

CONTINUITY OF GOVERNMENT COMMISSION
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Continuity of Congress After a
Catastrophic Terrorist Attack
[TRANSCRIPT PREPARED FROM A TAPE RECORDING.]

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P R O C E E D I N G S

MR. DeMUTH: Ladies and gentlemen, can we please come to order and begin. My name is Chris DeMuth. I'm president of the American Enterprise Institute. I'm going to say a few words and then my counterpart, Strobe Talbott, president of the Brookings Institution, will say a few introductory words, and then we will turn things over to Norm Ornstein, Tom Mann, and the members of the Continuity of Congress Commission. Democratic governments have persistent problems in coping with the issues that involve remote contingencies of catastrophic consequences. Examples range from environmental regulation to missile defense to the terrorist alert system that has been put in place since September 11th. The men and women who are assembled here today have done a tremendous national service in drawing attention, and especially drawing the attention of people in the government, practicing politicians in the Congress and the Executive Branch, to the deficiencies of our Constitutional institutions for dealing with the problem of the death or sickness or incapacity of large numbers of members of the Congress, especially of the House of Representatives, both in thinking through the problems and the likely political contingencies and encouraging very busy practicing politicians who would rather devote their attentions to other matters to take this issue seriously. The report that they are issuing this morning, the first of several reports--this one to deal with the United States Congress--is really an extraordinary document. Among commission reports, I've rarely seen one that is so lucid and subtle, that has plumbed these issues in such a thoughtful way and come up with a series of propositions which I'm actually quite confident are going to find success in the political process. First honors are due to my colleague Norm Ornstein, who first brought attention to these issues in the days immediately after September 11th to his colleague Tom Mann at Brookings and, most of all, to the members of the commission and especially their chairs, Lloyd Cutler and Alan Simpson. On behalf of AEI and the members of the commission, I would also like to give a special thanks to the foundations that have provided financial support to make their activities possible, the Carnegie Corporation of New York, the Hewlett Foundation and the Packard Foundation of Palo Alto, California, and the MacArthur Foundation of Chicago. I'd like to ask my friend Strobe Talbott of Brookings to say a few introductory words, and then we will turn things over to the commission.

MR. TALBOTT: Thanks, Chris. I'd like not only to thank you and your colleagues for hosting this important event this morning, but to thank you personally and AEI institutionally for the many forms of collaboration that exist between your institution and ours. I think it's self-evident, including from the substance and importance of what we're talking about today, that there needs to be more of that kind of partnership between the NGOs and the foundations and think tanks, particularly in this neighborhood. And I think that AEI and Brookings have really kind of set a good standard there. It's a highly personalized collaboration, in the persons of Tom Mann and Norm Ornstein. It's also institutional in the work that we're doing on the Joint Regulatory Center. I'm glad that a number of people with other Brookings connections--former trustee, Donna Shalala, a current and very active trustee; Lloyd Cutler--could be involved in this venture. If I'm not mistaken, Ken Duberstein, another member of the commission, is not sitting here because he's up on Capitol Hill--Senator Simpson, how are you, sir? Good to see you. Ken Duberstein, who is also a member of the Brookings board, is up in the Senate presenting this report, even as we sit here this morning, to the Senate majority leader. So

that, I think, underscores both the timeliness of the report and also the degree of attention that it is deservedly getting. Norm, I think--over to you.

MR. ORNSTEIN: Thanks very much, Strobe. I'm Norm Ornstein of the American Enterprise Institute. I want to welcome you all today, and also our commission members. The Washington Times yesterday had a story by Bill Gerths [ph] headlined, "CIA Says Al Qaeda Ready To Use Nukes - Also Sees Terrorists With Chemical and Biological Weapons"--underscoring yet again the real and tangible threats that are now a part of the fabric of our lives, the desire on the part of evil-doers, as it were, to find weapons, including radiological, biological, chemical, and nuclear, if they can, to do violence upon American society. We know the violence that was done on September 11th, and we know the bullet, literally, that we dodged on Capitol Hill was fairly clear evidence at this point that United Flight 93 was in fact targeted at the Capitol Dome, and didn't arrive there, as the other planes did, largely because it took off 41 minutes late, allowing the passengers to know what their fate would be. We know as well that al Qaeda, if it fails to hit targets, tries to come back at them again.

So what used to be the stuff of Tom Clancy novels is now something that we have to deal with, and we have to deal with it in a way that responsibly prepares us and provides insurance for the American constitutional system; that in the event of some awful catastrophe--and we will do our best to prevent these things from happening--we continue to have the fabric of our Constitution intact.

That is the focus of this commission, and we are looking right now, with the report issued today at the Congress, but we will move from here to also look at the gaps, things that the framers and their successors simply could not have anticipated in the constitutional system to make sure that we are protected for the presidency and the Supreme Court as well.

As you see from the materials that you have and others will, we have a quite remarkable commission in place: Honorary co-chairs former presidents Jimmy Carter and Gerald Ford; our two remarkable co-chairs who are here with us today, former White House Counsel Lloyd Cutler, former Senate and Senate leader Alan Simpson; and other commission members with us today--Donna Shalala, former secretary of Health and Human Services and now president of the University of Miami; former member of Congress, the leadership, and secretary of labor, Lynn Martin; and, as Strobe Talbott mentioned, Ken Duberstein, former White House chief of staff, who will be with us shortly. We also have, of course, former speakers Tom Foley and Newt Gingrich; former Republican leader Bob Michael; former White House chief of staff, Leon Panetta; former member of Congress and head of the NAACP, Kwasi Mfume; Judge Robert Katzman, who's focused on these issues involving continuity in the judiciary; former top Defense Department official and deputy attorney general, who dealt with issues of this sort in many ways, Jamie Gorelick; and distinguished constitutional scholars, Philip Bobbitt and Charles Fried, who's also a former solicitor general.

They not only have the widest range of experiences inside and outside government in dealing with questions of the Constitution, but span the entire ideological spectrum and, of course, as we will see in our discussions and as you'll see reading the report, came to unanimous conclusions about where we ought to go with this set of issues.

Now, more than a year and a half after those horrific events of September 11th, with the second anniversary out there on the horizon, we're seeing large numbers of people beginning to focus on these issues. The Washington Post did an editorial on this report and the work of the commission a few days ago. Today, the lead editorial in the

Washington Times and an editorial in the Wall Street Journal also addressed these issues, looking at the report and coming to the same conclusions that we did.

And I should also note here that Senator John Cornyn of Texas, who's the chair of the Judiciary Subcommittee on the Constitution, has looked at the report and will hold hearings on these issues very shortly and attempt to move the ball forward. And I might note that we've had hearings on this issue in the Senate before. One of our commission members, Nicholas Katzenbach, who's a former attorney general, as an assistant attorney general in the Kennedy administration actually testified in favor of a constitutional amendment on these issues during the Cold War, affecting the House of Representatives very much along the same lines.

While we've thought about these issues before, they were in a different context, a context in which we would have some notice if we had a kind of devastating attack. Now we have a different context--no notice, and the possibility indeed that the kind of attack that we would have might involve more a matter of widespread incapacitation, even, than of demise of members. And so we have to look at things in a different way.

I'm going to turn to our commission members who are here very shortly for their observations on what we've done and on the report itself. As well, let me note that we have here with us the Honorable Brian Baird, member of Congress from the State of Washington, who at a very early stage in the days after September 11th, the two of us were both comrades in arms because, from that day on, we were sort of awestruck by the notion that that plane might very well have hit the Capitol with the House in morning business, and we would have been without a Congress for months at a critical time--thinking about what might be done about it, and Brian has been a leader in this effort as well.

We also have with us Jackie Leo, who's editor in chief of the Reader's Digest. Those of you here will see on your chairs a copy of a very interesting article done by Michael Barone in the Reader's Digest at an early stage on these issues as well. And the Digest has attempted to involve and engage the public, something it does very well on these issues, too. And I might note that the Digest this afternoon will be sponsoring the reception for the commission, the report of the commission, in 2123 Rayburn Office Building at 5 o'clock--which I hope all of you will come.

Now let me turn to Lloyd Cutler, a co-chair of our commission.

MR. CUTLER: I want to thank both Norman and Tom Mann for calling this problem to everybody's attention. And you begin with difficulty, that if you say to the average person, "What if one-third of Congress were killed, what would we do?", the first reaction is "What would be wrong with that?" But on reflection, thanks to Norman and Tom and others who've worked on this problem, you begin to realize that if one-third of the members of Congress or some other very high percentage were killed or incapacitated, we could not organize homeland security, we could not organize or commence the military actions we're carrying on abroad, we could not appropriate money, we could not ratify treaties, we could not appoint or confirm the appointment of judges. We simply cannot exist without a functioning Congress.

And if you posit this disaster of a very large number being killed or incapacitated, that is what we would have to do. The government would literally be crippled, and every action the president or anyone else might take would be simply a form of benign martial law. And even a declaration of martial law would require some action by the Congress itself to ratify it. It's not something under our constitutional system that the president can clearly do by himself.

Alan Simpson has been a wonderful treasure to work with. We fall off our chairs with one remark or another he makes during the course of every session. But he is a wonderful man, and I'm going turn it over to him.

MR. SIMPSON: I was waiting for more. Of all the introductions I've ever had, that was the most recent.

Let me tell you, I wanted to get here in the worst way, and I did. I don't know where the hell I've been, but I'm back. I'm here.

Let me just say, Lloyd Cutler, no one finer to work with. Great companions. I've worked with Donna Shalala, Lynn, Ken through the years on various things, trying not to let stark partisanship get in the way, which it sometimes does. But no more remarkable person than Lloyd Cutler. I have the deepest respect and admiration for him and each member of this commission. Those who are not here, also. I've worked with all of them.

This is serious business. And I think every one of us said it's a pretty grave step to go to a constitutional amendment. And it is. And I think we were all a little chary of doing it. I think the word appears several times, and I think Lloyd has used it, that we were loath to suggest a constitutional amendment. But that's what we're doing. But we're doing it in a way which should not offend Congress--and we do know how sensitive they are. We all know that. Very sensitive.

So what we're saying is a constitutional amendment, and the word "temporary" appears all through this document. That there would be temporary appointment, temporary this, temporary that, because you cannot--you can't go much further than that. And we leave the legislation to the Congress. We give the key to the Congress, and they have to open the lock. And the lock is what would happen in this terrible scenario, and could have and, intelligence shows us, would have.

So we've given it a good effort, taken a lot of time, had the two hearings. We always had a quorum, different members, and all of us at one time have been involved. And I think the thing that I would emphasize is that we can understand the situation in the House of Representatives. The Senate can be replaced in 24 to 48 hours. That's no problem.

That's in the Constitution.

But with 435 House districts that range in their own laws, in their own states between three weeks and six months to have a special election--and let me tell you, if you talk to a House member--and this man is doing tremendous work, Brian Baird--you talk to a House member and they'll say, "Wait a minute. Since the birth of the nation we have been the people's house, and we are all here by direct election, and you will not change that."

Well, that was great in those days, but it's not as helpful now. And they pride themselves, we understand that pride in the House. But what we're suggesting is the constitutional amendment giving the power to pass the legislation to set up some kind of temporary immediate--immediate--succession. And that has to be. Without that, you could have a scenario where there are five people left wandering around, and they appoint one of them the speaker of the House and that person could become the president of the United States. I don't think they'd think much of that in Salt Lake or San Francisco. And that's where we are. Who could believe it? I don't. But we're here. So that's what we're up to, and I thank Norm and Tom and the fine staff for their work. And hopefully this will receive proper hearings, and we're ready to press on with it as best we can. Thank you.

MR. ORNSTEIN: Thanks very much, Alan. Let me turn to Lynn Martin.

MS. MARTIN: Thank you. This is the least likely group and it's the least pleasant task: What happens in the kind of national tragedy that we don't want to envision? How do we talk to House members about their death and dismemberment? It's not something I like doing. And yet to not do it does not uphold what we as individuals have at different times sworn to.

I think it's easier now, too, to look at what happens to a nation, whatever that nation is, that does not have a government in place--the lack of safety, the lack of economic ability. When it can happen to a small nation, if just for a moment we put ourselves in the place of what we would be feeling--and I think it's appropriate to use such emotionally laden words.

But the one thing we will need, of course, is a chief executive to pull us together. We know that. On the other hand, we also are going to need a Congress so we can then act. It is more likely for some of us who've been elected officials to argue about the scope of government. And those are appropriate arguments. What we have to do in this country, we've got to differ, we can have people disagree with this statement. But at the end, there's still an operative word there called "government."

What the commission has tried to do is, after looking at innumerable quick fixes, which would have perhaps--I have to admit as a former House member--been the way I would have leaned initially: Let's just fix it and go on to what's important, like what does my district get? But we had to face a different reality. Our Constitution, which we treasure, will not let us do that, and it would not be appropriate for the future of the country.

I was trying to think if this is a little bit like a vaccination, but it really isn't. It isn't even about medicine. It is about that one hidden insurance policy in case real tragedy strikes. And where perhaps once there could have been people who would say that will never happen, we no longer have the surety. We don't believe it's going to happen; none of us really believe it's going to happen. But we can't guarantee it.

And therefore we propose a very simple amendment--it is not complex, it is not terribly subtle--that lets the House and the Senate look at how it wishes to do it and asks the states to help us in this process.

So we're glad we are here today. Thanks do go to everyone. This is not a perfect solution, but it is truly the best that good minds could unite and believe make it a better country with a better chance, were the tragedy to happen.

MR. ORNSTEIN: Thanks very much, Lynn. Donna Shalala.

MS. SHALALA: I've sat on a lot of commissions, none more fundamental than this one. Because this first report answers a very fundamental question: How do you preserve our democracy? That's the essence of the report, because it's about preserving the most important of our democratic institutions in times of great tragedy and of catastrophe. If Congress wanted to do one thing to reassure the American people, and probably the world, that our democracy would continue, they would move on with this constitutional amendment and then with the appropriate legislation. We know what basic science is; this is basic political science. It's about the fundamental infrastructures that preserve our democracy.

It also probably will not be scored by OMB and probably doesn't cost anything. So if they want to do one thing that would give us fundamental security that didn't cost anything, this would be it. But the cost of not doing it is very high, and that's what the report also tells us. Thank you.

MR. ORNSTEIN: Thanks. Ken Duberstein, back from the Senate.

MR. DUBERSTEIN: Thank you very much. I am honored to join the panel and to participate with so many of my dear friends.

I would say to you that during my years in the White House, we spent an awful lot of time thinking about presidential succession and about catastrophe. And yet we never spent one moment thinking about the reconstitution of the Congress, the people's house, the body that in fact is mentioned first in our Constitution. I think this is a vitally important more-than-an-exercise. I think this is essential. No one likes to contemplate their own death or incapacitation, but we are asking 535 people to do so. They have to take it seriously, because in fact this is the government of the United States.

The reason I was late is that John Fortier and I were visiting with the majority leader of the Senate, Bill Frist, and presenting him with a copy of the report. Senator Frist took this seriously, asked some questions, was frightened to think about the scenario, but knew that we have to contemplate it in light of what may have happened two September 11th's ago. This is something that is an obligation for the leadership of the House and Senate to act on.

As many know, this is not simply just a constitutional amendment, but clearly that is our major thrust. You are also seeing the House today, in the Rules Committee--and, I would not be surprised, the Senate as well--take action in creating a special or select committee to start thinking through some of the issues, the nuts and bolts of vacancies, et cetera. But there can be no doubt that a constitutional amendment is absolutely essential so that we can continue with the Congress, the House and the Senate, and let Congress deal with the issues of what's a quorum, how do you reconstitute or how do you convene. Those are things that Congress clearly should be doing. But it's all based on a constitutional amendment, which I think is urgent business as we deal with energy bills and Medicare and appropriations. This goes to the very heart, the very fundamentals of the American system of governing.

So I join everybody and thank you.

MR. ORNSTEIN: Thanks very much, Ken. Just a couple of logistics here. I'll turn in a moment for just a couple of comments from Brian Baird and then from Jackie Leo, and then we will open up to questions. And I will ask Tom Mann, who has joined me in this enterprise from the beginning, and the executive director of our committee John Fortier, to join us up here to help to deal with the questions and some of the technical and other aspects of them.

This is a press conference about the continuity of government, and the questions that we will take will only deal with the continuity of government. We have public officials and others up here who have many other areas of interest. I know that there's some interest in those things, but we're not going to deal with those today.

This is our report, which is a very handsome document. And I want to at least at this point thank our executive director John Fortier, our longtime assistant director who has just left to go back to school, Carrie Rieger, Kimberly Spears, who's worked on this from the beginning. We also have Ann Linskey here, who's joined us this last couple of weeks, who's worked for Brian Baird for some time to help with this report as well. It's not an easy task to come up with something like this, to do it in a short period of time. This is the Reader's Digest, which has the article. It's no longer on the newsstands, but few publications have the remarkable longevity of the Reader's Digest and you all know

where to find it--any doctor's office, any dentist's office, and many other places around as well. And we are happy to provide reprints.

And let me finally note that we have a remarkable website which has on it almost everything you'd want to know about this set of issues, and links to virtually everything else and other institutions, which is continuityofgovernment.org. So many questions that people will have can be answered there, or the issues are dealt with.

So Brian Baird, if you'd like to come up and say a couple of words.

MR. BAIRD: Well, thank you very much. I want to join you in thanking [inaudible]. It's rare that so many distinguished individuals get together about a matter of such grave importance. And the work that Norm and Tom and the Continuity of Government Commission has produced is outstanding. It's factual, it is informative, it's thoughtful, and I think it will be a profound service to this country.

On September 11th, as we watched the planes go into the World Trade Center, when we saw that second plane hit, I called my staff together and said if they've hit New York City, I think they will hit us as well, and I want everyone to pay attention. We were on the seventh floor of the Longworth House Office Building, and I instructed my staff to review the exit strategy and instructed them to watch out the window [inaudible].

It was not five minutes later that one of my staff members screamed, "Oh, my God, something is exploding!" We ran to the window and saw the fireball, just seconds after the impact, rising from the Pentagon. I instructed my staff to go down floor-by-floor and tell each floor that something had happened because, for all we knew, another plane was coming towards us and there was not time to do--any other way to get people out of that building. I stayed on the seventh floor and ran from office to office to make sure that the young people who worked there should know that it was okay to evacuate even if their boss wasn't there to tell them to do so.

And it was of those surreal moments as I ran down that hall wondering is another plane coming into our building, trying to get people out, but in the back of my mind being aware that the entire world had just changed and would be different for the rest of our lives.

That evening, I went home and grabbed the House Rules and the Constitution and began to think about what would happen if the House and Senate perished and the Executive Branch as well. And either that evening or the next, as I spoke to Speaker Hastert on the phone when we had one of these conferences, I said, "Of all the tasks we have to prepare for, one of them must be what we tell the American people, and what the media tells the American people, if we perish."

And my premise was this: If a news bulletin comes on and announces to the American people that we have just received word from Washington, D.C. that a nuclear weapon has been detonated, the president and vice president were meeting in the White House at the time and are believed to have perished; the House and Senate were in session and are believed to have been killed in nearly the entirety, as far as we know; the Supreme Court was meeting and they, too, are believed to have been killed, along with thousands of our fellow citizens and government officials. We'll be back in a moment.

When we follow that announcement, should it ever happen, we must, for the sake of the American people, for the sake of the world, and for the sake of our democratic republic, have an absolutely clear answer to what happens next. It has to be constitutionally valid, it has to be institutionally sound, and it must be something we can put in place in a couple of days so that this great democratic republic, with all its traditions of checks and balances and all the things that make it so wonderful, can be passed on.

We do not have that in place today. The most powerful government in the history of the world, the symbol of liberty, does not have a constitutionally sound mechanism to replace its House and Senate, does not have a constitutionally sound mechanism to replace the presidency should extensive losses occur, and does not really have a sound mechanism to replace the judiciary. That's the reality today.

I honestly believe that the work that has been done by this commission--we hope with all our heart will never be needed. But should it be needed, I know of few things either done by a private organization or by the government that will have been more important than solving this problem. And this commission has done tremendous work. And Norm and Tom and all the members have done really heroic efforts to protect this great country. Now it's up to the Congress. And we will, hopefully, carry it from here. We cannot fail in this mission because, if it's ever needed, there's nothing any of you have done that will have mattered more. Thank you, Norm.

MR. ORNSTEIN: Thanks very much, Brian. Jackie Leo.

MS. LEO: As some of you know, Reader's Digest is the largest selling magazine in the world. And one reason for that, I think, is that we can take what I just saw as a 58-page report and boil it down to three pages.

[Laughter.]

MS. LEO: One other fact that sets us apart from other magazines is that our readers vote, and not just in presidential elections. And when I mentioned this to Lloyd Cutler last summer, he suggested that we invite our readers to vote on one of the three proposals that have been considered by the commission.

Our outstanding deputy editor and Washington bureau chief Bill Beman [ph], who is here today, took the lead and asked Michael Barone to write a piece telling readers what was at stake if Congress was disabled by terrorism. And Michael's piece, "Clear and Present Danger," as you see, ran in our November issue and include a mail-in ballot indicated three choices. One was to allow governors to appoint whom they choose, not unlike the Senate; a second was to allow governors to appoint someone from the same party; and the third was to allow representatives to designate their own successors--of course, all on a temporary basis. Close to 10,000 readers responded by snail mail and many more by e-mail. And an overwhelming majority, 52 percent, chose option 2.

I'd like to thank Lloyd Cutler and the commission and the American Enterprise Institute and, of course, the Brookings Institution for urging our participation in this historical report. We'll continue to cover this initiative along with other issues of national interest. And as you heard from Norm, we are hosting a reception this evening to honor the work of the commission, and we hope you'll all join us. Thank you very much.

MR. ORNSTEIN: Thanks, Jackie. Let me invite Tom Mann of the Brookings Institution and John Fortier of AEI and the executive director of the commission to join us.

And now we'll take your questions. Once again, the ground rules are you should please identify yourself and your affiliation before your question, and the questions be targeted at this report and the work of the commission.

QUESTION: [Off microphone, inaudible.]

MR. : Actually, I would say the interest has been growing. You've already heard that this morning initial steps were taken to form a joint committee on the continuity of Congress. This follows work by a House task force chaired by Chris Cox and Martin Frost that had dealt with matters falling short of needing constitutional change. But my sentiment is the more individual members hear about it, read about it, think about it, the more they understand that patches here and there will not be sufficient.

Remember, it's taken our country a period of time to respond to 9/11. Initially it required the president to reassure the country and to begin a response--initially to take down the Taliban regime in Afghanistan, to organize the campaign against terrorism, to begin to build a rational homeland security strategy to form a department of homeland security. And now Congress is looking seriously at how it should best oversee and coordinate that effort.

What would be more appropriate on the second anniversary of 9/11, which is only a little more than four months away, what would be better, more responsible commemoration by Congress than sending to the states a short constitutional amendment giving the Congress the authority to provide for temporary appointments and to fill this horrendous gap in our constitution? I think the power of that argument, along with the evidence brought together in this document, is going to light a fire in Congress. All members of the leadership in the House and the Senate will be--or have already received the report today. Vice President Cheney will receive the report at noon today. I actually believe there's a good chance of Congress taking this up in a very timely manner.

MR. ORNSTEIN: Anybody else?

MR. DUBERSTEIN: I would just add that I think this is very much on the plate of the leadership of the House and Senate. And I think the rank and file will become very familiar with it, but it has to take leadership at the very top. And what we heard from Senator Frist this morning, what John and I heard, was, "This is something that we absolutely have to look at"; "My God, this is part of our responsibility as far as reconstituting the government of the United States." But I think it is much more a leadership responsibility, which will then grow with the rank-and-file members of the House and Senate.

MR. FORTIER: The analogy that we would use from the beginning here is that this is the equivalent of Congress writing a will. And we know what it takes to get people to write a will. It's just not an easy task.

MR. SIMPSON: I might add, what you find there is that if you die without a will and the family scratches through the chaos for about three years, you decide then to do it. And this would be a time when you look and say we didn't have a will and it would have been chaos. This is that opportunity.

MR. ORNSTEIN: One other ground rule, we have a microphone so that your questions can be picked up. So if you'd wait for the microphone.

QUESTION: Howard Phillips, chairman of The Conservative Caucus and a new entity, Committee to Preserve an Elected Congress.

Let me first of all say that I have great respect for the concerns which motivate this report and for every member of this body who's participated in it. But I do have other concerns. And my concern is that in the name of promoting democracy, something is proposed which is very anti-democratic. In the name of preserving our American republic, we're moving more in the direction of Plato's republic, where decisions were made not by the people as a whole, but by an elite group.

One of the fundamental principles which motivated the founders and the framers of the Constitution was that the House would be elected by the people and the Senate would represent the states. Allusion has been made to this. And the Seventeenth Amendment does indeed provide that governors may fill vacancies promptly which occur in the United States Senate. The character of the House would be fundamentally changed if even temporarily its members reflected the will of the governors rather than the will of the people. [tape change] -- members voting for something which they have not fully considered. And the case can be made that the House under existing rules--and there are existing quorum rules which permit the living to make decisions--could deal with the greatest urgencies and contingencies.

Senator Simpson talked about the word "temporary." He underscored it. And I respect the intent to make it temporary, but there are many things--taxes, regulations--which were called temporary and were not.

I would appreciate your addressing the question of the elimination of the distinction between the accountability of the House to the people and the Senate to the states under the proposal you put forward. Thank you.

MR. CUTLER: Mr. Phillips, it seems to me, looking at the present provision of Article I, Section 4, saying that it takes a majority of the House to do any business, that the height of anti-democratic government would be the House to decide that "we can fix this ourselves, and even if there are only five of us or seven of us or 25 of us, we the five or seven or 25 can elect a new president, can pass bills through the House even though there is no majority as elected." It seems to me just the opposite of what you're saying. There are many ways of going about this, but the least desirable, it seems to most of us, would be to leave this dubious proposition that, in the event of a catastrophic attack, the surviving members of the House, no matter how few they are, are the ones who decide the fate of the country.

MR. ORNSTEIN: Let me add a couple of things, Howard. It seems me that if you believe in limited government--we all, to one degree or another, believe in limited government--the idea that either you would have a handful of members, undoubtedly completely unrepresentative of the country geographically, ethnically, regionally, or ideologically, or in partisan terms, making those decisions. And after all, the representative nature of the House is at least as core a value as the elected aspect. It would be a terrible way to go.

Or a more likely possibility, given that the notion of quorum consisting only of living members is of dubious constitutionality--it's a serious challenge--that we would have no Congress for several months, that a Patriot Act would be done not with a Congress voting on it, but by decree for a period of time, would serve the interests of limited government. What we've done here is to try to make sure that the only way in which you would go against this tradition of an elected House is when a drastic event occurred, a catastrophe occurred. Otherwise, we would not move in that direction. I'm actually baffled that people who are for limited government would not see that the alternatives would be far worse.

MS. MARTIN: I think it's a superb question, Howard. Thank you for it. And I think it's wise to remember that's why we do have a democracy, because I assure you there will be plenty of discussion on the House floor by duly elected House members asking, as appropriate--that's what we pride in this country, asking questions, just as the one you've raised. And I think the most important part of the answer may well be that it is the House that determines what "temporary" is. They've already taken some steps to ensure that elections can move more quickly, and that's been a plus. But what we are talking about here is for that relatively short period of time to ensure that a republic can move forward and that the people of this great land are reassured.

So I look forward to these debates. We've proposed one way because, were we to try to do this legislatively, part of what I think you're asking about would be real. So therefore, with great reluctance, we do this very defined-by-the-Congress, in effect, amendment. So those questions are welcome.

The alternative is to do nothing. That's the alternative: Let it sit. Pretend it won't happen. Sometimes I prefer that. That, and I think there's an ability to undervalue members of the House. I was one. I know it's easy to joke about them. I know it's easy to talk about how they don't care and how they do this and they only care about their own elections. But there is one thing I am very sure of. Regardless of how often I've disagreed with how many of them or where they are on the spectrum, the future of this nation matters to each and every one of them. And I believe they will look at it in exactly that light.

QUESTION: I'm John Wortman with the Consortium of Social Science Associations. We heard about the prospects for action in Congress on this. If a constitutional amendment is passed, obviously it will have to be ratified by, I think, 38 states. Is the Continuity of Government Commission going to undertake any effort to send information about this to the states, get feedback from legislators and governors?

MR. : The states are going to be an integral part of the process in a number of ways. First, in the states that have election laws which provide for special elections, it's worthwhile for them all to reconsider their laws in light of 9/11. And the House task force which operated last Congress recommended that they do so.

I had a chance to meet with Virginia. Virginia has a homeland security, continuity of government effort led by former Lieutenant Governor John Hager. They are grappling with these same issues in the state legislatures. Some, back in the '50s and '60s, have put in provisions to provide for the continuity of the legislatures, for their governors. Some have not. It varies from state to state. But it's something where we encourage not only their participation in the federal effort, as possibly ratifying a constitutional amendment, but also to look at their own state legislative continuity provisions.

And we've learned something from them. We have examples in our report of Delaware, California, North Dakota, ways in which they fill vacancies, which provide some help to us here at the federal level.

QUESTION: I'm Tom Donlon from Barron's magazine. I wonder if your scholars could address the question of why, under considerably greater threat of nuclear war, Congress and the states never successfully addressed this issue in the past.

MR. SIMPSON: Because it never happened.

MR. ORNSTEIN: It's an interesting question, Tom. The Senate three times passed a constitutional amendment by overwhelming margins, calling for temporary appointments in the House of Representatives. The House didn't act I think for the same reason we're seeing a reluctance to move forward now--people don't like to think about these prospects. Although the House did come close once, at a time when they were juggling a variety of amendments and it basically became clear that they could only do one, and this was not going to be at the top of the list.

I think what also happened back then is, because they knew, or believed, that there would be notice, that if we ended up with a nuclear confrontation we'd have missiles launched from Siberia and we'd have some time, the solution that was preferred by the Congress was the bunker at the Greenbrier. Believing that--and of course if you've ever been to this facility, which is now a tourist facility, it's fascinating to see. This vast underground hardened complex designed to protect all of Congress--with a mini-chamber inside and its own self-contained food, water, and air facilities--for a very substantial period of time if there were a nuclear disaster in Washington, so that they could actually operate through radioactivity.

But of course the thesis was that you'd have notice and you could grab all the members and take them down by helicopter, by train, by automobile or by plane, the couple hundred miles to the Greenbrier resort. Now we don't even have that kind of option, because we're not talking about the possibility of something that would give us notice. We're not going to have necessarily hours, even minutes before you get some kind of radiological, biological, chemical, or nuclear device set off or a problem that occurs. Just imagine if the anthrax attack in the Senate had been a concerted effort by al Qaeda or some other organization using weaponized anthrax not to just hit a few people but to get into the ventilation system. And we know the fine and powerful quality of that, where you could end up with 60 or 70 senators in intensive care units with inhalation anthrax, not knowing it until it actually happened.

Well, now it's a different kind of problem and so now I think it requires a different kind of engagement.

MR. : The answer is that it's real now. It's no longer hypothetical. Look what happened on September 11th. The world's changed. And I think Congress, even though most think they're infallible, that Congress realizes that they have to do something.

MR. SIMPSON: The worst thing for a politician--and Lynn isn't here, but Howard knows, Lloyd knows people in this room that are deeply in politics--the worst thing that can happen is when you go home and people say, "Why didn't they do something?" And this is a classic example. If you have this horrible scenario that none of us can envision even yet, and yet we have a better view of it because of September 11th, the question of the citizens that these wonderful people represent is why in the hell didn't somebody do something? And that's the most searing thing that can happen to a politician.

I can't imagine anything more--more--the impact on a politician of people sitting in town meetings all over the country while we're being administered by 25 people, or 50 people from maybe one district or two districts, as it might happen. No one even can conjecture how did this happen; how could this have possibly happened? They're going to go back and go through it and say, well, they started to do it once; they didn't--we can see why, because there was no nuclear attack. But there was an attack and they didn't do anything--except Brian and Chris and some others in the House who are going to have to lead the

way. And I think that's the big difference. Every politician should hear that one coming up.

QUESTION: John Franz [ph] of [inaudible] News Service. Were there any concerns, in proposing such a broad constitutional, of some possible mischief down the line, since this is a law that could change over and over again? And why not specify a direct process in the amendment for appointing people?

MR. CUTLER: One reason not to specify a direct process is that it may prove to be very difficult to organize elections. If you said in a constitutional amendment elections must be held within two months or three months or even four months, and then that turned out to be impractical; or you selected a solution in which the members of the executive branch of the state would have a lot of discretion or very little discretion in selecting the temporary members and you made a mistake, it turned out to be unpopular; it's much easier to amend and correct for a mistake by further legislation than if everything had been incorporated in the constitutional amendment and then turned out to be a mistaken decision by the country as a whole.

MR. : I think another objective all along has been to keep the Constitution simple, that to try to specify all of the possibilities and contingencies in the Constitution would end up being counterproductive. That's number one. Number two, that the Constitution is meant to apply indefinitely. Conditions will change. The nature of the institution may change and the way in which Congress would implement this power today may be different than what it would in 50 or 75 years. So we thought there ought to be that possibility.

Third, as far as mischief, the belief is that it's not easy to pass legislation through the House and the Senate, to reconcile it, and to get the signature of the president, particularly on a matter like this, when it's not a sort of a partisan position on taxes or spending or war-or-no-war. It's about the fundamental procedures of democratic government and the possibility of responding in the wake of a catastrophic attack. That's the precisely the sort of matter on which you're unlikely to see that kind of mischief engaged in.

MR. CUTLER: If you look at your Constitution and all of the amendments that have been adopted, say, since the Civil War, you'll notice that almost every one now provides, in creating a new right, that the Congress shall have the power to enforce this new right by appropriate legislation. So it's not a new method. And it permits Congress the flexibility, once a new right has been created, to correct its own mistakes in trying to deal with the situation.

MS. SHALALA: It also makes Congress clearly accountable for preserving democratic institutions. And so it pins responsibility by having the legislation implementing.

MR. ORNSTEIN: We agonized over this one as much as anything else. In a way, what we did was to chose a form very much parallel to that that the framers used for presidential succession. The presidential specifies in the body of the Constitution itself that there will be a president and a vice president and then "such other officers" as the Congress shall designate. And while we think that we now need revision of the

presidential selection process in light of this new set of developments, that can be done by legislation. It doesn't require a constitutional amendment, which makes it easier. But also, if you look at the Presidential Succession Act of 1947, which has many flaws within it, it wasn't something that was designed to or that provided for mischief. People stepped up to the plate when it came to something as serious as this, and we have no reason to believe they won't -- with a lot of the knotty specific issues that you've got to deal with here, where you don't want to find that you've made a mistake or you haven't contemplated something and then have to go back to the arduous and, as we've said, undesirable task of once again amending the Constitution.

QUESTION: Larissa Davis of the Brookings Institution. Another argument that seemed compelling to me but that I haven't heard anybody mention today is the potential preventive nature of adopting an amendment such as this, in that I feel the current situation opens up an invitation to terrorists to attack the Congress. Because clearly, these weaknesses exist, and if they do attack the Congress that leaves us in chaos for four months. So we adopt this amendment, and then why would they want to attack the Congress if we have clear procedures in place to reenact a new Congress and put them in and keep our systems going?

And I'm just wondering if you've considered this argument and whether you've found shortcomings in it, or if you would consider making that argument to members of Congress.

MR. CUTLER: We do consider that argument, and in the closing paragraphs of our covering letter issuing this report and in the first six pages of the report itself, which has such a terrific impact, I think, we say it would simply be irresponsible and it opens us up to attacks on our political institutions, just as you've said. And that was the pattern, at least to some extent, in 9/11 with respect to the flight that went down in--the flight that hit the Pentagon and the flight that went down in Pennsylvania itself.

MR. SIMPSON: But you're saying the very passage of this would reduce the threat of terrorism, and I think that's a very, very good point. Like if the whole purpose of terrorism is to disrupt government--and that's what it is--this would then put in the machinery that this government [sound glitch]. I think that's a--you have hit the jackpot. I never thought of that, but I'm going to use it a lot.

MR. DUBERSTEIN: It's much easier to practice preventative medicine. Well done.

MR. ORNSTEIN: You know, right in the weeks after September 11th, and I think Brian has probably had the same experience, when I would raise this, I would often have members of Congress say, "Shh! Shh! You don't want to say things like that. You'll let them know that we're vulnerable." As if they didn't know we were vulnerable otherwise. So the opposite argument was used, I think, rather ineffectively, and this is a much more powerful one to make.

QUESTION: Harvey Simon with McGraw Hill's Homeland Security and Defense. You use in the proposed constitutional amendment language the words "a substantial number." And also, in some of the summaries you use similar vague language, such as "a large number" and also you refer to "a catastrophic event." How do you define "substantial"? And how do you define "catastrophic"?

MR. SIMPSON: That's the work of the Congress. The Congress will determine that. And that's why this debate will be spirited. They will determine all of those things. Whatever form of constitutional amendment they eventually decide to do, they will determine "quorum," they will determine "substantial," they will determine "incapacitation." They will determine how, if you feel you're not incapacitated anymore, you come back and take out the temporary person that had taken-- There's lots of stuff. It's big-time.

QUESTION: [Off-microphone] --the amendment says that Congress shall the power if there is a substantial number of casualties. So if there isn't a substantial number, they won't have the power; if there is a substantial number, they will. Who will define when the amendment itself is invoked?

MR. CUTLER: One of the great beauties of our Constitution is that everything, every amendment, every provision of the Constitution uses general terms like that.

MR. ORNSTEIN: We've had--

MR. CUTLER: I think we've had--it takes less than a thousand words to recite the entire Constitution and all of the amendments. Whereas there are states like California, as you know, where there's an entire volume of the California Code about this thick consisting of nothing but constitutional amendments.

MR. DUBERSTEIN: It is clearly the role of the Congress to make those kinds of definitional assignments of decisions. And I think that's very much in the nature of the Congress that they should be doing that, and that is not something that you write in concrete.

MR. : Just to be clear, we haven't proposed a specific text on the amendment. We have given many examples. We do propose a simple amendment which many of the details are filled in by legislation, and then we have long discussions of many of those issues, the threshold, when the amendment would kick in. So if it's important enough to Congress to say that a substantial number shall be no less than [inaudible] percent, we're okay with that as well. We think that we shouldn't muck up the amendment with lots of details, but there may be a few things that Congress will put in the amendment itself, at least minimum floor levels, but that the general threshold would be defined by legislation.

QUESTION: Suzanne Nelson from Roll Call. You talked earlier about the greatest reluctance coming from the House side and the House being the chamber that has the most substantial issues in the event of a terrorist attack or other event that would incapacitate many people. And you've talked a little bit about some--you mentioned Senator Frist and Senator Cornyn. Where are House leaders with this? What kind of reception has this gotten from the speaker, the Democratic leader, and--I mean, you had talked, Mr. Duberstein, earlier about this being a leadership issue, so they seem to be the most important leadership in this equation.

MR. ORNSTEIN: You know, in many ways I think the most eloquent statement that I've heard about September 11th itself came from the speaker, who has said many times that

he was sitting in his office, which has this magnificent view down the Mall, thinking that there was a plane that would have headed right up towards his office, and how close we came. So the speaker is very much aware of the threat that existed to the Congress, that continues to exist to the Congress, and I believe will engage this issue more.

The House has moved slowly on this, to be perfectly frank. They did create a task force, a working group under Chris Cox of California and Martin Frost of Texas, that did some very, very good work. And those members are well-versed in these issues already.

Today there's a proposal moving forward to have a joint committee that would be co-chaired by the chairs of the two rules committees, David Dreier in the House and Trent Lott in the Senate, to deal with a wide range of continuity issues.

We, of course, in our report also deal with a number of these below the constitutional level--questions to make sure that there's a meeting place for the Congress, that you might have at least have some interim emergency appropriations if you can't constitute yourself for a few days, specifying some of the quorum issues--that will deal those and presumably also deal beyond. We want to make sure that this proposal isn't just a way of kicking the issue down the road again.

We need leadership from the leaders. And we have found Senator Frist, Senator Daschle, and the minority leader Nancy Pelosi in the House, I've talked to them, as others of us have. They are aware of these issues and I think will move on them.

It's partly a chicken-and-egg question. We need leadership. They want to wait a little bit until the members themselves can get their arms around the enormity of this problem, which hasn't occurred to the same extent that it should have. And we hope that we can both prod them along, but also have provided for them some templates. Because this can't be done overnight and it shouldn't be done overnight. Even with all of the work that we've done, I don't want to see the House and Senate pass a constitutional amendment tomorrow.

A constitutional amendment is the most serious business you can imagine. We have the most serious threat. So what we want especially is for the leaders now to take cognizance of this report and our work and get their own process quickly underway, which will include not only the specific language of this amendment, but one would hope they would begin the process of some implementing legislation to deal with these knotty questions of not just what the threshold levels are, substantial or otherwise, who determines those thresholds if there's nobody in Washington to do it? You've got those sets of issues. You've got the issues of who would make these appointments and how much you would involve the members themselves.

You've got to move this along. We have leaders who understand the problem. Now what we need is a greater sense of urgency.

MR. DUBERSTEIN: I would only add that this legislation, the HConRes that is coming out of Rules Committee is not simply sponsored by David Dreier, but the most senior co-sponsor is Martin Frost. So it is bipartisan. And I think that sends a signal as well that this is not a partisan issue, but rather it is very much in the bipartisan interest.

QUESTION: Bill Beaman, Reader's Digest. Given the basic premise that we're vulnerable, obviously, until action is taken, whether it's a constitutional amendment or some other action, what is the best-case scenario in terms of how long this intricate political process, done deliberately as you suggest, would take? What is our best scenario in terms of time frame?

MR. : My own view, as I suggested earlier, is that it is possible for Congress to be deliberate and responsible but to report out a constitutional amendment by the second anniversary of the September 11 events. I believe that the--in response further to your question, that this will be a very rapid ratification process. I don't see the basis for any serious opposition developing. I may be wrong, but as the case gets out there and states look at the form of the amendment that's likely to be simple, I think you will see those 38 states materialize very quickly.

There's some problem of the timing of legislative sessions, but I would guess Congress would put a brief period of ratification on. It certainly ought to be done in a year. They may specify some other period of time. My own view is you could potentially see this ratified within six months. At the same time, Congress could begin the more difficult task of writing the implementing legislation, so at the time that the amendment is ratified, Congress could come forward and pass the ratifying legislation that's signed by the president.

So we are talking here potentially of moving within a year or a little bit more than that to have the entire matter wrapped up.

MR. CUTLER: Most 20th century amendments provide, when they're sent to the states, that the states will have seven years in which to ratify. We haven't--clearly, we haven't got seven years. We have to move much more quickly than that. So what we have proposed in one of these drafts is to allow two years; and two years rather than one year because there are some state legislatures, and I think Texas is one, where the legislature meets only every two years.

MR. SIMPSON: I think the ratification process will be swift, even less than two years, but it is the process of legislating and crafting the amendment which will take the time and the debate--and should. That will be the legislative way we do things: tediously.

MR. ORNSTEIN: And let me reiterate that John Cornyn will hold hearings, I think, expeditiously on this in the Senate. We are hopeful, but we have no commitment yet from the House Judiciary Committee. And we should also note that the critical element here is getting the amendment and an implementing package with it through the Congress while there's still a Congress. If this gets through the Congress and the states haven't ratified, and we have a horrific event, does anyone doubt that the states would move with lightning speed to make sure that we would preserve our constitution? Of course they would.

So it's simply important now that we act before we end up with this whole tragedy that Senator Simpson suggested of people saying why didn't they act.

MR. SIMPSON: That's why the emphasis has to be on the Congress.

QUESTION: I'm Dean O'Drudy, an economist for the federal government. I guess the question I would have is that this would seem to change the character of the appointments. You can have the governor, who is elected statewide, pick the successor to the senator, who is always elected statewide. But the constituency of a House member is generally not the entire state, and so the governor doesn't really represent the same constituency as a particular House district in most states. Which is a complicating factor. It seems to me that in order to change the Constitution, you usually need a super-majority not only in the representatives but among the people, which is certainly more than 52 percent. What would you think of other alternatives such as allowing each candidate for

the House of Representatives to, at the time he or she stands for election, designating a successor such that the people would know when they vote for the person who that successor would be. And if the Congress were de-quorumed--because if you lose a third of the House, that's not really a problem; they still have a quorum to do business. But if it were truly de-quorumed, then the people would have already in a sense elected the successor, who might be some lawyer or government official back in the county where, you know, the congressional district is located that could immediately take office, or even could take office in the event that one member dies just of normal causes until a special election can be held.

MR. CUTLER: You have raised a substantial political problem, and we have dealt with it by proposing an alternative method of appointing successors to the individual members of Congress. And it's almost the same as yours. And it's quite similar to the French system, where just like in our country, if you are in the Congress and you are appointed to the cabinet, you must give up your seat. Under the French system, when you run for election you designate who would succeed you if you are elected and then subsequently appointed to the cabinet. So we've tried to deal with that as a substantial political problem.

MR. : Let me just follow on that. We considered all sorts of methods of appointment and we settled on these two alternatives. Our criteria, really, were that the appointment be swift, decisive, and legitimate. So you wouldn't have a system--let's say you ask the state legislatures to appoint someone--where you could deadlock; or where there are separation of powers questions, a president, a remainder of the legislature. All of those have been proposed, but they could theoretically fail or be illegitimate--separation of powers questions.

So these two are the ones that we recommend. And one of the places we got our information was from the states. Delaware, an example, has a system where each member of the legislature specifies a list of three to seven successors and if in a catastrophic situation, you go down the list. Person 1 is the next person to take that seat, all the way down to, potentially, 7. We also believe that a combination of the two methods would be possible, that the legislators would specify successors and that the governor would pick among them.

So we're open to both of these methods, plus a combination. And in the case of the governor, we actually don't think that there would be a lot of playing politics or picking people from the other party or people who don't agree with the particular region that the governor is not from, because of the situation. But we are open to that possibility of the members providing for their own successors.

MR. SIMPSON: Let me just say, it's interesting. I think twice, maybe three times, I've heard the phrase "changing the character of the House" and the disturbing part that comes from that inquiry. What is more disturbing in changing the character of the House than death and complete evaporation, incapacitation? That really does change the character of the House I think more dramatically than anything else I can imagine. So I think we have to keep that kind of thing.

The trouble we've had is trying to make it look not as dramatic as it is, and not hyping it and making it, you know, some thing that's going to happen tomorrow and everybody breathing heavily and grunting and hyperventilating and all. That's not the point. The point is this is serious business. Brian has said it clearly. It is deadly, deadly serious

business. But if we just came to the American people saying you must do--oh, you never want to tell a Congress that you must do this because it's the most important thing in the history of the world. They'll say, hah, boy, there's another one of those guys. But this is critically serious business--and the character of the House, which we all know how deeply they feel. I think personally that our biggest challenge in the House will be the Judiciary Committee. It will be a House Judiciary Committee, a very distinctly different group of people from both sides of the aisle and different philosophies. And that will have to--that will go through that committee. That's where our homework needs to be done, as I see it as legislator.

MR. ORNSTEIN: Let me just note that we have with us here in the audience Alton Frye of the Council on Foreign Relations, who worked with us through a lot of our deliberations. We spent an enormous amount of time dealing with all of these knotty questions and looking for alternatives short of a constitutional amendment. And Alton made a very strong case that we could do this by having designated successors. We came to the conclusion that that wouldn't work constitutionally. But we've definitely grappled with this notion, which many members are concerned about. In fact, it's very striking. If you talk to a large number of them, often the first thing they'll do is to think about their own governors. And then you'll get this time and time again, "Well, I can't let my governor replace me." And after you get past the initial reaction, which is "you'll be dead, so I wouldn't waste a lot of sleep now on that possibility," is the reality that no governor is going to succumb to the temptation after a catastrophe of this sort to go down in history as a villain having exploited the worst tragedy in the history of the country for political purposes. And since these would be temporary appointments lasting only for a matter of weeks or months, the public I'm sure would have a huge backlash against something like that.

But having some role for the members themselves in maintaining a level of continuity here is not at all a bad idea, and that we may very well be able to find an appropriate mix of executive authority and discretion of the members. And that's what we've suggested, with some kind of a balance built on the Delaware model.

We have time for one more question, if there is one. If not, does anybody have a final benediction or comment?

Then I thank you very much. Let me remind you of continuityofgovernment.org, our website. And copies of the report, you can get them through asking us through there.

Thank you very much.

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