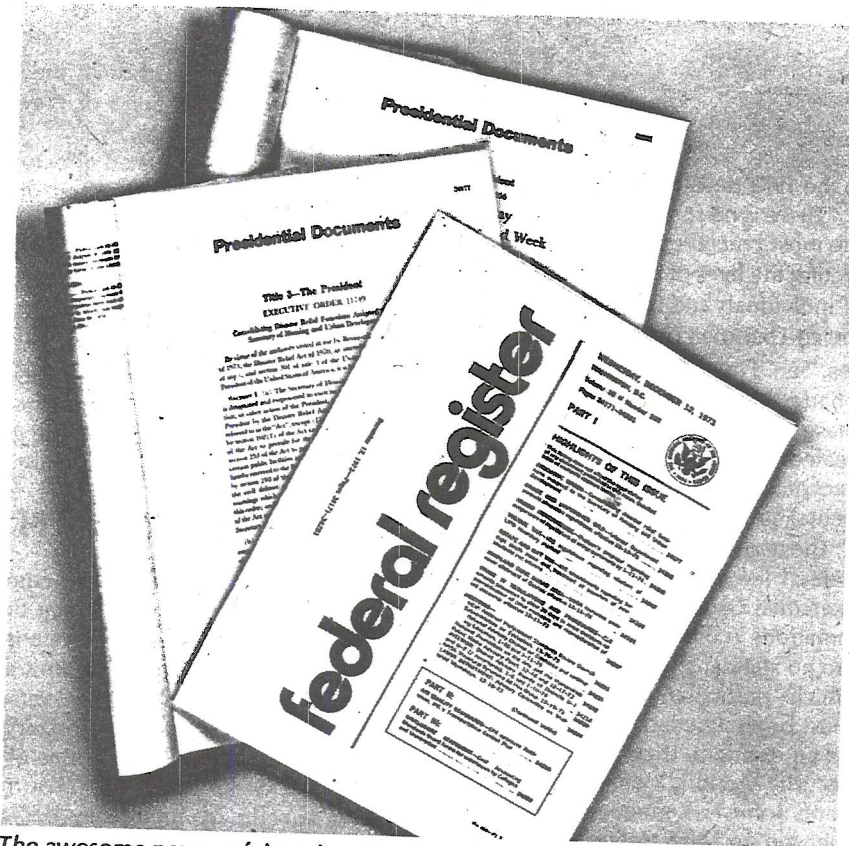


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Parade



The awesome power of American Presidents to bypass Congressional wishes through notices in the Federal Register has drawn growing fire from critics.

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# How Little-Known Presidential Orders Affect Your Life

by Mark Johnson

WASHINGTON, D.C.

**H**ow much do you know about Executive Orders and Presidential Proclamations?

Do you know that under an Executive Order signed by President Nixon the Agriculture Department can examine farmers tax returns?

Do you know that the Administration once contemplated giving Watergate figure Jeb Magruder a cushy job by means of an Executive Order—to circumvent the need for Senate confirmation?

Do you know that Executive Orders and Presidential Proclamations are having an increasing impact on your daily life and activities—without even your Congressman being aware of it?

Rep. Jerry L. Litton, a freshman Democrat in the House, one day last year was riffling through a relatively obscure government publication called the Federal Register when he came upon a curious item called "Executive Order 11697." Plowing through the bureaucratic jargon, he discovered that this Executive Order, signed by President

Nixon, granted unprecedented authority for the Agriculture Department to examine the supposedly confidential federal tax returns of every farmer in the country.

Litton, who represents a rural Missouri constituency, was indignant. His

outrage sparked a series of Congressional hearings which revealed that the Agriculture Department three years earlier had indeed asked for statistical data from the Internal Revenue Service—in a form which would have protected the secrecy of individual farmers' tax returns—but the White House had gone far beyond that request and authorized inspection of individual tax reports.

Two Senate committees are quietly investigating the use of those orders and proclamations, but most Americans know very little about the subject despite the growing national concern over concentration of power in the White House and the attention the Watergate scandal has focused on President Nixon's particular affinity for government by fiat.

## The final step

Executive Orders and Presidential Proclamations are precisely that—the final step in the unilateral exercise of power on the part of the President involving neither consultation with Congress nor substantial notification to the public. All that is necessary for an order or proclamation to go into effect is that it be printed in the Federal Register, a daily publication similar in function to the legal notices published in many newspapers by state and local governments. The purpose of the Federal Register is ostensibly to provide public notice of all executive branch actions, but it has a very limited circulation, even in Washington. "This publication ... is not everyday reading for the average farm family," explained the official of one agricultural group during Congressional hearings on the controversial plan to open farmers' tax returns to bureaucratic inspection.

That incident was not, however, an isolated one. The current round of Washington scandals has produced two examples of the Nixon Administration's questionable use of such Presidential orders, the first involving Jeb Stuart Magruder, deputy director of the Committee for the Re-Election of the President throughout the 1972 campaign year. In return for his loyal service in



The mighty pen: Nixon and predecessors in office have exercised power unilaterally through signing Executive Orders and Presidential Proclamations.

that post and an earlier stint as a member of Nixon's personal staff, the White House wanted to reward Magruder with a prestigious and highly paid government post.

### **One serious problem**

There was, however, one serious problem to be overcome: The type of policy-making job Magruder and the White House were considering traditionally requires Senate confirmation. The Watergate scandal, in which Magruder was a major figure, was just heating up at that time, and neither the White House nor Magruder wanted to risk a confirmation hearing at which the nominee could be grilled about alleged illegal and improper activities in the Nixon campaign organization.

The solution was proposed in a Feb. 28, 1973, "administratively confidential" memo written by Jerry Jones, the White House patronage chief. The document was later disclosed by John W. Dean III after his dismissal by the President as White House counsel.

Jones' memo listed nine possible jobs for Magruder, seven of which would have required the issuance of a Nixon-signed Executive Order to either create a new position or exempt an old one from the Senate confirmation requirement. For example, Jones suggested the possibility of making Magruder an assistant secretary in the Department of Health, Education and Welfare, a move which "would require cancellation of E.O. (Executive Order) 11251 and reissuance of an E.O. to make the position a P.A. (Presidential Appointment)." Similarly, Jones said it "would require cancellation of E.O. 11262 and a new one issued in its place" if Magruder was named director of the Interior Department's Bureau of Outdoor Recreation.

### **Decision on Magruder**

The intent of the memo was clear: The White House was planning to use the President's power to issue an Executive Order as a device to provide a political patronage post for the second-ranking official of the Nixon campaign organization and, at the same time, avoid Senate confirmation hearings. (Magruder eventually was given a \$36,000-a-year job at the Commerce Department, one of two on Jones' memo which did not require issuance of an Executive Order, but he remained in that position for only about 45 days before being forced to resign because of the mushrooming scandal.)

The second Watergate-related incident involves the Associated Milk Producers, Inc., one of three dairy farmers' cooperatives which contributed a total of more than \$500,000 to the Nixon campaign concurrently with a White House decision to raise the government's price support level for wholesale

*continued*

## EXECUTIVE ORDERS *continued*

milk products. In late 1970, Nixon received a letter from Patrick J. Hillings, a Washington lawyer who long has been a personal friend and political ally of the President. Hillings noted that AMPI, his client, was working with two key Nixon fund-raisers "in setting up appropriate channels for AMPI to contribute \$2 million for your re-election."

### 'The Democrats only took...'

In the very next paragraph, Hillings noted that the Tariff Commission had recommended four specific quotas which the domestic milk producers sought to have imposed on imported dairy products. However, Hillings noted, "No Presidential Proclamation has been issued" to put those commission recommendations into effect. "The problem is this: The dairy industry cannot understand why these recommendations were not implemented very quickly. The longest the Democrats ever took to implement a Tariff Commission dairy recommendation was 16 days."

Again, the message was unmistakable: The dairy farmers were willing to contribute \$2 million to Nixon's 1972 campaign, and all they sought in return was his signature on a Proclamation. (Two weeks later, the President signed the Proclamation, and shortly thereafter the milk producers' heavy political contributions started to flow.)

The only Presidential Proclamations which most Americans hear about are those which officially designate Thanksgiving Day or Be Kind to Your Neighbor Week, usually signed amid a flurry of publicity. But others, unnoticed except by devotees of the Federal Register, can have far greater effect on the ordinary citizen. For example, the Special Senate Committee on the Termination of the National Emergency has recently discovered that for 40 years the United States has been living in declared states of national emergency which, in theory, give the President the power to suspend civil liberties guarantees, declare martial law and summarily take control of both public and private institutions.

### Four national emergencies

Each of those national emergencies went into effect through the single act of the President signing a Proclamation. At this very moment, the country is under no less than four such officially declared states of national emergency, including one proclaimed in 1933 by President Franklin D. Roosevelt because of a financial crisis during the Depression. Also still on the books is a Proclamation issued in 1950 by President Harry S. Truman at the start of the Korean conflict and two Nixon-imposed declarations of national emergency, one proclaimed in 1970 because of a strike by postal workers and another relating

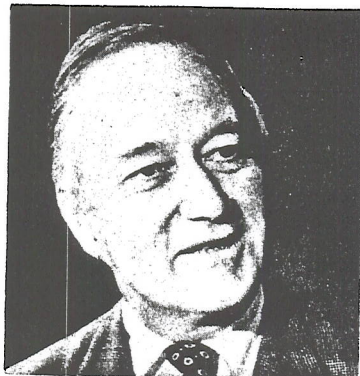
to the 1971 devaluation of the dollar.

"There is no formal accountability for the most crucial executive decisions affecting the lives of citizens and freedom of individuals and institutions," warned the co-chairmen of that Senate committee, Sen. Frank Church (D., Idaho) and Charles McC. Mathias (R., Md.). "Few of these vital executive decisions are revealed to the Congress or the public except under irregular, arbitrary or accidental circumstances."

The two Senators noted that although federal law requires publication of all Executive Orders and Presidential Proclamations in the Federal Register, "there are no standards or requirements under which particular executive decisions must be designated" in either category. As an example, they cited the National Security Action Memoranda of Presidents John F. Kennedy and Lyndon B. Johnson and the National Security Action Directives of President Nixon, all of which are withheld from the public



Jeb Magruder...  
Order for a new job



Sen. Mathias...  
"No formal accountability"



Rep. Dingell...  
Challenging the Veep

and Congress even though they represent decisions "in areas of gravest importance."

William G. Miller, staff director of the committee, notes that "there must be only a handful of people in the country who understand how to read Executive Orders, when they are published" but he says "our greatest concern is with what is not recorded—those orders signed by the President on defense, national security and other sensitive matters which are withheld on the grounds that they contain classified information."

### Roosevelt & the FBI

Similarly, Miller says, the committee has received information that the Federal Bureau of Investigation's entire domestic intelligence program, a focal point of considerable controversy in recent years, was never authorized by law but was initiated under terms of an Executive Order issued by Roosevelt during a state of emergency declared in 1939.

In another case, Rep. John D. Dingell (D., Mich.) startled his colleagues in the House last year by successfully challenging the entire appropriation for the Vice President's 40-member staff on the grounds that it was never authorized by law, only an Executive Order. As Dingell pointed out, the Constitution forbids the appropriation of any money to finance government activities which are not authorized by law, yet the nation's second highest official has been functioning for years with a staff whose only legal authority is an Executive Order.

### The police powers issue

Joe L. Pecore, assistant counsel of the Senate Judiciary Committee's Subcommittee on Separation of Powers, recalls an incident relating to an environmental protection law approved by Congress in 1969. "The act was designed to protect public park land, but it didn't include any authority for police powers. Nevertheless, President Nixon, citing that bill as his authority, issued an Executive Order restricting snowmobiles and other off-the-road vehicles on public land—and that order included police penalties for violators."

Both Miller and Pecore noted that when they began their study of this little-noticed but awesome Presidential power, they were unable to find copies of Executive Orders and Presidential Proclamations anywhere except at the office of the Federal Register and the Library of Congress. Neither the Justice Department nor the White House had a complete file, and Congressional committees seldom received copies of orders relating to their areas of jurisdiction. "What we're really talking about," concludes Miller, "is the accountability of the executive branch of government for its actions—and we're certainly not satisfied with the system as it now exists."