons of the judiciary if virtually the entire federal leadership were to be destroyed.

The changes since Sept. 11 have been mostly logistical. Vice President Cheney is often taken to a "secure undisclosed location." All members of Congress and

some top aides have been given BlackBerry devices allowing them to receive immediate, confidential information about a security threat or evacuation plan. The House has ordered the wiring of an alternative meeting place at Fort McNair in the District if the Capitol cannot be used.

But several people who have studied the scenarios said these adjustments fall far short of what is necessary. Current law allows only for special elections in the case of House members, which would take weeks, although senators can be replaced by their state governors.

"We have to realistically think about something more catastrophic," said Rep. Brian Baird (D-Wash.), who has proposed a constitutional amendment allowing governors to appoint new representatives if a large number of lawmakers were killed or incapacitated. "If somebody hits us in a severe and coordinated attack, there will be great confusions and possibly a constitutional crisis."

Norman Ornstein, a scholar at the American Enterprise Institute, called current government preparations "utterly irresponsible." He favors a version of Baird's proposal and revisions to the Presidential Succession Act of 1947 – possibly adding state governors into the line of succession. "It's about having a Congress and having a president at a time when you need it most. There are a lot of times when every single person in the line of succession is inside the Beltway, and we live in a time where it's conceivable to lose everybody inside the Beltway."

Long before Sept. 11, the federal government planned for the unimaginable. President Bill Clinton's National Security Council had an aide who handled nothing but continuity-of-

government issues, his work shrouded in secrecy. Aides to President Bush say they had been contemplating changes to assure continuity in government even before this fall's attacks. Those involved in the discussions were not permitted to be interviewed, and the White House, citing security concerns, declined to discuss any proposals.

"We continue to take a look at those plans and see what steps need to be taken, need to be changed," a White House spokeswoman said. "A lot of these plans that were fashioned and formed based on the Cold War, while needing to be fine-tuned, are not irrelevant."

The administration last month proposed to Congress an emergency spending procedure that would allow the president, in consultation with congressional leaders, to continue government operations for 30 days at existing funding levels if spending authority expires during a crisis when Congress cannot convene.

The White House dropped the proposal when congressional and administration aides could not agree on the structure of such a mechanism. Congress was willing to give the president such authority if congressional leaders from both parties agreed, but lawmakers said they balked when the White House sought permission to act only after consulting the House speaker.

John Feehery, spokesman for House Speaker J. Dennis Hastert (R-Ill.), ruled out constitutional changes such as Baird's proposal. "We've had no discussions on moving any legislation," he said. "We don't think there's any movement toward having a change in the Constitution."

Still, even those who oppose a proposal as lofty as Baird's see need for change. Rep.

Victor F. Snyder (D-Ark.) said he objects to the amendment allowing governors to name representatives in a crisis because "we ought to be very cautious about doing away with this important quality that our framers intended of House members being elected." Even if all but a few representatives were killed, "I do not see that the government would cease functioning," he said.

Instead, Snyder wants to encourage states to revise special-election laws to allow them to expedite elections to replace representatives who die.

The government has long had precautions to protect those in line of succession, most visibly the practice of keeping one Cabinet member out of the House chamber for the State of the Union address. But many Cold War practices – such as building a bunker for lawmakers to meet beneath the Greenbrier resort in West Virginia – assume there would be warning before an attack.

But if terrorists using the element of surprise were to wipe out the government, "we don't have anything in place that would deal very adequately with that matter," said David E. Kyvig, a constitutional historian at Northern Illinois University. "That could be a cause for chaos."

The framers understood conventional warfare, but not terrorists armed with germs and nuclear devices. "James Madison was not exactly in tune with the nuclear age," Kyvig said.

Among the ideas lawmakers and scholars are pondering:

Rep. James R. Langevin (D-R.I.) proposes an "eCongress" system, a secure computer system for voting and communicating

among members of Congress if they could not meet at a single location because of an emergency. He seeks permission from the House Administration Committee to study the possibility.

Rep. Brad Sherman (D-Calif.) proposes changing the presidential succession line so that if the president and vice president were to die, a previously designated congressional leader from the president's party would assume office. Currently, succession goes to the House speaker and Senate president pro tempore, then to members of the Cabinet.

Ornstein favors a variety of reforms: more meeting places for Congress outside Washington, a law designating a court to replace the Supreme Court if the justices are killed and replacing the Senate president pro tempore (usually the oldest member) with the majority leader for purposes of succession. Ornstein would also add governors to the succession, most likely by state population.

Baird, probably the most aggressive lawmaker on the subject, favors alternative meeting places for Congress – and not merely Fort McNair, which would likely be destroyed by the same nuclear bomb that would destroy the Capitol. Congress could meet in state capitals, he suggested.

Baird's top priority, though, is the quick, temporary replacement of lawmakers killed or incapacitated in a terrorist strike if more than 25 percent of the chamber is affected. Technically, the House could operate with only a few members, because the law requires only a majority of members to be present for a quorum.

But, Baird said, "if we have a House of Representatives that's in the hands of four or five people, we've done a disservice to

the framers." More than 30 similar proposals had been offered during the Cold War without success, according to the Congressional Research Service.

Baird said Bush seemed "very interested" in the plan and suggested Baird take it up with Cheney.

