

NATIONAL EMERGENCIES AND
DELEGATED EMERGENCY POWERS

FINAL REPORT

OF THE

SPECIAL COMMITTEE ON NATIONAL
EMERGENCIES AND DELEGATED
EMERGENCY POWERS



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**SPECIAL COMMITTEE ON NATIONAL EMERGENCIES AND
DELEGATED EMERGENCY POWERS**

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PREFACE

With this Final Report, the Special Committee on National Emergencies and Delegated Emergency Powers (formerly the Special Committee on the Termination of the National Emergency) concludes its three year existence. The Committee regrets that legislative delay has made it necessary to submit this document before final passage of the National Emergencies Act. Only when that legislation has been enacted into law will the work of the Committee truly be finished.

We would like to take this opportunity to thank Senators Philip A. Hart, Claiborne Pell, Adlai E. Stevenson III, Clifford P. Case, James B. Pearson, and Clifford P. Hansen for the spirit of cooperation and non-partisanship which has made the work of the Committee so successful.

We would also like to express our gratitude to the many other people who have helped the Committee complete its work. In particular, we wish to thank the following people for their valuable assistance: Lester S. Jayson, the director of the Congressional Research Service of the Library of Congress; Joseph E. Ross, head of the American Law Division of CRS; and especially Raymond Celada of the American Law Division and his able assistant, Charles V. Dale and Grover S. Williams; Jack Goldklang of the Office of Legal Counsel, Department of Justice; Paul Armstrong of the General Accounting Office, and Linda Lee, research aide. Dr. Harold Relyea of the Library of Congress continually provided valuable assistance in addition to writing an informative and useful history of American government in times of emergency.

We wish to commend Staff Directors William G. Miller and Jerry M. Brady for their leadership and the other staff members for their diligence in completing the work of the Committee. Over the three-year period, the staff included: Thomas A. Dine, Audrey H. Hatry, Martha E. Mecham, Roland B. Moore, III, Patrick M. Norton, William K. Sawyer, Patrick A. Shea, Naldeen McDonald, Yvonne McCoy, and Gayle D. Fitzpatrick.

Finally, we would like to give credit to the staff members responsible for this Final Report and the report on emergency preparedness which is included in the Appendix. We thank William K. Sawyer for writing these reports, Jerry M. Brady for editing them, and Gayle D. Fitzpatrick for administrative support.

FRANK CHURCH,
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Cochairmen.

INTRODUCTION

The Special Committee on National Emergencies and Delegated Emergency Powers ends its work with an emphatic plea that the National Emergencies Act, H.R. 3884, be passed as soon as possible. The legislation, which represents the culmination of three years of work by the Committee, will both terminate special powers possessed by the President as a result of existing states of national emergency and establish procedural guidelines for the handling of future emergencies with provision for regular Congressional review. The bill should end the disarray that has characterized emergency laws and procedures in the United States.

The legislation is long overdue. A majority of Americans alive today have lived their entire lives under emergency rule. Since 1933, protections and procedures guaranteed by the Constitution have, in varying degrees, been abridged by Executive directives whose legality rests on the continued existence of Presidentially proclaimed states of emergency. For more than forty years, emergency authority intended for use in crisis situations has been available to the Executive. The President has had extraordinary powers—powers to seize property and commodities, seize control of transportation and communications, organize and control the means of production, assign military forces abroad, and restrict travel.

This dangerous state of affairs is a direct result of Congress' failure to establish effective means for the handling of emergencies and its willingness to defer to Executive branch leadership. In the face of the wars, emergencies, and crises and determined Presidents of the past forty years, the Congress, through its own actions has transferred awesome magnitudes of power to the Executive without ever examining the cumulative effect of that delegation of responsibility. It has tolerated and condoned Executive initiatives without fulfilling its own constitutional responsibilities. It has in important respects permitted the Executive branch to draft and in large measure to make the law. This has occurred despite the constitutional responsibility conferred on Congress by Article I, Section 8 of the Constitution which states that it is Congress that "makes all Laws. . ."

Passage of the National Emergencies Act will be a major step toward restoring Congress to its proper legislative role. The legislation represents significant progress in checking the growth of Executive power and returning the United States to normal peacetime processes. The measure is vital in insuring that the United States travels a road marked by legislative oversight and carefully constructed legal safeguards.

HISTORY OF THE SPECIAL COMMITTEE

Interest in the question of emergency powers stems from the United States' experience in the Viet Nam War and the incursion into Cam-

bodia. The President's ability to commit Americans to warfare without any Congressional declaration of a state of war disturbed many Senators.

In 1971 Senator Charles McC. Mathias, Jr. of Maryland submitted Senate Concurrent Resolution 27 to establish a special joint committee to study the effect of terminating the only emergency known to be in existence at the time, that declared by President Truman in 1950 during the Korean War. On May 23, 1972, Senator Mathias and Senator Frank Church of Idaho introduced Senate Resolution 304, which called for the creation of the Senate Special Committee on the Termination of the National Emergency. The Senate Foreign Relations Committee, after hearings and executive comments, reported the resolution favorable on June 13, 1972. The bill subsequently passed the Senate, and on September 18, 1972, an equal number of majority and minority party members were appointed to the newly-formed Special Committee. Senators Church and Mathias became co-chairmen, and Senators Hart, Pell, Stevenson, Case, Pearson, and Hansen were also appointed.

On January 6, 1973, the Special Committee began its work under the authority of S. Res. 9 and the 93rd Congress. The mandate of the Committee was:

to conduct a study and investigation with respect to the matter of terminating the national emergency proclaimed by the President of the United States on December 16, 1950, as announced in Presidential Proclamation Numbered 2914, dated the same date.

In conducting its study, the Committee was to:

- (1) consult and confer with the President and his advisers;
- (2) consider the problems which may arise as the result of terminating such national emergency; and
- (3) consider what administrative or legislative actions might be necessary or desirable as the result of terminating such national emergency, including consideration of the desirability and consequences of terminating special legislative powers that were conferred on the President and other officers, boards, and commissions as the result of the President proclaiming a national emergency.

From the start, the work of the Committee was marked by non-partisanship and its efforts facilitated by the cooperation of the Executive branch. The Committee staff met with Attorney General Kleindienst as early as January 17, 1973, and enlisted the help of the Department of Justice. A special task force was established in the White House to look into the question of emergency powers.

Executive cooperation was important because of the rudimentary state of knowledge of emergency laws and procedures at that time. The Special Committee knew that the Truman Korean War Emergency was still in existence and that at least 200 special powers had accrued to the President over the years. The investigators knew that President Johnson had used emergency powers in January, 1968, to control American investments abroad in an effort to ease that year's balance-of-payments crisis, and that President Nixon had invoked the same authority in February, 1971, to suspend the provisions of the

Davis-Bacon Act. Yet, the Special Committee did not know the full story.

Committee's Findings

The Committee quickly discovered that disorder enveloped the whole field of emergency statutes and procedures. Not one but four emergency proclamations remained in force. In addition to the national emergency proclaimed by President Truman on December 16, 1950, the following declarations of emergency remained in force:

- the national emergency declared by Franklin Roosevelt on March 9, 1933, to cope with the current banking crisis;
- the national emergency declared by Richard Nixon on March 23, 1970, to deal with the Post Office strike;
- the national emergency declared by Richard Nixon on August 15, 1971, to implement currency restrictions and to enforce controls on foreign trade.

The continuation of these states of emergency was significant, since any declaration of emergency triggers numerous laws which, taken together, give the President extraordinary power. The following laws are illustrative:

Statute 10 USC 712 permits the President "during a war or a declared national emergency" to "detail members of the Army, Navy, Air Force, and Marine Corps to assist in military matters" in any foreign country.

Under 10 USC 333, the President can use the militia or armed forces to suppress "conspiracy," if it is likely that "any part" of the people in a state will be deprived of some constitutional rights, and the state itself refuses to act. Under this statute, the President conceivably could circumvent Article IV, Section 4, of the Constitution even before waiting for state legislatures or state executives to request Federal troops.

Under 18 USC 1383, the President has authority to declare any part or all of the United States military zones. People in such zones can be jailed for a year for violating any "executive order of the President." Would these arrests be reviewable in court? It is not clear. Judicial review of agency actions is guaranteed in 5 USC 702, but 5 USC 701 excludes actions taken under declarations of martial law.

A President could make use of Public Law 733, which expresses the determination of the United States to prevent "by whatever means may be necessary including the use of arms," any "subversive" activities by the government of Cuba.

Under 47 USC 308, the Federal Communications Commission could, during a national emergency, modify existing broadcast licenses under terms it might prescribe.

Under 47 USC 606, the President can amend "as he sees fit" the rules and regulations of the Federal Communications Commission and, in particular, can "cause the closing of any facility or station for wire communications."

If the President finds the nation "threatened by attack," he could, under 44 USC 1505, cease to publish his regulations in the Federal Register if he determines that it is "imprac-

licable." This could open the way to promulgation of secret laws.

Moreover, no recent comprehensive record of statutes effective during times of emergency had been compiled. No consistent procedure was being followed in declaring, administering, and terminating states of national emergency. The enlarged task that the Committee confronted led to its being redesignated the Special Committee on National Emergencies and Delegated Emergency Powers.

Two Tasks for the Committee

The Special Committee worked on two main tasks. The first was to explore how existing states of national emergency could be terminated with the least adverse effects. There were three possible approaches: (a) outright repeal of all emergency statutes, (b) relegating all emergency provisions to a state of dormancy to be used in future emergencies, or (c) maintaining emergency provisions in the United States Code but for use only in states of emergency declared in accordance with regular and consistent procedures which would provide for termination and oversight.

The second task was to explore the possibility of establishing a procedure for declaring states of national emergency. The procedure would require accountability for actions taken by the Executive pursuant to delegated emergency authorities in order to permit the Congress to effectively exercise its oversight responsibilities.

Hearings

Concurrent with the historical research undertaken by the staff of the Special Committee, the Library of Congress and distinguished consultants, hearings were held on the history of emergency rule in the United States and constitutional problems created by such rule.

Professor Robert S. Rankin, Emeritus, of Duke University, Professor Cornelius P. Cotter of the University of Wisconsin, and Professor J. Malcolm Smith of California State University, all renowned scholars of the subject of emergency powers, testified in hearings held by the Special Committee on April 11, 1973.

Professor Adrian S. Fisher, Dean of the Georgetown University Law Center, and Dr. Gerhard Casper, Professor of Law and Political Science at the University of Chicago, testified on April 12, 1973. Professor Fisher served as an advisor to President Harry S. Truman in 1950 and described to the Committee the circumstances surrounding Truman's declaration of national emergency in that year. Professor Casper testified on the constitutional questions raised by Executive use of emergency powers.

The Committee also heard from officials formerly associated with the Justice Department and Supreme Court including the late Chief Justice Earl Warren. Former Attorney General of the United States and Associate Justice of the U.S. Supreme Court Tom C. Clark, former Attorney General Nicholas DeB. Katzenbach, and former Attorney General Ramsey Clark testified on July 24, 1973. Later, on November 28, 1973, former Attorney General Elliott Richardson and former Solicitor General Erwin Griswold presented their views to the Special Committee.

Throughout its work the Special Committee has had the benefit of the full cooperation and assistance of the Justice Department, under

four successive Attorneys General—Kleindienst, Richardson, Saxbe, and Levi—as well as the Department of Defense and the Office of Management and Budget.

Publications on Emergency Powers

To improve understanding of emergency laws and procedures and provide the basis for legislation, the Special Committee published a number of studies, reports, and compilations. The first was a compilation of "Emergency Power Statutes: Provisions of Federal Law Now in Effect Delegating to the Executive Extraordinary Authority in Time of National Emergency." The story of how this document was composed illustrates the size of the task the Committee faced and the cooperation it received from the Executive branch.

In the past, the only way to compile a catalog useful to Congress would have required going through every page of the 86 volumes of the Statutes-at-Large. Fortunately, the U.S. Code was put into computer tapes by the U.S. Air Force in the so-called LITE system, which is located at a military facility in the State of Colorado. The Special Committee devised several programs for computer searches based on a wide spectrum of key words and phrases contained in typical provisions of law which delegate extraordinary powers. Examples of some trigger words are "national emergency," "war," "national defense," "invasion," "insurrection," et cetera.

These programs resulted in several thousand citations. At this point, the Special Committee and Library of Congress staffs went through the printouts, separating out those provisions of the U.S. Code most relevant to war or national emergency, and weeding out those provisions of a trivial or extremely remote nature. Two separate teams worked on the computer printouts and the results were put together in a third basic list of U.S. Code citations.

To determine legislative intent, the U.S. Code citations were then hand checked against the Statutes-at-Large, the Reports of Standing Committees of the U.S. Senate and House of Representatives and, where applicable, Reports of Senate and House Conferences.

In addition, the laws passed since the publishing of the 1970 Code were checked and relevant citations were added to the master list. The compilation was then checked against existing official catalogs: that of the Department of Defense, "Digest of War and Emergency Legislation Affecting the Department of Defense"; that of the Office of Emergency Planning, "Guide to the Emergency Powers Conferred by Laws in Effect on January 1, 1969"; and, the 1962 House Judiciary Committee synopsis of emergency powers, "Provisions of Federal Law in Effect in Time of National Emergency." The result was a compilation and commentary on 470 special statutes invokable by the President during a time of declared national emergency.

Once the Special Committee had completed its compilation of emergency statutes, the staff, assisted by the Office of Management and Budget, solicited evaluation of the existing statutes from Executive departments, agencies, and offices and from Standing Committees of the Senate. "Executive Replies: Summaries of the Executive Branch and Committee Recommendations" was then issued as a committee print in three parts.

Other Publications

The Special Committee also composed a study of "Executive Orders in Time of War and National Emergency." This compilation brought together as complete a collection as possible of Executive Orders and Proclamations issued pursuant to states of war and national emergency. The collection was based on an examination of Proclamations and Executive Orders found at the Library of Congress and the Federal Register. The report documents the lack of legal accountability in many important areas of public policy for orders given by the President.

In addition, "A Brief History of Emergency Powers in the United States" was issued as a committee print. When the Special Committee began its work, there was no basic study outlining the use of emergency powers in the United States from the time of the Philadelphia Constitutional Convention to the present. To fill the gap, the Committee asked Dr. Harold Relyea of the Library of Congress to write a chronological history of the American government in times of crisis. His study highlights the great crises of American history and the manner in which the three branches of the Federal Government have met particular emergency situations. Especially significant are the experiences and legacies of Shay's Rebellion, the Civil War, labor strikes of the late 19th Century, and both World Wars.

COURT GUIDANCE

Throughout its work the Special Committee has paid close attention to court decisions. The Committee was particularly guided by the famous *Youngstown Steel and Tube Company v. Sawyer* decision, in which the Supreme Court failed to uphold an attempt by President Truman to seize control of the striking steel industry. Speaking for the majority, Justice Black held that "the President's power, if any, to issue the order must stem from an Act of Congress or from the Constitution itself." He characterized President Truman's action as an unconstitutional arrogation of "law-making power" by the Executive.

Justice Jackson's widely quoted and praised concurring opinion stressed that our system of government is a "balanced power structure" and pointed out that Executive power to act is a variable depending upon the collective will of Congress for its authority. Justice Jackson listed three situations which determine the extent of the President's power:

1. When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate.
2. When the President acts in absence of either a Congressional grant or denial of authority, he can only rely upon his own independent powers.
3. When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter.

Justice Jackson continued :

The appeal, however, that we declare the existence of inherent powers *ex necessitate* to meet an emergency asks us to do what many think would be wise, although it is something the forefathers omitted. They knew what emergencies were, knew the pressures they engendered for authoritative action, knew, too, how they afford a ready pretext for usurpation. We may also suspect that they suspected that emergency powers would tend to kindle emergencies. Aside from suspension of the privilege of the writ of habeas corpus in time of rebellion or invasion, when the public safety may require it, they made no express provision for exercise of extraordinary authority because of a crisis. I do not think we rightfully may so amend their work, and, if we could, I am not convinced it would be wise to do so, although many modern nations have forthrightly recognized that war and economic crisis may upset the normal balance between liberty and authority. Their experience with emergency powers may not be irrelevant to the argument here that we should say that the Executive, of his own volition, can invest himself with undefined emergency powers.

After recalling the experience of Germany, where the Constitution had permitted the President to suspend individual rights, and Great Britain and France, where the parliaments had maintained strict control over emergency powers, Justice Jackson concluded :

This contemporary foreign experience may be inconclusive as to the wisdom of lodging emergency powers somewhere in a modern government. But it suggests that emergency powers are consistent with free government only when their control is lodged elsewhere than in the Executive who exercises them. That is the safeguard that would be nullified by our adoption of the "inherent powers" formula. Nothing in my experience convinces me that such risks are warranted by any real necessity, although such powers would, of course, be an Executive convenience.

In the practical working of our Government we already have evolved a technique within the framework of the Constitution by which normal Executive powers may be considerably expanded to meet an emergency. Congress may and has granted extraordinary authorities which lie dormant in normal times but may be called into play by the Executive in war or upon proclamation of a national emergency. In 1939, upon Congressional request, the Attorney General listed ninety-nine such separate statutory grants by Congress of emergency or wartime Executive powers. They were invoked from time to time as need appeared. Under this procedure we retain government by law—special, temporary law, perhaps, but law nonetheless. The public may know the extent and limitations of the powers that can be asserted, and persons affected may be informed from the statute of their rights and duties.

In view of the case, expedition and safety with which Congress can grant and has granted large emergency powers, certainly ample to embrace this crisis, I am quite unimpressed with the argument that we should affirm possession of them without statute. Such power either has no beginning or it has no end. If it exists, it need submit to no legal restraint. I am not alarmed that it would plunge us straightway into dictatorship, but it is at least a step in that wrong direction.

The Special Committee accepted Jackson's opinion as a basic guideline for its work. The continuing importance of the opinion is illustrated by the reference made to it in counsel given to the Special Committee by the late Chief Justice Earl Warren just prior to his death. Senator Mathias reported the details of that conversation to the Senate on August 22, 1974:

Chief Justice Warren said that while the Constitution provides that only Congress can make the law, the legislature had the obligation through enacting statutes to provide firm policy guidelines for the Executive branch. The former Chief Justice agreed with Justice Jackson's view that where there are statutory guidelines, a President is obliged to follow the precepts contained in the laws passed by the Congress. Inherent powers problems arise and the other branches act, he said, largely when Congress fails to act definitely, when it fails to make needed laws and when there is a necessity for legislative action and Congress fails to meet the challenge.

LEGISLATIVE HISTORY

Upon the basis of all its findings, the Special Committee decided to write legislation which would both effectively end the four states of national emergency found to be in force and establish procedures for the handling of any future national emergency. The resulting bill, the National Emergencies Act, has received broad bipartisan support and elicited a rare degree of cooperation between the Executive and Legislative branches of government.

A quick review of the legislative history is instructive. The Committee first submitted the National Emergencies Act to the Senate on August 22, 1974. The bill, S. 3957, was sponsored by Senators Church, Mathias, Hart, Pell, Stevenson, Case, Pearson, Hansen, Ervin, Chiles, Williams, Muskie, Javits, Ribicoff, and Roth. The legislation provided for:

1. Termination of powers and authorities available to the Executive as a result of the states of national emergency in force.
2. Congressional review of future national emergencies.
3. Congressional oversight of and Executive accountability for actions taken in the exercise of emergency powers.
4. Repeal of obsolete emergency powers statutes.

The Senate Committee on Government Operations, to which the bill was referred, reported it without amendment on September 30, 1974 (S. Rept. 93-1193). On October 7 on the floor of the Senate, Senator Mathias offered amendments incorporating compromises agreed to by

the Government Operations Committee and the Administration. The amendments provided for:

1. Extension of the termination date for existing emergencies from nine to twelve months from enactment;
2. A semi-annual review and decision by Congress on whether to end an emergency, rather than automatic termination of states of emergency;
3. Reduction of the number of statutes to be repealed;
4. Exemption of six statutes considered essential by the Executive branch and provision for their review by appropriate Congressional committees;
5. Requirements for an accounting of expenditures incurred in the exercise of national emergency statutes.

The amended legislation passed the Senate without dissent on October 7, 1974.

Senate bill, S. 3957, then went to the House of Representatives, but the House Judiciary Committee, to which the legislation was referred, was unable to act on the bill in 1974. Representative Peter Rodino, the Committee Chairman, had intended to hold early hearings on the legislation; however, the impeachment inquiry and confirmation of Vice President Rockefeller prevented consideration during the 93rd Congress, and the bill consequently died.

Early in the 94th Congress, on February 27, 1975, Chairman Rodino introduced H.R. 3884 and on March 6, 1975, Senator Mathias introduced S. 977. The bills were identical and, with the exception of two minor technical amendments, the same as the measure already passed by the Senate.

The House Judiciary Subcommittee on Administrative Law and Governmental Relations, chaired by Representative Walter Flowers, then held hearings on H.R. 3884 on March 6, 13, 19 and April 9, 1975. Witnesses included Senator Mathias, Senator Church, Representative Rodino, and representatives of Executive departments and agencies.

On May 21, 1975, the Judiciary Committee reported H.R. 3884 with amendments (H. Rept. 94-238). Most of the changes clarified and corrected sections of the bill. One amendment advanced from one year to two years the effective date for the termination of the existing emergency powers. The two-year delay provided time for all Executive agencies and departments dependent on emergency statutes to seek permanent legislation. Another revision gave the Executive additional time to account for expenditures incurred during the exercise of emergency powers. The Committee felt that the original schedule did not provide sufficient time for the reporting of expenditures. The Committee also increased the number of statutes which would be exempt from the force of the legislation.

H.R. 3884, as amended by the House Judiciary Committee, passed the House on September 4, 1975. On the floor, the House accepted an amendment by Representative Matsunaga to provide for automatic termination of an emergency if the Executive fails to publicly renew the emergency. Final passage came easily. Only five Representatives voted against the bill, while three hundred and eighty-eight cast their ballots in favor of it.

In the Senate, H.R. 3884 was referred to the Government Operations Committee. Senator Church and Senator Mathias testified on behalf of the legislation on February 25, 1976, but the full Committee has been unable to markup the bill yet, due to the press of other business, mainly proposed reforms concerning the Central Intelligence Agency.

The Special Committee believes that there is no reason to delay passage any longer. Both houses of Congress have passed the bill overwhelmingly; the only problem is that the Senate acted in the 93rd Congress and the House in the 94th. Seldom has such a significant piece of legislation received such universal support. The time for the National Emergencies Act to become the law of the land is long overdue.

WORK REMAINING

Passage of the National Emergencies Act is the top priority, but other issues will also deserve attention in the future.

Issues related to the National Emergencies Act

1. Committee review of exempted statutes—Under Title V of the National Emergencies Act certain statutes are exempted from the force of the legislation pending further review by Standing Committees in the House and Senate. The Special Committee initially contemplated no such exemptions, but it became apparent that because of the prolongation of emergency rule in the United States, many governmental departments had come to depend on these laws for their day-to-day operations. Abrupt termination of such provisions threatened to disrupt activities deemed to be essential to the functioning of the government. To avoid such disruption and to allow careful consideration of the statutes in question and enactment of permanent law where appropriate, the Committee agreed to exempt these provisions from the effect of the legislation.

Close scrutiny will be required to determine whether these statutes should be continued in force or how they should be amended. Serious questions exist about future reliance on laws which were enacted to meet emergency situations and which have been used in ways not envisioned in the legislative histories of the statutes.

2. Careful review of requests for permanent law—The National Emergencies Act provides for a two-year delay in the termination of emergency powers currently possessed by the President. The delay is designed to give Executive agencies time to seek permanent legislation where necessary. Congressional committees should remain vigilant during this period and conduct a rigorous examination in those instances where permanent law is sought in place of emergency law (i.e., law operative only under a condition of proclaimed national emergency). Care must be taken to preserve the distinction between permanent law and emergency law and to insure that powers which are properly restricted to periods of national emergency do not become available in normal times. Committees should examine Executive justifications closely and not allow changes solely for reasons of convenience.

3. Potential efforts to thwart intent of law—Congress must be wary of potential efforts to bypass or circumvent the intent of the new legislation. It should be clearly understood that Congress will not accept

any claim that an emergency is so severe that the President can act without the Congressional review required under this legislation. Congress must be prepared for possible efforts to thwart the intent of the bill by dropping the wording "national emergency" and introducing different terminology. Committees must insure that all emergency legislation, however denominated, has the same accountability and reporting requirements and termination procedures. No claim can in the future be advanced that a particular type or class of emergency can arise in which the President's powers are not subject to Congressional review.

Need for an Investigation of Emergency Preparedness Efforts Conducted by the Executive Branch

The Special Committee recommends that emergency preparedness efforts in the United States be investigated to determine the advantages and disadvantages of the administrative structure established in 1973.

Under Reorganization Plan Number 1 of 1973, the Office of Emergency Preparedness was dismantled and a more decentralized administrative apparatus set up. The Federal Preparedness Agency within General Services Administration assumed responsibility for coordination and planning; the Federal Disaster Assistance Administration within Housing and Urban Development became the central agency in charge of natural disasters; and the Department of the Treasury assimilated those functions regarding investigations of imports which might threaten national security.

The Committee believes that now—three years after that reorganization—the time has arrived to assess its effects and to evaluate the operation of the new structure with particular attention to emergency preparedness, coordination, planning, and civil liberties questions. A brief exploration by the staff of this Committee raised serious questions, and further investigation seems wise.¹

Need for Congressional Preparations for an Emergency and Continual Review of Emergency Law

The Special Committee believes that Congress must take steps to insure that it will be able to act quickly and effectively in time of emergency. Action must be taken now if Congress is to play an active, responsible role in any future emergency.

In a letter to Senators Church and Mathias on May 14, 1974, Majority Leader Mansfield described emergency preparations undertaken by the leadership:

Under the terms of the resolution, adopted December 22, 1973, the Majority Leaders of each House, or the Minority Leaders of each House, or the Speaker and President Pro Tempore have the authority to call the Congress back into session within 48 hours. It is my intention to insist upon this provision for any recess or adjournment of the Senate of a duration in excess of three days.

Although a more efficient system could be established, the leadership of the Senate does have the capacity now to contact

¹ See "Staff Report on Emergency Preparedness" in the Appendix.

each Senator within 24 hours. I believe that an enactment might be necessary to assure the proper priority by the various Executive departments of requests for air transportation when the above procedure is invoked.

The Committee believes that more thought should be given to emergency preparedness. Congress must anticipate diverse scenarios and insure its ability both to survive a crisis and to act effectively in its aftermath. There must be an intelligent definition of the role Congress should assume in emergency preparedness efforts and other emergency activities.

It may be wise to appoint personnel or to establish an administrative mechanism to assume responsibility for coordinating emergency preparations. A new subcommittee, which need not be large, could be set up in the Government Operations Committee, the Joint Committee on Congressional Operations, or elsewhere. The subcommittee could, on an ongoing basis, review Congressional activities, oversee Executive efforts, and coordinate the work of the two branches of government. It could also work out administrative details of the National Emergencies Act and insure that its provisions are followed in time of emergency.

If the Senate were reluctant to set up a permanent body to monitor policy developments, it could establish, on a reserve basis, a panel which would come into existence as soon as a national emergency has been proclaimed. The unit might be a Special or Select Committee, or a subcommittee of the Government Operations Committee. The panel would provide a coordinating center to bring concentrated attention to the emergency.

Regardless of whether any new Congressional structures are established, regular examination of the canon of emergency statutes, Executive orders and related administrative rules, regulations and instruments—operative, dormant, limited—is imperative to keep the Congress apprised of developments and advised as to corrective actions which should be undertaken. The potential threat posed by national emergency law to the political well-being of a democracy makes essential regular examination of policy developments by a Senate committee. Since the Government Operations Committee has had responsibility for the National Emergencies Act in the Senate, it seems appropriate that this Committee conduct this review.

Ending Open-Ended Grants of Authority to the Executive

The Special Committee is particularly concerned that Congress end its dangerous practice of extending open-ended authority to the President. Future legislation should include a terminal date for authorities granted to the Executive and provide for Congressional review.

Past experience presents ample reason for concern about the lack of controls on powers extended to the President. Too often the failure to include a terminal date or to require Congressional review has led to a situation in which the use of an Act belies the purposes for which it was enacted. Several examples illustrate this pattern.

During the Civil War, Congress passed the Feed and Forage Act of 1861 to enable the cavalry in the American West to buy feed for their horses when Congress was out of session. Later, Presidents

invoked the authority of this Act to spend millions of dollars without benefit of Congressional action. The law was used to finance American marines in Lebanon in 1958, to support the Berlin mobilization in 1962, and to maintain troops in Southeast Asia.

In 1933, Congress passed the Emergency Banking Act, which was based on Section 5(b) of the Trading with the Enemy Act of 1917. The legislation gave President Roosevelt the power to control major aspects of the economy—an authority which had formerly been reserved to the Congress. Since then, the Executive branch has used this authority constantly to regulate many aspects of foreign trade and international monetary controls. For instance, when President Johnson wanted to control the foreign investments of U.S. companies in 1968 to alleviate the balance of payments crisis, he issued an Executive Order based on this authority.²

In 1950, Congress passed the Defense Production Act giving the President wide-ranging powers to control the production of materials needed for national defense efforts connected with the Korean War. Sixteen years later, the Act was used to fill a Department of Defense order for 3 million tropical uniforms for use in Vietnam. In the fourth quarter of 1966, the President also relied on the law to require steel, copper, and aluminum producers to set aside part of their output for defense purposes.

Most troubling about these open-ended grants of power is that they have often been made in response to the exigencies of war and other emergency conditions, frequently with the most perfunctory committee review and with virtually no consideration of a law's effect on civil liberties or the delicate structure of divided powers in the U.S. government. The passage of broad economic measures in 1933 provides an extreme example. There was a total of only eight hours of debate in both Houses. There were no committee reports; indeed, only one copy of the bill was available on the floor. The same pattern of hasty and inadequate consideration was repeated during World War II, the Korean War, and the 1964 debate on the Tonkin Gulf resolution.

Lack of Congressional control is particularly characteristic of emergency statutes, most of which have no provision for Congressional oversight or termination. There are two reasons for this. First, few, if any, foresaw that the temporary states of emergency declared in 1933, 1939, 1941, 1950, 1970, and 1971 would remain in effect for so long (the 1939 and 1941 emergencies were terminated in 1952). Second, the various administrations which drafted these laws were understandably not concerned about providing for Congressional review, oversight, or termination of delegated powers, which gave the President wide-ranging authority.

In any case, the time has come to reverse the pernicious habits of the past. It is imperative that termination dates, reporting requirements, and accountability procedures be included in future legislation. Those who would argue for greater latitude for the Executive should remember the experience of the British who fought all through the Second World War on delegation of power extended to the Prime Minister for no longer than thirty days at a time.

² The Special Committee wishes to commend the House International Relations Subcommittee on International Trade and Commerce, which started an investigation of Section 5(b) of the Trading With the Enemy Act in the fall of 1975.

Investigating and Instituting Stricter Controls Over Delegated Powers

Concurrent with efforts to include terminal dates and provision for Congressional review in future legislation, there must be a reexamination of the whole issue of Congressional delegations of power to the Executive.

Fortunately, the Senate Judiciary Subcommittee on Separation of Powers has already initiated an investigation in this area. That subcommittee is examining the question of whether the delegation doctrine retains any vitality. The study will focus on the pattern of abdication of responsibility by the Congress through the use of broad unstructured mandates and the excessive use by the Executive of guidelines and Executive orders either to implement policies not concurred in by Congress or to aggrandize narrowly delegated power.

The Special Committee wishes to emphasize the importance of this inquiry. The Committee's examination of delegated emergency powers revealed the extent of power the Legislative branch has delegated to the Executive. Emergency powers statutes embrace every aspect of American life, and it only takes a quick glance at certain statutes to underscore the vast transfer of power to the Executive. For instance, Section 712 of Title 10 of the United States Code, entitled "Foreign Governments: Detail to Assist," reads:

(a) Upon the application of a country concerned, the President, whenever he considers it in the public interest, may detail members of the Army, Navy, Air Force, and Marine Corps to assist in military matters—

(1) any republic in North America, Central America, or South America;

(2) the Republic of Cuba, Haiti, or Santo Domingo; and

(3) during a war or a declared national emergency, any other country that he considers it advisable to assist in the interest of national defense.

(b) Subject to the prior approval of the Secretary of the military department concerned, a member detailed under this section may accept any office from the country to which he is detailed. He is entitled to credit for all service while so detailed, as if serving with the armed forces of the United States. Arrangements may be made by the President, with countries to which such members are detailed to perform functions under this section, for reimbursement to the United States or other sharing of the cost of performing such functions.

The Defense Department, in answer to inquiries by the Special Committee concerning this provision, has stated that it has only been used with regard to Latin America, Liberia and Iran, and interprets its applicability as being limited to noncombatant advisers. The language of Section 712, however, is wide open to other interpretations.

The transfer of power of which this statute is illustrative is the result of Congressional mandate, not Executive usurpation. Over the past four decades the Congress has been content to give the Executive increasing latitude to act without reference to Congress. In a Yale Review article, entitled "The Routinization of Crisis Government," Donald L. Robinson underscores the trend:

A review of the development of [emergency] statutes reveals the deterioration of legislative form during the twenti-

eth century. They vary most significantly in the guidelines they lay down for administrators, and it is here that a trend is most apparent. Some, like the statute giving the President power to call the National Guard into Federal service, have always been couched in language giving the President broad discretion . . . statutes dealing with the military have always tended to be broad in their delegations to the President.

When emergency powers touch upon domestic industry, however, Congress has traditionally tended to show greater care in the delegation of powers to the Executive branch. In 1916, for example, Congress passed an act providing for the mobilization of industries capable of producing war material. If such industries refused to comply with government orders "in time of war or when war is imminent," the President was authorized to take possession and, through an appointed Board of Mobilization, to operate them. Firms were to be given "fair and just" compensation for their products or for the "rental" of their facilities. Despite pressure from the Truman Administration, Congress steadfastly refused to broaden the act by authorizing seizures in peacetime emergencies or even in the event of undeclared wars like the Korean. But, in 1956, this statute was repealed, and replaced by one much briefer, stripped of all qualifications as to the kind of enterprise subject to seizure and the kinds of compliance that would forestall seizure. Under present law, when the President deems war imminent, he "may take possession of any plant" which refuses to "manufacture the kind, quantity, or quality of arms or ammunition . . . ordered by the Secretary [of the Army]; or . . . to furnish them at a reasonable price as determined by the Secretary."

In the case of labor regulations, an even more marked trend toward legislative permissiveness is apparent. In 1917, Congress passed an act providing for the suspension of the eight-hour day on contract work for the government during declared emergencies. In 1962, the chapter dealing with "hours of labor on public works" was completely revised. No longer do the powers of the Secretary of Labor to suspend the provisions of the law depend upon the existence of a declared emergency. Instead, he is given discretion to permit variations and exemptions "to and from any or all provisions" of the act, if he finds it "necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment of the conduct of Government business." The report of the Senate Committee on Labor and Public Welfare, which urged the passage of this revised "work standards" legislation, fails even to mention the change cited here.

The Special Committee believes that it is time to reverse this trend. In the future, when Congress delegates power to the Executive, it should be more specific in defining the conditions in which the authority may be used. Beyond that, the challenge is to devise means by which Congress can monitor the exercise of delegated powers and control those actions deemed to be unnecessary or undesirable. Serious consideration should be given to legislation which would give Con-

gress some type of veto over Executive branch rules and regulations judged to be inconsistent with the legislative intent of the authorizing statute. The law might also cover Executive directives, rules, and regulations which only come into effect during a condition of national emergency. These instruments, though effective only at some future time, should be subject to Congressional scrutiny prior to issuance or activation so that, when they are needed, they will truly reflect the intent of the Legislative branch and will not require adjustment in the midst of a crisis.

Improving the Accountability of Executive Decisionmaking

There must also be an effort to increase Executive accountability by regularizing the procedures surrounding the issuance of Executive orders.

The Special Committee's examination of "Executive Orders in Times of War and National Emergency" underscored the chaotic and secretive conditions that envelop Executive decisionmaking. The Committee found considerable confusion in procedure, a decided absence of a comprehensive means for public accountability, and an uncertain basis for the determination of legal authority on which Executive directives may be issued or challenged.

Title 3 of the Code of Federal Regulations indicates that in issuing decisions and commands, Presidents have used such diverse forms as letters, memorandums, directives, notice, reorganization plans, administrative designation, and military orders. The decision whether to publish an Executive decision is clearly a result of the President's own discretion rather than any prescription of law. In recent years, the National Security Action Memorandums of Presidents Kennedy and Johnson and the National Security Action Directives of President Nixon represent a new method for promulgating decisions, in areas of the gravest importance. Such decisions are not specifically required by law to be published in any register, even in a classified form; none have prescribed formats or procedures; none of these vital Executive decisions are revealed to Congress or the public except under irregular arbitrary or accidental circumstances. For instance, the 1969-1970 secret bombing of Cambodia has recently come before Congressional and public notice. The public record reveals very little about how the commands for such far reaching actions were issued. What is most disturbing is lack of access to any authoritative records in these matters. In short, there is no formal accountability for the most crucial Executive decisions affecting the lives of citizens and the freedom of individuals and institutions.

The problem is exacerbated by the classification of sensitive or important Executive decisions, classification which in most cases prevents even Congress from having access to these documents. While no one would wish to prevent sensitive documents from being classified for reasonable cause, the absolute discretion given to the Executive in this area has led to abuse. It has permitted and encouraged inclusion in this category of many documents in no way connected with essential national security. Moreover, not only are their contents kept secret, but even the extent of such documents is unascertainable. On the basis of the handling of past Presidential papers, many of these documents will, of course, in one manner or another, eventually be declassified, but many have been withheld by Executive discretion.

The legal record of Executive decisionmaking has thus continued to be closed from the light of public or Congressional scrutiny through the use of classified procedures which withhold necessary documents from Congress, by failure to establish substantive criteria for publication and by bypassing existing standards. As a result, the legality of a substantial area of operations of the Government has in large measure been immune from any oversight or scrutiny by Congress. And the situation is growing worse. The number of formal Executive Orders and Proclamations has, in recent years, declined from many hundreds to about 70 annually. Since it is certain that as the United States has grown in size and power the Executive has issued more and more decisions, many of which are of the greatest importance, it can only be surmised that such commands continue to be issued in irregular form and in ways hidden from Congress and the people. As the role of the Executive in Government continues to expand, this must be cause for concern.

Again, the complacency of the Congress can be cited as the reason for this disorderly state of affairs. Congress has not specified substantive standards for the recording of Presidential directives. In addition, Congress has not yet enacted laws to prevent the Executive branch from abusing its power to classify documents where its purpose is to withhold information from Congress and the public.

Improving the accountability of Executive decisionmaking must be a matter of the highest priority. One task—that of codification—has already been begun by the Federal Register. That organization has embarked upon a codification of all published Executive orders issued between 1961 and 1975. This codification, which is expected to be finished by the summer of 1976, will represent the first definitive compilation of published Executive directives. In the past the exact legal status of Executive orders has been virtually impossible to ascertain. While many Executive orders have specified which orders they were modifying or superseding, this practice has by no means been uniform.

The next step would seem to be amendment of the Federal Register Act of 1935, which provides the present statutory guidelines for the issuance of Executive decisions and orders. That Act is supplemented by a series of Executive orders by which the Executive prescribes for itself additional procedures to be observed. Both the statutory and the self-imposed regulations, however, fail to diminish significantly the fundamental arbitrariness of the system, and the Executive's own procedures appear to be followed only insofar as it is convenient to the Executive's purpose at the time.

The Federal Register Act (44 U.S.C. 1505) provides for the publication of:

1. Presidential Proclamations and Executive Orders, except those not having general applicability and legal effect or effective only against Federal Agencies or persons in their capacity as officers, agents or employees thereof;

2. Documents or classes of documents that the President may determine from time to time have general applicability and legal effect; and

3. Documents or classes of documents that may be required so to be published by Act of Congress.

The categories enumerated herein are not all-inclusive. First of all, there is the problem of terminology. If a document is not specifically designated as an "Executive Order" or "Presidential Proclamation," the decision of whether or not it will be published as a part of the public record is left to the discretion of the President and his advisers. If he wishes a document to have "general applicability and legal effect," he will presumably have it published. If, however, the order is directed only to an official or an agency and does not purport to regulate the conduct of private citizens, there is no legal necessity for its publication. Most Executive directives fall into this category. Although most Executive directives pertain to exclusively internal bureaucratic operations, many others have great consequences for the Government, the Nation, and individuals as well. One need cite only the decisionmaking which governed the war in Indochina to illustrate the point most vividly. Although clause 3 of 44 U.S.C. 1505 permits Congress to designate classes of documents for publication, Congress has never addressed itself directly to this question in the broad sense here considered.

Amendment could be made to insure the publication of all significant Executive directives, however denominated, in the Federal Register. At the same time some thought should be given to establishing a system whereby classified rules and orders, by whatever name called, would be registered.

Until Congress grapples with these problems directly, it will be confronted with a continuing veil of secrecy and will be unable to conduct effective oversight of the Executive branch.

CONCLUSION

While much work remains, none of it is more important than passage of the National Emergencies Act. Right now, hundreds of emergency statutes confer enough authority on the President to rule the country without reference to normal constitutional process. Revelations of how power has been abused by high government officials must give rise to concern about the potential exercise, unchecked by the Congress or the American people, of this extraordinary power. The National Emergencies Act would end this threat and insure that the powers now in the hands of the Executive will be utilized only in time of genuine emergency and then only under safeguards providing for Congressional review.

The Special Committee believes that it has provided the nation with an effective, workable method for dealing with future emergencies in accord with constitutional processes. The legislation establishes statutory guidelines for the declaration, administration, and termination of national emergencies. At the minimum, it provides procedure and due process for the exercise of emergency authority.

The bill rests on the Committee's conviction that both the Executive and Legislative branches have vital roles to play. The Constitution makes no provision for suspending the distribution of power in the United States Government in time of emergency. And it would be wrong to argue that the framers did not anticipate crises. As Justice Jackson observed, "they knew what emergencies were, knew the pressures they engender for authoritative action, knew, too, how they

afford a ready pretext for usurpation." Constitutional scholar Gerhard Casper has commented:

the refusal to arrange for institutional changes during emergencies expresses the confidence of the Founding Fathers that the ordinary institutions were so designed as to be capable of coping with extraordinary events.³

The Committee, consequently, cannot accept any doctrine which holds that a nation *in extremis* must submit to the will of a single individual. Such is the doctrine which has carried India to its present state, where the writ of habeas corpus is no longer recognized. Our forefathers—George Washington, James Madison, and others—cautioned, repeatedly, that one branch of government must not be allowed to usurp the powers of another. Thomas Jefferson knew that "the way to have a good and safe government, is not to trust it all to one, but to divide it among the many." In answer to his own question, "What has destroyed liberty and rights of man in every government which has ever existed under the sun?" he replied, "the generalizing and concentrating of all cares and powers into one body."⁴ No doubt we can envision circumstances where greater authority must be lodged in the Executive, but the Executive cannot be allowed to arrogate those powers to itself without recourse to the Legislative branch.

The Special Committee can only conclude by reemphasizing that emergency laws and procedures in the United States have been neglected for too long, and that Congress must pass the National Emergencies Act to end a potentially dangerous situation. To fail to act is to invite abuse. Surely now, after the Vietnam War, the bombing of Cambodia, the Watergate abuses, and the violation of the rights of Americans by the intelligence agencies, Congress is too wise to do that.

³ Gerhard Casper, Statement, U.S. Congress, Senate, Special Committee on the Termination of the National Emergency, "Constitutional Questions Concerning Emergency Powers, Hearings," April 12, 1973, 93rd Congress, 1st session, p. 77.

⁴ Thomas Jefferson letter to Joseph C. Cabell, 1816.

A P P E N D I X E S

PUBLICATIONS OF SPECIAL COMMITTEE ON NATIONAL EMERGENCIES AND DELEGATED EMERGENCY POWERS

REPORTS

- A Brief History of Emergency Powers in the United States: U.S. Senate, Committee Print, 93d Congress, 2d Session, July, 1974. U.S. Government Printing Office, Washington, D.C. 140 pp.
- Emergency Powers Statutes: Provisions of Federal Law Now in Effect Delegating to the Executive Extraordinary Authority in Time of National Emergency: U.S. Senate, Senate Report 93-549, 93d Congress, 1st Session, November 19, 1973. U.S. Government Printing Office, Washington, D.C. 607 pp.
- Summary of Emergency Power Statutes: U.S. Senate, Committee Print, 93d Congress, 2d Session, October, 1973. U.S. Government Printing Office, Washington, D.C. 74 pp.
- Executive Orders in Times of War and National Emergency: U.S. Senate, Senate Report 93-1280, 93d Congress, 2d Session, October 16, 1974. U.S. Government Printing Office, Washington, D.C. 283 pp.
- Summary of Executive Orders in Times of War and National Emergency: U.S. Senate, Committee Print, 93d Congress, 2d Session, August, 1974. U.S. Government Printing Office, Washington, D.C. 69 pp.

EXECUTIVE REPLIES

- Part 1—Evaluation of Emergency Powers Statutes. U.S. Senate, Committee Print, 93d Congress, 2d Session, November, 1974. U.S. Government Printing Office, Washington, D.C. 126 pp.
- Part 2—Summaries of the Executive Branch and Committee Recommendations. U.S. Senate, Committee Print, 93d Congress, 2d Session, November, 1974. U.S. Government Printing Office, Washington, D.C. 322 pp.
- Part 3—Statutes at Large. U.S. Senate, Committee Print, 93d Congress, 2d Session, November, 1974. U.S. Government Printing Office, Washington, D.C. 68 pp.

HEARINGS

- Part 1—Constitutional Questions Concerning Emergency Powers. U.S. Senate, 93d Congress, 1st Session, April 11, 12, 1973. U.S. Government Printing Office, Washington, D.C. 496 pp.
- Part 2—Views of Former Attorneys General. U.S. Senate, 93d Congress, 2d Session, July 24, 1973. U.S. Government Printing Office, Washington, D.C. 225 pp.

Part 3—Constitutional Questions Concerning Emergency Powers.
U.S. Senate, 93d Congress, 1st Session, November 28, 1973. U.S.
Government Printing Office, Washington, D.C. 196 pp.

ERRATA SECTION

The Special Committee would like to note that there is an error in the information on page 96 of Senate Report Number 93-1280, "Executive Orders in Times of War and National Emergency." The original notation reads that ". . . Executive Order 11798 . . . revoked both Executive Order 11796 and Executive Order 11533." According to Presidential Documents Division, Office of the Federal Register, Executive Order 11798 revoked Executive Order 11796, but continued in "full force and effect" Executive Order 11533. The full text of Executive Order 11798 reads as follows:

REVOKING EXECUTIVE ORDER NO. 11796 OF JULY 30, 1974, AND
CONTINUING IN EFFECT EXECUTIVE ORDER NO. 11533 OF JUNE 4,
1970, RELATING TO THE ADMINISTRATION OF EXPORT CONTROLS

By virtue of the authority vested in the President by the Constitution and statutes of the United States, including the statutes referred to herein, it is hereby ordered:

Section 1. Executive Order No. 11796 of July 30, 1974, issued under the authority of the act of October 6, 1917, as amended (12 U.S.C. 95a), is hereby revoked, except that this revocation shall not affect any violation of any rules, regulations, orders, licenses, and other forms of administrative action under said orders which occurred during the period said order was in effect.

Section 2. Pursuant to Public Law 93-372 of August 14, 1974, effective as of the close of July 30, 1974, Executive Order No. 11533 of June 4, 1970, and all delegations, redelegations, rules, regulations, orders, licenses, and other forms of administrative action under said order which were in effect on July 30, 1974, and which have not been revoked administratively or legislatively, are continued and shall be in full force and effect until amended, modified, or terminated by proper authority.

GERALD R. FORD.

THE WHITE HOUSE, *August 14, 1974.*

U. S. SENATE,
SPECIAL COMMITTEE ON NATIONAL EMERGENCIES
AND DELEGATED EMERGENCY POWERS,
Washington, D.C., April 23, 1976.

HON. ABRAHAM RIBICOFF.

Chairman, Government Operations Committee, Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR RIBICOFF: The Special Committee on National Emergencies and Delegated Emergency Powers has prepared a Sourcebook on the National Emergencies Act. The document constitutes a legislative history of the Act, bringing together into one volume texts

of bills, reports, Senate and House debate, and other pertinent documents. The volume also contains a bibliography of readings on emergency powers and a short introductory essay describing the evolution of the legislation. The Special Committee believes that the document will prove enormously useful to scholars and researchers and could be extremely important should a dispute over legislative intent ever arise in time of emergency.

Since the Special Committee is scheduled to terminate on April 30, 1976, we would like to request that the Government Operations Committee assume responsibility for completion of the Sourcebook. The only tasks that remain are: (1) to update the introductory essay on the legislative history of the bill; (2) to insert final documents, such as the Government Operations report, Senate debate, and the President's messages on the legislation; and (3) to issue the document for final printing. (All the other documents have been printed, proofread and are ready for final printing.)

Should you have further questions concerning the document and the work required to finish it, please contact Wilkie Sawyer or Gayle Fitzpatrick at 4-1281.

We would be most grateful for your assistance.

Sincerely,

CHARLES McC. MATHIAS, JR.
FRANK CHURCH.

**STAFF REPORT ON EMERGENCY PREPAREDNESS
IN THE UNITED STATES**

**SENATE SPECIAL COMMITTEE ON NATIONAL EMERGENCIES AND
DELEGATED EMERGENCY POWERS**

March 1976

EMERGENCY PREPAREDNESS IN THE UNITED STATES

In its investigations the Special Committee on National Emergencies and Delegated Emergency Powers has concentrated on determining the extent of emergency power delegated to the President and recommending procedures for the declaration, administration, and termination of emergencies. It has not attempted to evaluate the state of emergency preparedness in the United States. Only in its final days did the Committee probe this question at all, and then only briefly.

The range and complexity of emergency issues make any evaluation extremely difficult.¹ Too often government units, trapped within their particular fragment of the bureaucratic puzzle, fail to examine issues in all their parameters. In its brief probing of emergency preparedness issues, the staff of the Committee attempted to cut across customary lines of fragmentation and to take a broad view. To do this, the staff solicited the views of representatives of Federal emergency agencies, Congressional staff members, and nongovernmental experts.

The exploration raised serious questions, and the staff believes that it is time to assess the effects of the 1973 administrative reorganization and to evaluate the operation of the new structure with particular attention to emergency preparedness, coordination, planning, and civil liberties questions.

To facilitate such a study and to stimulate interest in and awareness of the many issues involved, this report will summarize the findings of the staff's brief survey.^{1a}

Background

Until 1973 responsibility for emergency coordination was vested in the Office of Emergency Preparedness (OEP), located in the Executive Office of the President. OEP drew its authority from many sources, some by delegation from the President and others directly by statute. Its resource planning and mobilization functions were founded in part on the National Security Act of 1947,² the Defense Production Act of 1950,³ and the Strategic and Critical Materials Stockpiling Act.⁴ In the Eisenhower administration, civil and defense

¹ To evaluate planning and preparedness efforts in a comprehensive manner, it is useful to develop analytical frameworks which will help structure an overview. Two frameworks may be useful to later investigators. One method involves classifying the specific types of emergency that could occur:

Economic: Depression, inflation, strikes, housing, agricultural, commodity trading, municipal or corporate bankruptcies, domestic program failures, etc.

Natural Catastrophe: Drought, agricultural pests, plagues, climatic changes, famine, floods, earthquakes, etc.

National Security: Defense, civil defense, internal security, hostilities, war, terrorism, embargoes, nuclear threats (peacetime and wartime), etc.

Another method would be to assess: (1) Organizational capabilities, (2) material resources, and (3) manpower availability.

^{1a} This report represents an initial probing of preparedness issues, rather than a final statement on them. The staff was not able to conduct a thorough examination, and its findings must be viewed with caution.

² 61 Stat. 495, 499; 50 U.S.C. 404.

³ 60 Stat. 596; 50 U.S.C. app., sec. 2061 et seq.

⁴ 64 Stat. 798; 50 U.S.C. 98 et seq. See also 50 U.S.C. app., sec. 2271 note and Executive Order 11051 set out therein.

mobilization functions were merged when Reorganization Plan No. 1 of 1958 joined the functions of the Federal Civil Defense Administration and the Office of Defense Mobilization in a new component of the Executive Office of the President called the Office of Defense and Civilian Mobilization.⁵ The plan provided for a Director and Deputy Director, three Assistant Directors, and ten Regional Directors; made the Director a member of the National Security Council; and attached to the new entity the Civil Defense Advisory Council, originally created by the Federal Civil Defense Act of 1950.⁶ By successive statutes, the Office was renamed Office of Civil and Defense Mobilization,⁷ Office of Emergency Planning,⁸ and, finally, Office of Emergency Preparedness.⁹

Through the years, OEP lost some functions and gained others. By Executive Order 10952, dated July 20, 1961,¹⁰ President Kennedy withdrew designated civil defense functions from OEP and assigned them to the Department of Defense, where they still remain. OEP's responsibility for telecommunications policy was withdrawn (and an Assistant Director eliminated) when the Office of Telecommunications Policy was established by Reorganization Plan No. 1 of 1970.¹¹ Important new responsibilities for supervising disaster relief were thrust upon OEP by the Disaster Relief Act of 1970.¹² The OEP Director was authorized to form emergency support teams of Federal personnel; to draw upon outside organizations; to establish regional offices; to determine qualifications for assistance; to guide the activities of emergency personnel; to provide temporary housing, transportation, communications, and other facilities in emergencies; and to take other actions in major disaster areas. Other laws added to OEP's responsibilities in disaster relief, such as those which authorize Federal assistance to educational institutions which have suffered damage or destruction.¹³

By law or delegation of Presidential authority, OEP also served in various other capacities. Under section 232 of the Trade Expansion Act of 1962, for example, the OEP Director was responsible for investigating imports which might threaten to impair the national security.¹⁴ He served by Presidential appointment as Chairman of the Oil Policy Committee, established by President Nixon in February, 1970, following the report of a Cabinet task force on oil import policy.¹⁵

On January 26, 1973, President Nixon submitted to the Congress Reorganization Plan Number 1 of 1973. That plan called for the abolition of the Office of Emergency Preparedness, the Office of Science and Technology and the National Aeronautics and Space Council and the transfer of their functions to old line agencies. Nixon

⁵ 72 Stat. 1799; 5 U.S.C., app. 565. Also printed at 50 U.S.C., app., sec. 2271 note.

⁶ 64 Stat. 1245, 1247; 50 U.S.C. app., secs 2251-2297.

⁷ 72 Stat. 861; see 50 U.S.C. app., sec. 2271 note.

⁸ 75 Stat. 630; see 50 U.S.C. app., sec. 2271 note.

⁹ 82 Stat. 1194; see 50 U.S.C. app., sec. 2271 note.

¹⁰ 3 CFR, 1959-1963 Comp., p. 479.

¹¹ 5 U.S.C., app., p. 605.

¹² 42 U.S.C. sec. 4401 et seq.

¹³ 81 Stat. 810, 86 Stat. 299.

¹⁴ 19 U.S.C. 862(b).

¹⁵ The information on pages 3-5 was excerpted from: U.S. Congress, House, Committee on Government Operations, Reorganization Plan No. 1 of 1973: House Report No. 93-106, 93rd Congress, 1st Session, Washington, U.S. Government Printing Office, 1973, pp. 12-13.

described the changes in the emergency preparedness area in the following words:

In the interest of efficiency and economy, we can now further streamline the Executive Office of the President by formally relocating those responsibilities and closing the Office of Emergency Preparedness.

I propose to accomplish this reform in two steps. First, reorganization plan No. 1 would transfer to the President all functions previously vested by law in the office or its director, except the director's role as a member of the National Security Council, which would be abolished; and it would abolish the Office of Emergency Preparedness.

The functions to be transferred to the President from OEP largely incidental to emergency authorities already vested in him. They include functions under the Disaster Relief Act of 1970; the function of determining whether a major disaster has occurred within the meaning of (1) Section 7 of the Act of September 30, 1950, as amended, 30 U.S.C. 241-1, or (2) Section 762 (a) of the Higher Education Act of 1965, as added by Section 161 (a) of the Education Amendments of 1972, Public Law 92-318, 86 Stat. 288, 299 (relating to the furnishing by the Commissioner of Education of disaster relief assistance for educational purposes); and functions under Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), with respect to the conduct of investigations to determine the effects on national security of the importation of certain articles.

The Civil Defense Advisory Council within OEP would also be abolished by this plan, as changes in domestic and international conditions since its establishment in 1950 have now obviated the need for a standing council of this type. Should advice of the kind the council has provided be required again in the future, state and local officials and experts in the field can be consulted on an ad hoc basis.

Second, as soon as the plan became effective, I would delegate OEP's former functions as follows:

All OEP responsibilities having to do with preparedness for and relief of civil emergencies and disasters would be transferred to the Department of Housing and Urban Development. This would provide greater field capabilities for coordination of federal disaster assistance with that provided by states and local communities, and would be in keeping with the objective of creating a broad, new Department of Community Development.

OEP's responsibilities for measures to ensure the continuity of civil government operations in the event of major military attack would be reassigned to the General Services Administration, as would responsibility for resource mobilization including the management of national security stockpiles, with policy guidance in both

cases to be provided by the National Security Council, and with economic considerations relating to changes in stockpile levels to be coordinated by the Council on Economic Policy.

Investigations of importa which might threaten the national security—assigned to OEP by Section 232 of the Trade Expansion Act of 1962—would be reassigned to the Treasury Department, whose other trade studies give it a ready-made capability in this field; the National Security Council would maintain its supervisory role over strategic imports.

Those disaster relief authorities which have been reserved to the President in the past, such as the authority to declare major disasters, will continue to be exercised by him under rapid interagency coordination, the federal response will be coordinated by the Executive Office of the President in charge of executive management.

The Oil Policy Committee will continue to function as in the past, unaffected by this reorganization, except that I will designate the Deputy Secretary of the Treasury as chairman in place of the Director of OEP. The Committee will operate under the general supervision of the Assistant to the President in charge of economic affairs.

The functions which would be abolished by this plan, and the statutory authorities for each, are:

(1) The functions of the Director of the Office of Emergency Preparedness with respect to being a member of the National Security Council (Sec. 101, National Security Act of 1947, as amended, 50 U.S.C. 402; and Sec. 4, Reorganization Plan No. 1 of 1958);

(2) The functions of the Civil Defense Advisory Council (Sec. 102(a) Federal Civil Defense Act of 1950; 50 U.S.C. App. 2272 (a)). . . .¹⁶

Under the Reorganization Act of 1949, Executive reorganization proposals take effect automatically unless either House of Congress disapproves the plan within sixty days of its submission to Congress. Both the House and Senate Government Operations Committee held hearings on Reorganization Plan No. 1 of 1973. The Senate took no action, while the House issued a report approving the plan. The House group observed that "the President cannot be compelled to utilize a policymaking and advisory apparatus in the Executive Office against his own preferences." The House report concluded:

We cannot predict how well the agencies will execute the functions and responsibilities transferred to them by the reorganization plan. The quality of leadership, the funds and resources available, management techniques, and other factors will make a large difference. The fear expressed by some critics of the plan is that the transferred functions will be buried at lower levels in departmental or agency bureaucra-

¹⁶ U.S. President, Message, "Reorganization Plan No. 1, 1973," Hearings, before a Subcommittee of the Committee on Government Operations, House of Representatives, 93rd Congress, 1st Session, Washington, U.S. Government Printing Office, 1973, pp. 100-102.

cies, and that performance will suffer accordingly. This result is possible, but it will not follow automatically if common sense, good management, and sufficient resources are brought to bear.¹⁷

Neither house having disapproved, the reorganization plan went into effect. OEP was dismantled, and its authorities were split up between different Executive agencies. The Federal Preparedness Agency within GSA—known during a transitional period as the Office of Preparedness—assumed responsibility for coordination and planning. The Federal Disaster Assistance Administration within HUD became the central agency in charge of natural disasters. The Department of the Treasury assimilated those OEP functions regarding investigation of imports which might threaten national security. The Deputy Security of the Treasury replaced the OEP director as Chairman of the Oil Policy Committee, and FPA lost the seat which OEP had had on the National Security Council. The Civil Defense Advisory Council within OEP was abolished, while the Defense Civil Preparedness Agency, set up in 1972, continued as before.

Two investigations explored emergency preparedness issues in the two years following the reorganization. Hearings conducted in 1973 by the Subcommittee on Disaster Relief of the Senate Public Works Committee focused on the adequacy and effectiveness of federal disaster relief legislation. In 1974, hearings held by a House Appropriations Subcommittee indicated the need for a more complete investigation. There was confusion about the exact relationship of the DCPA and the Office of Preparedness (known as the FPA now). Georgiana Sheldon, Deputy Director of the DCPA, decried the lack of Congressional oversight.

Recently more studies have been launched. In January 1976, the House Armed Services Subcommittee on Investigations set up a panel to examine the nation's civil defense. The inquiry is particularly important since the Senate Armed Services Preparedness Investigating Subcommittee has not held any hearings in the last year and a half.

In December 1975, GAO initiated its own examination of the Nation's civil defense program. The study will focus on the Defense Civil Preparedness Agency as an effort to determine its operating efficiency. GAO plans to investigate the practicality of the Agency's programs and the effectiveness of its assistance to states and local communities. GAO is particularly concerned about possible overlap and inefficiency between DCPA, FDAA, and FPA. Recently DCPA has been helping anticipate and prepare for possible crises. Once a disaster has occurred, the FDAA has assumed operational responsibility. FPA has played an overall supervisory and coordinating role. GAO will investigate how these divided responsibilities operate in practice.

Concurrently, the Senate Government Operations Committee has begun to examine the DMPA, FPA, FDAA, and the Emergency Preparedness Office of the Secretary of the Interior. The Government Operations staff has concerned that considerable overlap existed in the programs of these agencies.

¹⁷ U.S. Congress. House. Committee on Government Operations. Reorganization Plan No. 1 of 1973: House Report No. 93-106, 93rd Congress, 1st Session, Washington, U.S. Government Printing Office, 1973, p. 18.

Organization

While promising, these inquiries will stop short of an overall assessment of both emergency preparedness and planning efforts in this country and the wisdom of the new administrative structure set up under Reorganization Plan Number 1 of 1973.

The Committee staff believes that now—three years after that reorganization—an investigation into preparedness operations is in order. During recent years a trend toward decentralizing governmental functions has emerged, but serious questions exist about whether the nation benefits from decentralization of emergency preparedness activities. Alternatives to the present arrangement must be examined for their possible benefits.

The current policy of the U.S. is to operate a decentralized system, coordinated by an agency located in GSA, the Federal Preparedness Agency. FPA retains some of the operational duties of OEP, most notably in maintaining stockpiles and underground facilities and supplies, but compared to its predecessor, FPA is relatively free of operational responsibility. Its main responsibility is to provide policy guidance for emergency preparedness programs and to coordinate programs throughout the U.S. government. The Agency operates with a staff of over 200 people and with an unclassified administrative budget of about \$7 million. Ten regional offices provide guidance to other Federal field offices and to state and local governments in planning and developing their readiness programs. Beyond its administrative structure, FPA has three main divisions: (1) Conflict Preparedness runs emergency facilities, "Continuity of the U.S. Government" operations, and other programs; (2) Civil Crisis Preparedness handles stockpiles, industrial mobilization, and crisis management; and (3) Research, Development, and Program Development explores increasingly-sophisticated technologies.

A discussion of the relative merits of the present and alternate administrative structures might start with an examination of the decision to dismantle OEP and to establish FPA. Nixon said that he was acting "in the interest of efficiency and economy." Later, in testimony, Fred Malek, Deputy Director of the Office of Management and Budget, stated:

One objective is to reduce the size of the Executive Office, but, more important is the need for reorienting the Executive Office to focus on its original mission as a staff for top-level policy formation and monitoring of policy execution in broad functional areas. These actions are also consistent with the President's overall purpose of strengthening and upgrading the capacity of our line departments and agencies, and to press for further decentralization of Federal activity to field offices and even to the communities themselves, wherever we can bring the Government closer to the people.¹⁸

The staff found that most people interviewed placed great stress on the political pressure to cut back the Executive Office. One FPA official argued that the President was trying to prod agencies and depart-

¹⁸ U.S., Congress, House, Committee on Government Operations, "Reorganization Plan No. 1 of 1973, Hearings," before a subcommittee of the Committee on Government Operations, House of Representatives, 93rd Congress, 1st sess., February 26, 1973, p. 3.

ments to rethink and restructure their administrative organizations. Others pointed to a longstanding antagonism between OMB and OEP and noted that a committee chaired by OMB director Roy Ash had recommended a restructuring of OEP. According to this argument, OMB had always seen OEP as a rival, so when the idea of reorganizing government gained favor and OEP issued some reports embarrassing to the Administration, OMB seized the occasion and moved to revamp OEP.

Whatever the reasons, current debate on different administrative arrangements should focus on several key questions. One policy matter is whether the lead coordinating agency should have operational responsibility, and if so, how much.

The staff found agreement that the lead agency is probably better off without responsibility for oil and natural disaster programs. FPA spokesmen and critics generally agree that reduction of natural disaster responsibilities has benefitted FPA. One official observed that OEP's work had always been characterized by a stop-and-go quality. People would begin a project only to be interrupted when some natural disaster would demand their attention. Now that FDAA has taken over the handling of natural disasters, the problem has been alleviated. Similarly, a consensus seemed to exist that oil matters had become so complex and vital that they were better handled separately.

Whether the central coordinating agency should be free of all operational responsibility is a more controversial subject. Critics argue that first-hand exposure to emergencies and personal experience in handling them insure that planning preparedness, and coordination efforts remain realistic. They insist that cutting administrators and planners off from immediate contact with emergency conditions leads to an isolation that has a detrimental effect on efforts to make efficient, realistic preparations.

A top FPA official admitted that he was not certain what structure would be most advantageous. He ended up suggesting that the best solution might be not a "restored OEP" or the present setup, but a hybrid structure—a centralized agency with operational responsibilities which stopped short of natural disasters and oil policies.

Another issue centers on the importance of the specific location of the coordinating agency within the government¹⁹ OEP, by virtue of its location in the Executive Office of the President, exercised considerable "clout." The staff found universal agreement that FPA carries less political prestige and muscle than its predecessor. As a result, FPA requests elicit slower responses, involve more red tape, and, generally, take a longer time.

The diminished "clout" of FPA raises serious questions about the importance and effectiveness of its leadership role. Some argue that it is imperative that the Agency be moved from GSA and either be set up

¹⁹ An Arthur D. Little study on "Industrial Preparedness in an Arms Control Environment," prepared in December 1974 for the Arms Control and Disarmament Agency (ACDA), also raised the issue of location: "It is possible to point out areas in the preparedness system where effort might be rewarded with improvement. One such area is the standby organization for industrial mobilization. The principal issue here appears to be the level at which the primary mobilization coordination responsibility is fixed within the Executive Branch. * * * The link with arms control * * * may not have been fully appreciated when the 1973 decision was made and its emerging significance suggests that a different disposition should at least be considered."

by itself or be attached to the National Security Council, Domestic Council, or the Office of Management and Budget. This line of argument is based on the view that the coordinating agency has to occupy a significant position to possess enough authority to command respect and to be effective. Prime location is important, if only to insure that the President is aware of the coordinating agency's services and makes use of them. Proponents of this view believe that under the present structure Executive decisionmakers are frequently unaware that FPA has information which would be of use to them.

It seems clear that FPA does not play a major policy role in crisis situations. Frequently, when a project has needed to be organized quickly and political muscle has been required, the Office of Management and Budget has taken command of the situation. As an OMB official observed, "crisis direction was required, and it had to be out of the President's office."

The issue is whether OMB is suited to its new role. Critics contend that it is not. They stress that while OMB has Executive clout, it does not have the expertise required to successfully handle emergencies. They argue that there is high pay-off in using people who have had experience in planning for and coping with emergency situations. Reliance on those with prior experience is particularly important in improving efficiency during the first seventy-two hours of the emergency. In the view of critics, OMB is ill-suited to its fire-fighting role: it cannot provide the expertise necessary to expedite the handling of emergencies.

Another major policy question concerns the effectiveness of coordination. Critics charge that present efforts are inefficient and fragmented. A 1974 Arthur D. Little study lent credence to this view, finding that "officials familiar with the preparedness system feel concern over divisions of responsibility, possible gaps between agencies, and a lack of full coordination." The study concluded, "An effort to confirm these views and develop remedies for such deficiencies as are verified seems warranted."²⁰

In its own investigation, the staff found particular concern over the uneven coordination between state and local agencies and the Federal bureaucracy. States apparently find it difficult to work with the reorganized Federal structure. They would prefer to deal with a single unified Federal agency capable of granting them lump sum grants. The present fragmented system—in which agencies have overlapping jurisdictions and coordination efforts prior to an emergency are distinct from those following a disaster—frustrates and confuses them. States have problems identifying the source of needed funds, and they have trouble complying with the "strings" frequently attached to grants. The use of funds allocated by the Defense Civil Preparedness Agency seems to have been a subject of particular controversy.

FPA officials acknowledge these problems. They were eager to improve coordination with state and local agencies. In addition, they (and FDAA officials) indicated that contact between FPA and FDAA is minimal and that coordination between the two agencies is in need of improvement.

Despite these problems, FPA representatives believe that the system works better than critics charge. Problems that have surfaced reflect

²⁰ Arthur D. Little, "Industrial Preparedness in an Arms Control Environment," p. 68.

in large part the settling out of the new administrative apparatus, and generally, coordination within the Federal bureaucracy is effective. Difficulties are being worked out through administrative arrangements and informal agreements.

Finally, in this time of government deficits and tight budgets, comparative budgetary figures will also have to be considered. When the Nixon Administration presented Reorganization Number 1, official spokesmen heralded savings of some \$2 million, but none of the savings was to result from the restructuring of the emergency agencies. In fact, a high FPA official has suggested that the present decentralized set-up is more expensive to operate. If true, it is only natural to examine what advantages the new structure offers and to ask whether they warrant the additional expenditures.

Planning

An evaluation of planning efforts within the government seems wise in light of widespread skepticism about planning. Critics contend that the level of planning has been excessive in the past and that efforts that are undertaken in the future should be more realistic, emphasizing existing structures and resources rather than relying on contingency structures and plans. They view planning efforts as an academic exercise, an impractical activity conducted in a world of contingencies too often separated from more mundane realities. They argue that planning is an expensive luxury that is hard to justify when all programs are being scrutinized for possible savings and other programs provide more concrete and visible results.

Former OEP officials and current FPA spokesmen strongly defend the need for advance planning. In defining planning, they speak of the anticipation of potential crises and preparation of appropriate governmental responses, including the establishment of procedures, the perfection of methodologies, the collection of important data, and the identification of skilled personnel. These officials argue that the complexity and increasing interdependence of the world and the concurrent growth in the potential for and ramifications of devastating disasters make advance work absolutely essential.

FPA officials expressed concern that the present administrative apparatus and appropriations process were biased against planning efforts. No single appropriations control point exists to insure that enough money has gone into planning. Individual committees of the Congress make independent decisions on each agency's request without any concern for the overall outcome. FPA cannot exert the political muscle that OEP could, and no one else has a big stake in contingency planning. Consequently, when agencies negotiate their budgetary requests and Congressional committees give them further examination, funds requested for planning efforts are particularly vulnerable.

The ending of the delegate agency funding process was of particular concern to FPA officials. Under this system the lead preparedness agency maintained control over funds, when it used to insure that vital planning efforts went ahead. According to FPA representatives, the existence of the fund gave the lead agency both latitude and leverage, while also simplifying the accounting of expenditures in the emergency area. Congress eliminated the system, in part, because it

made more difficult efforts to keep track of the exact sums each department was spending on preparedness efforts. FPA officials did not recommend restoration of the delegate agency funding process, but insisted that some type of budgetary pool was necessary to insure continuity of planning and to guarantee completion of any planning whose impact extends beyond a single department.

FPA officials were more concerned about the future implications of the decreasing interest in preparedness planning than about the present results. They worried that the cumulative effort of the small incremental steps in which planning efforts were receiving less and less support would be extremely serious. They emphasized that certain types of planning were dynamic and in need of constant revision, and they expressed fears that this planning would become obsolescent and would deteriorate to a dangerous point.

The staff believes that further investigation of these issues is warranted. In the face of an evident decline in planning efforts, the amount of planning the nation should support is an obvious area of inquiry. The problem is to find the elusive mean between excessive and inadequate planning. The staff believes that concerns expressed by FPA officials are legitimate, but that they must be coupled with a recognition that planning inevitably has diminishing returns. It does not seem wise to prepare elaborate plans for every possible contingency. Certain types of planning might be carried out in specific parts of the nation and then be applied elsewhere as required. Planning may be most viable for crises of a limited nature, as a former OEP official suggested. Some thought is required to insure that planning is conducted not just with an eye to maximizing efficiency, but also with an eye to confining actions to the restraints of the Constitution and the law. Efforts must be made to make certain that advance planning is formulated to provide procedures for the protection of civil liberties and that all emergency preparations are in accordance with constitutional processes. It is essential to assess the impact of specific planning in a broader framework. For instance, plans for relocating whole segments of the population in the event of a nuclear threat must be considered within the perspective of an overall policy of nuclear parity. Such plans might be viewed by an enemy as our preparation for a first strike and be escalatory in ways that were unintended. At the same time, relocation plans may violate important civil liberties.

The quality and efficiency of current planning efforts must be examined along with other questions, such as the extent to which affected agencies are involved in advance planning. It will be important to judge how well officials are anticipating the diverse types of emergencies that might occur. War and natural disasters are the commonest but the near default of New York City suggests an entirely different realm of economic emergencies and raises the question whether other possible calamities have been anticipated.

Any investigation should not neglect the critical importance of the lead organizational agency. The coordinating agency plays a key role, particularly in charting unexplored terrain, such as the possible dangers of world terrorism and peacetime nuclear emergencies. It seems wise to examine both the contention of FPA officials that the

central agency should serve as a control point in the allocation of funds and the suggestion of others that the diminished political muscle of the FPA has materially hurt planning efforts.

Any assessment of planning and preparedness efforts in the United States should give certain areas special scrutiny. In April 1973, the strategic and critical materials stockpile objectives were reduced by a quantity valued at more than \$4 billion. The rationale for this abrupt change in policy is unclear. An investigation by GAO seems to be leading to a reevaluation of stockpile assumptions, but it is essential that Congress insure that the nation's policies in this area are not subject to dramatic fluctuation or political whim.

Another issue concerns Executive Reserves. Under this program, selected American citizens are assigned key governmental roles which they are to assume in an emergency. In effect, these officials constitute a type of "shadow government." Serious questions—such as the extent of the program, the type of individuals involved, the advisability of public disclosure, and the manner of activation of these reserves—suggest the need for further investigation. In December 1973, in testimony before the Senate Interior Subcommittee on Integrated Oil Operations, Senator Lee Metcalf expressed concern about the extent of industry representation in the Emergency Petroleum and Gas Administration Executive Reserve. The staff of the Special Committee feels that the extent of industry control in all Executive Reserve programs merits investigation. An inquiry seems wise in view of the findings of the House Small Business Subcommittee on Energy and the Environment that "politicalization" and "disregard for conflict of interest considerations" plague the Presidential Executive Interchange Program created by President Johnson in 1969.

Another issue involves representation of the chief preparedness agency on the National Security Council. OEP was represented on that body, but the preparedness representative was removed in the 1973 reorganization. The staff heard different views on this issue. A former OEP official felt that it would be difficult to make a compelling case for representation, since most of the items on the National Security Council agenda are matters concerning the CIA and State and Defense Departments. An FPA official felt that the chief preparedness agency should naturally be represented on that group, but was under no illusion that membership would bring immediate influence.

Civil Liberties

Finally, there are a range of government programs which warrant investigation because they pose a potential threat to civil liberties. Emergency censorship demands more thorough scrutiny. In 1972, the House Government Operations Subcommittee on Foreign Operations and Government Information held hearings on the "Wartime Information Security Program," but these hearings did not constitute an exhaustive inquiry.

The maintenance of lists of people to be watched or to be detained in time of national emergency is another sensitive area. Of particular concern are contingency plans, developed by the Justice Department, for a domestic emergency. In an article by Harvard law professor Alan Dershowitz appearing in the March/April, 1973, *Liberty*, Richard Kliendienst, the Deputy Attorney General at that time, is

quoted as saying: "We have careful plans ready to be put into effect in the event of any emergency requiring Federal troops." The Senate Select Committee on Intelligence Activities and the House Judiciary Subcommittee on Civil Liberties have begun investigations of these matters, but the Congress still awaits the results of these inquiries.

Another matter of concern is the number of organizations which have been established in a dormant status to be activated upon the President's determination in a national emergency. Planned agencies, such as the Office of Defense Resources and the Office of Economic Stabilization, may require further study.

Perhaps the operation most in need of scrutiny is the series of government relocation centers operated under the FPA's "continuity of government" program. Recent articles by Richard P. Pollock in *The Progressive*²¹ and the new Washington weekly, *Newsworks*,²² have detailed the operations of Mount Weather and other relocation sites operated outside Washington, D.C. The staff is concerned about the lack of Congressional oversight and the absence of evidence that these facilities are being run in accordance with constitutional processes. If these programs are to continue, it is imperative that adequate safeguards exist in the activation and operation of Mount Weather and other relocation sites. The Senate Judiciary Subcommittee on Constitutional Rights has begun to probe this area but has found it difficult to penetrate the veil of secrecy surrounding these programs.

²¹ Richard P. Pollock, "The Mysterious Mountain," *The Progressive*, Madison, Wis., March 1976, pp. 12-16.

²² Richard P. Pollock, "Flight 514 and the Secret of Mount Weather." *Washington News works*, Washington, D.C., February 12-18, 1976, pp. 7-8.

