

PANEL WANTS CONSTITUTION AMENDED IN CASE U.S. IS ATTACKED

By Frank Davies

Knight Ridder/Tribune News Service

June 4, 2003

WASHINGTON— The Constitution must be amended to ensure the continuity of government in case Congress is wiped out by a terrorist attack, a blue-ribbon bipartisan commission will recommend Wednesday.

If a Sept. 11-like attack destroyed Congress, the current system of holding special elections to fill vacancies in the House of Representatives would take too long—an average of four months, depending on the state—the panel found after a year-long study.

Governors currently fill U.S. Senate vacancies, but without an amendment allowing similar temporary appointments to the House until elections could be held, the nation could have no functioning Congress in a time of great crisis.

"In the event of a disaster that debilitated Congress, the vacuum could be filled by unilateral executive action—perhaps a benign form of martial law," the commission found. "The country might get by, but at a terrible cost to our democratic institutions."

The 15-member bipartisan panel was chaired by veteran presidential adviser Lloyd Cutler, a Democrat, and former Sen. Alan Simpson of Wyoming, a Republican. It includes two former House speakers—Democrat Tom Foley of Washington state and Republican Newt Gingrich of Georgia—and two

former White House chiefs of staff, Kenneth Duberstein, who served President Reagan, and Leon Panetta, who served President Clinton.

The doomsday scenario that the Continuity of Government Commission addressed might seem the stuff of a Tom Clancy thriller, except for what happened in the fall of 2001. According to two of the plotters, the fourth hijacked plane, which crashed in Pennsylvania, was headed for the U.S. Capitol. And the anthrax-by-mail attacks that shut down a Senate office building revealed another vulnerability of the nation's legislature.

"The issue is real now," said commission member Donna Shalala, president of the University of Miami and former secretary of the Department of Health and Human Services.

"Those attacks were a warning about how would we govern if there were some terrible tragedy," Shalala said. "The answer is we would have to go to the governors."

After the attacks, members of the House wrestled with what to do about their own mortality. Several of them proposed revisions, but many resisted change in the tradition of the "people's House," for which representatives have always been elected.

Two of Washington's leading research centers, the conservative American Enterprise Institute and more liberal Brookings Institution, focused on how to ensure continuity in government in an age of terrorism. With the support of congressional leaders, scholars Norman Ornstein of AEI and Thomas Mann of Brookings helped create the

commission, which also will look at the executive branch and judiciary.

Enacting a constitutional amendment is a tortuous process, requiring a two-thirds vote by both houses of Congress and passage by three-quarters of state legislatures.

After a lengthy debate, commissioners agreed unanimously that an amendment was the only solution. Similar amendments were proposed in the 1950s and 1960s under the threat of nuclear attack, but never advanced.

"The problem of vacancies in the House is more or less the same as it was during the Cold War, but there is a much greater likelihood of an attack incapacitating large numbers of members," the commission report says, citing the threat of anthrax and smallpox.

The panel favors a concise amendment that would empower Congress to legislate several sensitive issues: How many vacancies would trigger emergency replacements, how is "incapacitation" determined and how would an incapacitated member be able return to work?

Congress has not come to grips with such issues, "and the further we get from the horror of the 2001 attacks and the dodged bullet, the tougher it gets," Ornstein said.

"But with the second anniversary of Sept. 11 looming, I hope this will nudge Congress to do something after so long."

—

The Continuity of Government Commission suggested a concise constitutional amendment and gave one example:

"Congress shall have the power to regulate by law the filling of vacancies that may occur in the House of Representatives and Senate in the event that a substantial number of members are killed or incapacitated."

—

Members of the commission are:

Co-chairmen: Lloyd Cutler, former presidential adviser; former Sen. Alan Simpson, R-Wyo.

Members:

Philip Chase Bobbitt, historian and adviser to President Reagan.

Kenneth Duberstein, who was White House chief of staff for President Reagan.

Ex-House Speaker Tom Foley, D-Wash.

Charles Fried, who was solicitor general under President Reagan.

Ex-House Speaker Newt Gingrich, R-Ga.

Jamie Gorelick, who was deputy attorney general under President Clinton.

Nicholas Katzenbach, who was attorney general under President Johnson.

U.S. Appeals Court Judge Robert Katzmann.

Lynn Martin, who was labor secretary under President George H.W. Bush.

Former Rep. Kweisi Mfume, D-Md., and NAACP president.

Former House Minority Leader Robert Michel, R-Ill.

Leon Panetta, who was White House chief of staff for President Clinton.

Donna Shalala, who was health and human services secretary under President Clinton.

(c) 2003, Knight Ridder/Tribune Information Services.