

*TESTIMONY OF*

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Before the Senate Judiciary  
Subcommittee on the Constitution

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It is an honor to be here before you this afternoon.

I have served here in Washington for over 64 years, 14 of them as a member of the White House Staff – under Presidents Eisenhower, Nixon and Ford – and 12 as a senior staff member of the Brookings Institution.

I have six points to emphasize concerning the “history and legality of Executive Branch czars.”

Point 1: “Czar” is not an official government title of anybody; it is a vernacular of executive branch public administration, harking back – in one account -- at least to the Coolidge years. It is a label now used loosely hereabouts, especially by the media.

Point 2: To use the dictionary definition of “czar” as “one in authority” leads us straight to the question: who in today’s executive branch is a “czar?” A September 16 *Washington Post* story makes up a list of 30 -- with which I differ. My definition of “czar” means, first, that this person reports only to the president. If the so-called “czar” reports to someone in between, then that intermediate person is the “czar” and the appointee is only a subordinate assistant. Special Envoys Stern, Holbrooke and Mitchell, for instance, report to the president through or with Secretary of State Clinton. “Both Mitchell and Holbrooke said she oversees their work closely,” explains a September 19 story in the *Washington Post*. A careful reading of the White House announcement about so-called “Urban Affairs Czar” Adolfo Carrion Jr. reveals that he answers not

directly to the president, but “reports jointly” to White House Assistants Valerie Jarrett and Melody Barnes. “Performance Czar” Jeffrey Zients, and “Information Czar” Vivek Kundra are subordinates in the Office of Management and Budget.

My definition of “czars” also excludes appointees who have undergone Senate confirmation and are thus accountable to testify before congressional committees. This excludes from czardom the Director of National Intelligence and the Drug, Science, Technology and Regulatory principals in the Executive Office of the President and the Domestic Violence Office Director in the Department of Justice. I note that the media constantly inject the adjectival words “White House” in front of the titles of most of the above-described supposed “czar” officials. I regard this as misleading reporting.

Point 3: The implication of Senator Feingold’s September 15 letter to the president is that policy officers of the executive branch, especially those in “executive positions,” who have never been appointed “with the advice and consent of the Senate” may hold positions which are not “consistent with the Appointments Clause” of the Constitution.

Principal persons in the “non-confirmable” category are the 24 top White House staff officers with the title of Assistant to the President. Examples are so-called “Health Czar” Nancy-Ann DeParle and Carol Browner for energy and climate change. These two officers, and all of their colleagues at the White House, are appointed pursuant to Public Law 95-570 of November, 1978 which specifies that “the President is authorized to appoint and fix the pay of employees in the White House Office without regard to any other provision of law regulating the employment or compensation of persons in the Government service.” Public Law 95-570 is silent about any requirement for Senate

confirmation of those appointments. I interpret this silence as evidencing the intent of Congress to reconfirm, in 1978, the historic practice of not requiring Senate approval of White House staff members, whether they are called “czars” or not. Likewise, White House staffers do not give formal testimony to congressional committees – unless, as in the Watergate instance, criminality is alleged.

Point 4: Does that mean that senior White House staffers wall themselves off from the Congress, being “anti-democratic” – “a poor way to manage the government”? as Senator Lamar Alexander alleges (*Washington Post* story September 16). Consider the example of Ms. DeParle: (*New York Times*, September 20): “When Senator Dianne Feinstein... expressed misgivings about how expanding Medicaid would affect California’s budget, Ms. DeParle gathered some charts and dropped by [the Senator’s home] on a Saturday. They spent nearly three hours talking over coffee in Ms. Feinstein’s den.” Rather un-czar-like behavior... As Subcommittee members are aware, White House officers constantly visit the Hill for informal conferences with Members and staffs.

Point 5: The *Post*’s September 16 story quotes Senator Byrd as having written the president criticizing White House staffers for “their rapid and easy accumulation of power.” Are they powerful? Are they “czars”?

Well, no. Let us remember Franklin Roosevelt’s Executive Order 8248 of September, 1939: These Assistants “shall be personal aides to the President and shall have no authority over anyone in any department or agency.” White House staff members have no legal responsibility whatsoever other than to assist and advise the

president. On occasion, when staff seniors communicate the president's instructions to Cabinet members, they sometimes do it in a forceful style. I have seen that happen.

Point 6: "These guys don't get vetted," the *Post* quotes Republican Congressman Jack Kingston, "they have staff and offices and immense responsibility. All that needs to come before Congress." I differ.

Defending the new Constitution, and its three branches, Executive, Legislative and Judicial, Madison's Federalist 51 emphasized that "the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other..." This venerable tenet is as applicable to staff as well as principals. It would be unthinkable that the Law Clerks of the Supreme Court should be in any way accountable to the president or to the Congress; it would be unthinkable that the appointments of any of the personal legislative or committee staff here at the Capitol should be approved by the White House. And likewise vice versa.

The independence of these three groups of staff is indispensable to the separation of powers -- which as this Subcommittee knows, is an implied mandate of the Constitution.

The president's personal staff are independently responsible only to the president -- and in the end he is the only "czar" that is. And he is accountable: to the American electorate.

Thank you.

[Attached are two pages from my 1988 book about the White House staff which identify the special czar-like offices used by presidents beginning with Eisenhower.]

# THE RING OF POWER

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The White House Staff  
and Its Expanding Role  
in Government

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Never mind that such a new White House special assistant will probably be a pain to the Cabinet and will appear to them to fuzz up their direct lines to the president. And don't mention that the problem against which the czar is aimed may be incurable by administrative fixes anyway. A czar conveys the flavor of action, will be publicized as the superman who will "knock heads," "cut red tape," and "mow down" resistance. The president can collect some praise for his "initiative"; the very fact of the czar's appointment will help rebut the political attack that the beleaguered chief executive is "doing nothing about" the problem at hand. None of the recent presidents has withstood these temptations.

As has already been described, the White House staff has a center of continuing offices. But the staff is—and always will be—the mirror of the president's priorities; as they surge and expand, it will change to reflect them. Flaring out from that center, therefore, will be a corona of ephemeral luminaries.

Eisenhower, for example, created special White House offices for Personnel Management (Young, followed by Ellsworth), Airways Modernization (Curtis and later Quesada), Disarmament (Stassen), Cold War Planning (Jackson), International Understanding and Cooperation (Rockefeller), Public Works Planning (Bragdon, followed by Peterson), Agricultural Surpluses (Francis), Foreign Economic Policy (Dodge and later Randall), Science and Technology (Killian and later Kistiakowsky), and Atomic Energy (Strauss). He also appointed Meyer Kestnbaum on his White House staff as a special assistant to follow up the reports of the two Hoover Commissions and of the Commission on Intergovernmental Relations which Kestnbaum himself had chaired.

Except for the Science and Technology Office, which finally became an institution in the Executive Office, Kennedy wiped them all out and started new ones of his own: Food for Peace (McGovern), Mental Retardation (Warren), Latin America (Mann), International Trade (Peterson), Transport Mergers (Prettyman), and Military Affairs (Taylor). Johnson established czars of his own, for the War on Poverty (Shriver), Alaskan Earthquake Rehabilitation (Anderson and Ink), the Arts (Stevens), and he reappointed Maxwell Taylor as a consultant for Military-Diplomatic Strategy. President Nixon, in addition to his extensive Public Liaison Office with its links to consumers and to minority groups, installed White House special assistants for Energy (Love and later DiBona), Physical

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Fitness (Wilkinson), the Academic Community and the Young (Heard), the Business Community (Flanigan), and Manpower Planning (Hershey). Ford created czars for Labor-Management Negotiations (Usery), Urban Affairs (Fletcher), and Human Rights and Humanitarian Affairs (Wilson). Carter initiated a counselor for Aging (Cruikshank), and special assistants for Inflation (Strauss, followed by Kahn), for Reorganization (Pettigrew), for the Middle East (Strauss), Drugs and Health (Bourne and later O'Keefe), Information Management (Harden), White House Administration (Hugh Carter), and the Iranian Hostages (Ball). President Reagan has had his own assistants for Drug Abuse Policy (Turner, followed by MacDonald), for Private-Sector Initiatives (Ryan), and for Agricultural Trade and Food Aid (Alan Tracy)—this last a position ordained in statute.<sup>1</sup>

Not even counted here are the dozens of special ambassadors and envoys (such as Averell Harriman, Walter George, Donald Rumsfeld, Hamilton Jordan, Philip Habib, Ellsworth Bunker, Robert Strauss, and Cyrus Vance) whom presidents have sent for brief and sensitive missions to inflamed corners of the country and the world.

Beyond the catalog of czars created in fact, there have been others proposed but not deployed. Eisenhower ended his presidency arguing for a "first secretary of the government" to help in the "formulation of national security objectives." A 1964 Johnson Task Force recommended a "secretary at large" for "interagency program coordination." (Both would have required Senate confirmation.)

White House veteran Joseph Califano, while Secretary of Health, Education, and Welfare for Carter, suggested a White House "special representative for domestic assistance," while arts advocates called for a presidential Office of Cultural Affairs. Senior Reagan staffers reportedly urged him to create an "arms-control czar," Senator John Glenn proposed a White House assistant for "nonproliferation," and Reagan himself vetoed a bill that would have forced him to appoint a statutory, Cabinet-level drug-enforcement czar.

The few proposals that did not make it to White House status are outnumbered by the legions that did. What opens the door to such appointments? What conditions produce new ad hoc special presidential assistants?

Presidents are spurred to appoint czars when three incendiary elements converge: if action is needed, time is short, and several federal agencies must contribute to the urgent enterprise. If there is a hint of failure having occurred, and if political flak is exploding, the White House is doubly pressed to dramatize the president's personal concern and to center the needed initiative within his own perimeter.