

Planning for a Disaster

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National Law Journal

July 14, 2003

Imagine another terrorist attack on Washington. This is not a farfetched notion. The FBI recently issued a report that underscored the continuing, clear and present threat to the well-being of the United States from al-Qaeda--a threat made more serious by the terrorists' active pursuit of weapons of mass destruction.

The report's conclusion was eerily similar to the Hart/Rudman Commission warning in 2000, that the likelihood of a devastating attack on American soil in the coming two years was very high. And al-Qaeda has a well-known history of returning to finish the job at targets it did not take out on a first attack: witness the World Trade Center, attacked in 1993 and again in 2001.

On Sept. 11, 2001, Congress literally dodged a bullet. The al-Qaeda planners subsequently interviewed on al-Jazeera television made it clear that United flight 93 was headed for the U.S. Capitol dome. The plane left 41 minutes late, allowing its passengers to know with ample time that this was no standard hijacking.

Had the plane left on time, it would likely have hit the Capitol when the House of Representatives was in morning business, with sizable numbers of members on the floor, in nearby meeting rooms or on the Capitol grounds. The Capitol dome is cast iron; had the plane hit it, the burning jet fuel would have caused molten cast iron to rain down on the building and the

grounds, causing mass devastation.

It is no exaggeration to say that we might have lost a couple hundred House members, with perhaps another hundred or so sent to burn units.

Such an outcome would leave the country with no Congress for months, and at the worst possible time. There is a constitutional quorum requirement of half the members of each house of Congress to conduct official business. And the constitution requires that vacancies in the House of Representatives be filled only by election; such special elections take, on average, four months.

Even if one accepts the debatable contention of House parliamentarians since the Civil War that a quorum is a majority of living members, the possibility of large numbers of incapacitated lawmakers could still leave a long gap.

The alternative--a House with perhaps 100 [or 50, or 10] living members using half that number to elect a new speaker [who might become acting president], or passing declarations of war or suspension of habeas corpus--is unacceptable. The framers could not have anticipated modern terrorism. Hence, there is a hole in the constitution, and a gap in related law, that prudence and fealty to our constitutional system demands filling.

The largest and most pressing problem is Congress. The House in particular is vulnerable because of its election requirement; the Senate, under the 17th Amendment to the Constitution, can refill vacancies by appointment. But

both houses must deal with the possibility of paralysis by widespread incapacitation or death [a real possibility in an age of "dirty bombs"].

We need a mechanism for temporary appointments to replenish the House rapidly in the event of widespread death until special elections can fill the seats, and to temporarily fill out both the House and Senate in the case of widespread incapacitation.

This fix--call it writing a will--would require a constitutional amendment. There are many knotty questions that need to be dealt with. What level of catastrophe would trigger the temporary appointment mechanism? Who would decide when the threshold has been met? Who would make the appointments? How long would they last?

The Continuity of Government Commission recently issued a report recommending a simple, one-sentence amendment authorizing Congress to deal with this problem and leaving the difficult details to implementing legislation.

Given the threat and the gap, and the unacceptability of the alternatives--benign martial law to fill the vacuum until Congress is up and running, or a literal [and unrepresentative] handful of lawmakers making fateful decisions--this should be a no-brainer for Congress. Yet Congress has been agonizingly slow to react.

Members, human after all, would prefer not to contemplate their own demise or the prospect of endowing their governors with the power to appoint their replacements. And many cling to the

tradition of elected-only members. But the alternative would be either no Congress or a wildly unrepresentative one.

Continuity

Congress, commendably, is on its way to creating a joint committee on continuity issues. The Senate Judiciary Subcommittee on the Constitution, chaired by John Cornyn, R-Texas, will hold hearings in coming weeks. But we need expeditious action.

The subcommittee should also consider revising the presidential succession process to address serious flaws and make sure that we have an alternative U.S. Supreme Court to adjudicate any questions of constitutionality of succession.

Americans face many threats to our well-being from terrorists. The sanctity and continuity of our governing institutions should be removed from that threat list.