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AUTHORIZATION FOR WHITE HOUSE PERSONNEL

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HEARING
BEFORE THE
COMMITTEE ON
OFFICE AND CIVIL SERVICE
UNITED STATES SENATE

NINETY-THIRD CONGRESS

SECOND SESSION

ON

S. 3647

TO CLARIFY EXISTING AUTHORITY FOR EMPLOYMENT
OF WHITE HOUSE OFFICE AND EXECUTIVE RESIDENCE
PERSONNEL, AND EMPLOYMENT OF PERSONNEL BY THE
PRESIDENT IN EMERGENCIES INVOLVING THE NATIONAL
SECURITY AND DEFENSE, AND FOR OTHER PURPOSES

JUNE 26, 1974

Printed for the use of the
Committee on Post Office and Civil Service



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1974

36-545 O

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CLYDE S. DUPONT, *Minority Counsel*

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TO THE

MEMBERS OF THE

AMERICAN ASSOCIATION OF COLLEGE AND UNIVERSITY TEACHERS

OF THE UNITED STATES

AND TO THE AMERICAN ASSOCIATION OF COLLEGE AND UNIVERSITY STUDENTS

THE AMERICAN ASSOCIATION OF COLLEGE AND UNIVERSITY TEACHERS

AND THE AMERICAN ASSOCIATION OF COLLEGE AND UNIVERSITY STUDENTS

AUTHORIZATION FOR WHITE HOUSE PERSONNEL

WEDNESDAY, JUNE 26, 1974

U.S. SENATE,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
Washington, D.C.

The committee met, pursuant to call, at 10:10 a.m., in room 6202, Dirksen Senate Office Building, Hon. Gale W. McGee (chairman of the committee) presiding.

Senators present: Senators Fong and Dole.

Staff members present: Richard Fuller, associate staff director, and Clyde DuPont, minority counsel.

OPENING STATEMENT BY CHAIRMAN MCGEE

The CHAIRMAN. The committee hearing will come to order. This session is convened so that we may hear testimony on S. 3647, the bill introduced by Senator Fong, primarily to provide legislative authorization for employment of White House and Executive Residence personnel, which will include employment of personnel supporting the Vice President in the execution of his duties.

A bill to clarify authority to appoint personnel on the staffs of the President and Vice President is necessary because of clause 2, rule 21 of the House of Representatives. This clause provides that no appropriation shall be reported by the House Appropriations Committee for any expenditures not previously authorized by law.

The House yesterday passed a similar bill, H.R. 14715. This was a bill requested by OMB, a request based upon a suggestion from the chairman of the House Appropriations Committee that such a bill is needed.

This morning we have two witnesses on the agenda: Hon. Roy Ash, Director of OMB, and periodically much maligned whenever we cannot find any other target. Then we always shoot at you. It is good that you have an alligator hide in this business.

It is good to have you here this morning.

Senator Mondale, of Minnesota, has asked to testify also. Two other Senators, Senator Church of Idaho and Senator Mathias, of Maryland, have written to the committee to express their view on one section of the bill. Their letters will be included in the record of this hearing. Also a copy of S. 3647 with the agency report.

[The aforementioned follows:]

FRANK CHURCH, IDAHO
CHARLES MCC. MATHIAS, JR., MD.
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United States Senate
SPECIAL COMMITTEE ON NATIONAL EMERGENCIES
AND DELEGATED EMERGENCY POWERS
(PURSUANT TO S. RES. 241, 91st CONGRESS)
ROOM 252, RUSSELL SENATE OFFICE BUILDING
WASHINGTON, D.C. 20510

June 20, 1974

Senator Gale W. McGee
Chairman
Committee on Post Office and Civil Service
6206 Dirksen Building
United States Senate

Dear Mr. Chairman:

We are writing in regard to § 106 of S. 3647 which is currently pending before your Committee.

During the last year and a half, the Special Committee on National Emergencies and Delegated Emergency Powers has been studying and investigating the use of extraordinary powers delegated by Congress to the Executive in times of national emergency. The United States has been in a continuous state of national emergency since March 1933, when in the Emergency Banking Act the Congress affirmed the existence of the national emergency. President Franklin Roosevelt declared immediately after his inauguration. President Truman proclaimed a state of national emergency in December 1950; President Nixon has declared two states of national emergency. All four are still in effect.

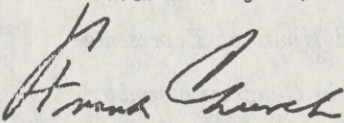
The Special Committee, aided by an intensive computer search, identified and compiled a list of 470 sections of the U.S. Code which grant extraordinary powers to the President in times of crisis. Analysis of these statutes shows that many--although instigated by a specific short-term condition--contain no formulation limiting the exercise of the powers to the duration of that particular emergency. Hence many years after the great depression, long after the end of the Korean conflict, and the post office strike of 1970, government functions unrelated to those situations are carried out, although the statutory authority for them rests solely on these declarations of emergency.

Legislation to remedy this is now being drafted by both of us. It would provide a standard operating procedure for future emergencies, so that a state of emergency does not endure "on paper" indefinitely, and so that the Congress can take appropriate legislative action to deal with conditions which require continuing action beyond an immediate emergency occurrence.

With the experiences of the past in mind, we would like to recommend that § 106 of S. 3647 be revised to include a time limitation to the authority appropriating funds for the President to employ persons to respond to and deal with emergencies involving the national interest, security, or defense which may arise within or outside the country. If, for example, the authority were granted for a period of not more than 60 days, with provision for extensions approved by Congress on the basis of evidence of need presented by the Executive branch, this would assure that the President would be able to take prompt action in time of emergency, but would also assure that a means is available by which Congress can exercise effective oversight. This is similar to a process we recommended to the Committee on Interior and Insular Affairs in the autumn of 1973 during the debate on energy emergency legislation which Congress has accepted. (See enclosed Senate speech by Senator Church, November 19, 1973).

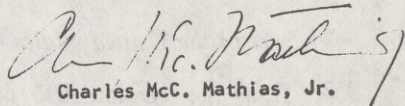
We hope this suggestion for modification will be given favorable consideration by your Committee. Also enclosed is a copy of our study of Emergency Powers Statutes and three volumes of hearings on the whole subject. If you have further questions, please contact us.

With kind regards,



Frank Church

Sincerely,



Charles McC. Mathias, Jr.

Encls.

93^D CONGRESS
2^D SESSION

S. 3647

IN THE SENATE OF THE UNITED STATES

JUNE 13, 1974

Mr. FONG introduced the following bill; which was read twice and referred to the Committee on Post Office and Civil Service

A BILL

To clarify existing authority for employment of White House Office and Executive Residence personnel, and employment of personnel by the President in emergencies involving the national security and defense, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) section 105 of title 3, United States Code, is
4 amended to read as follows:

5 “§ 105. Assistance and services for President and Vice
6 President

7 “(a) Subject to the provisions of subsection (b) of this
8 section, the President is authorized to appoint administrative
9 and staff personnel in the White House Office and the Execu-

1 tive Residence, without regard to the provisions of title 5
2 governing appointments in the competitive service, and to
3 fix the pay of such personnel, without regard to the provi-
4 sions of chapter 51 and subchapter III of chapter 53 of title 5
5 relating to classification and General Schedule pay rates.
6 Such personnel shall perform such official duties as the Presi-
7 dent may prescribe.

8 “(b) The President, under the authority of subsection
9 (a) of this section, may appoint and fix the pay of—

10 “(1) not more than fifteen of such personnel at
11 respective rates not more than the rate of basic pay then
12 currently in effect for level II of the Executive Schedule
13 of section 5313 of title 5;

14 “(2) not more than twenty-five of such personnel
15 at respective rates not more than the rate of basic pay
16 then currently in effect for level III of the Executive
17 Schedule of section 5314 of title 5; and

18 “(3) such other personnel as he considers neces-
19 sary at respective rates not more than the maximum rate
20 of basic pay then currently paid under the General
21 Schedule of section 5332 of title 5.

22 “(c) The President is authorized to procure within
23 the White House Office and the Executive Residence tem-
24 porary or intermittent services of experts and consultants,
25 as described in and in accordance with the first two sentences

1 of section 3109 (b) of title 5, at respective daily rates of
2 pay for individuals not more than the daily equivalent of
3 the rate of basic pay then currently in effect for level II of
4 the Executive Schedule of section 5313 of title 5.

5 “(d) The President is authorized to procure goods and
6 services as he considers necessary for the maintenance, opera-
7 tion, improvement, and preservation of the Executive Resi-
8 dence.

9 “(e) There are authorized to be appropriated each
10 fiscal year to the President—

11 “(1) such sums as may be necessary to pay official
12 reception, entertainment, and representation expenses,
13 to be expended at the discretion of the President and
14 accounted for solely on his certificate; and

15 “(2) such sums as may be necessary for allocation
16 within the Executive Office of the President for official
17 reception and representation expenses.

18 “(f) There are authorized to be appropriated each fiscal
19 year such sums as may be necessary to enable the Vice
20 President to provide assistance to the President in connec-
21 tion with the performance of functions specially assigned to
22 the Vice President by the President in the discharge of
23 Executive duties and responsibilities, including the use of
24 such funds to—

25 “(1) procure temporary or intermittent services of

1 experts and consultants, as described in and in accord-
2 ance with the first two sentences of section 3109 (b) of
3 title 5, at respective daily rates of pay for individuals
4 not more than the daily equivalent of the maximum rate
5 of basic pay then currently paid under the General
6 Schedule of section 5332 of title 5; and

7 “(2) appoint, without regard to the provisions of
8 title 5 governing appointments in the competitive serv-
9 ice, and fix the pay of, without regard to the provisions
10 of chapter 51 and subchapter III of chapter 53 of title 5
11 relating to classification and General Schedule pay
12 rates—

13 “(A) one employee at a rate not more than the
14 rate of basic pay then currently in effect for level
15 II of the Executive Schedule of section 5313 of
16 title 5;

17 “(B) not more than six employees at respec-
18 tive rates not more than the rate of basic pay then
19 currently in effect for level III of the Executive
20 Schedule of section 5314 of title 5; and

21 “(C) such other personnel as the Vice Presi-
22 dent considers necessary at rates not more than the
23 basic pay then currently paid under the General
24 Schedule of section 5332 of title 5.”

1 (b) The table of sections at the beginning of chapter 2
 2 of title 3, United States Code, is amended by deleting—

“105. Compensation of secretaries and executive, administrative, and staff assistants to President.”

3 and inserting in place thereof—

“105. Assistance and services for President and Vice President.”

4 SEC. 2. (a) Section 106 of title 3, United States Code,
 5 is amended to read as follows:

6 **“§ 106. Assistance to President in emergencies involving**
 7 **the national interest, security, or defense**

8 “There are authorized to be appropriated to the Presi-
 9 dent each fiscal year such sums as may be necessary to enable
 10 the President, in his discretion, without regard to any pro-
 11 vision of law regulating employment and pay of persons
 12 in the service of the Federal Government or regulating
 13 expenditures of Federal Government funds, to respond to
 14 and deal with emergencies involving the national interest,
 15 security, or defense which may arise within or outside the
 16 United States of America.”

17 (c) The table of sections at the beginning of chapter
 18 2 of title 3, United States Code, is amended by deleting—

“106. Administrative assistants.”

19 and inserting in place thereof—

“106. Assistance to President in emergencies involving the national inter-
 est, security, or defense.”



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-133209

June 26, 1974

The Honorable Gale W. McGee, Chairman
Committee on Post Office and Civil Service
United States Senate

Dear Mr. Chairman:

This refers to your letter of June 21, 1974, requesting our comments on S. 3647, a bill "To clarify existing authority for employment of White House Office and Executive Residence personnel, and employment of personnel by the President in emergencies involving the national security and defense, and for other purposes."

The bill would amend sections 105 and 106 of title 3, United States Code; to provide permanent statutory authority (1) for the President to appoint and fix the compensation of personnel, including experts and consultants in the White House Office and the Executive Residence; (2) for procurement of goods and services as necessary for the maintenance, operation, improvement and preservation of the Executive Residence; (3) for official receptions, entertainment and representation expenses; (4) for staff and personal services to enable the Vice President to provide assistance to the President, including experts and consultants; and (5) for emergency expenditures by the President. Authorization for most of these expenditures has, in the past, been found only in annual appropriation acts. The bill also would amend 3 U.S.C. 103 to increase the authorized annual travel expenses of the President from \$40,000 to \$100,000.

Section 105, title 3, United States Code, as amended by section 1 of the bill, would specify the numbers of personnel to be authorized for the staff of the President and Vice President.

For the President authority would be provided for employment of not more than 15 persons at rates of pay not in excess of Level II of the Executive Schedule, 5 U.S.C. 5313; not more than 25 of such personnel at rates not in excess of Level III of the Executive Schedule, 5 U.S.C. 5314; unlimited numbers of personnel at rates not in excess of the maximum rate of basic pay under the General Schedule, 5 U.S.C. 5332; and unlimited numbers of experts and consultants employed in accordance with the first two sentences of 5 U.S.C. 3109(b) at rates not in excess of the rate for Level II of the Executive Schedule.

For the Vice President authority would be provided for employment of one employee at a rate not in excess of the rate for Level II of the Executive Schedule; not more than six employees at rates not in excess of Level III; an unlimited number of other personnel at rates not in excess of rates of basic pay under the General Schedule; and an unlimited number of experts and consultants as described in the first two sentences of 5 U.S.C. 3109(b) at daily rates not in excess of the daily equivalent of the maximum rate under the General Schedule.

It is our understanding that the authorities to be provided by S. 3647 would be applicable to the specific categories of appropriations requested by the President which were included under the following headings in the Executive Office Appropriation Act of 1974, Title III of Public Law 93-143, October 30, 1973: (1) The White House Office; (2) Executive Residence; (3) Special Assistance to the President (assistance to enable the Vice President to assist the President in connection with the performance of Executive duties and responsibilities); and (4) Emergency Fund for the President.

We recognize the need for permanent authorizing legislation covering the expenditures in question and believe it would be in the best interests of the Congress and the Executive branch to enact such basic authorizing legislation.

The authority of the President to appoint persons for service in the White House Office as provided by permanent law is now found in sections 105 and 106 of title 3, United States Code, which limits such appointments to six administrative assistants and eight other staff assistants compensated at rates not in excess of Level II of the Executive Schedule. Those provisions do not reflect the requirements of the President for adequate authority to employ and compensate the staff performing the functions of the White House Office, maintaining the Executive Residence and providing assistance to the Vice President in carrying out the executive responsibilities of that office. The difficulties presented by this lack of basic authority was demonstrated by the points of order raised in the House of Representatives against specific appropriation items in the Executive Office budget during debate on H.R. 9590, enacted as Public Law 93-143, *supra*. See House debate, Congressional Record for August 1, 1973, pp. H7146, 7147.

While we are in agreement with the intent of the bill to provide permanent statutory authority for the appropriation of funds for the purposes specified, we have certain comments, as set out below, with respect to specific provisions of the bill.

1. In section 1 the proposed subsection 105(a) with respect to appointments of staff for the White House Office and the Executive Residence and the proposed subsection 105(f)(2) with respect to appointments of staff for the Vice President would make such appointments effective "without regard to the provisions of title 5 governing appointments in the competitive service" and to "fix the pay of" appointees "without regard to provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates."

With respect to the proposed authority for appointment of personnel without regard to provisions of title 5, United States Code, governing appointments in the competitive service we point out that section 3302 of title 5 now authorizes the President to prescribe rules governing the competitive service, including the designation of exceptions to that service. Pursuant to this authority, delegated to the Civil Service Commission (CSC), the Commission has, under Part 6 (Rule VI), title 5, Code of Federal Regulations, provided in Schedule A of the excepted service, for exception from the competitive service of positions to which appointments are made by the President without Senate confirmation. See 5 CFR 213.3102(c). We believe consideration might be given by the CSC to excepting, also, appointments to the staff of the Vice President made for the purpose of assisting that official in performing functions of the Executive branch, as differentiated from legislative functions of the Office of Vice President.

With respect to exemptions of Presidential and Vice Presidential appointees from provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, we point out that the positions to be established in the Executive Levels are specifically excluded from the Classification Act (5 U.S.C. 5102(c)(25)), and from the General Schedule (5 U.S.C. 5331(b)). With respect to employees provided for in the proposed subsection 105(b)(3) to be appointed by the President and in subsection 105(f)(2)(C) to be appointed to the staff of the Vice President we point out that the effect of the exception from the Classification Act and the General Schedule would be to allow appointment of an unlimited number of "ungraded" employees, provided their rates of pay do not exceed the highest rate payable under the General Schedule, 5 U.S.C. 5332. Such ungraded employees have been assigned to the White House, the Executive Residence and the Office of the Vice President in the past under authority of annual appropriation acts. We note from the proposed budget for the Executive Office of the President for fiscal year 1975

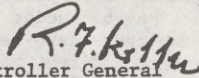
that the request is made for an increase of 30 such positions for a total of 126 for the White House Office over the number (96) on that staff in fiscal years 1973 and 1974. The budget proposes that the number of ungraded positions at annual rates in the Executive Residence would remain the same, as would the number assigned to the Office of the Vice President.

2. With respect to the authority provided in the proposed subsection 105(d) for procurement of goods and services as necessary for the maintenance, operation, improvement and preservation of the Executive Residence, we understand this provision is meant to authorize such expenditures solely for the Residence located at 1600 Pennsylvania Avenue, Washington, D.C., described in section 109 of title 3, supra, as the Executive Mansion and in section 110 as the White House. In this connection, we are aware of no reason why the procurement of goods and services for the Executive Residence and for other property essential to the fulfillment of Presidential duties should not be subject to provisions of the Federal Property and Administrative Services Act of 1949, June 30, 1949, ch. 288, 63 Stat. 377, as amended, and the statutory regulations issued thereunder. Our opinion is that the controls provided under that act and implementing regulations should be made applicable to goods and services procured for the Executive Residence and for other property essential to the fulfillment of Presidential duties.

3. Finally, we believe our authority under provisions of the Budget and Accounting Act, 1921, the act of June 10, 1921, chapter 18, 42 Stat. 20, especially sections 312 and 313 (31 U.S.C. 53 and 54) is sufficiently broad to allow such audits, access to documents and reports on Presidential expenditures to the Congress as may be necessary. However, we suggest the Committee may wish to include in its report on the bill a statement that nothing contained in it by way of special authority is intended to deny or diminish the authority of this Office to examine records and make reports.

Sincerely yours,

Deputy


Comptroller General
of the United States

The CHAIRMAN. But let us turn to the business at hand, Roy, and proceed in whatever manner you deem appropriate.

STATEMENT OF HON. ROY L. ASH, DIRECTOR, OMB, ACCOMPANIED BY STANLEY EBNER, GENERAL COUNSEL, VELMA N. BALDWIN, ASSISTANT TO THE DIRECTOR FOR ADMINISTRATION, PHILLIP D. LARSEN, BUDGET AND MANAGEMENT OFFICER

Mr. ASH. Thank you, Mr. Chairman. I have a very short statement that I would like to read for the record and get to any questions that you may have.

I am pleased to appear before this committee to testify in support of S. 3647, a bill to clarify authority for employment of White House Office and Executive Residence personnel.

I would like to express our appreciation to you, Mr. Chairman, to Senator Fong, and to the other members of the committee for your expeditious action in setting early hearings on this important house-keeping bill.

As you have just stated, Mr. Chairman, the House yesterday passed H.R. 14715, with amendments.

Assuming that the House-passed bill will be referred to this committee when it reaches the Senate, we will be pleased to provide the committee with a detailed report containing our views on that bill if you believe this will be helpful.

The CHAIRMAN. That would be helpful.

Mr. ASH. For the moment, however, I would like to state for the record that, although we appreciate the expeditious action of the House in moving so quickly on our request, we do have certain difficulties with the version passed by the House yesterday. We strongly prefer enactment of S. 3647 as introduced by Senator Fong and is now before the committee.

Before discussing the bill itself, however, I should briefly explain the background surrounding the need for this proposed legislation.

For many years the Congress has routinely provided Presidents with funds to appoint the staff and procure the services they have deemed necessary for the White House Office, Executive Residence, and related operations. Although different Presidents have had varying structures for their organizations, Congress has, as a matter of course, made available sufficient funds to carry out their work, following the principle of comity between branches of Government.

Last year there was an unforeseen departure from this precedent in the course of the appropriations process, when points of order were raised in the House of Representatives against certain appropriations for which there was no supporting authorization statute.

Although history had left us unprepared for this eventuality, the handwriting on the wall was plainly there for the executive branch to read. We understand the reasons why the Congress would wish to have authorizing legislation as a prerequisite to appropriations. We also think that this new turn of events provides a good opportunity to review and revise outmoded statutes which have not changed during the past quarter century.

S. 3647 would revise and amend sections 103, 105, and 106 of title 3, United States Code. It would affirm and clarify the authority of the

President to appoint a specified level of assistants and procure services in the White House Office and Executive Residence. It would also furnish authority to enable the Vice President to provide assistance to the President in connection with the performance of functions specifically assigned to the Vice President in the discharge of Executive duties and responsibilities.

This bill would provide an updated basic authorization for staffing and funding White House and related activities, subject, of course to the annual appropriations process and the review it provides. In essence, it provides nothing unique or new, but merely ratifies what has been the existing practice in recent years through annual appropriations acts.

Mr. Chairman, we are not unaware of the controversial nature which surrounds any current legislative efforts which relate to the White House. However, we strongly feel that S. 3647 is basically a housekeeping bill which sets a reasonable ceiling on personnel levels within the White House, Executive Residence, and Vice President's Office.

It contains enough flexibility to permit the incumbents, as well as future Presidents and Vice Presidents, to structure their offices according to their needs, and yet does not obviate the mandatory annual review and justification process which will continue to take place as funds are sought for the level of support requested.

That concludes my formal statement, Mr. Chairman. Because of the real need to enact this legislation in advance of appropriations for the personnel and activities authorized by S. 3647, we urge the committee to act as expeditiously as possible. Members of my staff will be happy to work with the staff of the committee on the details of these recommendations, and to assist in any way possible.

I shall be happy to answer any questions you may have.

The CHAIRMAN. Thank you for that testimony, Mr. Ash. We want to assure you the committee, if its two leaders here have their say in it, will not be dragging its feet in any way on it. We have a number of questions, and we will want to make sure we have examined it so that we can explain it adequately on the floor. You may be sure there as well that we will have many questions raised. We have to equip ourselves to cope with that kind of situation.

PRESIDENTIAL TRAVEL EXPENSES

Let me start by asking about the authorization for travel expenses. S. 3647 would authorize an increase for the Presidential travel from \$40,000 to \$100,000.

Now, it is obvious that this framework, including the increase does not really cover the President's travel expenses. That will be one of the obvious questions that will be asked. What is the current \$40,000 spent for, that an increase to \$100,000 should be allowed?

Mr. ASH. The travel expense amounts are spent for all of those costs associated with the travel of those people who accompany the President. He, of course travels on an Air Force plane, and this is part of the Air Force budget. Nevertheless, there are many ancillary activities that surround his travel which are covered by this particular appropriation.

The CHAIRMAN. The reason I asked that question, very frankly, it seemed to me—I would have guessed we were talking about \$1

million or \$3 million or \$2 million. That is the reason we wanted to try to pinpoint this \$40,000 to \$100,000 category, setting aside Air Force One.

A President must travel a great deal, and in these times it requires a great deal more. I think we need to be a little tighter.

Mr. ASH. When the President travels, a number of others go with him. Usually, facilities are made available to him for occupancy at times of travel, either in foreign countries or domestic. On the other hand, his staff many times has to occupy commercial facilities, and the costs of those facilities are included in the expenses charged to this account.

Other costs of those who travel with him, whether it be their food costs, are also a part of this account.

This really provides those costs of Presidential trips not paid for out of the Defense or State budgets.

The CHAIRMAN. The Defense budget, for example, could cover the costs en route on the plane and food.

Mr. ASH. Actually, the cost of the food en route is not paid by Defense. I have been on the plane myself, and I know I get a bill for food I am served en route, which I pay myself subject only to reimbursement one gets in per diem for food costs.

The CHAIRMAN. I will have to remember that when we get on Air Force One. If we are going to get a bill, we ought to take some travelers' checks.

I did not realize that. I think it is an interesting point to make. It still strikes me that I would have thought you would burn up \$40,000 on the fringe, just going from here to Western Europe, to Moscow and back; going to Egypt and Saudi Arabia, Syria and Israel, that that kind of thing alone—

Mr. ASH. The main portion of those costs are charged to the Defense budget. Furnishing of the plane itself and its fuel, and its crew, by the time that is done, the biggest portion of the costs have been borne out of the Defense budget.

Then, also, facilities will be provided the President by those countries, I presume free of charge, for his stay, and probably also for his staff.

On the other hand, in domestic travel, there are many ancillary costs that go along with it.

The CHAIRMAN. Would this fund have to be drawn upon whenever the President goes to Key Biscayne or San Clemente?

Mr. ASH. When the President goes to Key Biscayne or San Clemente, and when there are staff with him that stay at commercial establishments, this would be a charge to this particular fund.

EMPLOYEES DETAILED FROM AGENCIES

The CHAIRMAN. The House bill provides for the detailing of employees from the executive agencies to the White House. This provision does not appear in S. 3647 here. Do you need such authorization for the detailing of employees?

Mr. ASH. The law already allows such detailing, and we therefore see no need to put it explicitly in here. There was a time in the past, up until 4 or 5 years ago, when a big portion—in fact, probably more than half of the White House personnel—were on detail.

The President concluded early in his administration to make an open public record of those on the White House staff by reducing substantially those ones detailed and taking them on the White House payroll directly.

There still is from time to time a need, however, to have details, those who have some special expertise and call upon them for a temporary time, and that is a practice that is followed. It relates to many, many fewer people than it did in earlier years.

The CHAIRMAN. Would it be helpful to have it in this bill, too?

Mr. ASH. We really do not need it.

The CHAIRMAN. What length of time are these employees usually detailed?

Mr. ASH. Typically, up to 6 months. If they tend to be there only temporarily, they would go back to their agencies. If, instead, they would stay there permanently, then they would go onto the White House payroll.

The CHAIRMAN. The bill authorizes an unlimited number of personnel for staffs of Presidents and Vice Presidents, at rates not more than the rate for GS-18. What kinds of employees would these be?

Mr. ASH. There are many varying functions that serve the President. Basically, those personnel up to GS-18 will be ones that would be part of the various offices within the White House; as an example, the Congressional Liaison Office, under Bill Timmons, has a number of people.

The CHAIRMAN. In other words, if Tom Korologos needs help, it would come under here?

Mr. ASH. That is exactly right.

The CHAIRMAN. He does a good job over here. I think he is one of the most effective we have ever had.

Mr. ASH. Are you talking about the Vice President, sir? I thought it was the President we were talking about.

The CHAIRMAN. Korologos is handling the liaison. If you get any bills passed, he did it.

Mr. ASH. I will have to convey that message to him. I do not know whether I can live with him thereafter.

The CHAIRMAN. You may have to raise his salary. He is at the ceiling probably.

Mr. ASH. He works the other side, too, I must say, Mr. Chairman. He calls on me quite often to say that this Senator or that Senator or Congressman has a strong feeling one way or the other, and that I should take that into account. So, he serves both of our purposes.

The CHAIRMAN. That is why he is so effective.

The bill, S. 3647, authorizes the appropriation of funds to enable the President to deal with emergencies involving the national interests in security or defense, either inside or outside of the United States.

Now, what types of emergencies? Would that be like the airlift of last October to the Middle East? Is that an illustration?

Mr. ASH. No; that is not the kind that this deals with. This is for hiring, on an emergency and an unanticipated basis, personnel to carry out functions that were not anticipated at the beginning of the year. For example, this last fiscal year, the Energy Policy Office was created, about October, I believe, and that had not been earlier anticipated, but, yet, was necessary to quickly hire people to carry out some of those functions. Another activity was the Federal Property

Council. There was created also the United States-Puerto Rico ad hoc advisory group to deal with special problems developing there at that time.

Those are the kinds of expenditures. They are personnel ones for unanticipated needs. There was nothing in 1973. In fact, the whole fund was lapsed.

In 1972, the Special Action Office for Drug Abuse Prevention was the only expenditure made.

In 1971, the Cabinet Committee on Transportation required some staffwork. Also, an Aviation Advisory Committee.

So they tend to be, and are, in fact, all to pay for unanticipated personnel needs, the kind that were not foreseen at the beginning of the year. In no year, I guess, has the total fund been used. Much of it is lapsed. In fact, in 1973, the whole \$1 million was lapsed. There was no need at all for such personnel.

EMERGENCY TIME LIMITATION

The CHAIRMAN. The question of time limit on the emergency category, the reason that is raised is a number of Senators have pointed out rather eloquently some of these emergency powers passed back in the Dark Ages are still on the books. They are kind of cumulative and nobody really knows what closets they are locked up in, how they are used and all. Thus, they tend to lean toward having some kind of a terminal point for reviewing the grant of that emergency power rather than just putting in—I started to say Fibber McGee's closet, but there might be a conflict of interest.

Mr. ASH. Mr. Chairman, this is quite different than the emergency powers or authorities the President has under that.

This is a very special and narrow emergency fund for the President to use for pay in unanticipated matters. It is appropriated annually; is reviewed annually at that time. In fact, we have accounted to the Appropriations Committee each year specifically for what we have done with previous years' moneys, and it is subject to that review and subject to annual appropriations. It has no unlimited life. Just as in 1973, \$1 million was appropriated, but not having been spent, it was fully lapsed at the end of 1973, and required a new appropriation for 1974. So this is quite different, even though the word "emergency" is used.

The CHAIRMAN. That would be overextending the use of the word "emergency." You are separating that from, I guess you would say, a more drastic situation, than the other kind of emergency category.

Mr. ASH. Right.

The CHAIRMAN. Maybe this should be the "unanticipated" category.

Mr. ASH. It could be just as well called something else.

The CHAIRMAN. We might have to amend that. We might consider that in the wording of it simply for the reason when you say "emergency," you are flashing a lot of lights up here, that might attract legitimate questions for reasons that are not present, as you describe it, in this particular proposal.

Mr. ASH. It could well be "Contingency," "Unanticipated" or "Interim." In most cases, after amounts have been originally charged to these accounts, we have sought and received legislation for those specific programs and, in some cases, that legislation has reimbursed this account, so that these tend to be interim and unanticipated

contingent type activities rather than emergency. And it could well be that we would not at all object to a change of title for this clarification that it could bring.

The CHAIRMAN. The House amended the legislation in a way that would require the President to report to the Congress on the employees authorized by this legislation; their names, the amounts paid them, job descriptions, and so forth.

Would you comment on that House provision?

Mr. ASH. We have, as a matter of practice, been providing that information during the appropriations hearing.

The CHAIRMAN. This would not pose any procedural problems for you?

Mr. ASH. This would not pose any procedural problems. I think it may well be when various current events have passed, the Appropriations Committee may not be as interested in looking at the details name by name. They certainly do not at the Defense Department or anywhere else. And we have for the last 2 years been providing it, and I am sure it will continue. I would think that for the long course it might be a matter that would not interest the House to the extent that it has recently, or the Senate, in any appropriations considerations. We don't think it is the best legislation to call for it, but as long as it is something that is a matter of practice, it would not change the practice by calling for it.

The CHAIRMAN. It would seem, just off the top of the head here, that this at this particular moment in our history that it might, all things being equal, as you indicate, it might be wise political psychology to go along with that House amendment. They are trying to change it again, anticipate what kinds of alarm bells will be ringing.

Mr. ASH. We would find that acceptable, but I would hope for the longer run that there would be a time to reconsider that.

The CHAIRMAN. Yes, another time might be better than the present.

Mr. ASH. That could well be the case.

The CHAIRMAN. I think the important thing is to address ourselves to the real substance of the bill, any way we can keep the waters unruffled will be helpful.

Mr. ASH. We will certainly, Mr. Chairman be more than guided, we will be controlled—

The CHAIRMAN. I am popping off with regard to that as a possibility, but I can see the psychological advantage.

Mr. ASH. I agree with what you just said.

The CHAIRMAN. That's all the questions I have. Hiram?

AUTHORIZING ADDITIONAL EMPLOYEES

Senator FONG. Mr. Ash, my bill authorizes 15 level 2 positions. Currently there are 14 positions at that level; is that correct?

Mr. ASH. Yes, there are.

Senator FONG. Why is the extra one requested here?

Mr. ASH. Nobody special is in mind, it is a more round number than 14 I guess.

The CHAIRMAN. Divisible by 5 rather than 2.

Mr. ASH. It is, in that sense, arbitrary. It is slightly more round than 14, but it has no specific meaning. Nobody is in mind for the extra one.

The CHAIRMAN. Thirteen might be a more interesting number.

Mr. ASH. Then we would have to identify somebody in particular though.

Senator FONG. Since this is a permanent legislation, you would like that flexibility?

Mr. ASH. We would, yes; as far ahead as we can see. Of course, each President should have the opportunity to rearrange matters that best serve his purposes. We think 15 should serve Presidents from here on as far as we can see.

Senator FONG. Further, my bill authorizes 25 level 3's, 4's, and 5's; there are presently 21.

Mr. ASH. The same reasoning would apply.

Senator FONG. Now the 14 in level 2 and 21 in levels 3, 4, and 5. Is that number required by the President for the amount of work he is faced with?

Mr. ASH. We certainly believe so. One of the goals of the President has been to reduce the White House Office to the lowest extent possible. Among other things, he has done, as I described earlier, by identifying the details and with that identity seeing how many we can reduce, and I believe that we are at a level, given today's organizational structure of the Government, about the minimum that any President can deal with.

Now, if sometime in the future Congress sees fit to pass some of the legislation the President proposed in 1971, that is to restructure the main departments of Government, then that should be reconsidered, because probably there would not be needed as big a White House staff if the main structure were smaller, restructured. Until this time, and until that is done, I do not know of any way he can do with much less than he now has.

Senator FONG. The House bill, 14715, cuts level 2 from 14 positions down to 5.

Mr. ASH. We think that would create real problems.

Senator FONG. A real problem for the President?

Mr. ASH. We certainly believe that.

Senator FONG. Even though there is a grandfather clause, there is movement in the positions here?

Mr. ASH. Yes, sir, there is movement.

Senator FONG. Neither you nor I could be hired down there.

Mr. ASH. We would not want to go down there.

Senator FONG. So, with the grandfather clause, that would not help me much if Pete Flannagan, for example, was leaving, he would be grandfathered in, but the man coming in would not be. Is that correct?

Mr. ASH. That is right. We think that while grandfather clauses serve a number of purposes, they are not necessarily the best kind of clause to put in this kind of legislation. In my own case, for example, I am grandfathered into my job, but I am afraid that gives me more job security than I really want or need. My successor has to be confirmed.

The CHAIRMAN. I wanted to make clear on who the grandfather—

Mr. ASH. If Brice Harlow came back for the third or fifth time, he would then not be able to hold the job he had before.

Senator FONG. Mr. Ash, are you included in this?

Mr. ASH. No, sir; I am over in the OMB budget. I am just thinking of the concept of grandfather clauses—

The CHAIRMAN. When the bullets start flying, when the new budget comes out, you may want to shift over to another spot.

Senator FONG. I notice that the House gave you 5 level 3's, from 36 they gave you 10 in level 4, 15 in level 5, giving you a total of 35 in relation to the 35 downgraded positions.

Mr. ASH. We also believe that is way too rigid a structure to impose on this or any other President, and it would limit his ability to carry out his own functions with that degree of rigidity.

Senator FONG. Do you feel that the White House needs a log of flexibility?

Mr. ASH. It does. It is essential we think, since the problems and issues and ways of dealing with them continually change. If one were to anticipate what might be the problems, how to structure for them in 1980, it would be very hard at this time to know. And, therefore, that flexibility would be essential to any President. We believe it should be built into the proper statement of the authorization language, and prefer, therefore, so much more your bill than that of the House.

WIDE GAP IN COMPARABILITY

Senator FONG. Now, we have had testimony in this committee relative to the salary scale of GS-18's, levels 4, 5, 3, and 2. We have been told that there is no pay comparability between positions in Government with those in private industry; that those in the lower GS grades do have comparability in some cases, more than comparability with the private sector. When you get up to the GS-15, 16, 17, 18, and levels 5, 4, and 3, you do not have comparability. Also, Government does not propose to meet that comparability because it cannot.

Mr. ASH. That does distinguish the private sector from the public sector at the higher level jobs.

Senator FONG. Now these men who are now holding these positions in the executive levels, are they comparable to men in the private sector who are right next to the President and Vice President?

Mr. ASH. Particularly men in the private sector holding jobs that are comparable in responsibility are paid much, much more than they are in these. It is very difficult though to equate a job in the top structure of the Federal Government to the jobs in the private sector, and to equate them in a dollar way because the jobs become quite different. But I certainly know that if you were to take any part of the private sector, of any business establishment, even a tenth of the size of the Government, measured by number of people or any other index, the staff immediately supporting the top executive would be paid more than these would be.

Senator FONG. Now, you were top man in a very large industrial firm. Did you pay your men more than these men are getting?

Mr. ASH. I certainly did; yes. Probably 150 people in the organization that I headed that were paid more than these people are getting, out of a total organization of 115,000, we had 115 people paid more than this. The Government has 2 million civilian employees, plus military.

Senator FONG. When you compare the assets of the Federal Government with your company, it was not very large.

Mr. ASH. You would have to move the decimal point over many places from any private company to the Federal Government.

Senator FONG. So, you feel that these men at the present time, judging from all the evidence that we have received and the recommendation that there ought to be an increase in salary, if we go along with what the House has passed, we would really not be getting top men.

Mr. ASH. We would have to forego the opportunity that we now have to get the best people we can get because it would be a reduction of pay from even what they are now getting, and the level they are now getting is less in comparability to the outside and would require some sacrifice.

The CHAIRMAN. As you know, this committee, Senator Fong and the chairman leading, have been trying to do something about that problem throughout the structure of the Federal Government. All we get is bad mouthed, and shot down and voted down. And now we are looking for a new formula for backbone in the Congress of the United States because it is important to dignify the office of the U.S. Senator. If there is not a Senator worth that, he ought to be kicked out. Send somebody back who is worth it. But the office has to be put into this structure as well as other responsibilities, and this is what we are neglecting because of the great pressure of bitterness around the country, in political years and all this kind of thing. It is a very difficult time for us, but we are trying. And it is important that we not let the widened gap between the private sector and public service grow any wider, whatever else happens, because we are only bound, finally, to get what we pay for.

Mr. ASH. We will support any action you take in that direction, because we believe it just as strongly as you.

The CHAIRMAN. Well, we are 6 years behind. Just in cost of living, aside from any other relative structures, you know. Excuse me for interrupting, Hiram.

Senator FONG. I have been on the committee now for 14 years, and I have worked very closely with the chairman in trying to get adequate salaries for Government employees. He has fought valiantly on the floor to get the recommendation of the President passed, although we felt the recommendations did not meet the requirement of what the Federal employees deserve. They are far, far below the salary scale in private industry. Even then we were not able to have the bill——

The CHAIRMAN. It was late in coming to us.

Senator FONG. That did not help either.

The CHAIRMAN. It was the wrong year.

Mr. ASH. Maybe after election things will be better.

Senator FONG. So we still adhere to the principles which we fought for on the floor of the Senate. I do not see how we can cut this down because we have already said they are underpaid. We have already said these men who have been in these positions for the past 5 years have not received an increase in salary.

We say that if the Federal Pay Salary Commission, which will not meet for another 4 years, will come up with recommendations at that time, possibly we will do something. It will then be 9 years before we do anything for these people who are not getting comparable salaries even now with their counterparts in the private sector. So, I cannot see how this committee can really cut you down if we adhere to that principle.

Mr. ASH. We certainly see it the same way you do.

Senator FONG. If we cut you down, we are only saying these men should be reduced rather than to even sustain or maintain what you have, we would be going contrary to that.

May I ask you one last question? What are the salaries, or what were the salaries paid by the previous administration for their top people? Have you got that kind of figure?

Mr. ASH. We do not have the data on the people paid by the previous administration, but we certainly can attempt to get it. As you may know, not much was made available publicly at that time, and whether we will succeed in our attempts or not, I am not exactly sure. But we will certainly do the best we can to get it.

They did have in the last administration 14 of the executive level 2's at that time that we can probably confirm. The number that were detailed is going to be a very difficult thing.

The CHAIRMAN. Why do you not see what luck you have. It would help to keep it in perspective, although times change and get more complicated as we go along.

Mr. ASH. We do have one particular piece of information. As I said earlier, at that time when the President decided that we must move all of these details onto the White House payroll, we had 273 out of 574 personnel then detailed. So it was way more than half at that time. That's a very difficult matter to trace back. We will do the very best we can.

The CHAIRMAN. You have cut that back how much?

Mr. ASH. We went to 510—from 573, including all these details, we cut back to 510, the level at which we are now operating and do propose for this year's appropriations that that move to 540 again. And the number of details, which were 278, 90 percent of those are no longer on the payroll. We are down to about 30, just about 10 percent of what was once the level of details.

The CHAIRMAN. Be sure and identify for the record, you do not have to do it audibly, supply the names of those with you at the witness table.

Senator FONG. We would like to have comparisons if you are able to furnish those.

Mr. ASH. We will do the best we can to work with the data that is available.

Senator FONG. I have no further questions.

The CHAIRMAN. I have no further questions. I want to thank you very much, Mr. Ash, for your contribution here this morning.

Whatever else we may do, we will not delay or procrastinate on this. We may disagree with you on some of the aspects. We want to look at it, and we will study it very carefully and try to do the best we can, what we think is wise and necessary at this point.

Mr. ASH. We especially appreciate your expeditious considerations and the work that you and your staff have been doing with regard to this mutual purpose that we are trying to get through.

Senator FONG. I would join in commending the chairman for calling this hearing expeditiously.

Thank you.

[Aforementioned OMB detailed report on H.R. 14715.]



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

GENERAL COUNSEL

July 8, 1974

Honorable Gale W. McGee
Chairman
Post Office and Civil Service Committee
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

As you know, the Director of the Office of Management and Budget testified before your Committee in support of S. 3674 on June 26. This will reiterate our strong backing for the provisions of S. 3674 as introduced, and our request that the bill be enacted at the earliest possible time.

During his appearance, the Director indicated that we would submit to the Committee our views on H.R. 14715 as passed by the House on June 25. Our comments are reflected below in the order in which the provisions to which they relate appear in the bill.

- Proposed Section 105(a) - This language differs from the comparable provision in S. 3647 in several respects. Initially, it omits the language making it plain that White House and Executive Residence employees may be employed and have their pay rates set by the President outside civil service and pay schedule constraints, subject only to the position limitations which appear in the bill. We believe inclusion of this language is important to remove any doubts as to the President's flexibility in hiring and fixing pay of key personnel.

Additional difficulties are created by the limits on executive level and supergrade positions in this provision of H.R. 14715. Particularly serious is

the limitation of five level II positions which, in spite of the "grandfather" clause in the bill (section 6), would significantly affect the ability of any President to attract and retain top quality people as his senior advisers. The limits as a whole are too rigid, imposing constraints which for example Members of Congress do not face in fixing positions and rates of pay for their personal staffs. Because of the need to shift emphasis periodically within the White House as different national issues emerge or subside, the President should not be placed in a strait-jacket when it comes to hiring and realigning his top advisory staff.

- Proposed Section 105(c) - Procurement activities in connection with the Executive Residence are by definition unique and ad hoc. While we certainly recognize the desirability of a dollar limitation on funds made available for this purpose, as annually imposed by the Appropriations Committees over the years, subjecting this unusual area of operations to the provisions of the Federal Property and Administrative Services Act of 1949 could produce complications for those whose charge it is to administer and maintain the Residence. We believe the proviso in this subsection should be deleted as unnecessary.
- Proposed Section 105(d)(1) - The requirement of a GAO audit of the President's official representation money, as contained in the proviso, could tend to compromise the confidential nature of these funds. The implication that oversight by GAO is necessary to insure proper use of these funds is we think unwarranted. The proviso should be deleted and replaced with the words "and accounted for solely on his certificate" as in S. 3647.
- Proposed Section 105(e) - As with the provision authorizing the hiring of White House Office employees, this subsection does not contain language sufficiently explicit to establish clearly that the

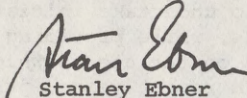
Vice President's staff as authorized may be hired outside civil service and pay schedule constraints. The language in S. 3647 is preferable, as is the greater flexibility in staff authorizations provided by the Senate bill.

- Section 2 - This provision in effect deleted language similar to that in section 2 of S. 3647 which was found in an earlier version of the House bill. We view the lack of authority for a Presidential emergency or contingency fund, made available through annual appropriations of \$1 million over the past 20 years, as a serious omission. This fund has enabled various Presidents to undertake initiatives on a speedy and interim basis, while providing a full accounting to the Congress on the use to which these dollars have been put. In recent years, just two examples of worthwhile expenditures have been start-up money for the Special Action Office for Drug Abuse Prevention and the Energy Policy Office, later replaced by the Federal Energy Office.
- Section 3 - Our objections to the GAO audit of Presidential travel funds are the same as those expressed for the audit provided for Presidential representation funds under proposed section 105(d) (1).
- Section 4 - Existing law (3 U.S.C. 107) provides authority for detailing personnel to the White House Office. The revised provision in H.R. 14715 would limit the duration of these details, something which is now done administratively as a general rule. We see no need for such a statutory limitation, but if one is to be included we would urge that it provide an exception where a strong case of need can be made for details in excess of one year.
- Section 5 - While we have no objection to the reports required by this provision, we have some question regarding the requirement to make these reports available to the public. We are concerned only with the

administrative burden and printing costs involved, not the disclosure aspects. We would prefer that the words "and make available to the public" be deleted, leaving to the discretion of Congress the choice of how or whether it wishes to disseminate this information.

Mr. Chairman, we again wish to express our appreciation for the expeditious consideration you are giving this legislation, and hope that you will take the foregoing observations into account as you mark up S. 3647.

Sincerely,



Stanley Ebner
General Counsel

cc:

Honorable Hiram L. Fong
United States Senate

The CHAIRMAN. Now in the wake of the humidity, it is delightful to have a breath of fresh air. Fritz, welcome to the committee this morning. It was fine of you to take your time to appear here and we will follow what you have to say to us.

**STATEMENT OF HON. WALTER F. MONDALE, A U.S. SENATOR FROM
THE STATE OF MINNESOTA**

Senator MONDALE. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, I am very pleased to be here on what is, I hope, the beginning of an historic undertaking to deal with the question of the trend toward what Dr. Schlesinger calls the Imperial Presidency.

The very reason for this hearing is historic in one sense, since we are seeking for the first time to adopt legislative authorization for the modern-day White House staff. Traditionally, appropriations have been made for most of the White House staff without legislative authority, which makes it one of the unique institutions in the country.

And the reason why, for the first time, we are talking about legislative authorization is that money that has been appropriated has been badly abused to the point of threatening American democracy.

Secret police, called plumbers, were established. Some who were operating under these appropriations have been indicted. And for that reason, many in the Congress felt that the need for legislative oversight, not only of this President, but future Presidents, was essential. And it seems to me that the real question is not only in numbers, although that may be part of it—the real question is whether we have an issue of Executive usurpation and, if so, whether the role of authorizing and appropriating money to the White House and its staff can diminish this trend toward such usurpation. That, in my opinion, is the real question before this committee, and before the Senate, and which was before the House of Representatives yesterday.

I believe that the administration proposal is an extraordinarily important and dangerous piece of legislation, viewed from that perspective.

PRESERVATION OF CHECKS AND BALANCES

This legislation would represent another major application of responsibility by Congress in our battle to preserve checks and balances in our constitutional system.

Mr. Chairman, I believe the prayer for a perfect environment and perfect human nature is a wonderful prayer, but I do not think it is going to be answered in the near future. And I believe that the wisdom of our Constitution—which is to disperse power in a way that nobody has too much of it—is the genius of the American system.

And I believe the task before this committee is to insure that this dispersal continues and we do not contribute to a continuation of the accumulation of power within the White House, which destroys those checks and balances.

Passage of S. 3647 as introduced would represent a major victory for the White House's efforts to enlarge the size and power of the Executive Office of the President, and reduce accountability to Congress.

It would sanction general authorizing language, contained in section 2 of this bill, which could provide permanent and virtually unlimited emergency powers for the President.

Much of this bill was drafted by the OMB. Sadly, it seems to me to indicate that the Nixon administration has not learned a basic lesson: that White House decisionmaking must be placed under controls which insure that the decisionmakers are responsible to Congress, if our system of representative government is to survive.

It seems incredible to me that we have gone through the worst political scandal in American history, and the administration responsible for it comes up here with a bill without limits on personnel, without limits of time, and without limits of money, and without limits of authority.

This legislation is not neutral. In my opinion, it is worse than nothing, and endorses what has gone on before.

At least in the past, when they abused appropriations, we could say it was their fault. If we adopt this legislation, I believe in the future it becomes our fault.

It will show that Congress has not learned our lesson from the experience of the last 5 years—that unchecked executive branch power leads to abuses which can destroy the trust of the American people in their Government, and destroys the constitutional base of the Government itself.

There are two specific aspects of this legislation that I want to discuss.

LEVEL OF AUTHORIZATION

The first is the level of authorization for White House staff. This gives a blank authorization check to the White House to expand the size of its staff at will. It would institutionalize and legitimize a runaway White House staff, which bears little resemblance to the White House staff envisioned when the EOP was created some 35 years ago.

I would remind the committee that President Roosevelt's Committee on Administrative Management, which first proposed the creation of an Executive Office of the President in the 1930's, stated that assistants to the President "would not be assistant presidents in any sense," and "would remain in the background, issue no orders, make no decisions, emit no public statements." President Roosevelt, in the Executive order which created the EOP, followed this advice by directing that "in no event shall the administrative assistants be interposed between the President and the head of any department or agency."

Compare the philosophy and direction for the creation of EOP 40 years ago to what we see today.

From an original staff of six assistants to the President under President Roosevelt, the EOP has mushroomed to a staff of over 2,000. And the administration has asked for over \$100 million in budget authority for fiscal year 1975 to run the EOP.

This, of course, is not a sudden development. Previous administrations must share the blame for the growth of a White House staff of enormous size and influence. But even in this context, I believe this administration has used the White House staff to aggrandize and centralize power to a degree never before experienced in our history. As the

National Academy of Public Administration noted in its recent report to the Senate Select Committee on Presidential Campaign Activities, "the principal assistants and counselors have been converted from intimate personal advisors to the President to the equivalent of assistant presidents managing the executive establishment out of the White House."

EXECUTIVE PRIVILEGE

Along with the growth in the White House staff's size and arrogance has come the corresponding ability to hide behind bloated notions of executive privilege in seeking to avoid responsibility to the Congress.

I believe I am correct that a recent study by the Library of Congress shows that President Kennedy invoked executive privilege twice; that President Johnson invoked it three times; and by early 1973, this administration had invoked executive privilege 29 times. I believe they have invoked it at least that much since then.

Even Mr. Rush, who is supposed to be the chief economic counselor of this country, and I believe he is paid out of this budget we are discussing today, refused to testify before the Congress on the grounds of executive privilege.

What they are doing is telling us to go to hell. And what they are asking us for this morning is to give them all the authority by which they can continue to do so.

I am sure that each member of this committee has had the experience which I have had over these recent years. We worked on a piece of legislation; we worked with administration representatives; we have often worked with Cabinet heads, subject to Senate confirmation and congressional oversight. We bargained in good faith with these Cabinet officers, believing that positive results could be achieved. And often we reached agreement, or we thought we had, only to find out that he was a front man without authority, a PR official sent out by the White House to fend off inquisitive Congressmen.

The real decisions, we found, were being made in the White House, by staff members who are not subject to Senate confirmation, who did not have to answer questions to the Congress, who knew nothing about what was going on here, who did not have to answer questions of American citizens, or even questions that we put to them. And they were able to develop, within the White House, policies affecting domestic affairs, foreign affairs, and military affairs, and clearly violative of the intent of checks and balances recognized in our Constitution.

I recognize that many of the issues relating to the growth in size and arrogance of this staff, under this and previous administrations, are beyond the jurisdiction of this committee. And yet the legislation before us today is one important part of the entire picture, and I hope we will deal with it wisely.

This legislation, by opening up an unlimited number of ungraded positions at salaries up to \$36,000 a year, would give permanent legislative authorization to a White House staff of unlimited size. Obviously, the Appropriations Committees of the House and Senate could control the size of this staff through limitations on the dollar amounts of appropriations. But I regard it as most dangerous to embody in permanent legislation the concept that this or any future President can hire unlimited numbers of personnel, who may occupy

positions of great importance, and are not subject to the checks required of Cabinet officers and their subordinates.

Clearly, a revision of the statutory basis for the White House staff is long overdue. But we must not turn this opportunity to gain congressional control over the size of this staff into a legislative authorization of a staff of unlimited size, and of unlimited power.

Therefore, I would strongly urge the committee to put a ceiling on the number of key White House personnel for whom legislative authorization is given.

The measure before this committee authorizes a total of 40 positions at levels 2 and 3, and an unlimited number of ungraded positions.

At the present time, there are 65 White House positions paying \$30,000 and over. These include 14 level II, 48 ungraded positions, with salaries ranging from \$30,000 to \$40,000, and 3 supergrade positions.

I would hope that the committee in its deliberations would give consideration to making three changes:

THREE RECOMMENDED CHANGES

First, to retain an absolute ceiling on the number of authorized White House positions at key salary levels at a number no higher than 65;

Second, to require all but level II positions to be governed by the Hatch Act; and, third, I think it would make sense to put a term on this legislative authority, say 4 years, so that we can come back and look at how this is working 4 years from now.

Basically, what this authorization is going to do is to govern the next President. It will have some effect on this one, but basically it will set the pattern for future Presidents, whoever they might be and whatever their political party. And I think it would be important for this committee to put some kind of reasonable term on this, so you can review what is happening and see whether you approve of it.

The recommendations that I have made closely parallel the recommendations of the National Academy of Public Administration, which, in its report to the Senate Select Committee, stated that the "White House staff should be limited to not more than 15 top aides to the President and should not exceed 50 supporting professional employees, the latter to be subject . . . to the Hatch Act."

Providing a statutory upper limit on the number of key White House positions is a necessity if we are to gain some control over a runaway White House staff. If this or future administrations seek to employ more key aides in the White House, they should be required to come to the Congress and say why they want it.

I would hope that the committee would consider the present 65 an absolute limitation, and would give consideration to reducing the present size to somewhat more manageable proportions. This would greatly aid in forcing key decisions back to the Cabinet departments and in creating a White House staff which is composed of personal advisers to the President, rather than policymakers robbing the Cabinet departments of their vitality.

I further believe that subjecting all but the very top White House employees to the political restrictions of the Hatch Act would have a

beneficial effect in reducing abuses of the White House which have occurred in recent years.

No such statutory provision, of course, can absolutely prevent those who are intent on committing illegal acts from doing so, but I think this measure would help.

EMERGENCY FUND

The second issue raised, on which I would like to comment, relates to the emergency fund for the President. The section authorizing authority for the President of this is, I believe, breathtaking. Let me read it:

"There are authorized to be appropriated to the President each fiscal year such sums as may be necessary to enable the President, in his discretion, without regard to any provision of law regulating employment and pay of persons in the service of the Federal Government or regulating expenditures of Federal Government funds, to respond to and deal with emergencies involving the national interest, security, or defense which may arise within or outside the United States of America."

This language, supplied by the White House, is innocently described as "providing the legislative authority previously contained in the appropriation 'Emergency Fund for the President.'"

Mr. Ash, testifying before the House committee said there was nothing unique or new. With regard to this particular section, apparently it is the administration's contention that this language simply places in authorizing language what has been appropriated in past years as the President's emergency fund. That appropriation has been traditionally \$1 million and it has been spent on a variety of legitimate purposes. I raise no question about the need for the fund, as opposed to the special projects fund, some of which was apparently used for Watergate-related activities.

But I must confess to amazement at the audacity of the White House in proposing the language of section 2. They have taken what has been a small amount of money appropriated annually without legislative authorization, stripped any dollar limitation from this provision, and sent to the Congress a provision which, if funded, allows the President to do any damned thing he wants to do, in the name of national security.

Now, what kind of limitations do they accept on their definition of "National security"?

I think the hearings on Watergate are very instructive.

You will recall Senator Talmadge asked Mr. Ehrlichman, "Do you believe the President's power over national security, as you define it, included the power to invade Dr. Ellsberg's doctor's private files?"

He said, "Certainly."

He said, "Mr. Ehrlichman, do you believe that the President's power over national security would include the power to murder?"

He said, "I don't know. A line has to be drawn somewhere, but I don't know where it should be drawn."

He couldn't even say no to that.

Now, we have seen national security used for everything. And in the light of that history, in light of that Watergate record, to adopt

legislation like this, which, in effect, I think involves the Congress in authorizing future acts by the President without limits in time or dollars or authority, I think is incredible.

I shudder to think what this or any future administration could do with this language. We have had a lot of experience with loose language in the past, not only with this administration, but the previous administration.

Should a compliant Congress appropriate to a President——

The CHAIRMAN. There is some of that loose language on the floor, too.

Senator MONDALE. But usually we get burned with it. We are dealing, it seems to me, with the central question of our time, whether we are going to restore the system of checks and balances, which has been eroding under many different administrations for a long time.

George Reedy's book, entitled "Twilight of the Presidency" talks about what happened in the later years of the Johnson administration. This trend we all know has been underway a long time. And one of the key ways to deal with it is the power of the purse. Go back to the Federalist Papers, and it is clear that was the key choke-chain—that and impeachment. You could not possibly draft a paragraph that granted more authority without restriction than the one the White House has supplied. The language is simply and unequivocally dangerous. It is not needed in the broad manner in which it is proposed. It is an affront to the Congress to even seek blanket authorization to do anything they please in any emergency. In fact, this language institutionalizes funding of something very close to what we might call a "Daniel Ellsberg Memorial Break-In Fund," which could be used to hire operatives whenever so-called national security was thought to be threatened.

The swollen conception of national security which this administration has consistently used, would be sanctioned through this provision with the blessing of the Congress, awaiting only some future Congress blind enough to fund these activities at levels high enough to threaten our democracy.

I urge the committee to delete this language and to substitute in its place language which would provide for a fund similar to the Emergency Fund of the President, with a statutorily mandated maximum of no more than \$1 million and with precise standards and safeguards to insure its proper use.

In conclusion, Mr. Chairman, I strongly believe this legislation must be studied carefully.

Frankly, I am distressed at the length of time which it took the White House to submit proposed legislation on this matter.

We will shortly be asked to take up the appropriations bill for the White House. I believe that in view of the time which the White House possessed to send legislation to the Congress and in view of their late response, that we in the Senate should follow the House example and not act on this appropriation until this authorization has been acted upon.

But I also believe that the possibility of holding up action on the appropriations bill for the White House should not preclude careful consideration of S. 3647, particularly in light of the House action.

This bill deserves your most careful scrutiny, affecting as it does the most basic constitutional balance of powers between the branches of government.

For too many years, we in the Congress let ourselves be lulled into unthinking compliance with White House wishes, Comity between the branches of government, we were told, required that we not look at the authority for White House positions or the budget for these positions. Yet for too long, comity has been used as an excuse by the Congress to shirk its responsibility.

We have the power of the purse. We have the power to authorize or not to authorize programs. And unless we use these powers, comity becomes a cruel joke, slowly sapping the vitality out of our system of checks and balances.

Mr. Chairman and members of the committee, I am very hopeful that this new development, namely a legislative authorization measure as a precedent to appropriations, will be the beginning of a reassertion, a responsible reassertion of congressional prerogatives. I do not want to destroy the White House. I know a President has to be strong. And I know he has to have staff. But there have to be limits, and we have to have checks and balances. And I see this as one of the key avenues by which this committee and the Congress can do so.

The CHAIRMAN. Thank you for your testimony, Fritz.

You have highlighted some cautionary areas, which I assure you the committee is very mindful of. The committee is not about to abdicate the power of the committee or the Congress; that we intend to examine the essence and substance of this measure; that it is our every intention to make sure that we are on top of it, and that we stay on top of it; that we think that, having said that, including the detailing of who is involved, and what they will be doing, and how much it will cost, and whether it is justified, this sort of thing, which we have spelled out here, that there probably is a necessary area here where we will have to have a hard look to be realistic about what we, in turn, are expecting of the White House in terms of updating their performance. But we are confident that we can arrive a pretty wise mix there that will protect the role of Congress and still not erode the area of responsibility that is imposed on whomever is in the White House. We have all learned in recent years to move into this with our eyes open. I want to assure you that we will make every effort to make sure that we are on top.

Senator MONDALE. I am confident of that, and I would expect no less from the distinguished chairman of this committee and members of this committee, whom I deeply respect. This is an issue about which I feel very strongly, as I know many of you do. I think the real question is authority, checks and balances.

The CHAIRMAN. We have come a long way by having the measure in the first place.

Senator MONDALE. I agree. The reason I think we finally are at a stage where we are considering authorization legislation is because of abuse, not necessarily only of this administration, but for a long, long time and I am very hopeful this will be the beginning of a responsible reassertion of congressional interest, concern and understanding to help restore our system of checks and balances.

Senator FONG. I join the chairman, Senator Mondale, in saying we are not going to abdicate our responsibility.

We want to thank you for your contribution.

The CHAIRMAN. Bob, do you have—

Senator DOLE. No, I have nothing. I arrived late, but I seemed to be hearing partisan statements.

Senator MONDALE. You know, one of the problems here, it does sound partisan, and I suppose it is.

The CHAIRMAN. You were talking about the next administration, which could be your own. It might be President Mondale. We want to be careful and watch your language here. You might want to double that staff.

Senator MONDALE. Really, to be frank about it, I think we have seen this whole question of executive usurpation coming for a long, long time, though we have seen it in exaggerated form in this administration. The longer I am here, the more I am convinced that less confidence should be placed in the majesty of wisdom of one single person in the White House than in the collective wisdom of Congress, and, even more than that, in the understanding of the American people when issues really have to be ventilated. And that is what checks and balances are all about. The longer I am in government, the more I become preoccupied with procedure, and less with policy. I get mad over policy, but if I lose them, so what, we can go back another day. But if the American people lose a government of checks and balances under the Constitution, we move more and more toward what Schlesinger calls "The Imperial Presidency." We are robbing the people of the real strength of democracy, and that I think is fatal.

Senator DOLE. I do not have any quarrel with that. I think there have been indications in this administration that certainly needs some attention, but I would also add that they have never been looked at in other Administrations. Democrats do not investigate Democrats, they investigate Republicans.

With that in mind, I have been critical of some of the excesses and some of what I consider abuses, and we do not have a quarrel with that.

Senator MONDALE. I believe there is a lot of truth in what you say, that the partisanship of an incumbent Administration tends to muzzle public debate and criticisms that the public is entitled to—and the more you can institutionalize and strengthen checks and balances, the more you can prevent the success of that old system where real issues are hidden and covered up. That is why I feel strongly about this position.

Senator DOLE. I feel they should not have a blank check in any administration, whether the Congress is the same or opposite party, makes no difference.

Thank you very much.

The CHAIRMAN. That is all I think we have except a little bit from the political philosopher. This has always given me problems, who and where and how do we draw the line between preserving checks and balances, which is our eternal problem, to avoid becoming stymieing and obstructionist and stifling. This is the really sophisticated task that we have.

A great many crimes are committed in the name of checks and balances, just as they are committed in other ways. So our task is to try to be above that kind of battle, and make sure that we do not use a phrase that we all subscribe to, to cover up either our indifference, our negligence or our forfeiting responsibility. I was the only one I ever trusted drawing that line what it ought to be. How we draw the line reflects the changes of the times, the composition of the body, but it is something we are striving for, and the Senator is one of those who has contributed much to it.

Again, I want to conclude the hearings on this with the additional inserts in the record of a letter of other Senators we have referred to, and make them part of the record, that the committee intends to address itself to with the greatest responsibility it can mobilize.

Thank you.

[Whereupon, at 11:20 a.m. the hearing was concluded.]



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