

Simpson Rips Judiciary Chairman on Continuity

By Suzanne Nelson

Roll Call

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By his own admission, former Sen. Alan Simpson (R-Wyo.) "erupted" over what he deemed House Judiciary Chairman Jim Sensenbrenner's (R-Wis.) stubbornness on the subject of Congressional continuity Tuesday.

The comments came at a Senate Judiciary Committee hearing on a proposed constitutional amendment and implementing legislation to allow for the immediate reconstitution of both chambers should large numbers of Members be killed or incapacitated.

Simpson co-chairs the blue-ribbon Continuity of Government Commission, which determined last year that it isn't feasible to deal with such a scenario statutorily. Sensenbrenner, along with much of the Republican leadership in the House, has steadfastly opposed even temporary appointments to the House and has authored legislation to instead expedite special elections.

"If somebody could hear us over there in the House, we're talking about temporary," Simpson told the Senate Judiciary Committee. "If the argument is continued in the House that it's simply the people's House" and that even temporary appointments would change its character, "I'll tell you what would destroy the character of the House - 220 of them laying in an alley, incapacitated with burns or dead."

Simpson went on to charge that Sensenbrenner has treated the commission,

comprising former Members, former executive branch officials and constitutional scholars, with disdain.

"I am astounded at the reaction in the House. It's almost embarrassing. We've been treated rudely, rudely, by the chairman. I hate to be that critical," he added, explaining how he "respects" and has "enjoyed" working with Sensenbrenner in the past.

The former Wyoming Senator almost pleaded for Sensenbrenner to invite him to discuss the issue. "We need to have the chairman open his door and listen. We have been rudely treated, and I think that's a shame. All I want is the same courtesy to just sit around and describe it to the gentleman. It's no time for rigidity, stubbornness and not listening. We'll sit around for a while and chew the fat."

A spokesman for Sensenbrenner responded that the two simply have "a difference of opinion."

"I don't know why members of the commission have gotten so personal about it," said House Judiciary Communications Director Jeff Lungren. "You want to talk about stubborn, the commission says anyone who doesn't agree with them is wrong and isn't taking the issue seriously."

Lungren added that the chairman expects and hopes that the bill he authored will garner bipartisan support when the full House takes it up sometime in the next few weeks.

As for any tete-a-tete between Simpson and Sensenbrenner, Lungren said: "I don't know what's going to happen at this point."

"I guess there's just an embarrassing lack of logic by the commission," Lungren added,

because if fixing continuity is such a "high priority," a constitutional amendment isn't the way to go because it will take years. "What the commission is trying to do is change the essential character of the House, which is something the Founding Fathers considered and deliberated for quite a while. Chairman Sensenbrenner has sided with the Founding Fathers on this over so-called experts."

One of the constitutional scholars who spoke at the hearing Tuesday had a response to such criticism.

Sanford Levinson, a professor at the University of Texas Law School, read from a letter written by George Washington to his nephew Bushrod Washington (who later sat on the Supreme Court).

"The warmest friends and the best supporters the Constitution has, do not contend that it is free from imperfections. The people (for it is with them to judge) can, as they will have the advantage of experience on their side, decide with as much propriety on the alterations and amendment which are necessary," the first president wrote.

"Should the point not already be clear enough," Levinson concluded, "Washington went on to say that 'I do not think we are more inspired, have more wisdom, or possess more virtue than those who will come after us.'"

Sen. John Cornyn (R-Texas), who heads the Judiciary subcommittee on the Constitution, chaired the hearing for the full committee. Although he was deferential to the House's prerogatives "out of courtesy and out of necessity," he reiterated his intention to continue pushing the issue in the Senate. He said Tuesday that he plans to address the

issue of incapacitation in the Senate - which isn't addressed in the 17th Amendment allowing states to fill Senate vacancies, and which experts believe is more likely than mass casualties.

Another member of the witness panel, Howard Wasserman, discussed incapacitation with the committee and attempted to dispel what he deems a prevalent misunderstanding - that if either chamber were to face mass incapacitation that body could simply vote to expel incapacitated Members so as to allow their replacements.

"Expulsion is simply procedurally impossible," Wasserman said, explaining that if either chamber doesn't have a quorum to do business, neither will it have the two-thirds necessary to expel incapacitated Members.

Levinson also touched on the issue of "fairness" with regard to removing incapacitated Members from their seats when they might be able to return to them in a matter of days or weeks - furthering, he said, the argument for temporary appointments.

Judiciary members Russ Feingold (D-Wis.) and Larry Craig (R-Idaho) also questioned panelists and expressed at least tepid support for Cornyn's constitutional approach - a positive sign for the Texan, who held a hearing on the issue in September at which no other committee members appeared. Craig and Feingold's presence, along with statements by full committee Chairman Orrin Hatch (R-Utah) and ranking member Patrick Leahy (D-Vt.), perhaps demonstrates that the issue is gaining currency in the Senate.

In opening remarks, Feingold said that while

he approaches "all changes to the Constitution with some skepticism, I do recognize that there are some problems that can't be solved with legislation, and continuity of Congress may be one of them."

He said the assassination of President John F. Kennedy made clear that the country needed to have a provision for presidential incapacity, subsequently addressed in the 25th Amendment. "It may well be that the attacks of Sept. 11 could lead to the 28th Amendment," he said.

Craig recalled the symbolic importance of Congress convening on the steps of the Capitol on the evening of Sept. 11, 2001. "That was probably on that day the single most important thing the Congress did for the psyche of the American people," he said, adding that Congress reconstituting quickly after a devastating attack on the institution and its Members would boost Americans' confidence in their government.

"I've always been extremely cautious about how we amend our Constitution, but you may well be right," Craig told Cornyn.