

CONGRESS INSIDE OUT

By Norm Ornstein

WHAT IF CONGRESS WERE OBLITERATED? GOOD QUESTION

Roll Call

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When President Bush, speaking to the nation Sept. 20 from the U.S. Capitol, pointed to the House gallery and recognized Lisa Beamer, he was acknowledging the heroism of her late husband and others on United Flight 93, which crashed near Pittsburgh on Sept. 11 after passengers apparently struggled with its hijackers. Left unsaid was that absent their heroism, the airliner might well have hit the Capitol - with both chambers of Congress filled with Members at the time.

Flight 93's heroes saved more than lives. They possibly prevented the chaos that would follow the virtual cancellation of one of our three branches of government.

What if the terrorists had succeeded in this logical fourth part of their plot, obliterating many or most of the Members of the House of Representatives and the Senate? Wrenching as it is to even think about the unthinkable, we must answer this question and then take the necessary action.

The reason: Our Constitution and laws have makeshift and incomplete provisions for Congress to convene, do business and make laws under those circumstances. That is no academic problem. Among the last things the United States needs in the aftermath of a terrorist attack is the enduring absence of national leadership - or the necessity, for an extended period of time, for a president or a literal handful of lawmakers to act in sweeping ways in their absence (i.e., the equivalent of martial law).

A literal reading of the Constitution would cast doubt on whether Congress could even convene under those circumstances; Article 1 states that a majority is required in both chambers to pass laws or conduct other vital business. Basically, since the Civil War, however, the House and Senate have defined the quorum not as a majority of the overall membership of the House and the Senate but as a majority of those duly chosen, sworn and living. So if the House, for example, lost 300 of its Members to a natural disaster or terrorist attack, only 68, half of those remaining, would be needed to allow the chamber to do business.

However, if there were a substantial number of Members alive but incapacitated, the smaller quorum requirement might still be impossible to achieve, leaving Congress unable to do any significant business. Even if it could convene, for Congress to operate under those circumstances for long - passing sweeping anti-terrorist laws, emergency appropriations and economic recovery measures - would tax its legitimacy, particularly if there were much greater partisan and regional differences among the surviving (and ambulatory) lawmakers than existed in the full House.

Of course, Members can be replaced and a chamber replenished. But here the Constitution provides another impediment, potentially leaving the House of Representatives in limbo for months. Senate vacancies can be filled either by special election or gubernatorial appointments. So if the Senate had a catastrophe of this order, state governors could presumably act with dispatch to refill seats. However, this is not the case with the House, as the Constitution states that vacancies in this chamber can be filled only by special election.

The Constitution does give Congress the authority to regulate the time, place and manner of special elections, but in the absence of federal regulation, state laws govern the proceedings. These state laws differ widely, but most have significant waiting periods before the

special elections are held. Some don't allow special elections at all within 180 days of the end of a Congressional term. The past six special elections to fill House vacancies have taken three to six months.

It is simply not practical to have the possibility exist of Congress being unable to operate because of massive deaths and incapacitations, or operating for many months with a skeleton crew that is highly skewed in regional or partisan composition. Congress must consider this horrible possibility and reform the process to deal with it. There is no simple answer, but there are ways to create a better balance.

The best start is to create a small, short-term task force of constitutional scholars and former lawmakers to report to the top four Congressional leaders with suggestions for reform. It should consider laws that would expedite special elections under emergency circumstances.

Unfortunately, it may also be necessary to consider a constitutional amendment, crafted narrowly and carefully, to lay out ways to fill Congress temporarily if disaster or an act of war reduces its ranks below the regular quorum. These might include interim appointments to both houses by state governors until special elections can be held, redefinition of a quorum if large numbers of Members are physically incapacitated, delegation of emergency powers to Congressional leaders, and/or provisions for emergency meeting places.

The possibility of the Capitol's obliteration has been in our national scenarios before; during the Cold War, the United States made many plans for the consequences of an all-out nuclear war, including elaborate evacuation procedures for Congress and a secret fallout shelter (now a tourist attraction) connected to the Greenbrier resort in West Virginia.

Even so, those plans assumed Congress would have enough warning to escape and that most Members could survive and eventually return to

helping govern the country. Now another horrific possibility has emerged - one in some ways worse than that of a nuclear showdown with the Soviets - that of the possibility of receiving no warning whatsoever.

No doubt, Congress doesn't want to think about that nightmarish situation. But it should, and then act responsibly and quickly to minimize the potential disruption to our way of governing.

