

The Battle Over Presidential Powers

By John H. Averill

Washington

IF THE President of the United States is so inclined, he has legal authority at this moment to:

- Place practically any person in the United States in military detention for up to one year.

- Dispatch U.S. military forces to any nation in the world "he considers it advisable to assist in the interest of national defense."

- Seize and control all transportation and communications, including the closing down of any radio or television station or network or newspaper wire service.

- Institute martial law.

- Seize properties and commodities.

- Organize and control the means of production.

- Restrict travel, and, in the words of a Senate study, "in a plethora of ways, control the lives of all American citizens."

Lifetime Emergency

These are just a few of the powers available to the President during times of national emergency, a condition that has existed without break since March 5, 1933 — when Franklin D. Roosevelt, one day after entering the White House, declared such an emergency to deal with bank closings in the Great Depression.

"A majority of the people of the United States have lived all of their lives under emergency rule," a special Senate committee reported last November. "For 40 years, freedoms and governmental procedures guaranteed by the Constitution have, in varying degrees, been abridged by laws

brought into force by states of national emergency."

Although it has become a popular pastime for Congress to lament the erosion of its powers, it was Congress that enacted the hundreds of statutes that surrendered more and more power to the executive branch in what Cornelius P. Cotter, a University of Wisconsin political scientist, has called a "surrealistic nightmare of eternal emergencies."

Since 1970, Sen. Charles M. Mathias Jr. (R-Md.) has been urging Congress to look at emergency powers and determine whether, in terms of individual liberties, they should be retained.

As a result, the Senate last year created the Special Committee on Termination

'They have been available since March 5, 1933'

of the National Emergency and gave it a one-year mandate, later extended to two years, to study all of the emergency powers laws.

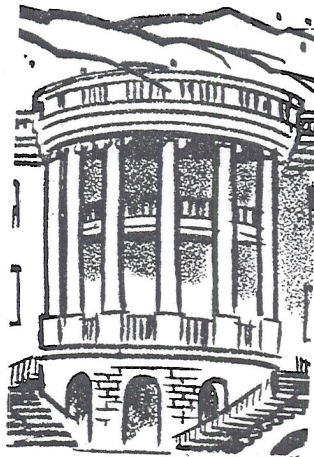
The committee's first task was to catalog all of the emergency powers statutes since a comprehensive list never had been compiled.

With the aid of an Air Force computer and with the assistance of lawyers from the Justice Department, the Library of Congress and the General Accounting Office, the committee reported last September it had uncovered 470 emergency power provisions that "delegate to the President extraordinary powers."

Tom C. Clark, a retired

Supreme Court justice and former Attorney General, said he had "never conceived" so many emergency powers existed. His son, Ramsey Clark, also a former Attorney General, testified that one result of so much presidential power could be "an anarchy in law and a tyranny by government."

Sen. Frank Church (D-Ida.), co-chairman of the Senate Committee, likened the powers to "a loaded gun lying around the house . . . ready for use for purposes other than their original intention."



Mathias, only partly in jest, commented:

"This committee may have done a very dangerous thing. It has compiled all of these laws into a single volume and it is now going to be very easy for any future officials to be well aware not only of its existence but of its potential."

However, Mathias expressed optimism the Nixon Administration will give the committee the support needed for Congress to get a handle on the national emergency problem.

Mathias indicated the

committee will be sympathetic in considering all requests that certain statutes be retained. But even where statutes are retained, Mathias said he is determined to give Congress a greater degree of control over them.

Time Limits

"What the committee has in mind where it retains a statute is to put a time limit on it, say of five to seven years," he said. "That will serve a double purpose. It will require the department or agency administering it to justify its continuance and it will require the Congressional committees with jurisdiction over the statute to undertake the legislative oversight that has been missing."

Mathias, Church and a majority of their committee appear determined to repeal emergency powers that authorize the President to place a person in military detention and to send U.S. troops anywhere he wishes without further Congressional sanction.

The detention statute, Section 1383 of Title 18 of the U.S. Code, says that whoever "enters, remains in, leaves or commits any act in any military area or military zone prescribed under the authority of an executive order of the President . . . shall . . . be fined not more than \$5,000 or imprisoned not more than one year, or both."

The law is much like the Emergency Detention Act Congress repealed two years ago as a threat to civil liberties. But Sec. 1383 was left untouched, possibly because Congress was unaware of it until the committee unearthed it.

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