

SENATE WEIGHS PRESIDENTIAL SUCCESSION

SEPT. 11 PROMPTS REVIEW, PROPOSALS TO CHANGE LAW

By Shannon McMahon

Chicago Tribune

September 17, 2003

WASHINGTON - What used to be the stuff of pulp novels and action films - who takes charge of government if the president is incapacitated by a terrorist attack - has become the stuff of serious conversation in the nation's capital since the Sept. 11 attacks.

In a hearing yesterday, which seemed more suited for an episode of *The West Wing* or a Tom Clancy novel, senators warned that in the event of an attack that incapacitated the nation's top leaders, it may be impractical or even unconstitutional to implement the existing succession law, the Presidential Succession Act of 1947. The joint Senate committee hearing was part of a larger process of risk evaluation begun in the wake of the Sept. 11 attacks. Legislation tackling the presidential succession puzzle is pending before a House subcommittee as well.

Sen. Trent Lott, a Mississippi Republican, said the existing succession plan is unworkable in a major catastrophe. "If Washington, D.C., is attacked and the entire line of succession is wiped out, there is no provision to deal with such a scenario," Lott said. "Two years - with no solution - is too long."

Under the law, the speaker of the House would become president if the president and vice president were incapacitated. Next in line after the speaker is the Senate president pro tem, followed by

the secretary of state and then other Cabinet members.

Yale law Professor Akhil Amar said the succession law faces practical, political and constitutional problems. Amar noted that having a member of Congress take over the presidency violates the constitutional separation of powers between the legislative and executive branches of government.

In addition, Lott noted that the speaker may be from a different party than the president, and the electorate would then be forced to accept a transfer of power to the opposition party.

"Since the late 1960s," Lott said, "the political party in control of the White House would have flip-flopped more than 80 percent of the time if members of Congress had succeeded to the presidency."

Amar said Congress could resolve these problems by establishing a second vice presidency. This "assistant" vice president would be confirmed by the Senate and live outside the Washington area, Amar said. He or she would receive regular briefings and be prepared to serve at a moment's notice - "in the line of succession but out of the line of fire," Amar said.

Another approach Amar suggested would be to skip over the speaker and the Senate president pro tem so that succession would pass directly to the president's appointed Cabinet. Amar argued that this would uphold the separation of powers and ensure that a successor would be someone with an ideology similar to the president's.

John Fortier, executive director of the Continuity of Government Commission,

said another solution could be to hold a special national revote.

Fortier acknowledged that this is the least likely and perhaps most frenzied approach to solving the problem, but it's better than no plan at all.

Rep. Brad Sherman, a California Democrat, suggests that the president file a document with the clerk of the House and the secretary of the Senate, naming either the minority or majority leader in each chamber to follow the vice president in the order of succession.