

CONGRESS SLOW TO PLAN FOR DISASTER

USA Today

September 23, 2002

Sept. 11 provided the mother of all wake-up calls of an enduring and direct terrorist challenge to our lives, well-being and institutions.

We've responded by moving to create a department of homeland security. We are rounding up potential attackers, driving terrorists from their main home in Afghanistan, enhancing our ability to track them down in the United States and beefing up air security.

At the same time, efforts are underway to locate nuclear materials from Iraq to Kazakhstan and elsewhere that could be used for suitcase nuclear bombs capable of taking out several square blocks of a city.

The White House quietly created a "shadow government" of senior career civil servants to ensure that Cabinet departments and agencies would always have a legal official in the line of succession. Congress moved to create alternative meeting sites in case the Capitol were shut down, and emergency evacuation procedures to avoid the chaos on the Hill on 9/11.

Yet one glaring gap remains: the security and continuity of our constitutional system. The suitcase nuclear bomb that worries much of Washington's security establishment could in one fell swoop remove Congress and the Supreme Court, or the White House and the Cabinet.

Today, the Commission on the Continuity of Government, launched by the American Enterprise Institute and the Brookings Institution and co-chaired by former Republican senator Alan Simpson of Wyoming and former White House counsel Lloyd Cutler, holds its first meeting. It is considering measures to make sure we have our

institutions functioning in every worst-case scenario. A congressional task force is doing the same. But congressional leaders have shown no eagerness to grapple with these questions.

What if United Flight 93 that crashed in Pennsylvania had instead hit the Capitol dome, which al-Qaeda conspirators have suggested was the target? If the plane had struck at the right moment, perhaps half the members of the House would have perished, with many of the rest placed in burn units for months -- effectively putting Congress out of action at the most critical moment imaginable.

The combination of the constitutional-quorum requirement -- half the living members of each house must be present for it to do official business -- and the Constitution's prohibition of appointments to the House of Representatives means that a serious attack on the Capitol could thwart Congress for months, with a combination of deaths and incapacitation making a quorum impossible. To replenish the House means relying on special elections that take, on average, three to six months. Senate vacancies, in contrast, can be temporarily filled by gubernatorial appointments -- but even in the Senate, there is no provision for incapacitated members.

During the Cold War, the government set up a secret underground bunker for Congress at West Virginia's Greenbrier resort, almost 250 miles south of Washington. The expectation was that the threat to our government would come from a nuclear attack; there would be enough warning to evacuate the lawmakers by helicopter, train and car. Now the threat is at once more insidious. An attack could come without notice, via jetliner or suitcase bomb. An attack by a biological or chemical agent -- requiring the quarantine or hospitalization of many lawmakers, but not necessarily their demise -- may be even more of a tangible threat.

The reaction of many when they hear about

the possibility of functioning without a Congress for several months is, "And the problem is?" My response is, "None -- if you like martial law."

Someday, another serious attack on our governing institutions might require a declaration of war, suspension of habeas corpus and sweeping police power, not to mention emergency disaster relief, the authorization of military force or public health mobilization.

Do we really want to risk having those momentous decisions made by a single figure -- the president, our commander-in-chief -- using self-declared emergency powers? Of course, it is possible that a disastrous attack would still leave enough members standing to muster a constitutional quorum. But do we want decisions such as those above made by a wholly unrepresentative group of 20 or 30 out of the 435? Some of these problems can be ameliorated by changes in law and rules, but we may also need a narrowly targeted constitutional amendment.

The problem we face now goes beyond Congress. Under the Presidential Succession Act of 1947, all individuals in line to succeed the president are Washington-based: the vice president, House speaker, Senate president pro tempore and Cabinet members. With the risk of a serious attack on Washington, shouldn't we revisit that act to add one or more non-Washington figures? The Supreme Court, which might have to adjudicate many knotty constitutional questions of this sort after an attack, has a legal-quorum requirement of six of the nine justices -- with no backup plan if four or more justices are killed or seriously disabled in an attack.

A year later, we are past time to deal with a problem in which the worst-case scenarios are no longer far-fetched, but all too real.

Norman Ornstein is a senior resident scholar at the American Enterprise Institute and a member of USA

TODAY's board of contributors. He also is a senior counsel to the Commission on the Continuity of Government.

