

## **Presidential use of White House “Czars”**

### **Testimony before the Senate Committee on Homeland Security and Governmental Affairs**

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The term “czar” has no generally accepted definition within the context of American government. It is a term loosely used by journalists to refer to members of a president’s administration who seem to be in charge of a particular policy area. For my purposes, the term “czar” refers to members of the White House staff who have been designated by the president to coordinate a specific policy that involves more than one department or agency in the executive branch; they do not hold Senate-confirmed positions, nor are they officers of the United States.

Article II Section 2 of the Constitution says that the president “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Officers of the United States.” The positions held by these officers (PAS) are created in law and most of them exercise legal authority to commit the United States government to certain policies (within the law) and expend resources in doing so.

In contrast, members of the White House staff are appointed by the president without Senate confirmation (PA). They are legally authorized only to advise the president; they cannot make authoritative decisions for the government of the United States. There is a parallel between the concepts of “line” and “staff” in the U.S. military. Staff personnel can advise line officers, but only line officers can make authoritative decisions, such as hiring and firing personnel or committing budgetary resources.

For practical purposes, however, staff personnel may have considerable “power” or influence, as opposed to authority. But this power is derivative from the line officer for whom they work. Thus White House staffers may communicate orders from the president, but they cannot legally give those orders themselves. In the real world, of course, White House staffers often make important decisions, but the weight of their decisions depends entirely on the willingness of the president to back them up.

#### **Growth of the White House Staff**

Both the advantages and disadvantages of White House czars are illustrated by the significant growth of the White House staff in the Modern Presidency.

Although presidents have always had advisers and confidants in the White House, the formal White staff was established in 1939 when Congress gave Franklin Roosevelt authority to create the Executive Office of the President and hire six formal White House staffers. The expected role of the White House staff was articulated by the classic statement of Franklin Roosevelt's Brownlow Committee in 1937:

These aides would have no power to make decisions or issue instructions in their own right. They would not be interposed between the president and the heads of his departments. They would not be assistant presidents in any sense. . . . They would remain in the background, issue no orders, make no decisions, emit no public statements. . . . [T]hey would not attempt to exercise power on their own account. They should be possessed of high competence, great physical vigor, and a passion for anonymity.

Despite the fact that these precepts have gone by the wayside and the White House staff now includes hundreds of people, some of whom enjoy high public visibility and wield significant power, the norms established in the Brownlow Committee Report still define the ideal for White House aides.

Over the following decades, presidents initiated major changes in the size and scope of their staffs. Dwight Eisenhower created the position of chief of staff to the president and began to institutionalize the White House. John Kennedy, after the Bay of Pigs debacle, told McGeorge Bundy to put together "a little State Department" in the White House that would consider national security policy from his own perspective rather than through the narrower lenses of the Departments of State and Defense. The Assistant to the President for National Security Affairs, (national security advisor) has played major roles in every presidential administration since then. It reached its zenith of power when Henry Kissinger held that position at the same time he was Secretary of State in the Nixon Administration.

When Richard Nixon came to office, his distrust of the executive branch bureaucracies led him to expand considerably the White House staff. In addition to increasing the number of White House staffers in the White House Office, he created the position of domestic policy adviser and designated John Ehrlichmann to be its director. Subsequent presidents have continued to use these the White House positions and to create new ones to meet their needs.

A certain amount of the centralization of policy control through expanding staff in the White House was inevitable and useful. Executive branch departments and cabinet secretaries necessarily and reasonably view national policy from their own perspective, and they often clash with other departments over the formulation and implementation of presidential policies. These conflicts and differing perspectives must be resolved and integrated by presidents, but someone short of the president must be able to narrow the range of alternatives for the president to consider. This coordination role is the most important role of the White House staff; and talented people are necessary to do the job. That being said, too much centralization and too many White House staffers can impair effective presidential leadership. White House staffers are ambitious people, and may try

to use the president's power as their own. Thus the White House staff must be carefully policed and kept on a short leash.

### **The Appropriate Role of Czars**

This brings the focus back to White House czars. Presidents designate czars in order to coordinate policy making across different departments and agencies. They thus play essential roles and lift the burden of coordination from the president. They help reduce the range of options to the essentials necessary for presidential decision. But if the number of czars proliferates, they can clog and confuse the policy making process. In addition to coordinating policy among departments and agencies, someone then must coordinate the czars and their access to the president. Czars may also create layers of aides between the president and departmental secretaries. Too many czars can result in managerial overload.

*From the president's perspective*, a proliferation of czars replicates the divisions already present in the departments and agencies of the executive branch. A large White House staff with many czars must be disciplined and coordinated by the president's chief of staff, a position used by every president since the Nixon administration. Perhaps the greatest challenge that the use of czars presents to coherent policy making is the question: who is in charge of this policy area short of the president? Conflict will abound, and members of Congress as well as other national leaders may be confused as to the locus of authoritative decisions. When this happens in foreign policy, as it has at times in recent decades, foreign leaders do not know who speaks for the president. In addition, a too active czar can pull problems into the White House that could be settled at the cabinet level. Only those issues that are central to a president's policy agenda should be brought into the White House; others should be delegated to the cabinet secretaries who have responsibility for their implementation.

*From the czar's perspective*, the title can be a mixed blessing. The czar enjoys the prestige and perks of being on the White House staff. He or she gets national news coverage and has the opportunity to exercise leadership and sometimes power. On the other hand, czars are often frustrated because they are supposed to be in charge of policy, yet they do not have authority commensurate with their responsibilities. While a czar may have the spotlight and the president's ear in the short term, he or she cannot enforce decisions on departments and agencies. Unlike cabinet secretaries, czars control neither personnel appointments nor budgets. For these they must depend on cabinet secretaries, and if they disagree with the cabinet secretary, they are at a disadvantage. They might appeal to the president to back up their decisions, but presidents have limited time, and czars can go back to that well only so many times. Persons who have been designated the "drug czar," the director of the Office of National Drug Control Policy, have thus had mixed success in their efforts to coordinate harmful substances policy across the executive branch. The Secretary of Homeland Security has more resources at her command than does the Assistant to the President for Homeland Security.

*From the perspective of the department secretary*, the presence of White House czars is most often frustrating. Throughout the modern presidency White House staffers have been the natural enemy of cabinet secretaries. Each vies for the president's ear, and each resents the other's "interference." White house staffers enjoy proximity to the

president and can drop everything else in order to focus on whatever policy the president is considering. Cabinet secretaries, in contrast, must worry about managing their departments and the many policies for which they are responsible. Absent a close relationship with the president, cabinet secretaries are often at a disadvantage in securing presidential attention, and they often resent a czar who is interposed between them and the president.

### **Managing the Presidency**

In the real world, presidents must balance their desire for centralized control with the managerial imperatives for delegation. No president can do an effective job without talented people on the White House staff. Yet if the president allows White House staffers to shut out cabinet secretaries, he or she will not be exposed to the crucial perspectives that cabinet secretaries provide: institutional memory, an operational point of view, and a broader political sensitivity than a single czar can provide. Thus the question of the best balance comes down to presidential judgment and managerial insight. Some czars, such as the National Security Advisor, are clearly necessary. And major presidential policy priorities must be coordinated out of the White House. Secondary issues should be pushed down to the departmental level.

A czar, seen as a symbol of presidential priorities, can be useful for that purpose and not pose an impediment to clear lines of policy making. But a czar who is charged with policy coordination and who uses his or her influence to undercut cabinet secretaries can create confusion and undermine effective policy making. So the real question of the impact of czars must be judged by the roles they play and their approach to their responsibilities rather than merely counting their numbers.

Thus insofar as President Obama's czars take active roles in policy making (as opposed to advising), attempt to shut out cabinet secretaries, and exercise power in their own right, they dilute authority and confuse the chain of command. But if they work closely with cabinet secretaries and help coordinate policy advice to the president, they can be very useful. So the effect of czars and their usefulness depends on their behavior. That said, the larger the White House staff and the more czars that the president designates, the more likely the White House will be difficult to manage, and relations between cabinet secretaries and white House staff will be strained.

### **Congressional oversight of executive branch policy**

Members of Congress are sometimes frustrated in their attempts to oversee executive branch policies and chafe at presidential attempts to circumvent Congress in its legitimate policy making role and responsibilities for oversight of the executive branch. And it is possible that presidents may use their White House staffs to frustrate legitimate congressional participation. Presidents often resist requests for White House staff to testify before Congress and they use claims of executive privilege, sometimes legitimately, sometimes not. Thus Congress can be frustrated when it seems that the president is refusing to let it exercise legitimate oversight of executive branch policy and actions. But Congress is not without constitutional authority to oversee the executive branch.

*The keys to congressional control of administration are its legislative powers to:*

*create agencies,  
authorize programs,  
appropriate money, and  
oversee the faithful execution of the laws.*

Congress has alternatives other than calling White House staffers to testify. Policy making in the executive branch is the responsibility of the President, who is accountable to Congress and the public. If Congress is concerned with policies or their implementation, it can call cabinet secretaries (or subordinate officers of the government) to testify about policy making and implementation. Congress can exercise its power of the purse and authorization power to curb or direct policy implementation. Executive branch departments and agencies exist and are authorized only in law, and Congress can change those laws. As a matter of comity, the president is entitled to the confidentiality of his or her staff, just as members of Congress are entitled to confidentiality of their staff and Supreme Court Justices are entitled to confidentiality of their clerks.

If Congress suspects that White House staffers are illegitimately interfering with policy making or implementation, it can call in cabinet secretaries to explain the policies or programs for which they are responsible. If White House staffers seem to be actually implementing policies, there is certainly cause for concern and Congress has a right to demand explanations. But the keys to congressional control are its authorization and appropriation powers.

In my judgment, there are much more significant threats to congressional constitutional authority than the existence of czars in the White House. The explosion of the use of **signing statements** to imply that the president may not faithfully execute the law, presents a fundamental threat to the constitutional role of Congress, which possesses “All legislative powers” granted in the Constitution.

If presidents create **secret programs** that effectively nullify or circumvent the laws, they are placing themselves above the law and claiming the authority to suspend the laws, which the Framers of the Constitution explicitly rejected.

If presidents use the **state secrets privilege** to avoid the disclosure of or accountability for their actions, the role of the courts can be undercut.

If presidents claim the right to suspend ***habeas corpus***, they are treading on Article I of the Constitution.

Although some presidents have abused their power by making extraordinary claims to constitutional authority, it is also the duty of Congress as a co-equal branch of government to assert its own constitutional prerogatives. Congress has all the

authority it needs to ensure effective oversight of executive branch implementation of policy. The use of czars by presidents presents serious questions of policy making and management, but the constitutional prerogatives of Congress are more seriously undermined by the claims of presidents to have the right to set aside the laws in favor of their own policy priorities.

#### Author

James P. Pfiffner is University Professor in the School of Public Policy at George Mason University. His major areas of expertise are the Presidency, American National Government, and public management. He has lectured on these topics at universities in Europe and throughout the United States as well as at the Federal Executive Institute, the National War College, the U.S. Military Academy, and the Departments of State, Justice, and Defense. He has written or edited twelve books on the presidency and American National Government, including *The Strategic Presidency: Hitting the Ground Running* (2nd edition, 1996), *Power Play: The Bush Administration and the Constitution* (Brookings 2008), and *Torture as Public Policy* (Paradigm Publishers 2010). He has also published more than 100 articles and chapters in books, professional journals, reference works, and the popular press.

He is an elected member of the National Academy of Public Administration, and he has been a panel member or on project staffs of the Volcker Commission, the Center for Strategic and International Studies, the National Academy of Sciences, and the Center for the Study of the Presidency. His professional experience includes service in the Director's Office of the U.S. Office of Personnel Management (1980-81), and he has been a member of the faculty at the University of California, Riverside and California State University, Fullerton. In 2007 he was S.T. Lee Professorial fellow at the Institute for Advanced Study at the University of London. He has received the Distinguished Faculty Award at George Mason University (1990) and the College of Arts and Sciences Award for Scholarship (1999). While serving with the 25th Infantry Division (1/8 Artillery) in 1970 he received the Army Commendation Medal for Valor in Vietnam and Cambodia. He is listed in *Who's Who in America* and *Who's Who in the World*.