

Docu-
ment
Y
4
P84/10
M54

GOVERNMENT

Storage

COMMITTEE PRINT

COMMITTEE
PRINT No. 94-10

THE MERIT SYSTEM
IN THE
UNITED STATES CIVIL SERVICE

DOCUMENTS

MAR 1 1976

THE LIBRARY
KANSAS STATE UNIVERSITY

A MONOGRAPH

PREPARED BY

BERNARD ROSEN

FOR THE

COMMITTEE ON POST OFFICE
AND CIVIL SERVICE
HOUSE OF REPRESENTATIVES



DECEMBER 23, 1975

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

U.S. GOVERNMENT PRINTING OFFICE

63-632

WASHINGTON : 1975

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402 - Price \$1.80

KANSAS STATE
UNIVERSITY
LIBRARY
MANHATTAN

COMMITTEE ON POST OFFICE AND CIVIL SERVICE

DAVID N. HENDERSON, North Carolina, *Chairman*

MORRIS K. UDALL, Arizona, *Vice Chairman*

DOMINICK V. DANIELS, New Jersey

ROBERT N. C. NIX, Pennsylvania

JAMES M. HANLEY, New York

CHARLES H. WILSON, California

RICHARD C. WHITE, Texas

WILLIAM D. FORD, Michigan

WILLIAM (BILL) CLAY, Missouri

PATRICIA SCHROEDER, Colorado

WILLIAM LEHMAN, Florida

GLADYS N. SPELLMAN, Maryland

STEPHEN L. NEAL, North Carolina

HERBERT E. HARRIS, Virginia

WILLIAM M. BRODHEAD, Michigan

PAUL SIMON, Illinois

NORMAN Y. MINETA, California

JOHN W. JENRETTE, JR., South Carolina

STEPHEN J. SOLARZ, New York

EDWARD J. DERWINSKI, Illinois

ALBERT W. JOHNSON, Pennsylvania

JOHN H. ROUSSELOT, California

ANDREW J. HINSHAW, California

JAMES M. COLLINS, Texas

GENE TAYLOR, Missouri

BENJAMIN A. GILMAN, New York

ROBIN L. BEARD, Tennessee

TRENT LOTT, Mississippi

JOHN H. MARTINY, *Chief Counsel*

VICTOR C. SMIROLDO, *Staff Director and Counsel*

THEODORE J. KAZY, *Associate Staff Director*

ROBERT E. LOCKHART, *Counsel*

J. PIERCE MYERS, *Assistant Counsel*

DAVID MINTON, *Associate Counsel*

PAUL W. NEWTON, *Subcommittee Staff Director*

(II)

Docu-
ment
Y
4
P84/10
M54

CONTENTS

	Page
I. About the conclusions and recommendations.....	3
II. Why a merit system.....	7
What is a merit system.....	7
Merit and effective continuity of Government operations.....	8
III. Present condition of the merit system.....	11
Merit in recruitment, appointment, and promotion.....	11
Information about jobs.....	11
Evaluating qualifications—"State of the art".....	13
Selecting the best.....	15
Examinations.....	15
Statutory exceptions.....	16
Administrative exceptions.....	18
Abuses.....	25
Meeting other merit principles.....	29
Pay.....	30
Training.....	30
Removal.....	31
Discrimination.....	32
Politics.....	34
Conclusions.....	35
Recommendations.....	36
IV. Organization for personnel administration.....	39
Fundamental personnel policies.....	40
The Congress.....	40
The President.....	41
General personnel policies and programs under law.....	41
Organizations advisory to the Civil Service Commission.....	41
Additional organizations impacting on Government-wide policies.....	42
The Civil Service Commission.....	44
Organizational implications of proposed labor relations laws.....	46
Operating personnel policies and programs.....	49
Departments and agencies.....	50
Technical assistance and training.....	51
Appeals.....	52
Evaluation and enforcement.....	54
The Congress.....	54
The Agencies.....	55
The Commission.....	56
Conclusions.....	61
Recommendations.....	61
V. Role of the Civil Service Commission.....	63
New responsibilities for the Commission.....	63
Congress and the Commission.....	64
The President (and his Executive Office) and the Commission.....	66
Evolution of a central personnel agency.....	66
Reorganization Plan No. 2 of 1970.....	73
The Commission's organization and capacity.....	80
The Commissioners.....	80
Organization.....	83
Staff.....	84
Funds.....	85
Authorities.....	86
Compatibility of Civil Service Commission roles.....	86
Conclusions.....	88
Recommendations.....	89

CONTENTS

Page	Chapter
3	I. About the conditions and recommendations
7	II. Why a merit system
7	What is a merit system
8	Merit and effective conduct of Government operations
11	III. Present condition of the merit system
11	Merit in recruitment, appointment and promotion
11	Information about jobs
13	Examination questions—“Style of the test”
15	Selection of the best
15	Examinations
16	Statutory exceptions
18	Administrative exceptions
18	Appeals
20	Mention other merit principles
20	Pay
20	Training
21	Retention
22	Classification
24	Politics
25	Conclusion
26	Recommendations
29	IV. Organization for personnel administration
40	Fundamental personnel policies
40	Personnel
41	The President
41	General personnel policies and principles under law
41	Organizations subject to the Civil Service Commission
42	Additional organizations important to Government work
43	Organizational implications of proposed labor relations law
44	The Civil Service Commission
46	Organizational implications of proposed labor relations law
49	Operating personnel policy and practice
50	Personnel and agency
51	Technical personnel and training
52	Appointments
54	Recruitment and information
54	The President
55	The Senate
56	The Commission
61	Conclusion
61	Recommendations
63	V. Role of the Civil Service Commission
63	New personnel policy framework
64	General and the Commission
65	The President and the Commission
65	Recruitment of personnel
70	Recruitment under the law
80	The Commission's organizational structure
80	Organization
81	Recruitment
82	Training
83	Retention
84	Classification
85	Pay
86	Conclusion

FOREWORD

Under authority of Rule XI of the Rules of the House of Representatives, relating to the authority of the Committee to conduct investigations and to exercise responsibilities on legislative oversight, the Post Office and Civil Service Committee, by unanimous vote on July 17, 1975, approved a proposed contract with Mr. Bernard Rosen, former Executive Director of the Civil Service Commission, for the purpose of furnishing the Committee a monograph on the merit system in the United States Civil Service.

By letter dated July 31, 1975, Mr. Rosen was notified of the approval of the contract and was advised of the general scope of the subjects the Committee wished to have him analyze and include in his monograph. The letter and the press release referred to in the letter are set forth at pages VII and IX, but the other enclosures referred to in the letter are retained in the Committee files.

This Committee Print contains the monograph entitled, "The Merit System in the United States Civil Service," which has been submitted by Mr. Rosen for consideration by the Committee on Post Office and Civil Service. The views expressed in this Committee Print are those of Mr. Rosen and have not yet been considered by the Committee.

LETTER OF REQUEST

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
Washington, D.C., July 31, 1975.

Mr. BERNARD ROSEN,
Cathedral Avenue, NW.,
Washington, D.C.

DEAR MR. ROSEN: The Chairman on House Administration has just advised me that our request to enter into a contractual agreement with you for the preparation of a monograph has received their final approval. There is enclosed for your files a copy of the letter of agreement entered into on this matter, together with the correspondence to the Committee on House Administration and the press release issued August 1.

Confirming our series of discussions over the past few weeks, I would like to set forth in writing the general scope of the subjects that the Post Office and Civil Service Committee would like to have you analyze and deal with in your monograph for their use. In view of the variety, depth and quality of experience you have had in Federal personnel matters both with the Civil Service Commission and as personnel director for a cabinet level agency, I am most anxious to obtain your views on certain matters while they are still fresh in mind and before you take on additional activities as I know you are planning to do since your retirement from the Federal service.

The monograph should be directed primarily to an analysis of the role of the central personnel agency of the Federal government, the U.S. Civil Service Commission; its relationships with the Chief Executive, Secretaries of Departments, and Heads of Independent Federal Establishments; its jurisdiction, legal authorities, and operating responsibilities for both career and noncareer personnel. The Committee will be particularly interested in obtaining your analysis, observations and recommendations regarding strengthening the merit system as it will be timely and of considerable value to them in connection with their regular oversight responsibilities of the Civil Service Commission and, in particular, to the Subcommittee on Manpower and Civil Service which is continuing investigations and open hearings on merit system abuses.

The monograph setting forth your analysis, observations and recommendations, should include, but not necessarily be limited to, the following areas:

Organization for personnel administration in the executive branch

Career and noncareer

Analysis of roles and relationships of the Civil Service Commission and the executive branch agencies for:

Policy development

Operating activities

Adjudicating or "third party role"

Interface and relationship between career civil service and non-career and political appointees

During transition upon changes of administration

Normal operations

Responsibilities of career service in carrying out legislatively mandated programs under direction of the President in the public interest

Merit system

What it includes and excludes

Present condition

Reasons for recent abuses

Corrective legislation or other action necessary to assure that it makes full contribution to effective continuity of government operations

I am most pleased that you have agreed to undertake this assignment for the committee at this particular time. It is most timely, both from the standpoint of committee actions underway, and immediately following your retirement before you have accepted other commitments. I am hopeful you can begin work on the monograph in late August or when you have concluded your deserved vacation following your retirement. I would hope that the final product could be completed on this phase of the study by December 31 of this year.

I will be available to confer with you from time to time as may be mutually desired and beneficial. In addition, I expect you will be available to confer from time to time as may be desired by Members of the committee and the Chief Counsel and other staff members, both majority and minority.

With best personal regards, I am

Sincerely yours,

DAVID N. HENDERSON,
Chairman.

7

FOR IMMEDIATE RELEASE—AUGUST 1, 1975

STATEMENT BY HONORABLE DAVID N. HENDERSON (D., N.C.), CHAIRMAN OF THE HOUSE COMMITTEE ON POST OFFICE AND CIVIL SERVICE AND OF THE SUBCOMMITTEE ON MANPOWER AND CIVIL SERVICE

The Chairman of the Committee on House Administration, the Honorable Wayne Hays, has advised me that his Committee has approved the request of the House Post Office and Civil Service Committee to enter into contractual agreement for the preparation of a monograph for the Committee by the former Executive Director of the Civil Service Commission, Mr. Bernard Rosen.

I am pleased to announce that Mr. Rosen has indicated his willingness to undertake such assignment for the Committee immediately after a planned short vacation period following his retirement from the Federal service on July 31, 1975.

Mr. Rosen has served as Deputy Executive Director and Executive Director of the Civil Service Commission since 1965. Prior to that time he held a number of field positions with the central personnel authority of the Federal Government, including that of Regional Director of one of the largest field activities, the San Francisco Region. In addition, he served as a personnel director of a cabinet level department, the Department of State, where he was responsible for directing an agency personnel program under the rules and guidelines of the Civil Service Commission. In view of the variety, depth and quality of experience that Mr. Rosen has had in Federal personnel matters, it is believed that his analysis, observations and recommendations to strengthen the merit system will be of considerable value to the Members of the Post Office and Civil Service Committee in connection with their oversight responsibilities.

For his achievements throughout his career, he has received many special recognition awards. I am pleased to note the most recent recognitions in 1975, which were presented by the American Society of Public Administration for "Exceptional Integrity in Public Service," and by the American Legion, its National Award for "Exceptional Service to Veterans."

The monograph will cover the role of the Civil Service Commission as the central personnel agency of the Federal Government and will also deal with the strength and weakness of the Federal merit system—from Mr. Rosen's viewpoint and based on his extensive experience under the merit system—the present condition of the system, the reasons for it, and what legislative and/or other actions would be recommended to assure that the merit system makes a full contribution to effective continuity of Government operations.

The review will also deal with such matters as reasons for the recent reported abuses to the merit system, the relationship of the career civil

service to the non-career civil service, and a review of the organizational structure for personnel administration in the Executive Branch. Rosen's treatise will analyze the role and the responsibilities of the Civil Service Commissioners, the Executive Director, and the executive staffs relating to the Federal Government's personnel systems.

LETTER OF TRANSMITTAL

BERNARD ROSEN,
Washington, D.C., December 23, 1975.

HON. DAVID N. HENDERSON,
*Chairman, Committee on Post Office and Civil Service,
U.S. House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: At the request of the House Post Office and Civil Service Committee I have prepared the attached monograph and am pleased to present it to you. It deals with the present condition of the merit system, the organization for Federal personnel administration, and the role of the Civil Service Commission. A central concern is the need for excellence and integrity in the civil service to assure the effective continuity of government operations.

The monograph contains twenty recommendations to improve and safeguard the merit system. Twelve of them propose legislation. Together, these twelve recommendations, which are summarized in Chapter I, could constitute the core of a Civil Service Reform Act. It would be fitting to consider such a major strengthening of the civil service system during the bicentennial year.

The perceptions and recommendations in this monograph are the product of more than thirty years experience which included serving in the top career positions of the Civil Service Commission in Washington and the field, as Director of Personnel of a cabinet level department, and on numerous interagency task forces concerned with improving government operations. My views and judgments have been affected by discussions on Federal personnel policies and problems with Members of Congress and staff, Presidential appointees, career managers, personnel experts, national and local union leaders, and other Federal employees at all levels and throughout the United States and overseas. I am indebted to these thousands of unnamed people. The entire monograph was made more readable as a result of a critical review by my wife, Adele, who also typed many drafts and the final copy.

My Federal service was filled with challenging and useful work. I feel particularly honored and privileged to have been called on to prepare this monograph now. I hope you and the Members of the Committee will find it helpful as you go about the important and difficult business of legislating for an even more effective civil service.

Respectfully,

BERNARD ROSEN.

LETTER OF TRANSMITTAL

Hon. Warren Rogers
Washington, D.C., December 22, 1955

Hon. Warren N. Hearneson,
Committee on Post Office and Civil Service,
U.S. House of Representatives, Washington, D.C.

Dear Mr. Chairman: At the request of the House Post Office and Civil Service Committee, I have prepared the attached monograph and am pleased to present it to you. It deals with the present condition of the merit system, the organization for Federal personnel administration, and the role of the Civil Service Commission. A central concern is the need for excellence and integrity in the civil service and the effectiveness of government operations.

The monograph contains twenty recommendations to improve and strengthen the merit system. Twelve of these recommendations are contained in Chapter I, which could constitute the core of a Civil Service Reform Act. It would be fitting to consider such a major strengthening of the civil service system during the bicentennial year.

The perceptions and recommendations in this monograph are the product of more than thirty years experience which included service in the top career positions of the Civil Service Commission in Washington and the field, as Director of Personnel of a cabinet level department, and on numerous task forces concerned with improving government operations. My views and judgments have been shaped by discussions on Federal personnel policies and problems with Members of Congress and staff, Presidential appointees, career managers, personnel experts, national and local union leaders and other Federal employees all over the United States and overseas. I am indebted to these thousands of unnamed people. The entire monograph was made more readable as a result of a critical review by Mr. W. H. White, who also typed many drafts and the final copy.

My Federal service was filled with challenging and useful work. I feel particularly honored and privileged to have been called on to prepare this monograph now. I hope you and the Members of the Committee will find it helpful as you go about the important and difficult business of legislation for an even more effective civil service.

Respectfully,
Bernard Rogers

THE MERIT SYSTEM IN THE UNITED STATES CIVIL
SERVICE

A MONOGRAPH PREPARED BY BERNARD ROSEN FOR THE COMMITTEE ON
POST OFFICE AND CIVIL SERVICE, HOUSE OF REPRESENTATIVES

THE JURY SYSTEM IN THE UNITED STATES CIVIL SERVICE

A Monograph Prepared by Bernard Rosen for the Committee on
Post Office and Civil Service, House of Representatives

CHAPTER I.—ABOUT THE CONCLUSIONS AND RECOMMENDATIONS

The Federal civil service merit system, born in 1883 out of the tragedy of a President's assassination and widespread disgust with corruption and inefficiency in the national government, is serving the American people very well. Its strength rests on values that the people of this nation hold dear: free competition, excellence, and integrity. But despite its many years of service and improvement, the merit system remains a fragile institution in our democratic society because it lacks the sustained interest of vigilant and vocal constituencies. The merit system exists; it is expected to work properly and effectively, which it generally has done; and when something has gone wrong, it has been criticized—and then fixed with an adjustment, an addition, or a deletion. In some respects it is a patchwork, and this is an inevitable consequence of its evolution.

The recent systematic effort to subvert the merit system, the most serious in its ninety-three year history, has resulted in a public outcry for action. Newspapers, radio, and television have all reported the deep concern of Members of Congress and leaders of unions, professional associations and other citizen groups, about the threat to the merit system uncovered by Civil Service Commission investigations in 1973.

Flexibilities introduced in the system from the mid-1940s to the mid-1960s, to serve worthwhile purposes, had been seriously abused, both deliberately and otherwise, by some agency managers and personnel officials. Long-standing and necessary delegations of authority from the Commission to the agencies, and within the agencies, made more difficult the early discovery of violations and the assignment of responsibility for them. While the 1973 investigations revealed an unprecedented degree of systematic abuse beginning in 1969, it would be naive to assume that there were not at least individual cases of abuse in previous years.

Without excusing in any way those who intentionally set out to subvert the merit system, the Civil Service Commission can not be held blameless. It should have discerned many years earlier that increased flexibility and major decentralization called for greater vigilance of agency and Commission actions to assure that they fully met the spirit and letter of civil service laws and merit principles. Nor can the lack of sufficient Congressional oversight during this thirty year period, and the general disinterest of citizen groups concerned with better government, go completely unnoticed. However, there are more subtle and complex forces that helped create the conditions that permitted the organized attack on the merit system to develop as far as it did. These need to be considered, and they are discussed in Chapter III.

The Civil Service Commission reacted promptly to the findings from its 1973 investigations with a wide range of administrative actions. These have reduced significantly the possibilities for manipulating the system in order to give preference in appointments because of political or personal reasons. But more than administrative actions are needed. The very absence of powerful constituencies makes a stronger foundation more imperative. The fact is that to adequately improve and protect the merit system, changes are needed in the authority, accountability, professional independence, and resources of the Commission, the obligations of the agencies, and the organization for Federal personnel administration. These can only be effected by legislation.

This monograph contains twelve specific recommendations for legislation. They are directed toward the solution of important, widespread, and persistent problems described in the succeeding chapters. Enactment of such legislation would

- give the Civil Service Commission clear statutory authority to enforce the civil service laws and rules;
- prohibit referral of applicants for competitive service jobs other than through the authorized process;
- establish in statute the criteria which the Civil Service Commission shall apply in excepting positions from the competitive service;
- require each department and agency with more than one hundred employees in the competitive service to establish a Director, Assistant Administrator, or Assistant Secretary for Personnel Management, responsible directly to an official of the agency who has overall direction of its major organizational components, to serve as both the principal personnel advisor and the statutorily designated agency compliance officer for civil service laws and merit principles;
- strengthen Congressional oversight by requiring the Civil Service Commission to report annually on (a) violations of civil service laws, rules, and merit principles, (b) the adequacy and effectiveness of agency personnel management evaluations systems, and (c) the corrective or other actions taken by the Commission and the agencies;
- clarify the relationship of the Civil Service Commission to the President, and end confusion and uncertainty, by deleting the personnel management responsibility given to the Office of Management and Budget under Reorganization Plan #2 of 1970;
- reinforce the accountability of the Civil Service Commission to Congress by requiring the Commission to present its own views directly to the appropriate Committees of Congress on matters of interest to the Congress and within the scope of Commission responsibilities;
- assure the professional independence of the Civil Service Commission by requiring it to submit requests for appropriations and personnel ceiling not only to the Office of Management and Budget in connection with the President's budget, but also to the appropriate congressional committees;

- enhance the performance of the Civil Service Commission by changing the conditions of appointment for the Commissioners;
- create a statutory base for labor relations in the Federal service;
- broaden the scope of bargaining by requiring the Civil Service Commission to use, insofar as practicable, bilateral mechanisms in the model of the joint labor-management Prevailing Rate Advisory Committee to develop government-wide personnel policies under law; and
- make greater use of the Civil Service Commission's expertise, in the interest of improving personnel management in agencies excepted by law from the competitive service, by requiring it to (a) evaluate the effectiveness of their personnel policies and practices under applicable laws, and (b) advise the President and Congress on the state of personnel management in all personnel systems and on any need for new laws or changes in existing laws.

Several of these recommendations provide for the Civil Service Commission to deal more directly with Congress than is customary for agencies in the Executive Branch. Recent events, plus the unique responsibility of the Commission to administer a system that, in good part, determines the competence and integrity with which the laws of the land are executed, are sufficient reason. There is no infringement on the "separation of powers"; and the need for more direct dealing with Congress is detailed in the monograph.

The monograph contains other recommendations whose adoption are important to achieving the purposes of the proposed legislation as well as the original Civil Service Act. For example, it is well known that during political transitions the merit system is subjected to special strain. One recommendation proposes that the Post Office and Civil Service Committee schedule several days of oversight hearings on the integrity of the merit system at least every other month throughout the first year of a new Administration, and thereafter as needed. These hearings would provide information on the need for any changes in law based in part on the performance of the Civil Service Commission as protector of the merit system, and the performance of personnel directors as compliance officers, in their own agencies, for civil service laws and merit principles. Such public hearings would also lay to rest unfounded rumors, and in general give new confidence to the American people in the stability and competence of the governmental institutions staffed with civil service employees.

The chapters which follow provide the factual and judgmental basis for all these recommendations. Chapter V also includes a discussion of one major issue that has surfaced, on and off, for more than forty years. This has to do with whether the Civil Service Commission is charged with two inherently conflicting roles: protector of the merit system and leader in personnel management. A four month, intense consideration of the condition of the merit system, the organization for Federal personnel administration, and the role of the Civil Serv-

ice Commission, all of which are discussed in this monograph, causes me to conclude firmly that the roles of guardian of the merit system and provider of leadership and central services in personnel management not only do not conflict, but they are mutually supportive. Dividing these roles between two agencies would isolate the guardian from day-to-day realities, and provide the American people with the illusion that a significant step had been taken to protect the integrity of the merit system. This monograph describes a pathology which will not be cured by establishing two agencies instead of one. A different treatment is required and recommended. Of course, without enforcement authority, direct responsibility to the President, increased accountability to the Congress, greater professional independence, and necessary resources, a single central personnel agency cannot adequately measure up to the challenge; but two central agencies would be both less effective and more costly.

Much of the basic legal framework for Federal personnel administration is already established. The twelve recommendations for legislation, taken together, could well constitute the core of a Civil Service Reform Act. Passage of such an Act, and progress on the other recommendations, will move us much closer to sound legal and organizational structures for dealing effectively with the personnel management requirements of the National Government during the last quarter of this century.

CHAPTER II.—WHY A MERIT SYSTEM?

The elected representatives of the people—435 Congressmen, 100 Senators, and the President—are the only ones directly accountable to the people for making and carrying out the laws of the land. But it is 2.8 million civil service employees who do the day-to-day business of government in accordance with the laws; and thousands of these civil service employees are inescapably involved in the making of public policy as well as in its execution because of their recognized expertise in particular subject matter areas. In helping to shape public policy, as well as in deciding on method and timing, setting the tone of administration, and in actually doing the work of government, the civil service has great responsibilities and power. It also costs a lot of money. In the bicentennial year, the salaries and benefits of the civil service exceed thirty-nine billion dollars and constitute over eleven percent of the annual budget of our national government. Over ninety percent of all the civil service workers are hired and retained under merit systems.

WHAT IS A MERIT SYSTEM?

A merit system is a fair and orderly process for hiring, paying, developing, promoting, retaining, disciplining, and retiring people on the basis of ability and performance. It is the antithesis of employment based on racial, ethnic or religious preference, political reward, discrimination based on sex, personal favoritism, or unvalidated selection devices. In other words, a merit system is based on merit principles; it is designed to produce a competent, stable work force to carry on the business of government.

Over a ninety year span Congress has defined the principles on which a merit system is based. The original Civil Service Act of 1883 called for “. . . open, competitive examinations for testing the fitness of applicants for the public service . . . fairly test the relative capacity and fitness . . . selections according to grade from among those graded highest . . .”. The Intergovernmental Personnel Act of 1971 identified the merit principles as follows:

That the quality of public service at all levels of government can be improved by the development of systems of personnel administration consistent with such merit principles as—

- (1) recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment;
- (2) providing equitable and adequate compensation;
- (3) training employees, as needed, to assure high-quality performance;

- (4) retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.
- (5) assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, or religious creed and with proper regard for their privacy and constitutional rights as citizens; and
- (6) assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

Some civil service systems are erroneously referred to as merit systems even though they do not meet these principles of merit, and, in fact, may have many unnecessary requirements and procedures. A merit system needs only such procedures as will assure effective compliance with the principles of merit.

MERIT AND EFFECTIVE CONTINUITY OF GOVERNMENT OPERATIONS

Numerous, well-supported reasons for having a merit system include the following:

- Assures needed expertise for continuity in government regardless of changes in Administration or times of crises.
- Makes more certain that laws are carried out and public services are delivered on a fair and impartial basis thus strengthening the people's confidence in our form of government.
- Attracts and retains well-qualified, honest people in the public service thereby increasing efficiency and enhancing the quality of government operations.
- Provides a sound basis for equal employment opportunity.
- Establishes a good foundation for effective relations with unions by making clear the Government's commitment to deal fairly on all matters of employment.

These reasons arise from several needs vital to our nation: the effective continuity of government operations in a very complex industrial society; citizen confidence in competent and impartial administration of laws; and fair treatment for government workers as well as those seeking government jobs.

Prior to passage of the Civil Service Act, operations of the national government practically stopped with each change in Administration, while thousands of government workers were fired and other thousands were hired in their places. Corruption, including the purchase of government jobs and the use of official positions for personal gain, was quite common; inefficiency was the order of the day with incompetents occupying many jobs that were needed and many unnecessary jobs being created for loyal political partisans and personal favorites. These scandalous conditions became intolerable even during a much simpler time in our nation's history.

Two keen observers of the spoils era wrote :

The spoils system was more fruitful of degradation in our political life than any other that could possibly have been invented. The spoils-monger, the man who peddled patronage, inevitably bred the vote-buyer, the vote-seller, and the man guilty of misfeasance in office.—Theodore Roosevelt, February 8, 1895.

Every four years, the whole machinery of the Government is pulled to pieces. The country presents a most ridiculous, revolting, and disheartening spectacle. The business of the nation and the legislation of Congress are subordinated to the distribution of plunder among eager partisans. Presidents, secretaries (of departments), senators, representatives are dogged, hunted, besieged, besought, denounced, and they become mere office brokers. The country seethes with intrigue and corruption. Economy, patriotism, honesty, honor, seem to have become words of no meaning.—George William Curtis, 1870.

Now, in good times and bad, the career civil service provides stability and competence. President Ford put it this way soon after he was sworn into the highest office: "Whatever else, recent experience has proven one thing about the Federal government: It can continue to function and move ahead even under the most difficult circumstances. This is due chiefly to more than two million career civil servants who, day-in and day-out, give of themselves in a thoroughly dedicated and efficient manner to assure this continuity."

The Chairman of the House Post Office and Civil Service Committee, David Henderson, speaking on the 92nd Anniversary of the Civil Service Act (January 16, 1975) said: "During the past two years our system of government has experienced one of its severest tests. It has survived this latest test thanks in no small part to the role of the career civil service . . . Public confidence in government may have slipped as the polls show, but citizen confidence in the day-to-day services of government was not shaken. The performance of our career civil service is, of course, the basis of that confidence."

Despite the crises of confidence at the top, the citizens knew that more than thirty million senior citizens would continue to receive their social security checks on time every month, the mail would continue to be collected and delivered, air traffic would continue to be controlled, banks would continue to be examined and deposits insured, disabled veterans would continue to receive proper care at government hospitals, our military forces would continue to be supported by civil servants at supply depots and repair facilities, tax laws would continue to be impartially enforced, research would continue in order to conquer dreaded diseases, national parks would continue to be maintained and protected, and myriad of other government actions and services which the American people depend upon, would continue to be performed. It was the career civil service, hired and working under merit principles, that provided the basis for much of the citizen certainty about government services.

Today there is no serious doubt as to the need for a merit system. But systematic actions in recent years to subvert the merit principles have

raised questions about the condition of the merit system and what needs to be done so it can make an optimum contribution to the effective continuity of government operations. Among the major issues being debated are: the integrity of the merit system, the organization for personnel administration, the role of the Civil Service Commission and the adequacy of its authority, and the relation of the Civil Service Commission to the President and to the Congress. Succeeding chapters deal with these and related issues.

CHAPTER III.—PRESENT CONDITION OF THE MERIT SYSTEM

How well personnel policies and practices accord with the six merit principles laid down in the Intergovernmental Personnel Act is a good indicator of the present condition of the Federal merit system. This Chapter will deal with personnel policies and practices that relate to each merit principle, but will give primary attention to merit in hiring and promotion because this is at the heart of the Civil Service Act of 1883.

MERIT IN RECRUITMENT, APPOINTMENT, AND PROMOTION

“Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills including open consideration of qualified applicants for initial appointment” is clearly the premier merit principle. The condition of the system in relation to this merit principle hinges first, on the effectiveness of the Job Information System to assure “open consideration”; second, on the “state of the art” for determining “relative ability, knowledge, and skills”; and third, on how well the best methods of evaluation are applied in the process of deciding who should be appointed and who should be promoted.

Information about jobs

With regard to job information, the complete overhaul and modernization of the system by the Civil Service Commission in the period 1972 to 1974 now makes it possible for a person anywhere in the fifty states to obtain current information on Federal job opportunities merely by telephoning toll free, writing, or visiting the nearest Commission Job Information Center. For the first time since 1883, there is now the capacity to live up to this inherent part of the merit principle in the normal process of filling jobs in the Federal service. Special recruiting programs to meet urgent or unusual needs of agencies also make good use of the Job Information network.

In fiscal year 1975, the 104 Job Information Centers (at least one in each state) answered eleven million inquiries, providing information on immediate job opportunities, specific requirements that must be met and the examinations appropriate to the applicants' interests and qualifications. Very few complaints were received from applicants, Congressmen, Senators, or any other source on the quality and promptness of the service. In general, criticism received was caused by overloaded telephone lines at peak periods and human error due to inadequate training or supervision. The Commission's own checks of the system reflect the same intermittent problems and steps have been initiated to minimize these difficulties.

Thus, it can be concluded that the Job Information System is Working effectively for almost all of the more than 200,000 positions filled

annually through registers of eligibles resulting from competitive civil service examinations.

However, the Job Information System is not an integral part of the process in filling some of the positions in the competitive service for which the employing agencies recommend a particular person (name request), and in filling positions that are excepted from the competitive service either by statute or administrative action. In many of these situations there is a general lack of "open consideration" which could be provided through the Job Information System, and the Government is thereby denied the increased possibility of selecting from among the best qualified and available. Furthermore, employees of some agencies (e.g., Energy Research and Development Administration, Tennessee Valley Authority) whose positions are excepted by statute are permitted to transfer into the competitive service without competitive examination by agreement between those agencies and the Civil Service Commission. Use of the Job Information System would help insure that the best qualified and available people are being considered when these agencies first fill their jobs.

In addition to new appointments, agencies make about 400,000 promotions each year. Information about jobs to be filled from within the agency by promotion is not a part of the "open consideration" aspect of this merit principle. Nevertheless, the Commission has called to the attention of agencies the desirability of notifying their own employees about promotion opportunities so those who are interested can apply and selection can then be made from the best qualified. Provisions for notifying employees have been included in agreements negotiated between unions and agency management. While promotions continue to be the single area in personnel management about which there are more employee complaints than any other, there are relatively few complaints about failure of agencies to notify employees about jobs to be filled through promotion. The notification is usually done by posting notices on bulletin boards or circulating a special issuance. Most complaints that are made in this regard allege that the notice was not posted on some bulletin boards or was not distributed to all units concerned, that sufficient time for filing was not allowed, or that the notice was meaningless because management had informally decided whom to promote before the notice was issued. Of course, any failure in this part of the process tends to undermine the credibility of the entire promotion program because employees feel that they are not being given a fair chance to compete.

One significant gap exists in information on promotion opportunities. This relates to the absence of a comprehensive system for permitting the consideration of career employees across agency lines. The Commission is able to provide information on the qualifications of employees in all agencies who are at GS-15 and above and for a few occupations at lower grades. For the most part, employees who wish to be considered in other agencies file applications in the Commission's open competitive examinations or apply directly to the agency in which they are interested.

Agencies wishing to consider employees from other agencies, have no systematic way of identifying those who are better qualified and might be available except, as stated earlier, at the GS-15 and above levels and a few occupations at lower levels. Even at these higher

levels and for these occupations, the information available to the Commission does not permit a definitive ranking of eligibles. Overall, this means that while one agency may have a number of excellent performers well-qualified for higher grade jobs but with few promotional opportunities, and another agency has promotional opportunities without sufficient numbers of well-qualified candidates, no system exists to bring together the supply and demand.

There is no simple and inexpensive solution to this problem. The most feasible approach appears to be to expand and improve that which the Commission has already initiated at the higher grade levels.

Evaluating qualifications—"State of the art"

In fiscal year 1975 almost two million of our citizens filed applications with the Civil Service Commission for employment in the Federal government. What is the "state of the art" for examining these applicants in order to identify the best qualified for the more than 200,000 jobs in a wide range of occupations that are filled annually from competitive civil service lists established by the Commission? This is an important question at any time, but it has an added dimension when unemployment is high and people fight harder for a civil service job.

The purpose of examining or testing is to determine which applicants among many will do best on the job. Examinations must be related to the ability, knowledge, and skills needed to do the work. Even when the tests are so related, there is no absolute certainty that the persons scoring highest will be the best performers on the job. Imperfections in the "state of the art" as well as unpredictable variables, such as the attitude of an employee toward the supervisor or vice versa, health, family problems, etc., can result in a disparity between test results and performance. Nevertheless, tests which meet the professional standards of validity, job relatedness, and reliability¹ do predict that those who do best on the test generally do best on the job.

Developing tests that meet these three standards is very difficult, painstaking, and costly professional work. Systematic analysis must be made of the jobs, and occupation to determine those duties and responsibilities which are important to successful performance. Then the abilities, knowledges, and skills necessary to successfully carry out those duties and responsibilities must be identified and defined. And before a test can be designed, the relative importance of each qualification requirement for the job must be established so they can be appropriately weighed in the measurement process.

In addition, tests must measure applicants without bias as to their race, color, national origin, age, sex, politics, or religion. Finally, tests must be practical and administratively feasible as to cost and workload.

Tests can be and have been designed to measure job skills and interests like learning ability, verbal ability, numerical ability, mechanical

¹ *Validity* is the extent to which a test measures what it is intended to measure. For example, a test designed to measure an applicant's job knowledge is valid if it representatively samples possession of the knowledges required for successful job performance.

Job-relatedness. A test is job-related to the extent it measures the knowledges, skills, and abilities shown by careful job analysis to be important to successful job performance. A job-related test measures the person for the job, not the person in the abstract.

Reliability is the extent to which scores on a test or selection procedure are not affected by change events or other factors that could cause inconsistent or unstable results. For example, a test would be reliable if an applicant taking the test twice within a brief period obtains approximately the same score each time. The test would be unreliable, however, if the scores fluctuate widely from administration to administration.

ability, dexterity, typing, occupational interests, and knowledge and proficiency as in spelling and more sophisticated subject matter. Tests can measure the ability, knowledge, and skills of people for highly complex as well as routine jobs. What has to be measured, in how many people, the available time and resources, these and other factors influence the type of examination.

Tests have many forms. The most common consists of multiple choice questions where the answer sheets are graded by computers; also used extensively are performance tests where the quality and speed of performance, as, for example, in typing, are rated by an examiner against a specific standard. Both of these types generally require the candidates to assemble at a particular place and time for the examination, and therefore, they are called "assembled examinations". Another widely used form of examination, called an "unassembled examination", does not require the candidates to come together at a particular time and place, but instead calls on them to submit information as to their education and experience. Frequently, the candidate must complete detailed questionnaires which cover previous work and training in relation to the job requirements. To improve the validity of this type of examination, information so furnished and the quality of performance may be verified by personal investigation or written inquiry to people who have first hand knowledge. The information received on all candidates is then evaluated to identify the best qualified for the job to be filled.

Whatever type of test is used, fair treatment of all applicants demands clearly established procedures which are uniformly observed governing all aspects of the examination process including standard information and instructions to the applicants and standard instructions and guides to the examiners. In the case of unassembled examinations this means the development of evaluation standards (rating schedules) for the jobs to be filled to provide a consistent basis for evaluating experience and education.

Critical to the development of assembled or unassembled examinations is a thorough knowledge of the jobs and occupations to be served by the examination. To develop such knowledge it is necessary to:

- review the literature concerning the occupation
- obtain job information from agency managers and specialists, professional societies, unions, and private organizations familiar with the occupation
- study official position descriptions, job performance standards, training materials, and work products
- observe the work processes
- review policies and programs affecting jobs in the occupation

The interpretation and use of all this information to design and conduct fair examinations require a high order of professionalism.

The present "state of the art" does not make possible the development of examinations which are essentially fair; those who are likely to perform best on the job can be identified. In this connection, a six year study made by the highly respected Educational Testing Service, funded by the Ford Foundation, concluded that carefully drawn pencil and paper tests predict job performance fairly for members of varied ethnic groups—Caucasians, Blacks, and Mexican-Americans. The study found that those who do not do well on job-related tests,

regardless of race, do not do well at work either; and a good test score was reflected in good job performance.

While the "state of the art" makes possible reasonably fair evaluation of the qualifications of applicants in most instances, there is a need to further increase the probability that those who will do better on the job will be those with higher scores on the relevant examination. The Commission has devoted very little resources to this fundamental area over the last thirty years, and consequently has made only a few important contributions. As the central personnel agency of the national government, with responsibility for helping state and local governments too, the Commission should undertake significant additional work to further improve the "state of the art".

Selecting the best

There is general acceptance of the concept that in the interest of effective continuity of government operations, examinations that identify the best qualified and available should be used for filling all continuing positions with two exceptions: (1) those positions that it is vital for the President or his appointees to control decisively in order to help him carry out the mandate of the electorate, and (2) those positions for which it is impracticable to conduct open competitive examinations.

Application of the concept raises issues in three major areas: examinations, statutory and administrative exceptions from the competitive service, and abuses of the merit system. First, examinations being conducted for many of the more than 200,000 competitive positions filled annually are not as good as they should be and as the "state of the art" permits. The possibility of making appointments from among those best qualified is thus reduced. Second, many positions for which it would be practicable to examine are now excepted from open competition by statute or administrative action, even though it is not vital for the President or his appointees to control them decisively. The effective continuity of government operations is thereby adversely affected and the Government is denied the opportunity to more consistently appoint from among the best qualified. Third, the merit system for examining and selection is abused at times with the result that the citizen can not be confident that the Government is making appointments to continuing positions only from among those who are best qualified and available.

EXAMINATIONS

With regard to the first issue, better and fairer results, which translate to better employees on the job, are attainable almost immediately by using alternate and additional examination methods which are already known and available; by more training of agency and Commission personnel specialists; by more use of expert panels instead of single examiners where difficult evaluation decisions have to be made; and by more and better quality reviews and controls throughout the whole examination process. Improvements made in the fairness of examinations for entry into the service need to be carried over to the promotion examining processes of the agencies. All of these steps require additional resources. Without adequate resources to meet a growing workload, the Commission and the agen-

cies are conducting many examinations minimally, not solidly, in accord with the "job relatedness" requirements laid down by the Supreme Court.

The Commission's budget for recruiting and examining is about thirty-five million for fiscal year 1976. This is less than two percent of the first year salary costs of the more than 200,000 people employed each year through these examinations. When one considers the potential loss in productivity and quality of work, and the adverse impact on employee morale that results from hiring and promoting less than the best, increasing the two percent by only half a percent would appear to be prudent management. Or looked at another way, the examining process that leads to a decision to appoint someone into the career service as a typist at \$7,000 or a beginning professional at \$10,000 a year is the critical step for many in a government "contract" that over thirty years will have a value ranging from a quarter to more than half a million dollars. These figures would be substantially higher if one included retirement and other benefits as well as possible increases due to inflation. Raising the Civil Service Commission's total cost per placement from \$175 to even \$250 in order to do a better job of examining would lead to better performers on the job. For example, in the 1960s primarily for cost reasons, the Civil Service Commission started accepting certificates of typing proficiency from schools. Budgetary constraints have prevented the Civil Service Commission from stopping the practice and returning to its own tests even though there are strong indications that some people who cannot type satisfactorily are being hired as typists based on proficiency certificates issued by their schools.

Financing the examining program so it performs to the degree permitted by the "state of the art" will not only improve the efficiency and effectiveness of government but will also preclude the administrative chaos and loss of citizen confidence in the Federal government that would result from the Court striking down some of the Commission's entry examinations and some agency promotion examinations. Such actions by the Court are not at all outside the realm of possibility. Improvements can and need to be made in job analysis, job relatedness, documentation of examining practices, and consistency of evaluations by examiners in order to better serve the public interest and to face with reasonable confidence the inevitable challenges in the courts.

STATUTORY EXCEPTIONS

All positions are in the competitive service, i.e., subject to competitive examination, unless an exception is granted by law or administrative action. In 1973, the Civil Service Commission, at the request of the Senate Post Office and Civil Service Committee, prepared a three volume report on positions excepted from the competitive service by statute.

A broad range of agencies have all or part of their positions excepted from the merit provisions of Title 5 U.S.C.—those relating to appointment, promotion, and separation of employees. While the record of the original reasons for many of these exceptions is very sketchy, there is no basis for doubting that the legislative action was then taken for good cause. For example, many exceptions were legislated some years ago because of the difficulty in filling Federal jobs due to inadequate

pay. Positions were excepted from the merit provisions of Title 5 as well as the classification and pay laws. The pay for most of these positions is no longer a deterrent to recruitment for the Federal service, and civil service jobs in almost all occupations are eagerly sought.

Whatever the reasons at the time the positions were excepted by law, the question remains whether there are persuasive reasons now to except them from the merit system laws which govern appointments to most positions in most agencies of the Executive Branch.

As a minimum, excepted positions which require knowledge and skills comparable to those required for positions in the competitive service in the same or other agencies should be considered prime candidates for inclusion under Title 5. This might well involve virtually all of the following (figures in parenthesis represent the estimated number of positions for which removal of the statutory exception should be considered):

- non-volunteer positions in ACTION (850)
- positions in Energy, Research, and Development Administration (7,300)
- positions in Federal Reserve System Board of Governors (1,350)
- scientific and research positions in Public Health Service, Department of Health, Education, and Welfare (300)
- positions in Federal Bureau of Investigation (19,000)
- positions in National Aeronautics and Space Administration (350)
- positions in Nuclear Regulatory Commission (1,800)
- trust fund positions in Smithsonian Institute (850)
- non-supervisory positions in Canteen Service, Veterans Administration (3,250)

The fact that an agency with excepted positions is not listed above, does not imply that there are good reasons for continuing the exception. Rather, the list suggests those exceptions where early review appears most warranted.

One excepted occupation that is found in many agencies is attorney. There are approximately 10,000 attorneys and the Civil Service Commission has long been prohibited from examining for them by a rider to its appropriation act. Current hiring practices for attorneys are uneven and frequently fall short of providing reasonable assurance to the Government that selections are being made from among the best qualified and available. There do not now appear to be any compelling public interest reasons to continue this statutory exception. If the statutory exception were ended, individual positions could still be excepted by administrative action when the appropriate criteria were met.

Medical positions require special attention. Doctors, dentists, and nurses in the Department of Medicine and Surgery of the Veterans Administration were first excepted by law in 1946 largely because the general pay scales for Federal employees were too low. This excepted group now numbers almost 30,000, of which about 10,000 are doctors and dentists. Pay for doctors and dentists is a major problem not just for the Veterans Administration but for all Federal agencies that employ them. There is a need to develop special pay and benefit provisions for doctors and dentists and possibly other health occupations

in all agencies if the Government is to attract and retain excellence. The Commission recognizes the problem but progress has been slow because there is little enthusiasm among the employing agencies for a coordinated approach.

ADMINISTRATIVE EXCEPTIONS

The Civil Service Commission is authorized to make administrative exceptions in accordance with criteria established by Executive order. Since shortly after passage of the Civil Service Act, the Commission has excepted positions from competitive and non-competitive examinations when it was impractical to examine for such positions. These are now designated Schedule A and Schedule B exceptions.

Schedule A applies to positions for which it is not practicable to hold any examinations. They include positions for teachers in dependent school systems overseas, narcotics agents for undercover work, severely handicapped persons who can do specific tasks well, needy school children available to work in the summer, and many purely seasonal positions not of a continuing nature. Further, because the Commission is prohibited by law to examine for attorney positions, those are also placed in Schedule A. There are about 100,000 positions in Schedule A of which about 60,000 are summer jobs for needy students. Attorney positions are the only ones in significant numbers which need to be reexamined as to whether their excepted status is warranted.

Schedule B applies to positions for which competitive examinations are impracticable, but the successful applicant must pass a noncompetitive examination established by the Commission which assures that those appointed possess at least the minimum skills and knowledge needed to perform the duties. The greatest number are student trainee positions established in connection with a bachelor's degree, cooperative education program, and positions assigned exclusively to Navy or Air Force Communication Intelligence activities. There are fewer than 3,000 jobs in this Schedule and a further review at this time may reveal some that can now be included under competitive examination to help assure selection from among the best qualified and available.

In 1953 the President established by Executive Order 10440 a new category for exceptions from the competitive service called Schedule C. These exceptions are for positions which are policy-determining or which involve a close personal relationship between the incumbent and the agency head or his top political appointees. It applies both to key positions which may then be filled by the Administration with persons who will fully support its political aims and policies, as well as to a limited number of positions for secretaries, special assistants and others on the immediate staff of high-level politically appointed officials. Initially, the Commission was not authorized to apply any qualification standards to proposed appointees for Schedule C positions. This was modified by Public Law 85-462, enacted in 1958, which requires Commission approval of the qualifications of persons for excepted as well as competitive positions in grades 16, 17, and 18. In 1966, the President established by Executive Order 11315 a separate category for Schedule C positions in grades 16, 17, and 18 called Non-Career Executive Assignments. At the same time the excepted criteria

for those grade levels was revised to add a criterion concerning the "advocacy of Administration programs and support of their controversial aspects". The criteria for excepting a position from the competitive service at grades 16, 17, and 18 and making it a Non-career Executive Assignment now read:

- be deeply involved in the advocacy of Administration programs and support of their controversial aspects;
- participate significantly in the determination of major political policies of the Administration; or
- serve principally as personal assistant to or advisor of a Presidential appointee or other key political figure.

In addition to seeking Commission approval of qualifications, the agency submits the name of the proposed non-career employee to the White House for approval. The Commission is not involved in the White House review or decision. If the Commission finds that the proposed appointee does not meet the minimum qualifications, it so advises the agency. If the Commission finds the proposed appointee qualified, it advises the agency only after the White House provides the Commission with a copy of its notice to the agency that the proposed non-career official is acceptable. Although the Commission makes its decisions independent of the White House, the very process continues to cause questions to be raised about possible White House influence.

In 1975, the criteria for placing positions in Non-Career Executive Assignments were further amended by the President to emphasize the *future* policy and advocacy role of the top field officials of seven departments and agencies by designating their positions non-career. These are the Regional Directors (or Regional Representatives) in the Small Business Administration, the Environmental Protection Agency, the Departments of Commerce, Labor, Housing and Urban Development, Transportation, and Health, Education and Welfare.

The events which culminated in this personnel policy action by the President to except specific positions from the competitive service based on an anticipated future role began in 1969. The new Administration expected that its intention to further decentralize Federal government operations would place new performance requirements on Regional Directors which would cause their positions to meet the non-career criteria. Therefore, while keeping the positions in the career service, as a temporary measure the Commission authorized the agencies cited above and the General Services Administration and the Defense Civil Preparedness Agency to make Limited Executive Assignments to the Regional Director positions thereby permitting the new Administration great leeway in making appointments to these positions. In following this course the Commission assumed the obligation to study the positions after they had evolved but within five years because an employee on a Limited Executive Assignment automatically converts to career status after five years service unless the agency removes the employee from the position or the Commission decides that the position is non-career.

In 1974, prior to any of these appointees completing five years service, the Commission conducted a detailed study involving numerous on-site reviews with the Regional Directors concerned. The Commission staff concluded that all the positions as they were in fact operating after almost five years of evolution were properly career positions.

Before making a recommendation for action by the Commissioners, the report was discussed with department and agency heads or their deputies and a copy provided to them for comments.

The General Services Administration positions had to be decided first because two Regional Directors were on the verge of completing five years service. After considering the comments of the Administrator of the General Services Administration, the staff recommended that the positions of Regional Director in that agency continue to be designated career and the Commissioners so decided in November 1974.

In the meantime, the Director of the Office of Management and Budget expressed White House interest in having all the appointees of the positions under study continued as Limited Executive Assignments or designated Non-Career Executive Assignments. In January 1975 the Commission staff completed its review of the comments from most other agency heads and concluded that under the existing criteria all the positions were properly career except in the Department of Housing and Urban Development. At about the same time the Commission was instructed by the Director of the Office of Management and Budget to draft the Executive order which was issued on February 15, 1975 that placed the Regional Director positions in five agencies outside the competitive service. As the Executive Order states, this action was taken by the President to assure that a capability would be available in the regions to advocate Administration proposals and policies, and their controversial aspects. The Regional Directors in the remaining two agencies, Small Business Administration and the Department of Commerce, were removed from the competitive service by Executive orders issued in May and November 1975 respectively.

There should be no question that the concept of a limited number of non-career positions immediately below Presidential appointees is sound and clearly necessary to help the President shape the character of his Administration. And over the years, many persons with excellent qualifications have been appointed to non-career positions and have served the American people well. However, the possible implications of the 1975 action by the President to change the criteria for Non-Career Executive Assignments, as well as the general adequacy of the criteria warrants discussion.

The 1975 amendments of the non-career criteria will permit the appointment in the future of politically partisan, minimally qualified individuals as the top field managers of major Federal programs which are intended to impartially and objectively provide benefits to, and otherwise impact directly on, millions of citizens as well as state and local governments. This possibility is real, rather than theoretical, in view of the experience with making Limited Executive Assignments to Regional Director positions from 1969 to 1975. While some of the appointees had good qualifications and performed well, others barely qualified and performed poorly. Furthermore, one oft-cited reason for having non-career employees in these positions—they can be removed easily if they do not perform well—proved illusory. Presidential appointees often found it politically impossible to move against marginal performers. In fact, a good case can be made that it is easier to remove a career employee than a non-career employee with political ties.

It is worth reviewing some of the evidence presented to the Commission by the Department of Housing and Urban Development, prior to the President's action, which served as the basis for the Commission staff to conclude that this Regional Director position met the then existing criteria of a non-career position. The persuasive examples of non-career behavior related primarily to the "advocacy of Administration programs and support of their controversial aspects", and included the following quotations from the press on speeches made or statements issued by a Regional Director of Housing and Urban Development."

Congress, with its Democratic majority, has been fingered by a federal official as a key reason for the temporary halt, recently ordered by the Nixon administration, in federal funding of housing and community development programs . . . Congress, Mr. Green said, presently is unable to "deal with an overall domestic situation in any coherent way." [The Knickerbocker News, Albany, New York, January 17, 1973.]

Last year it looked as if Congress would take a comprehensive look at housing and urban development legislation. The Senate passed a housing and urban development bill in March 1972. But the bill languished in the House Banking and Currency Committee from March to September as a feud among committee members prevented action on it. When the Banking and Currency Committee finally produced a bill, the House Rules Committee decided that such controversial legislation could not be considered so late in the session, and the bill died.

This background is important to an understanding of the action of the Administration in imposing what George Romney, the Secretary of Housing and Urban Development, described as a "temporary halt" in approving commitments under the housing subsidy programs and similar restrictions on the community development programs. [In Defense of Nixon on Housing by S. William Green, New York Times, Real Estate Section, February 4, 1974]

Since the Commission staff did not find such types of advocacy of controversial Administration proposals and programs prevalent in other Regional Director positions, and because the degree of involvement by Regional Directors in policy determination was quite limited, there would have been no basis for the Commission finding that the Regional Director positions in other agencies were non-career. They could be made non-career only by Presidential action amending the Executive order provisions dealing with the criteria for non-career appointments. This was done by adding a requirement that there needed to be available in the field an advocacy capacity for Administration proposals.

Only the future will reveal the extent to which this advocacy capacity is used. Also, in view of the subsequent addition of Regional Director positions in the Small Business Administration and the Department of Commerce, it remains to be seen whether a President in the future concludes that an advocacy capacity is needed for Regional Director positions in still other agencies and even at the Deputy Re-

gional Director level; and whether these new non-career officials in the field will need to be assisted by other non-career or Schedule C appointees. The overriding concern is whether the criteria as they now stand will make it possible for Federal programs in the field to be directed by the most knowledgeable and able executives available to assure competent and impartial administration of the laws, thus giving the citizens confidence in the effective continuity of government operations. A subsidiary but equally vital question is whether the confidence of the people and the Congress in the government's management of programs that are physically close to them is impaired if the manager engages in the kind of political advocacy exemplified by the Regional Director in the Department of Housing and Urban Development.

The removal from the competitive service of seventy top positions in the field points up the fact that the criteria established by Executive order for excepting positions from the competitive service under Schedule C and Non-Career Executive Assignments are lacking in one element that appears essential to the public interest. This has to do with whether making a position Schedule C or Non-Career Executive Assignment, in Washington or the field, will impact adversely on the effective continuity of the relevant government operations in view of (1) the limited tenure of incumbents, (2) the absence of any obligation on the appointing officer to fill the Schedule C position with a person qualified to perform the stated duties, and (3) the absence of a requirement to select a well-qualified person to fill a Non-Career Executive Assignment.

Number of positions in schedule C and noncareer executive assignments

1953 -----	871	1965 -----	1, 590
1954 -----	1, 133	1966 -----	1, 590
1955 -----	1, 122	1967 ¹ (472 are NEA's) -----	1, 600
1956 -----	1, 211	1968 (459 are NEA's) -----	1, 619
1957 -----	1, 218	1969 (504 are NEA's) -----	1, 704
1958 -----	1, 205	1970 (552 are NEA's) -----	1, 924
1959 -----	1, 238	1971 ² (562 are NEA's) -----	2, 003
1960 -----	1, 215	1972 (509 are NEA's) -----	1, 798
1961 -----	1, 349	1973 (564 are NEA's) -----	1, 856
1962 -----	1, 379	1974 (514 are NEA's) -----	1, 669
1963 -----	1, 428	1975 (536 are NEA's) -----	1, 550
1964 -----	1, 400		

¹ With the establishment of the executive assignment system in 1967, positions in grades GS-16 through GS-18 were removed from Schedule C and placed under the executive assignment system as Non-Career Executive Assignments (NEA). About twenty-five percent of these positions were in grades GS-16 through GS-18 when Schedule C was first authorized.

² In December of 1971, the number of authorized Schedule C positions reached their highest point, but thirty-two percent were vacant. Generally, the vacancy rate is twenty to twenty-five percent of the total positions. In 1973, the Commission adopted an automatic revocation system. Under this system, any Schedule C position at GS-15 or below which has been vacant for sixty days is automatically revoked. An agency which is actively seeking to fill the position may be granted an extension of sixty additional days. Similarly, all supergrade positions that are vacant for 180 days are automatically revoked unless the agency presents good reasons for granting an extension.

The addition of a criterion, which calls for a conclusion by the recommending agency and the Commission that placing a position in a non-career or Schedule C status will not impact adversely on the effective continuity of government operations, would help protect the public interest during changes in political leadership as well as at other times. This would not preclude non-career positions where the primary and dominant requirements are significant participation in

determining major political policies of the Administration, or deep involvement in the advocacy and support of controversial aspects of Administration programs, or serving as personal assistant to or advisor of a Presidential appointee or other key political figure.

As the preceding Table shows, there was a modest three percent increase in Schedule C positions from 1967 to 1974. Nevertheless, there was a significant change in the types of positions placed in Schedule C. The number of Schedule C secretaries decreased from 467 to 409 while the number of administrative and special assistants GS-13 to 15 (annual salaries range from \$22,000 to \$30,000) increased from 452 to 606. During this period the number of Schedule C's in administrative and special assistant positions increased from twenty-two to sixty-seven in the Department of Health, Education, and Welfare, twenty-five to sixty in the Department of Housing and Urban Development, four to eighteen in the Department of Justice, ten to twenty-two in the Department of Transportation, and four to twenty in the General Services Administration. Occupying some of these administrative and special assistant positions were undoubtedly individuals whose relatively short tenure and marginal qualifications impaired the effective continuity of government operations.

When appointed, many high level Schedule C's and non-career executives know very little about the operations of the Federal government; most know practically nothing about the particular program they will be heading or advising on, and often they are virtually ignorant of the legislative and executive processes so essential to getting things done in government. The public interest in this regard becomes even clearer when one specifies the range of knowledge most non-career executives and high level Schedule C's require before they can function effectively. They must develop an understanding of such matters as:

- agency programs overall and their own specific programs
- Administration policies as they impinge on relevant agency policies and programs
- relationships among the three branches of government
- organization of the Executive Branch
- relationship of the employing agency to the President
- relationship of the employing agency to other agencies
- relevant government policies as to personnel management, financial management, procurement, etc.
- roles of the central management agencies
- relation of Federal government to State and Local governments on pertinent matters
- role of the career staff and role of non-career appointees in own agency
- government's ethical standards
- key people in the organization—what they do, and their strengths and weaknesses
- institutional history

Too often non-career executives and Schedule C's leave the government before they have become partially effective. The resulting cost to the government and the citizens through non-performance as well as poor performance cannot be determined, but it is significant.

A recent review by the Civil Service Commission of personnel management in an agency within a Department, revealed that turnover was very high in the seven non-career supergrade positions—most had two or three incumbents in the preceding two years. Some non-career positions remained unfilled for periods of up to a year and a half. The employees gave very unfavorable responses to a questionnaire on the adequacy of work planning, and the use of their time and skills. The subordinate career managers' ability to manage day-to-day operations was being adversely affected by the need to train the constantly changing non-career executives. Clearly, the continuity of government operations was suffering as a result of designating all seven of these positions as non-career, but this important factor could not be considered under the existing criteria. While there is no reason to believe that the serious situation in this agency is typical of conditions elsewhere in the government, it does demonstrate how the existing criteria are used with unfortunate consequences for the taxpayer.

As to the matter of qualifications, it is reasonable to be skeptical about whether the public interest is being served by not requiring any oversight of qualifications for Schedule C's and by merely assuring minimum qualifications for non-career executives. While pay is not a conclusive indicator, it is disconcerting to find that many persons are appointed as non-career executives at salaries that exceed their previous annual earnings by three, five, and even more than ten thousand dollars a year. And the concern for the public interest sharpens when it is noted that many non-career positions involve supervision of important continuing operations of government.

The use of non-career executives and high level Schedule C's in the independent regulatory agencies warrants particular scrutiny because of the great need for citizen confidence in the professionalism and independence of these agencies. The so-called "Big 7"—Civil Aeronautics Board, Federal Communications Commission, Federal Power Commission, Federal Trade Commission, Interstate Commerce Commission, Securities and Exchange Commission, and Federal Maritime Commission—presently have thirty-four Non-Career Executive Assignments and seventy Schedule C's. While the Presidentially appointed, Senate confirmed members of these agencies generally reflect the political/economic philosophy of the President who appoints them, the desirability of some of their subordinates being required to engage in the kind of activity that would meet the criteria for Non-Career Executive Assignment—advocacy of controversial Administration programs or significant participation in the determination of major political policies of the Administration—needs to be reexamined.

One other type of appointment can impact adversely on the merit system and the effective continuity of government operations. This deals with the statutory authority of agencies to appoint experts and consultants. When specifically authorized by law, an agency may use Section 3109 of Title 5, U.S.C., to obtain the temporary (not to exceed one year) or intermittent services of experts and consultants without regard to competitive civil service and classification laws.

Since Section 3109 vests employment authority in agency heads, the Commission is only responsible for assuring that the positions are in fact expert or consultant positions. Nevertheless, to carry out its responsibility in this regard, the Commission does have some indirect

influence on the qualifications of persons placed in these positions; e.g., hiring a non-expert for a position designated as "expert" would cause the Commission to conclude that an "expert" position does not exist, and separation of the incumbent would be required.

To avoid having agencies submit each case for prior approval, agencies enter into general agreements with the Commission on standards, criteria, and controls which they are to observe and apply in employing experts and consultants. Under these agreements, agencies may fill individual positions without the Commission's specific prior authorization but subject to post audit. In the course of its general and special evaluations of agency personnel management, the Commission has found that occasionally these agreements have been violated by (1) appointing an individual who does not possess exceptional expertise, or (2) employing an expert or consultant to fill a position for which the agency has a continuing need and therefore should fill with a career employee. The Commission in such cases requires the agency to remove the expert or consultant.

ABUSES

In a system which now involves about 200,000 new appointments and 400,000 promotions annually, individual instances of inadvertent as well as intentional abuse of the merit principle and related processes for appointments and promotions have occurred over the years. Abuses include such actions as:

- tailoring a job description and job requirements to a particular candidate's experience
- soliciting declinations in order to reach a favored candidate
- writing an overblown job description to raise a grade
- establishing duties in a job description that will justify excepting the position from the competitive service even though the designated duties will not be performed
- making temporary appointments to continuing positions so the appointees can acquire additional qualifying experience in hopes of achieving preferred status for permanent appointments
- making temporary appointments to continuing positions in order to stay within the ceiling for permanent employees
- using inadequate evaluation methods which may result in selections being made inadvertently from those not best qualified, or intentionally facilitating the selection of favored candidates.

Investigations conducted by the Civil Service Commission in 1973 and 1974 revealed that the occasional individual violations of the system, deliberate or otherwise, which have occurred since the Civil Service Act was passed in 1883, had given way in recent years to an organized effort at subversion of merit principles through planned use of one or more of the improper actions listed above. Responsiveness in personnel matters was translated into systematic efforts to politicize the career civil service and nearly make a mockery of the merit system concept. Not only did some agency officials, career and non-career, participate in this effort, but they also had the cooperation of the Office of Management and Budget and the understanding, if not encouragement, of some officials in the White House.

The damage in terms of number of violations was small—just a fraction of one percent of the 200,000 new appointments each year.

But whatever the percent of violations, they seriously undermined the confidence of the American people in the entire system and they adversely affected the morale of civil service employees.

The Commission's investigations followed by proposed disciplinary actions ranging from thirty day suspensions to removal of nineteen agency officials earning \$30,000 to \$36,000 per year, a wide range of administrative actions by the Commission to reduce the possibilities for manipulating the system, and the investigative hearings by the Manpower and Civil Service Subcommittee of the House Post Office and Civil Service Committee have ended the immediate organized threat and have set in motion forces that may greatly strengthen the merit system.

To assure that in the future the merit system for examining and selections makes the optimum contribution to the effective continuity of government operations we need to consider this central issue: Why did the partially successful assault on the integrity of the merit system occur? In dealing with this issue, it is well to keep in mind several related questions.

- Why would *some Federal officials* (from agencies, White House, Congress, Office of Management and Budget, Civil Service Commission) have felt that they could safely initiate, or cooperate with, efforts to obtain appointments in the competitive civil service based on the applicants' political associations or other non-merit factors?
- Why would *certain agency officials* have felt that they could ignore their obligations to comply with civil service laws and rules?
- Why was it that the Civil Service Commission did not learn of the organized efforts to subvert the merit system until June 1973, even though these activities had been underway for several years?

The answers to these questions will also help us decide what needs to be done to assure the integrity of the merit system in the future.

In my judgment there were six conditions that established a favorable climate for the organized effort to subvert the merit system.

(1) For decades there has been a fashionable suspicion among many top political appointees, regardless of party, and particularly in the first year or two of a new Administration, that senior and sometimes even midlevel career people are firmly committed to the policies of the previous Administration and will not change. Therefore, they reason, at best these career professionals cannot be expected to enthusiastically carry out the policies of the new Administration, and at worst, they will try to scuttle them. While no evidence has been produced to support this thesis, it does provide a rationale for attempting to circumvent the civil service rules. Specious reasons have been given for changing career positions to non-career or for advocating that a person outside the career service, whom the official knows, is better qualified than anyone in the service or on the Commission's list of eligibles. And this has occurred even when no review has been made of the qualifications of employees in the agency or those applicants who have been competitively examined by the Commission.

The breadth and importance of these feelings can be portrayed by relating two personal experiences.

In the summer of 1961, several key people in the Kennedy Administration visited me in San Francisco and indicated that high officials in the Administration felt that senior civil servants in Washington and the field, "holdovers" from the Eisenhower Administration, were not supporting the President's efforts to change policies, program priorities, and emphases. I told them that I was well acquainted with the top career people in the various Federal agencies in that western region, having been the Civil Service Commission's Regional Director for three years, and that I saw no evidence of any footdragging. To the contrary, I had heard a number of them express concern that they were receiving no significant changes in policy or program direction from their headquarters. In a meeting with some of these career executives later in the day, this point was underscored for the officials from Washington by a comment from one career executive to the effect that after seven months of the Kennedy Administration, he has received no new policies from his headquarters, and the only clear evidence he has of a new President is what he reads in the newspapers and sees on television.

Eight years later, in the summer of 1969, I had a repeat experience with high officials in the Nixon Administration. This time it was at a meeting in the White House where the judgment was expressed by Presidential appointees from five or six Departments that Johnson Administration "holdovers" in important career positions in Washington and the field were behaving as if there had not been an election nine months earlier. Based on my then current contacts with career executives in Washington and the field, I expressed the same opinion that I had voiced in 1961. Further, I related the 1961 episode and remarked that undoubtedly some of the people considered in 1969 as Johnson Administration "holdovers" were viewed in 1961 as Eisenhower Administration "holdovers". No one challenged my statement and, in fact, one Presidential appointee agreed with it. Nevertheless, in the intervening years and subsequently, the myth continues to be repeated—and always without any supporting facts.

(2) A strong commitment was built up within the Civil Service Commission over some thirty-five years that the civil service system must be flexible and responsive to the "needs of management". This was encouraged by reports from two Hoover Commissions and other studies which are discussed in Chapter IV. In the matter of individual cases, sometimes called "name requests", the Commission went behind the stated "needs of management", and every possible avenue was explored to try to satisfy what was represented as the "needs of management" on the assumption that these needs were real and in the public interest.

Some "name requests" by agencies resulted from referrals and recommendations by Congressmen, Senators, officials in the Executive Branch, and others. While the great majority of such referrals were nothing more than a courtesy to constituents, it is now quite clear that there were a considerable number of cases which agency officials did not wish, or did not feel free, to consider on their merits alone because the persons making the referrals could seriously affect the agency or the individual official to whom the referral was made. In attempting to have the Commission determine that some of these "name requests" ranked among the top three eligibles, agency officials strongly chal-

lenged any Commission judgments that would not permit them to select the "name request". The ensuing interaction may have resulted in a Commission official or employee going too far in certain instances by offering advice and assistance that might meet the letter but not the spirit of the civil service law and merit principles.

Over this same thirty-five year period, as the Commission increasingly emphasized its advisory and assistance role, relatively less attention was being given to securing compliance with civil service laws and rules.

(3) The increased delegations of personnel authority to agency officials have not been matched by increased understanding of the reasons for various merit system standards and processes. Consequently, a superficial understanding has often resulted in civil service requirements being viewed as procedural red tape rather than essential to the substance of fairness and merit. In some agencies a personnel official who knew how to "get around civil service" was looked on with favor by his top management who saw in the power of appointment and promotion an additional means of building support or reducing opposition in matters of agency policies, programs, and resources.

(4) The relationships of the Civil Service Commission to the President were seriously weakened following adoption of Reorganization Plan #2 of 1970 which abolished the Bureau of the Budget and established the Office of Management and Budget. Thereafter, with rare exceptions, it was not possible for the Commission's views on important personnel management issues warranting Presidential attention, to be presented personally, or even in writing, directly to the President. Memoranda from the Chairman of the Commission to the President were generally referred by the White House to the Office of Management and Budget. In most instances, the Director of that Office discussed the matter with the President or wrote to him about it, and the Commission was subsequently informed of the decision by the Office of Management and Budget.

How tall the Civil Service Commission and civil service laws stood with the White House was also evident to many agencies when in January 1973, despite a Presidentially imposed freeze on all new hiring, the Office of Management and Budget gave sixteen agencies politically motivated exceptions to the freeze so they could hire certain people referred to those agencies by the White House; and some of these White House referrals were placed improperly in career positions.

Further inferences were drawn when there was no action for an extended period to nominate a Chairman following the reelection of the President in 1972. Two, three, and even four months ensued before most agency head nominations were sent forward, but it did not go unnoticed that in the case of the Chairman of the Commission, the hiatus lasted from November 1972, when the resignations of most Presidential appointees, including the Commission's Chairman, were obtained, until June 1973 when most of the positions had already been filled.

Likewise it did not go unnoticed that during the latter half of 1973, and until August 1974 when Gerald Ford became President, as the Civil Service Commission investigated and found systematic violations

of civil service laws, the White House interest in the integrity of the merit system could be characterized at best as non-committal.

(5) The imposition on agencies of ceilings for full-time permanent personnel that are lower than what they require to perform continuing work for which funds have been appropriated, undermines the merit system. To stay within the assigned ceilings, some agencies hire full-time temporary and part-time employees instead of full-time permanent employees and then try to manipulate the civil service system in order to permanently retain the full-time temporary employees. If they succeed, then better qualified people who were on the civil service list but available only for permanent appointment have been denied opportunity for employment, and the government is penalized because it did not hire from among the best. Of course, if the agencies are not successful in retaining the temporary employees for continuing work, the government also loses because it has already invested time and money in training them to do the specific work.

Such practices breed disrespect for civil service laws. They are unfair to the temporary employees who are doing the same continuing work as permanent employees but who have less favorable conditions of employment, e.g., no health insurance or life insurance, no appeal from adverse actions, and no promotions. Unrealistic personnel ceilings also encourage contracting-out when it may not otherwise be justified. All these practices affect adversely union-management relations. By imposing unrealistically low ceilings for full-time employees for continuing work that has been funded, the integrity of the merit system suffers and the costs to the taxpayers rise. But the greatest harm may be in the fact that the Executive Branch, Congress, and the American people are misinformed, and some will think they are being deceived, as to the number of full-time permanent employees required to carry on the continuing work of government.

(6) The grade levels of the Civil Service Commissioners are too low in relation to their broad and complex responsibilities. Compared to grades provided in law for the Presidentially appointed leadership of other agencies, Executive Level III for the Chairman of the Civil Service Commission and Executive Level IV for the Vice Chairman and third Commissioner are clearly out of line. The specific responsibilities of the Commissioners are discussed in Chapter V. In status-conscious Washington, this communicates an unwarranted message on the importance which the President and the Congress attach to the laws administered by the Commission.

These six conditions created an environment in which those who found it advantageous to abuse the merit system might believe that they could do so with impunity, and others might feel that there was little risk in cooperating with them. Unless these conditions are changed, it is reasonable to assume that in a few years the lessons learned in the recent past will have been forgotten and hiring based on merit will again be subjected to systematic subversion.

MEETING OTHER MERIT PRINCIPLES

Although the merit principle on hiring and promotions is the most critical for a merit system, there are five other merit principles identified in the Intergovernmental Personnel Act, and they are discussed briefly in the order in which they appear in the law.

PAY: "PROVIDING EQUITABLE AND ADEQUATE COMPENSATION" is a merit principle which is being complied with for the most part. The major deficiencies in applying this principle relate to (1) some of the methods used in setting blue collar and white collar pay, (2) the failure to adjust salaries in an adequate and timely manner for top level executive, professional, and scientific personnel, and (3) the large number of white collar classification standards that need updating and the intentional or inadvertent misclassification of some white collar jobs.

Studies have been made in all three areas and the problems are well known to the Congress, the Executive Branch, and employee organizations. Some improvements can be made by administrative action: for example, additional funds would permit the Civil Service Commission to deal more effectively with the outdated classification standards and much of the misclassification problem. Other improvements require legislation; for example, pay compression at the higher levels could be ended by establishing percentage differences between the top grades in the General Schedule and the Executive levels and phasing in the adjustments over several years. As long as these problems remain unsolved the taxpayer will continue in some instances to bear a heavier cost than warranted through overpayments, and in other instances employees' morale will suffer and some will leave the government because their pay is lower than it should be.

TRAINING: "TRAINING EMPLOYEES, AS NEEDED, TO ASSURE HIGH-QUALITY PERFORMANCE" is a merit principle that has received considerable attention in recent years. During the 1970s, annually almost one million Federal employees received specific off-the-job training of eight hours or more. This training provided by Federal agencies, the Civil Service Commission, universities, and other public and private organizations was designed primarily to help employees improve their knowledge and skills so they might better perform their assigned tasks and become ready to take on more difficult and responsible work.

The Civil Service Commission has provided training to over 100,000 employees annually in recent years, most of it on common skills and knowledges required in many agencies, and much of it designed for supervisors and managers to help them improve their performance. At the same time, non-government organizations have trained about 170,000 employees; but by far the biggest training job has been done by the agencies themselves in training over 700,000 employees each year.

Considering that seventeen years earlier, when the Government Employees Training Act was passed, only 13,000 employees were being trained away from the job each year, it is clear that great progress has been made in helping employees do their work better. But training is expensive both in the actual cost of training and the time away from the job. Therefore, every reasonable effort should be made to assure that all training is of high quality and that there is effective management of training by all agencies. The work being done by the Civil Service Commission with agencies in providing guidance, technical assistance, and evaluation needs to be accelerated because many agencies should do a better cost-effectiveness job of (1) identifying training needs and establishing training priorities, (2) selecting and using training resources, (3) identifying and selecting

training participants, and (4) evaluating training results as a basis for improving the entire training program.

REMOVAL: "RETAINING EMPLOYEES ON THE BASIS OF THE ADEQUACY OF THEIR PERFORMANCE, AND SEPARATING EMPLOYEES WHOSE INADEQUATE PERFORMANCE CAN NOT BE CORRECTED" is a merit principle which deals with the interest of the public and the employees in good performance and fair treatment.

Employees are involuntarily separated from the service when one of the following three conditions exist:

- (1) the employing agency lacks sufficient work;
- (2) the employing agency has inadequate funds; or
- (3) agency management determines that the employee's performance is not satisfactory.

Assuming that attrition and other voluntary actions do not bring the number of employees in line with agency requirements and resources, the first two result in reductions-in-force in accordance with law and Commission policies. These provide specified retention preference to veterans, career employees with longer service, and outstanding performers. The third condition requires the employee to be advised specifically and in detail why the agency proposes the dismissal and the employee must be given an opportunity to respond orally and/or in writing, and to have the response considered and decision made one level above the manager making the charges.

Any reduction-in-force disrupts government operations and the lives of the employees affected. Current policies and procedures are designed to balance the interests of the government in having an agency come down to a lower level of staffing, as quickly as possible and with a minimum impact on other parts of the organization, and the interests of employees in fair treatment based on their tenure, veterans preference, length of service, qualifications, and performance. In the reduction-in-force process, the merit principle is sometimes abused and the public interest is disserved in two ways: (1) when the agency limits the competition for the reduction to an unreasonably small area (geographical or organizational), and (2) when the agency excludes the incumbents of certain positions from the competition on an unjustifiable determination that their positions require different skills and knowledges than those possessed by the incumbents of the positions being eliminated.

The policies and procedures governing the separation of employees for cause are also designed to meet the interests of the public and employees: only those who perform satisfactorily should be kept on the government payroll, and employees should not be subjected to arbitrary or capricious actions. This merit principle is violated when an agency knowingly separates an employee for insufficient cause or without all "due process". This is unfair to the employee and demoralizing to others who learn of it. The merit principle is also tortured when an agency fails to deal effectively with unsatisfactory performance. Retention of an unsatisfactory performer is not in the public interest and in addition is unfair to those employees who are doing their jobs well. Most supervisors understand this, and thousands of Federal employees are involuntarily separated each year because they do not perform satisfactorily.

No precise figures are available, but it is estimated that additional thousands resign when it becomes clear that they can not do the work.

The quality of supervision is often the key ingredient in helping superior performers achieve their potential, encouraging satisfactory performers to do their best, and initiating action to remove unsatisfactory workers after efforts to help them have failed. There continues to be room for improvement in all these areas, and the training of supervisors referred to earlier is designed to help bring this about.

In reductions-in-force as well as adverse actions, the employees affected have appeal rights to the Civil Service Commission. In fiscal year 1975, out of 858 reduction-in-force appeals decided, the Commission reversed the agencies in sixty-eight cases; again in fiscal year 1975, out of 2707 adverse action appeals decided, the Commission reversed the agencies in 655 cases. On the average, decisions were issued about three months after the appeals were filed.

The appeal procedures available for correcting arbitrary or improper actions, which include provisions for restoring the employee to his job with back pay, and the fact that the procedures are used and produce results, provide assurance that this merit principle is applied reasonably well.

DISCRIMINATION: "ASSURING FAIR TREATMENT OF APPLICANTS AND EMPLOYEES IN ALL ASPECTS OF PERSONNEL ADMINISTRATION WITHOUT REGARD TO POLITICAL AFFILIATION, RACE, COLOR, NATIONAL ORIGIN, SEX, OR RELIGIOUS CREED AND WITH PROPER REGARD FOR THEIR PRIVACY AND CONSTITUTIONAL RIGHTS AS CITIZENS" is a merit principle whose central theme of "fairness" is also an inherent part of all other merit principles.

Equal opportunity in employment, promotion, training, and other aspects of personnel management is now for the most part a reality in the Federal service. Twenty-one percent of the total Federal employment is minority; thirty-four percent of all Federal white collar workers are women. There are significant numbers of minorities and women in the important mid-level positions and they are beginning to appear in greater numbers in the higher levels.

From 1971 to 1974, the number of Federal employees decreased, but the number of minority employees at General Schedule (GS) grades 7 to 12 increased from 56,566 in 1971 to 72,218 in 1974; at GS 13 to 15 the number increased from 7,827 in 1971 to 10,237 in 1974; at the supergrade levels, GS 16 to 18, minority employees are still few in numbers, although there has been an increase from 161 in 1971 to 227 in 1974.

The statistics show a similar pattern with regard to the employment of women. At GS 7 to 12 the number of women increased from 142,175 in 1971 to 158,430 in 1974; at GS 13 to 15 the number increased from 7,425 in 1971 to 9,147 in 1974; and at the supergrade levels of GS 16 to 18, although the number continues small, there has been an increase from 126 to 170 in this same period.

These data reflect a wide range of affirmative actions, within the merit principles, on the part of the agencies and the Civil Service Commission. Equal employment opportunity has been advanced by positive action directed against such conditions as inadequate publicity about job openings, unrealistic job requirements, invalid selection instruments and procedures, and insufficient opportunity for upward mobil-

ity. Because the attitudes and decisions of managers and first-line supervisors are crucial to achieving equal employment opportunity, they have also been the target of positive action through training on equal employment opportunity policies and practices. And such affirmative actions continue in all these areas.

Equal employment opportunity is also advanced and assured through a discrimination complaint system which seeks to resolve complaints informally through the use of specially trained counselors. Where this informal procedure does not produce acceptable results, the discrimination complaint system provides an opportunity for objective investigation, a hearing before a Civil Service Commission complaints examiner who recommends a decision to the agency, and an appeal to the Commission's Appeals Review Board from an agency decision. The employee may also obtain a review in Federal district court after the decision of the agency or the Appeals Review Board.

The complaint system appears to enjoy the confidence of the employees, for it is being used extensively and does produce results. In 1974, over 31,000 persons discussed problems or complaints with their equal employment opportunity counselors, and 11,000 obtained some corrective action including promotion, reassignment, and the withdrawal of proposed adverse actions. At the same time, 3,400 persons, or eleven percent of those counseled, filed formal complaints alleging discrimination in one or another specific personnel matter. On the average, about one-third of those who filed formal complaints received some favorable corrective action either from the agency or the Commission. Most of these cases reflected error in administrative procedures which adversely affected an individual but did not indicate discrimination based on race, sex, religion, ethnic origin, politics, or other non-merit factors. However, in 1974 the agencies and the Commission did find discrimination in 181 cases, and corrective action was taken. In certain of these cases where the agency or Commission concluded that a Federal employee deliberately discriminated against an applicant or employee, not only was action taken to remedy the injustice, but action was also taken against the employee who caused the injustice.

Although compliance with this merit principle is reasonably good, there are problems which persist: formal discrimination complaints average 200 days to process—this is too long; some upward mobility training programs are not geared to specific agency staffing needs; some agencies do not develop equal employment opportunity plans which will cause action leading to solutions or progress in important problem areas; and some few managers continue to discriminate against women and minorities while others discriminate in reverse by giving preference to individuals in appointments and promotions because they are women or members of a minority group. Federal agencies and the Commission are giving these matters considerable attention. Equal employment opportunity will be fully realized only when these problems have been dealt with successfully, and, as noted earlier in this Chapter, significant progress has been made in advancing the "state of the art" for evaluating qualifications and in applying the best evaluation methods for initial appointments and promotions in the competitive service.

POLITICS: "ASSURING THAT EMPLOYEES ARE PROTECTED AGAINST COERCION FOR PARTISAN POLITICAL PURPOSES AND ARE PROHIBITED FROM USING THEIR OFFICIAL AUTHORITY FOR THE PURPOSE OF INTERFERING WITH OR AFFECTING THE RESULT OF AN ELECTION OR A NOMINATION FOR OFFICE" is a merit principle that has wide acceptance and is violated in the competitive service on only rare occasions.

The Civil Service Act and the Hatch Act provide the legal base for this merit principle. By prohibiting active participation in partisan political management and partisan political campaigns, and prohibiting solicitation or receipt of political contributions among employees, an effective safeguard has existed against coercion by superiors or by others inside and outside the government service who may wish to use Federal employees to affect the outcome of elections. These same prohibitions also greatly minimize the possibility that employees will allow, or that the public might think they would allow, partisan political views to reduce their commitment to carrying on the business of government in a professional and politically neutral manner. The result is increased confidence of the citizenry in the objective and impartial administration of the laws.

The Hatch Act prohibitions have been particularly useful in the case of career employees who must exercise considerable judgment in making decisions which approve or deny substantial benefits from the Government. This includes tens of thousands of employees in the Internal Revenue Service, Agricultural Marketing Service, Defense Contract Audit Agency, Defense Supply Agency, Farmers Home Administration, Food and Drug Administration, Patent Office, Social Security Administration, Farm Credit Administration, National Labor Relations Board, Small Business Administration, and among others, positions in the independent regulatory agencies. The daily decisions of career employees in these agencies literally affect the lives and fortunes of millions of people. In upholding the constitutionality of the Hatch Act in 1973, the United States Supreme Court stated that Federal employees "are expected to enforce the law and execute the programs of the Government without bias or favoritism for or against any political party or group or the members thereof." The decision continued: "A major thesis of the Hatch Act is that to serve this great end of Government—the impartial execution of the laws—it is essential that Federal employees not, for example, take formal positions in political parties, not undertake to play substantial roles in partisan political tickets. Forbidding activities like these will reduce the hazards to fair and effective government." It could also be said that since citizen confidence often flows from appearance as well as reality, the Hatch Act prohibitions have reduced the possibility that citizens, of a political party different from the party supported by the Federal employee, would feel that the decisions of the employee were not objective and impartial.

In 1801 Thomas Jefferson spoke to this same issue in these words: "The right of any officer (i.e., officeholder) to give his vote at elections as a qualified citizen is not meant to be restrained, nor however given, shall it have any effect to his prejudice; but it is expected that

he will not attempt to influence the votes of others nor take any part in the business of electioneering, that being deemed inconsistent with the spirit of the Constitution and his duties to it."

But there is concern that the existing law in support of this merit principle may go too far in discouraging Federal employees from participating in the political process. A bill (H.R. 8617) has been passed by the House of Representatives which would repeal the current prohibition on participation by Federal employees in partisan political management and partisan political campaigns. In addition, it would relax the restrictions on the solicitation and exchange of political contributions among employees.

There is a need for some modification of the Hatch Act to encourage more voluntary participation by Federal employees in the political process. The Commission has developed specific proposals for change, but in the absence of Administration agreement, it has not been able to submit these to the Congress. However, the changes proposed by H.R. 8617 might well produce serious undesirable consequences which far outweigh the benefits. One way to reduce this risk somewhat, if the bill is enacted into law, would be to appropriate funds for a greatly increased level and depth of investigation and enforcement to assure that subtle but debilitating forms of political partisanship do not play a part in appointments or denial of appointments, in promotions or denial of promotions, and in the impartiality of performance and service to citizens. On the other hand, if H.R. 8617 is not enacted, it would be helpful to amend the Hatch Act by spelling out the permitted and prohibited political activities. Furthermore, since application of the Hatch Act to state and local employees, whose salaries are paid from Federal funds, was modified in 1974 in the direction of H.R. 8617, it would be useful to have a study made within the next year or two on the impact of those changes. Such a study could offer valuable insights for further amendment of the Hatch Act as it applies to Federal employees.

CONCLUSIONS

My conclusions as to the present condition of the merit system are as follows:

(1) The merit system is serving the needs of the Government and the American people very well.

(2) Because of renewed public interest, Congressional concern, and administrative actions taken by the Civil Service Commission in recent years, the merit system is temporarily closer to the high promise of the Civil Service Act than at any time in our history.

(3) The merit system should continuously make a greater contribution to the effective continuity of government operations, and this can be achieved by:

- sustained interest of the Congress and influential citizen groups;
- statutory and administrative changes as recommended below and in Chapters IV and V; and
- relatively modest increases in appropriations for the Civil Service Commission to implement the recommendations.

RECOMMENDATIONS

My recommendations are:

(1) That legislation be enacted to better assure the integrity of the merit system by authorizing the Civil Service Commission to enforce the civil service laws and rules by investigating alleged violations and requiring departments and agencies to discipline or remove those non-Presidentially appointed Executive Branch officials or employees who deliberately or repeatedly violate, assist or cooperate in violating, civil service laws and rules; and that the Civil Service Commission be required to report to the President and the appropriate oversight committees of Congress on deliberate or repeated violations of civil service laws and rules by Presidential appointees.

(2) That legislation be enacted to strengthen the merit system by prohibiting government officials, employees, and others from making referrals or recommendations for employment in the competitive service to any official or employee of a department or agency in which employment is sought; and that applications for employment in the competitive service be filed by the applicant with the Civil Service Commission or the agency personnel office for consideration in accordance with authorized procedures.

(3) That legislation be enacted to better assure the effective continuity of government operations by:

- establishing criteria in statute which the Civil Service Commission must determine are met before a position may be excepted from the competitive service by administrative action;
- discontinuing Civil Service Commission prior approval of qualifications for non-career executive assignments, and requiring departments and agencies to appoint to positions excepted by administrative action, in all grade levels, only those persons who possess the necessary experience, training, or education to perform the duties of the position at the approved grade level;
- requiring the Civil Service Commission to approve the minimum qualifications necessary for appointment at the same time it determines that a position meets the criteria for administrative exception from the competitive service; and
- requiring the Civil Service Commission to report annually to the President and Congress on the performance of the departments and agencies in filling positions excepted by administrative action with qualified persons;

(4) That to further protect the merit system against abuse, by considering the adequacy of existing legislation and institutional performance thereunder, the Committee on Post Office and Civil Service schedule several days of oversight hearings at least every other month throughout the first year of a new Administration, and thereafter as needed, in recognition of the special strain placed on the integrity of the merit system during political transitions;

(5) That Congress call on those agencies with positions now excepted from the competitive service by statute to advise the Congress whether continuance of the exception is deemed necessary, and, if so, why; and that the Civil Service Commission submit its views and comments on the agencies' representations to the Congress;

(6) That the Committee on Post Office and Civil Service express its strong interest in a firm foundation for the merit system by encouraging the Civil Service Commission to take the lead, through increased research and better administrative practices, to raise the probability that those who score high on examinations would be the best performers on the job; and that the Civil Service Commission be called on specifically to:

- initiate a continuing program for improving the “state of the art” in examining and thereby develop better examinations;
- apply in all examinations the better evaluation methods, using fully trained examiners, with sufficient controls and reviews, to assure optimum validity, job relatedness, and reliability;
- give more help to agencies to improve their promotion examination practices;
- update the classification standards over a three year period and thereafter keep them current;
- secure more complete compliance with the civil service examination and classification standards; and
- request the appropriation of sufficient funds to accomplish the above;

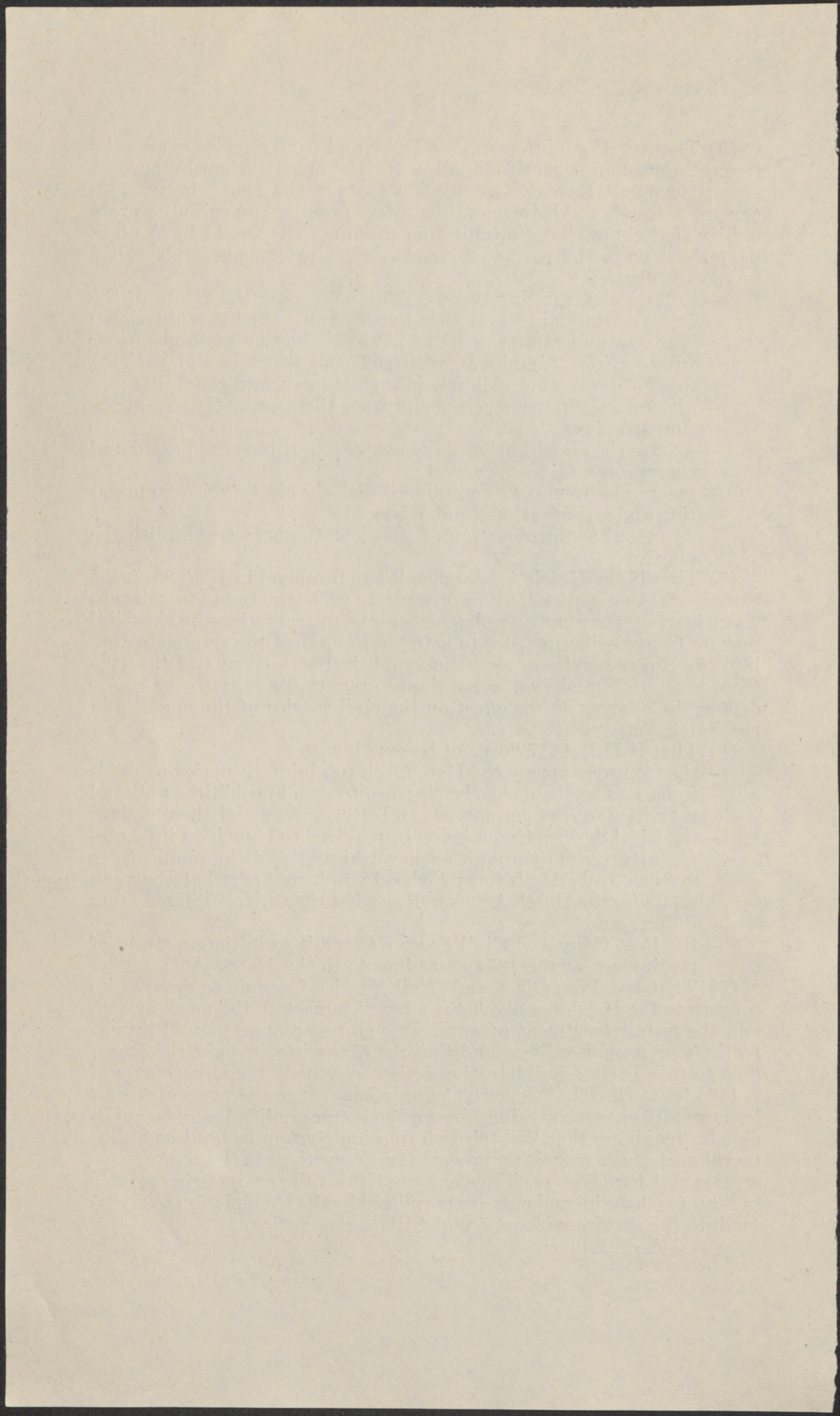
(7) That if the Hatch Act is amended as proposed in H.R. 8617, the Congress take early action to appropriate sufficient funds to substantially increase the number and depth of on-site evaluations by the Civil Service Commission in order to help guard against the reintroduction into the career service of pernicious political activities; and that the Civil Service Commission be required to report annually to the President and Congress on the effect on the civil service of the changes in the Hatch Act.

(8) That if H.R. 8617 does not become law,

- the Congress amend the Hatch Act, retaining its major prohibitions, and spell out clearly the permitted and prohibited political activities so that employees can better understand their rights;
- the Civil Service Commission be required to launch an informational program through agency training and communications systems to better inform Federal employees of what they can do under the Hatch Act as well as what they are prohibited from doing; and
- the Post Office and Civil Service Committee initiate a study of the impact of the 1974 amendments to the Hatch Act;

(9) That the Post Office and Civil Service Committee express its concern to the President about the adverse impact on the merit system and the unfair treatment of applicants and employees caused by unrealistic personnel ceilings, and that the Committee request the President to take early administrative action to remedy the situation; and

(10) That the Civil Service Commission reduce the possibilities of lesser qualified persons being hired when better qualified may be available by requiring that the Job Information System be used as an integral part of the recruiting process for *all* positions in the competitive service and for those positions excepted from the competitive service by statute whose incumbents are permitted by the Commission to transfer into the service without competitive examination.



CHAPTER IV.—ORGANIZATION FOR PERSONNEL ADMINISTRATION

The organization for personnel administration in the Federal government is in part a reflection of the mutual interests of those most concerned. The President is concerned that personnel administration facilitate his policy and program leadership and his control. The agency head and his principal administrators see personnel administration facilitate his policy and program leadership and his control. The agency head and his principal administrators see personnel administration in the context of managing an organization, with maximum possible freedom, to obtain desired results within specified costs and by a set time. The employee views personnel administration largely in terms of fair treatment in pay and working conditions, job security, and career advancement—all of which influence the employee's motivation and performance. Members of Congress are concerned with personnel administration for all the reasons above plus their unique and frequent accountability to constituents for a government workforce that is competent and honest, that will deal even-handedly with all the people in carrying out the laws, that is dedicated solely to the public interest, and a workforce in which every constituent has a fair and equal opportunity to compete for appointments and promotions without regard to race, color, religion, sex, or politics.

The 1937 Report of the President's Committee on Administrative Management, and the first Hoover Commission Report of 1949 gave great emphasis to the importance of Presidential leadership in personnel administration in keeping with the practices of large corporations. In fact, the idea advanced was a Presidential personnel system. In considering various legislative proposals in subsequent years, the Congress did not look favorably on the idea of a Presidential personnel system even though it encouraged greater executive leadership, primarily by the heads of departments and agencies. The systematic effort to subvert the merit system in recent years, with the knowledge, if not the initiative of some officials in the White House, underscores the reason for the continuing concern which Congress has in concentrating this power in the Presidency. "Watergate" makes it infinitely more difficult to conclude that there can be a Presidential personnel system based on merit which can be adequately protected from personal and political patronage; that the President's role as party leader can be harmonized with a Presidential personnel system based on merit; or that Federal personnel administration should be so organized as to mirror the concepts of large private organizations. The public character of the public service, including the power exercised by many in the civil service, makes necessary an organization and system with characteristics uniquely suited to the primacy of the public interest.

The organization for Federal personnel administration can be assessed by considering six areas: (1) who makes fundamental per-

sonnel policies; (2) who makes government-wide personnel policies and programs under law; (3) who makes the operating personnel policies and programs; (4) who provides technical assistance and training in personnel administration; (5) who decides appeals from employees to assure they are not treated arbitrarily or capriciously; and (6) who evaluates performance in personnel administration and enforces the requirements.

Article II, Section 2 of the Constitution states in part “. . . and he (the President) shall nominate, and by and with the advice and consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law; but Congress may by Law vest the appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.” Thus, the founding fathers wrote into the Constitution a basic and far-reaching responsibility for Congress with regard to Federal personnel administration.

FUNDAMENTAL PERSONNEL POLICIES

Congress has given the appointing authority for position in the departments and agencies to the heads of those organizations, and it has laid down certain fundamental policies governing the use of this authority and the conditions of employment for both career and non-career employees.

The Congress

The basic framework for Federal personnel administration is provided by law. Most civil service laws are the result of much thoughtful effort by the House and Senate Post Office and Civil Service Committees and their Subcommittees. Legislative proposals may come from a member of Congress (usually on the Post Offices and Civil Service Committees), the staff of the Post Office and Civil Service Committees or their Subcommittees, the President, the Civil Service Commission, one or more Federal agencies, unions, veterans organizations, civil rights organizations, or other interest groups. Organizations and individuals inside and outside of government have the opportunity to present their views during the legislative process.

Many Congressional committees consider proposals affecting the civil service with the Post Office and Civil Service Committees having the greatest and most concentrated involvement. In fiscal year 1975, of the 102 bill reports sent to Congress by the Commission, sixty-six went to the Post Office and Civil Service Committees. House and Senate Committees and Subcommittees dealing with education, labor, government operations, veterans affairs, foreign affairs, energy, space sciences, the judiciary, and appropriations have all initiated legislation which impact on the civil service. Committees having legislative responsibility for particular agencies and programs occasionally initiate civil service legislation for those activities which also affect, directly or indirectly, employees in other agencies. Generally, there is little opportunity for the Post Office and Civil Service Committees or the Civil Service Commission to bring their considerable knowledge and expertise to bear in such instances, with the result that some of these legisla-

tive initiatives may not be as sound as they should be, and the overall system is more of a patchwork and has less coherence than is desirable.

The President

Through his proposals, support, and objections, the President greatly influences the content of fundamental personnel policies as embodied in statute. He also makes personnel policy by Executive order. Although the development and approval of general personnel policies and programs to carry out the personnel laws is primarily the business of the Civil Service Commission, where approval of a particular policy would exceed the authority of the Commission, but would not require a statute, it is issued as an Executive order. These mandate the heads of departments and agencies to apply specific personnel policies which, often, are already within their discretionary authority. From January 1969 until October 1975 such Executive orders were issued on equal employment opportunity, detailing and transferring employees to international organizations, excusing Federal employees from duty, security requirements for government employees, occupational safety and health for Federal employees, labor-management relations in the Federal service, pay adjustments, appeals, withholding city income taxes of Federal employees, excepting certain positions in the field from the competitive service, and the garnishment of Federal workers' pay for child support and alimony payments. Some of these Executive orders were required by law. Most of the others were proposed by the Civil Service Commission. Through such Executive orders, memoranda, and other evidence of personal interest, the President can shape the emphasis as well as quality of personnel management in the departments and agencies.

GENERAL PERSONNEL POLICIES AND PROGRAMS UNDER LAW

By far the greatest number of general personnel policies and programs are developed and approved by the Commission under authority given to it by statute and Executive order.

Organizations advisory to the Civil Service Commission

The process by which the Commission develops personnel policies and programs is designed to obtain for the Commission the range of diverse views held by agencies, unions, professional associations, veterans organizations, civil rights groups, etc., and from within the Commission's own central office and field organization.

Two unique mechanisms exist to facilitate consultation, resolve differences, and advise the Commission on government-wide personnel policies and programs:

(1) The Interagency Advisory Group, consisting of the Directors of Personnel of all the departments and agencies and chaired by the Executive Director of the Civil Service Commission, meets monthly to discuss important problems, policy, and program developments in Federal personnel management. Standing committees on staffing, equal employment opportunity, training, etc., with high-level agency representatives as members and career executives of the Commission as chairmen, meet a number of times each year to consider progress, problems, and the need for possible changes in government-wide policies and programs. Ad hoc committees with similar membership are formed

as needed to study and advise the appropriate Commission official on specific issues or proposals. And once each year the Interagency Advisory Group meets for two or three days, with the Commissioners present and participating, to consider intensively a few high priority issues. In 1971, the entire mechanism was reexamined and major improvements were made in the committee structure and related operations. The Interagency Advisory Group has been operating successfully for more than twenty years as a forum for information between the Commission and the agencies.

(2) The Prevailing Advisory Committee, established by law in 1972 and consisting of five union officials and five agency directors of personnel with an independent chairman appointed by the Chairman of the Civil Service Commission, studies the Federal Wage System (blue collar employees) and makes recommendations to the Civil Service Commissioners. In terms of developing government-wide personnel policies and procedures, this organization comes closer than anything else now in existence to providing an effective bilateral mechanism. It has provided a useful instrument for union leaders and agency representatives to discuss, debate, and negotiate on policy and procedural problems and very frequently reach a consensus on a variety of wage system issues. All changes in policies and procedures favored by the Committee but not representing a consensus, are submitted to the Commissioners for decision. Additionally, all new policies or major changes in existing policies require approval by the Commissioners whether the Committee conclusion was reached as a consensus or by majority vote. Those based on a consensus have always been approved.

Additional organizations impacting on Government-wide policies

Six other mechanisms exist which affect general personnel policies under law and contribute to better communication between unions and the Executive Branch:

(1) The Federal Employees Pay Council, established under law in 1970 and consisting of five representatives of Federal employee unions which represent substantial numbers of employees under the statutory pay systems, makes recommendations to the President's agent (Chairman of the Civil Service Commission and Director of the Office of Management and Budget) on matters relating to the way white collar pay is established and adjusted under law. Its meetings with the President's agents, particularly in recent years, have been marked by considerable tension and acrimony as sharp differences developed over criteria and procedures which might significantly influence the size of the white collar pay increases.

(2) The Advisory Committee on Federal Pay, established by law in 1970, with three members appointed by the President, reviews the annual report of the President's agent with regard to adjusting Federal white collar pay, considers any additional views of employee organizations and other interested parties, and reports its findings and recommendations to the President. While often frustrated because the time available to study the issues and advise the President is very limited, the Advisory Committee has made a useful contribution with its thoughtful and candid comments and recommendations.

(3) The Federal Labor Relations Council, established by Executive order in 1969 and consisting of the Civil Service Commission Chairman as Chairman, the Director of the Office of Management and

Budget and the Secretary of Labor as members, administers and interprets Executive Order 11491, as amended, dealing with labor-management relations. It also considers appeals from agency decisions on the negotiability of specific issues; considers appeals from decisions of the Assistant Secretary of Labor when it appears that a decision was arbitrary or involves a major policy issue; and considers exceptions to grievance arbitration awards. The Chairman of the Commission personally has attended almost all meetings of the Council; the Secretary of Labor has usually been represented by the Under Secretary; the Director of the Office of Management and Budget has usually been represented by an Assistant Director. There has been little criticism of the Council other than the implications that flow from expressions of general concern by union leaders that the Council is dominated by management.

(4) The Assistant Secretary of Labor for Labor-Management Relations, nominated by the President and confirmed by the Senate, is authorized by the Executive Order on Labor Management Relations to decide questions as to the appropriate unit for the purpose of exclusive union recognition; supervise the conduct of secret elections to determine if the organization is or continues to be the choice of the majority of the employees in the designated unit; decide complaints of alleged unfair labor practices and alleged violations of the Standards of Conduct for labor organizations; administer financial and democratic practice controls over recognized labor organizations comparable to those required under the Landrum-Griffin Act in the private sector; decide questions on the eligibility of labor organizations for national consultation rights; and decide questions as to whether a grievance is subject to a negotiated grievance procedure or subject to arbitration under an agreement. While there have been sharp disagreements by agencies and unions with some decisions of the Assistant Secretary, on the whole, his operation is viewed favorably by both unions and agency management.

(5) The Federal Services Impasses Panel is established by the Executive Order on Labor Management Relations as an agency within the Federal Labor Relations Council. Its members are appointed by the President. At its discretion and under its regulations, the Panel may consider impasses and take action it considers necessary to settle impasses. It is designed to serve as a viable alternative to strikes over negotiation impasses. The Panel does not take jurisdiction on a disputed issue unless it is convinced that the parties have explored all possible methods of settling their differences through voluntary arrangements. The latter may include fact-finding without recommendations and third-party mediation assistance (normally by the Federal Mediation and Conciliation Service). The Panel enjoys the confidence of both unions and agency management.

(6) The Federal Mediation and Conciliation Service makes its services and assistance available to Federal agencies and employee unions in negotiation disputes. Federal mediators assigned to such cases serve in an advisory and guidance capacity; they try to help the parties reach an agreement, but do not have the authority to force agreement. Their services are regarded favorably by both unions and agency management.

In the interest of completing the organizational picture with regard to government-wide labor relations policies and programs, the Civil Service Commission's broad responsibilities under the Executive Order on Labor Management Relations should be noted. They include policy guidance to agencies in conjunction with the Office of Management and Budget, technical advice and training for agency officials, continuous reviews of the program to assure agency adherence to the provisions of the Executive Order and merit system requirements, collection and dissemination of information in conjunction with the Labor Department on the operation of the Executive Order, issuing regulations on dues withholding, and issuing regulations which extend rights in adverse actions to all employees in the competitive civil service identical to those provided by law to employees eligible for veterans preference. The agencies have been particularly commendatory as to the quality and timeliness of the Commission's technical advice and information activities.

The Civil Service Commission

In fulfilling their government-wide policy role, the Commissioners rely heavily on the career staff under the overall direction of the Executive Director. The staff identifies, defines, and explores the policy problems, consults knowledgeable and interested sources, develops possible alternative approaches, evaluates the views presented, and then places the issues with its recommendations before the three Civil Service Commissioners (views of all parties are included) through the Executive Director, who also makes his recommendations. The Commissioners may then meet with the Executive Director and appropriate staff to discuss the entire subject before making a decision, or may make a decision based on the record. Commission action requires two of the three Commissioners to agree. After careful consideration, final disagreement among the Commissioners is infrequent.

Developing, approving, and implementing government-wide personnel *programs* is within the responsibility of the Commission's Chairman. In developing personnel programs the Commission staff also obtains and evaluates the views of major interested groups much as in the development of policy. The implementation of personnel programs is carried out on two levels: the Commission's central office prepares written standards and guidance, and deals with agency headquarters; the Commission's field organization—ten regional offices and sixty-five area offices—explains the policies and programs to Federal managers and personnel people outside Washington and provides technical assistance as necessary.

The Commission also operates several government-wide personnel programs. These are in the areas of recruitment, examination, investigations, training, appeals, and retirement. These programs are conducted by the Commission for all or most agencies because it is more economical and effective to have the functions performed by one agency than by many. In the case of recruitment, while the Commission's job information network and a college relations system are the primary vehicles, agencies are encouraged to use their special knowledge or capacity to interest well-qualified candidates to compete in the appropriate examinations. The investigations of character, experience, and education of applicants or employees are conducted by the Commis-

sion for most agencies, but several, including the Departments of Defense and State, the Central Intelligence Agency, the National Security Agency, and the Federal Bureau of Investigations do their own. In training, practically all of which is done on a reimbursable basis, the Commission concentrates largely on improving supervisory and managerial performance, but also does some training in other subjects common to a number of agencies which they are unable, or find it uneconomical, to do alone. The retirement program is operated by the Commission for all Federal officials and employees since it can best be done on a centralized basis.

For almost all of its policy and program functions, including the adjudication of appeals, the Civil Service Commission has generally been viewed as professionally independent and objective. However, numerous study groups, from the 1930s through the 1950s, have called for a central personnel agency to serve as an "arm of management". This reflects the theme that the President is the government's top manager and he needs to control the personnel system in keeping with organizational theory and business management practices.

At various times, union leaders have criticized the Commission because they felt it was not adequately concerned with the needs and rights of employees and that it was too "management oriented". This is due in large part to the fact that in the long history of Federal employees' efforts to improve their pay and benefits, quits often, the Administration in office opposed those proposals that would increase costs substantially, and the central personnel agency was called on to be the spokesman for "management", whether or not it believed the Administration position was fair. Obviously, Commission advocacy or support of an Administration position that the President believed necessary for budgetary reasons, but was clearly unfair to employees, caused employees and their unions to question the objectivity of the Commission in its other activities as well.

The Civil Service Act of 1883 provides that the Commissioners will assist the President in preparing civil service rules to implement the law. There is no indication in the history of that Act or numerous other laws enacted in subsequent years, nor would one expect there to be, that the Congress intended for the Commission to make other than professionally informed, fair judgments in the exercise of its policy and program authority or in its advisory role. Yet, on numerous occasions over the years, the Commission favored a particular personnel policy because in its professional judgment it was sound, fair to employees, and overall in the public interest, only to be called on to present and defend a contrary position because of budgetary considerations. Often, in recent years, the Commission was excluded from the decision-making meetings.

The consequence of all this is that Congress, and at times even the President, have been denied the considered views of the bipartisanly headed central personnel agency—views based on a thoughtful, professional analysis of the policy problem and the related public interest. Another consequence is that because the Commission has been expected at times to advocate and defend positions which were clearly unfair to employees, confidence in the Commission's professional objectivity has suffered in the eyes of some members of Congress, employees, and union officials.

With the growing power of Federal employee unions, and as general government-wide personnel policies have become a matter of increasing concern to them and to other organizations in our society interested in the cost and effectiveness of government, the need for a bipartisanly headed central personnel agency, which will provide for fair, unbiased, professionally independent judgments, decisions, advice, and leadership in personnel administration, has become compelling and urgent. The complexity of Federal personnel administration and the increasingly adversary relations developing between unions and agency management underscore the need for a central personnel agency that enjoys the confidence of the Congress, the President, and the unions as to its professionalism and objectivity in translating into government-wide personnel policies and programs the public interest reflected in statute. This confidence can not develop as long as the central personnel agency is effectively prohibited from stating to the Congress as well as to the President its own positions on proposed personnel policies.

These matters also relate to the role of the central personnel agency, a subject that will be discussed in the next Chapter. But it is appropriate to conclude here that in deliberating on this matter, we need to keep in the forefront of our thought the public nature of Federal personnel administration, the central role of Congress in defining and interpreting the "public interest", the present state of Federal personnel policies and programs, the minimal time which the President can give to this subject, and the growing role of the agencies and the unions in personnel management.

Organizational implications of proposed labor relations laws

It is against this background that we consider the organization and policy implications in the determined effort being made by major AFL-CIO affiliated unions, which represent nearly three-fourths of the organized Federal employees, and unaffiliated unions representing the remaining organized Federal workers, to secure legislation which would provide for an independent central labor relations authority and collective bargaining that is virtually unlimited in its scope. Under H.R. 13, proposed by the American Federation of Government Employees (AFGE), there would be a three member central labor relations authority appointed by the President which would combine the functions of the Federal Labor Relations Council, the Assistant Secretary of Labor for Labor-Management Relations, and the Federal Service Impasses Panel. Working conditions would be negotiated in each unit and impasses could be resolved through binding arbitration under auspices of the central authority. The proposed legislation contains no prohibitions against striking. Union or agency shops would be permitted. It proposes to supersede all laws and Executive orders that would conflict with the proposed legislation, and the meaning of this is unclear in view of the broad scope for collective bargaining contemplated by H.R. 13.

The proposal evidences a disenchantment with the current Federal labor relations program which has evolved over thirteen years through four Executive orders (from Executive Order 10988, administered by the agencies, to Executive Order 11491, administered by third parties but still within the Executive Branch). During this period, the num-

ber of employees under exclusive recognition grew from 180,000 in 1963 to over 1,150,000 in mid-1975 (Postal Service is excluded). The primary union criticisms of the current program are that it is controlled by management, that there are too few matters subject to bargaining, and that the foundation for labor-management relations should be in law not Executive order. Union leaders at all levels feel these issues deeply and express their dissatisfaction strongly.

The Chairman of the House Post Office and Civil Service Committee introduced labor relations legislation, H.R. 4800, which is being redrafted for further consideration. It would provide for a Federal Labor Relations Authority consisting of three members appointed by the President and confirmed by the Senate that would combine the functions of the Federal Labor Relations Council, the Assistant Secretary of Labor for Labor-Management Relations, and the Federal Service Impasses Panel. The scope of bargaining would remain essentially as it is now. A Federal Service Impasse Panel appointed by the Authority would be authorized to take final action on impasses. Strikes would continue to be prohibited. Employees would continue to have the right to refrain from joining a union. A fifteen member Labor Management Review Board, appointed by the Chairman of the Authority, and consisting of a Chairman, seven members from management and seven members from labor organizations holding exclusive recognition, would review proposed personnel policies applying to more than one agency and submit its conclusions and recommendations to the issuing agency. Existing personnel laws would continue to be effective. Therefore, pay would continue to be established under the present organization including the use of the Federal Employee Pay Council, the Advisory Committee on Federal Pay, and the Federal Prevailing Rate Advisory Committee.

Another legislative proposal (H.R. 1837) has many provisions similar to H.R. 13, but there is one sharp difference—it explicitly gives to Federal employees the right to strike.

Establishing a statutory base for the Federal labor relations program has been opposed by successive Administrations in order to provide an opportunity for the Executive order program to evolve. This position was sound while unions and agency management were accustoming themselves to working together in a new relationship and while sweeping changes in the Executive orders were planned as the relations matured. Major changes were made in the Executive Order in 1969 and 1972, but the changes made in 1975, while important, are not of the previous magnitude and significance. New substantial changes in the Executive Order are not likely, and there are no other persuasive reasons to justify further delay in enacting a suitable law for labor relations in the Federal service.

The process of creating a legislative base for the Federal labor relations program needs to focus on issues that are important in themselves and also on the impact such legislation would have on the organization for Federal personnel administration. The more important issues that will need to be debated in deciding on the specifics of a labor relations law include: the character and role of any central bodies to administer and interpret the law and review government-wide personnel policies, the scope of bargaining, the machinery to facilitate the resolution of conflict and impasses, the right to strike, the closed

shop, whether personnel policies for the almost one million employees not represented by unions may in some respects be different from those applying to represented employees, the strengthened application of merit principles in personnel actions so fairness in the civil service system contributes to good labor relations as well as stable and effective government, and the authority and responsibilities of the Civil Service Commission.

Experience under the Executive Order creates a sound and broadly supported basis for establishing in law principles and third party mechanisms similar to those which have already been successful in resolving conflict and impasses. As for the right to strike and the closed shop, they would constitute a sharp departure from long-standing and widely accepted policies for the Federal service. Real progress in labor relations in the Federal Service might well be achieved by intensifying the efforts to systematically look for and agree on better ways to deal justly and promptly with specific issues that the unions believe threaten their security or otherwise cause them to believe that they have good reason to strike against the Government if this were not prohibited.

On the other hand, the scope of bargaining is an area where legislation could enhance bilateralism. Major expansion in the scope of bargaining can occur in only two ways: (1) by ending the commitment to uniformity for all agencies in specified policy areas and thereby widening the opportunities for bargaining with individual agencies, and (2) by bargaining on government-wide policies now established by the central personnel agency.

With regard to the first, reducing the areas where uniform policies are required, some changes in this direction have occurred in recent years. Searching reexaminations will probably surface other possibilities, but there will not be many because of a thirty year history of delegations from the Civil Service Commission to the agencies and an awareness that a lack of uniform policies, where uniformity is appropriate, assures unequal and unfair treatment, which in turn adversely affects morale and motivation.

The second, bargaining on government-wide policies, is much more promising. The experience of the last three years with the Prevailing Rate Advisory Committee makes clear that the debate, negotiation, and bargaining practiced in that Committee have produced sound policies in a healthy labor relations atmosphere marked by constructive tension.

There is little doubt that effective bilateralism, in the model of the joint labor-management Prevailing Rate Advisory Committee, could be achieved in many other policy areas where the Civil Service Commission has the responsibility to establish government-wide personnel policies. Moreover, a similar bilateral approach might also be used with good results in deciding on Civil Service Commission recommendations for legislation. In this regard, when the proposals of such a joint labor-management Committee reflect a consensus rather than a majority vote, there should be agreement that all participants on the Committee would publicly support them if the Commissioners recommend their enactment into law. But if a joint labor-management Committee reached a conclusion by majority vote, or if the Commissioners did not favor the proposals reached by a consensus,

then the participants on the Committee should be free to go their independent ways on the policy issue under consideration. However, good faith bargaining would be encouraged if it became apparent that both the President and Congress give considerable weight to recommendations for legislation which result from negotiations that produced a consensus among the unions, agencies, and the Commission.

One additional thought with regard to the organization for administering a labor relations law. It would be useful to have the Civil Service Commission Chairman, strengthened and more independent as recommended in the next Chapter, serve as a member of the central authority. This would help assure that the central labor relations authority and the Civil Service Commission would not operate in isolation of each other's policy deliberations. In fact, quite the contrary is essential: each body should have a good understanding of the other's policy thinking as it evolves, and should attempt, in so far as possible, to complement and support the other's decisions in the interest of better personnel management in the department's and agencies.

OPERATING PERSONNEL POLICIES AND PROGRAMS

The size, diversity, and geographical dispersion of Federal activities make it necessary to decentralize personnel authority and operations. Each department and agency head has the responsibility for managing his organization and that includes the hiring, assigning, motivating, training, promoting, and disciplining of employees.

The present organization for Federal personnel administration rests largely on Executive Order 9830 issued February 24, 1947. In transmitting copies of the Executive Order to department and agency heads, the President highlighted it as follows: "The Order provides the basic plan for the Civil Service Commission and the Federal departments and agencies to follow in working together to carry out Federal personnel laws and policies. It sets forth the broad responsibilities of the Civil Service Commission. It recognizes, however, that personnel management is a primary responsibility of the head of each agency, and of his officials who are responsible for the economical and efficient conduct of the work. The Order prescribes delegation of authority to act in personnel matters, subject to standards and inspection, to those close to actual operations. This program necessitates the Commission's leadership in personnel matters and the competent assistance of personnel staff in the agencies."

Under the Executive Order the agency head and his designated subordinates are expected to: plan, organize, direct, coordinate, and control all personnel management programs in the agency; insure that personnel management is effective and efficient and in accordance with laws, Executive orders, and Commission rules, which includes making certain that selections and promotions are made only on the basis of ability, merit, and fitness.

Very importantly, the Executive Order specifically provides that "Authority for the conduct of personnel matters within each agency should be delegated to the extent compatible with provisions of law and with economical and efficient administration to those officials responsible for planning, directing, and supervising the work of others.

The exercise of such delegated authority shall be subject to policies, rules, regulations, and standards established by the head of the agency, and shall be subject to appropriate review and inspection."

Departments and agencies

At central headquarters agencies make organization-wide personnel policies of an operational nature, and develop and sometimes operate personnel management programs such as recruitment for particular types of positions and career development in certain occupations. Major subdivisions in the larger agencies may be authorized to supplement the agency-wide policies and programs in order that they better meet the specialized requirements of that organization. And, of course, at the place where most Federal employees work, the installation or facility, the head of that organization is generally authorized to further supplement the policies or programs to better serve the situation at the work site.

At all these levels, where unions have won the right to represent employees, agency management is proscribed from establishing personnel policies unilaterally. Whether or not a contract has been signed, agency management is required to consult with the union on all proposed personnel policies except those that deal with (a) the mission of the agency, (b) its budget and organization, (c) the number of employees, (d) the numbers, types, and grades of positions or employees assigned to an organizational unit, work project, or tour of duty, (e) the technology of performing its work, or (f) its internal security practices. Of course, the union and agency management may negotiate to provide appropriate arrangements for employees adversely affected by the impact or realignment of work forces or technological change. If a contract has been signed, agency management is obligated to negotiate on any new or proposed changes in policy covered by the contract.

At all levels—headquarters, intermediate, and local—personnel offices have been established by the agencies to improve and oversee personnel management, and to advise managers not only on decisions they make that have personnel policy implications, but also on individual personnel problems as may arise, for example, in filling a job, training, or disciplining an employee. These personnel offices also render common central personnel services because they can be provided from one place more correctly and economically. Such services may include establishing the grade for a job, obtaining from the Civil Service Commission the names of the best qualified applicants for a particular position, representing the agency in dealing with unions, processing personnel actions, evaluating the qualifications of employees for promotion, conducting training programs, and answering questions about civil service laws and rules. Except in the smallest organizations, personnel work in personnel offices are full time jobs requiring considerable expertise in one or more technical areas such as examining, job classification, labor relations, and training. Moreover, senior personnel officials can help top officials deal with difficult management problems because they often have exceptional knowledge and insight about the capacity, morale, and utilization of the human resources in the organization.

As in all specialized fields, there is a continuing need to improve the technical competence and performance of personnel specialists and

generalists. To encourage an adequate intake and speed the planned development of these professionals early in their careers, the Civil Service Commission, in cooperation with the agencies, inaugurated in 1974 a Federal Personnel Administration Career Program. The Commission and the agencies also conduct numerous short courses in personnel management each year which are attended by many of the twenty thousand employees engaged in professional and technical personnel work.

No one would differ with the view that personnel specialists and generalists must understand the personnel policies and strive to see that they are faithfully carried out. But in the last analysis it is the knowledge of and commitment to effective personnel management on the part of the supervisors, and those supervisors and managers above them, including the top executives, that determine whether the best qualified are hired and advanced, whether employees perform at their optimum capacity on work that needs to be done, and whether those who do not do as well as required are counseled and trained where appropriate and then separated if they still can not do the assigned work satisfactorily.

In every organization, public and private, supervisors and managers at all levels pay attention to what they believe their bosses consider important. The fact that the personnel director in almost all Federal departments and agencies is not directly responsible to an official who also supervises all other major units of the organization tells the executive importance of personnel management and civil service laws. Equally or more important, as a practical matter the prevailing organizational arrangement denies to top executives, when they are trying to make decisions, the opportunity for first hand discussion with the personnel director on personnel management and human resources issues that may bear heavily on organization, program management, and policy problems. Frequently, when such decisions are being made by top executives and those who report directly to them, the personnel director is not present with the result that too often there is only superficial consideration of human and other personnel policy questions. The case for having the Personnel Director as a member of the top staff becomes even more compelling when one recalls that many Presidential appointees remain in office less than two years, and that generally it is not possible for agency heads and their deputies to have regular contact with more than a handful of the career employees.

TECHNICAL ASSISTANCE AND TRAINING

The agencies and the Civil Service Commission are, and need to be, deeply involved in technical assistance and training in personnel administration. As part of its leadership responsibility for improving personnel administration, the Commission prepares written materials, holds conferences, and conducts courses for agency officials to create understanding of the purpose, content, and ways to put into effect existing, new, or changed personnel policies and programs. A prime Commission responsibility in this regard is to assure that appropriate top executives and personnel staffs in agency headquarters know that changes have been made, and that they are motivated to provide technical assistance and training for those in Washington and the field who need to understand and apply the policies and programs.

In addition, the Commission's ten regional offices and sixty-five area offices maintain issuance systems to guide the agencies, hold meetings, and conduct courses to help agency managers and personnel officers and specialists become sufficiently familiar with the government-wide personnel policies so that their practices will be in accord with them. This technical assistance complements that provided by the agencies, and is particularly helpful to the many field organizations that do not receive adequate assistance in a timely manner from their own headquarters. Additionally, each year, the Commission staffs in Washington and the field respond to agency officials on thousands of requests for advice on individual problems.

Assistance and instructions provided by headquarters of agencies to subordinate units also take the form of written materials, conferences at selected field locations which bring together managers and personnel experts from agency headquarters and the field, and of course, advice by telephone or letter on many specific questions.

Much of the continuing technical assistance provided by the Commission and agency headquarters has as its major purpose to help field installations improve their personnel management. It concentrates on such matters as encouraging agency officials at all levels to take manpower factors into account when making management decisions, to so organize work and manage positions as to achieve quality performance at the lowest possible cost, and to deal sensibly and fairly in all personnel matters. Considerable advice and help is given on how to improve the utilization of talents and skills, establish career lines of progression, provide necessary training, evaluate performance, develop effective relationships with recognized union representatives, assure equal opportunity in all personnel management actions, motivate employees to achieve their full individual potential, encourage employees with incentive awards to improve agency operations, remove employees whose performance continues to be unsatisfactory after all reasonable help has been provided, maintain a safe and healthful work environment, make certain that management actions affecting employees are free from coercion and reprisal, provide employees with the means of getting fair reconsideration of management actions that are adverse to them, and consider both human problems as well as agency needs when the work force needs to be cut back or reorganized.

Despite very significant efforts in these areas by the Commission and some agencies, the records in many appeal and grievance cases alone show that more needs to be done. Partly this reflects the fact that every year thousands of employees are newly appointed as supervisors to replace those who leave the government service. And in part it recognizes that working with people is far more complex and unpredictable than working with things, and managers and supervisors need more expert help than they are getting.

APPEALS

For more than thirty years, impartial third parties have been used in the Federal government to settle disputes between employees and agency management. The Veterans Preference Act of 1944 gave to honorably discharged veterans the right to appeal to the Commission adverse decisions by their agencies which would result in their separation from the service, downgrading, or suspension for more than

thirty days. The Commission was given explicit authority to conduct its own investigations on matters appealed, to consider all evidence, hold hearings, and to decide whether the employee was accorded "due process" and the action taken for good cause. In 1962 these same rights were extended to nonveterans by Executive Order 10987. In all such adverse action appeals, the law mandates agencies to take the corrective action recommended by the Commission.

Until 1974, the agencies were required by Executive order to have adverse action appeals systems which were intended, along with agency grievance systems, to resolve within the employing agency most complaints about unfair treatment. Some of these agency appeals systems had two and three levels of appeals. Employees could then appeal adverse actions to the Commission if they were dissatisfied with decisions from the agency's appeals system. Within the Commission, there were two formal levels of appeals and ultimately even a third if the Commissioners agreed that the limited conditions for their reopening an appeal decision were met. Therefore, most cases went through multiple levels of appeal and many have taken two or three years before there was a final decision.

In 1974, recognizing the long delays inherent in a multi-level appeals system, the Commission recommended, and the President approved, a complete overhaul of the adverse action appeals system. The requirement for an agency appeals system was eliminated. A new single level appellate system, organized as the Federal Employees Appeals Authority and staffed with well-trained appeals officers in ten regional offices and at headquarters, operates directly under the Civil Service Commissioners. An Appeals Review Board, also operating under the Commissioners, may reopen and reconsider a case in very limited circumstances such as when new evidence is introduced or a decision contains an erroneous interpretation of law. However, all appeals from agency decision on equal employment opportunity complaints are submitted directly to the Appeals Review Board.

While most appeals are decided by the Federal Employees Appeals Authority and the Appeals Review Board, there are some appeals from agency actions, or requests to a Commission office to reconsider its own actions, that are decided elsewhere in the Commission. For example, agencies are authorized to determine the classification and grade of jobs in accordance with the Classification Act of 1949 and standards issued by the Commission. But the Commission is responsible for seeing to it that the agencies do this work correctly. The Commission not only samples agency classification decisions and orders corrective action where needed, but employees are permitted by law to appeal the agency classification of their jobs to the appropriate Commission regional or central office. Trained analysts in these offices make the technical classification decisions on the appeals. If the employee or the agency is dissatisfied with this first-level decision, either one may appeal to the Classification Appeals Office in the Bureau of Personnel Management Evaluation of the Commission's central office for a final decision.

Another type of appeal flows from the 1974 amendment to the Federal Employee Health Benefits law which requires that contracts made by the Commission with all insurance carriers specify that the carrier will accept the Commission's decisions on a complaint brought by a Federal employee about the adequacy of the payment on a claim. These

complaints are decided by specially trained staff in the Commission's Bureau of Retirement, Insurance, and Occupational Health.

While there was considerable criticism of the adverse action appeals system prior to the major changes in 1974, there has been very little criticism since then. The fact that the Federal Employee Appeals Authority reports directly to the Commissioners, the reduction in number of levels for appeal, and the issuance of fair decisions more quickly (usually in about ninety days) appear to have earned for the system the confidence of appellants and agency officials. More openness is also a factor. The Appeals Authority indexes, digests, and publishes significant decisions (information that identifies the parties is excised) and makes copies of any decision available to the public on request.

EVALUATION AND ENFORCEMENT

In a democratic society, an effective accountability process is essential to assure responsive and responsible public administration. It prevents the rise of an arrogant bureaucracy that could threaten the freedoms of the people and it provides a stimulus for turning national goals and policies, reflected in laws, into appropriate and timely action.

Officials and employees in the Civil Service Commission and the agencies have great latitude for program initiatives, case and policy judgments, and even rule-making. The administration of the public business requires personnel policy of varying importance to be made at different levels. A continuing concern with accountability by the Congress, the President, agency heads, the Civil Service Commission, the news media, professional associations, and other citizen groups is indispensable to assuring that administrators exercise their vast power in the public interest. The regrettable fact that in some cases the accountability process degenerates into meaningless controversy and unnecessary harassment of the administrator in no way diminishes the absolute need for it.

The Congress

The most far reaching and ultimately the most decisive accountability process is that engaged in by Congress. With its power to make or deny appropriations, change laws, require reports, conduct hearings, make investigations, subpoena witnesses, issue public statements, and confirm Presidential appointments, there is no doubt that Congressional interest can be a powerful force to assure proper execution of the personnel laws. On the other hand, with personnel management being practiced by tens of thousands of managers in thousands of locations and impacting on over two million employees in the United States and overseas, the extent and degree of legislative oversight is governed by practical considerations of the members' own time and available staff. Therefore, legislative oversight is generally neither systematic nor comprehensive. Most often it is ad hoc, complaint initiated, and case or issue oriented.

Congress has available information from other sources to meet its oversight responsibility. The General Accounting Office has always made limited reviews of some agency personnel practices in connection with its audits of agency performance pursuant to law. In 1971 the Comptroller General established a Personnel and Compensation

Division, and since then numerous reviews have been made across Commission and agency lines on the effectiveness of selected personnel policies and practices. The resulting reports, with recommendations for legislative and administrative action, are sent to the appropriate committees of Congress, the agencies concerned, the Civil Service Commission and the Office of Management and Budget.

For more comprehensive and systematic evaluation of personnel management and enforcement of civil service laws and merit principles in individual agencies, the Congress looks to the Civil Service Commission. In addition, under Presidential directive and with Commission encouragement and assistance, higher organizational levels, in an increasing number of agencies, are evaluating personnel management in their own and subordinate levels. Beyond legislative and executive action, there are court decisions on personnel cases which help assure that the personnel laws are constitutional, and that they are interpreted properly and applied evenhandedly.

The Agencies

For the agencies, comprehensive and systematic evaluation is as essential to sound personnel management as it is to effective overall management. In 1969, on recommendation of the Civil Service Commission, the President instructed agency heads to establish personnel management evaluation systems. This decision recognized that agency managers can fulfill their personnel management responsibilities only if they know whether personnel management is being practiced within the agency in accordance with law and related public policies, and whether various personnel programs are effectively contributing to the achievement of the agency's mission. The Commission has been encouraging and helping all agencies to establish the organizational capability and system to evaluate personnel management agency-wide, bureau-wide, and at those field activities that have delegated personnel management authority. The resulting evaluation reports are intended to provide regularly to agency managers, at all levels, useful information on such questions as:

- Are those agency officials who have been given delegation of authority to take personnel management actions carrying out this responsibility effectively and in accordance with the spirit and intent of government-wide and agency policies?
- Do managers consider the impact of their decisions on manpower resources?
- Are personnel management policies, programs, and practices an integral part of the total management function, and are they helping managers carry out the basic programs for which they are responsible?
- Are they making the most efficient and economical use of the organization's human resources in carrying out their programs?
- Have they established a sense of purpose and a working climate that help make the organization a dynamic, innovative one, on a par with the best in government and industry—one that is attractive to the best talent available?

The information developed and conclusions reached on these issues lay the basis for recommendations which will improve personnel management and the efficiency of agency operations.

Only a few agencies have had evaluation systems for many years. In 1974 and 1975, many of the departments and larger agencies made significant strides toward establishing or improving their organization and systems for personnel management evaluation. But much remains to be done. As of the beginning of fiscal year 1976, the personnel management evaluations systems in five of the twenty departments and larger agencies can only be rated as inadequate, and eight of the remaining fifteen are approaching adequacy but still need improvement.

Along with creating effective organizations and systems in the agencies to evaluate personnel management, there must also be developed a broad understanding among officials and employees of the reasons for various personnel laws and rules, and a will to have them enforced. Without progress in these regards, there will continue to be a lack of respect for civil service laws and an inclination to get around them. Only the personnel director and personnel staff at each level of the organization have the technical knowledge and the opportunity to effectively intervene in current personnel processes to achieve compliance and to provide managers with increased understanding of specific personnel policies and the underlying reasons for having them. While most personnel directors would consider this an inherent part of their responsibility, there is lacking an explicit, externally imposed requirement for accountability on this score, thus leaving the personnel director in a weakened condition for dealing with key agency officials. Ultimate accountability for making appointments in accordance with the law rests with the agency head, but a clearly identified compliance responsibility for the Personnel Director would increase the likelihood that he would learn of violations, that he would object strongly to such actions, and that his views would be heard by the head of the organization and would prevail.

The Commission

The Civil Service Commission has two *general* and a number of special responsibilities in evaluation. The general responsibilities are (1) to assess the state of personnel management on a government-wide basis and (2) to give leadership and assistance to agencies in developing and operating their internal evaluation systems. To meet the former, the Commission makes independent evaluations of agency personnel management, five hundred of which were completed in fiscal year 1975. The Commission also considers the findings of the agencies' own evaluation programs. Overall, there is now, or shortly will be, sufficient sampling of personnel practices to fulfill this responsibility. As better data becomes available through the evaluation system of more agencies, the Commission will have an even clearer picture of the state of personnel management and what needs to be done to improve it.

To meet the latter general responsibility, i.e., providing leadership and assistance on evaluations, the Commission establishes standards for agency evaluations systems, conducts research in and develops methods for evaluating personnel management, insures that persons who evaluate personnel management are qualified and trained, assesses the adequacy of agency evaluation systems, and calls for necessary improvements. Good progress has been made in each of these. Standards and methodology for evaluations have been developed and issued. Almost three hundred agency people have been formally trained to

make evaluations. And the Commission is systematically and comprehensively reviewing the evaluation systems of the twenty departments and larger agencies.

The Commission's special responsibilities concerned with agency personnel practices, include responding annually to over 28,000 complaints and inquiries (many come through members of Congress) about the personnel actions of particular agencies, adjudicating over 1,200 classification appeals, responding to more than 10,000 requests from agencies for technical assistance, and finding out if any government-wide personnel policies or programs appear inadequate or inappropriate (these are referred to the office in the Commission that has responsibility for the particular subject). And cutting through all of these is the responsibility which the Commission has to determine whether individual agencies are complying with civil service laws and related policies, and if not, to take necessary action to secure compliance.

Seventy-two professionals in the Bureau of Personnel Management Evaluation in the Commission's central office and 140 professionals in the Evaluation Divisions of the Commission's ten regional offices, or a total of 212 professionals, constitute the technical resources of the Commission assigned to fulfilling these general and special responsibilities. The staff is well-qualified but too few in numbers to adequately perform the growing workload flowing from these responsibilities.

The compliance and enforcement responsibilities of the Commission are central to maintaining the integrity of the merit system. Failure to follow both the letter and spirit of the personnel laws and related policies serves to deny the agency and the public of benefits of compliance and frequently affects adversely the rights of employees. The systematic efforts to subvert the merit system in recent years, have caused the Commission to give new emphasis to compliance. This has occurred against a backdrop of almost forty years during which studies by such highly respected groups as the Brownlow Committee, the two Hoover Commissions, and the American Assembly have urged a stronger role for agency heads, and a change in the role of the Civil Service Commission, away from regulator toward personnel management advisor. In an article written for the Spring 1975 issue of "Good Government" published by the National Civil Service League, I characterized the evolving situation in part as follows:

In the early years of the merit system, the spoilsman was the principal enemy, and civil service procedures were set up with the most important emphasis placed on the exclusion of political influence. But changes that had gradually been taking place in the conceptual basis of personnel administration were to come into sharp focus at the beginning of World War II... the Federal work force was doubled in size in the first 18 months and doubled again by the end of the war. War-emergency and indefinite appointments which shortcut regular competitive requirements were used for this very rapid temporary build-up without compromising principles of competition and merit with respect to the permanent career service.

The merit system withstood the wartime test, but the system itself would never be the same. For the earlier preoccupation

with exclusion of "spoils" was giving way to a new emphasis: flexibility.

The new concept was in no sense a violation of the merit system. It was more of an extension—a broadening—a demonstration that the merit system was fully capable of undergirding a modern, 20th Century personnel management system.

From my personal knowledge over the past 30 years, distinguished Civil Service Commissioners, leading academicians, and other outstanding citizens representing public interest groups, have repeatedly argued the need for greater flexibility and responsiveness.

For example, in 1946, Commissioner Flemming made a speech about decentralization of civil service administration as part of a move to make it a modern personnel management system.

Then we hear Commission Chairman Harry B. Mitchell, in a 1949 speech say "... A pattern is developing—a pattern of teamwork . . . a pattern of improved relationships between the agencies and the Commission. . . . We agree in large part with the Hoover Commission recommendation that appointing officers should be given more leeway than the present 'rule of three' permits in the selection of personnel."

In 1954, Commission Chairman Philip Young tells the heads of Federal establishments and personnel officers: "We believe that more flexibility is absolutely essential to the improvement of Federal personnel administration, and we are trying to supply it. We want to get away from rigid rules in the Government personnel program as much as we can, and we are making a real effort also to free personnel management in the executive branch from rigid legislative controls."

Of course, there were momentary qualms when highly respected *Washington Post* columnist Jerry Kluttz revealed a plan in 1954, devised by a staff assistant in the White House, for political clearance of appointments to career positions. Kluttz's expose killed the plan, but the interest in greater flexibility and responsiveness continued.

John W. Macy, Jr., career Executive Director of the Civil Service Commission from 1953 to 1958 and Chairman of the Commission from 1961 to 1969, speaks from extremely wide experience when he tells a banquet audience, gathered in Chicago to commemorate the 80th anniversary of the Federal civil service, in January 1963: "An outstanding quality of the civil service concept over [the past 80 years] has been its adaptability."

But flexibility had some built-in dangers, and in retrospect those who encouraged the concept most enthusiastically were not then able to perceive the dangers in the drive to modernize the Federal personnel system. Federal administrators kept making the point that they were in a better position to assess the caliber of applicants, and they knew where qualified people were to be found—therefore they deserved a larger role in both the recruitment and examining process.

After an era of saying agencies had little or no part to play in the process, the Commission, beginning in 1946, took the

position that agencies had insights and perspectives that would improve the process; and they deserved a larger role in it; and that staffing procedures must reflect this view.

For example, the Commission said, in effect, "We can send you our top three eligibles, but we recognize that some positions may require such specialized experience that these three may not be satisfactory. Then we offer you some alternatives. You may supplement our recruiting efforts with your own. You can furnish specialized selection factors; if they appear fully legitimate we will utilize them in placing people on our certificates.

"Further, since we have an open examining system, if you have found a candidate you feel is especially well qualified, we will consider that person in light of the selection factors, and in comparison with the people on our register. If the person really is among the three best qualified, we will certify that fact."

There is nothing wrong with such procedures, and they can be extremely valuable in acquiring outstanding talent, if used by people with the single end in view of employing the best qualified applicants after full competition. But these methods did offer a way in which the system could be abused; in which the qualifications could be jiggered in such a way as to fit the preselected candidate exclusively. And this was contrary to everything the merit system stands for.

These were the kinds of adjustments, fashioned for legitimate and useful purposes, but open to possible abuses and building up to a potentially powerful cumulative effect, that fit under the headings of "flexibility" and "responsiveness" as a part of a modern personnel management system. They assumed that the word "responsible" went along with the word responsive, and they seemed also to assume something else; that the battle of spoils was over.

In fact, there was a rather general feeling that spoils, the original enemy, was no longer much of a factor. An official of the National Civil Service League, wrote in the March 1961 issue of *Good Government*: "The great battles against corruption of the Federal service by spoils influences have been largely won."

On more than one occasion in recent years, officials of the League made the point that patronage as an issue is dead, and the issue is now representativeness. In the interest of assuring representativeness, the League urged such changes as replacing the "rule of three" with selections from larger categories or even the entire list of those who qualified in the examination.

None of the public pronouncements referred to is resurrected from the echo chamber of forgotten statements in a critical spirit. The commitment of all these individuals and organizations to the integrity of the merit system is beyond question.

Growing out of societal tensions of recent years there have also been proposals from other individuals and organizations, urging that we lower or eliminate the "barriers" of job-related

tests (which are indispensable to the integrity of the merit system), and that we use quotas. And there have been a variety of other pressures to achieve proportional representation.

I recall all of these proposals, pressures, and past statements of policy simply to help recapture the deeply-felt necessities and the turbulent circumstances that shaped the changes that came about.

Some observers now are saying that the Commission made a mistake in losing its "policeman" image, in gradually but knowingly moving from "inspecting" agency use of delegated authority to "evaluation" of personnel management by agencies.

Some are saying that the flexibilities fashioned and fostered from the 40's through the 60's were grave mistakes that made possible some of the abuses recently spotlighted. Thus, they believe the Commission should turn back the clock, repeal the flexibility concept, prescribe procedures to prevent non-merit judgments, and go back to being the inspector.

I come out somewhere between the extreme views. I believe it would be a mistake to swing the pendulum full stroke back to the predelegation and decentralization era. The great and growing complexity of government and of the personnel system makes it necessary to provide agencies with authority to act, subject to Commission post-audit. Proscribing the use of judgment to prevent evil can deny us necessary, honest judgments. Balance is needed, but it is also clear that greater vigilance and stronger enforcement measures are needed. It is necessary to insure that agency managers have a full understanding of their responsibility for assuring the integrity of the merit system, and that they will be held accountable.

Assaults on the merit system take many forms. Politics is only one. Personal preference, racial bias, sex bias . . . we have seen them all over the years, and administrators must be on guard against all of them. Furthermore, correction of individual violations, whether inadvertent or intentional, is something that goes on all the time. What we were dealing with in the recent situation was an organized effort at subversion of the merit system.

In a nutshell, this organized effort to subvert the merit system occurred in a climate created over many years where the Commission's attention was focused more on helping agencies improve their personnel management programs than on the vigorous enforcement of laws and related policies. The assumption was that agencies wanted to and would comply, and where they did not, it was inadvertent rather than deliberate. The resultant priorities within the Commission and in agency personnel offices, and the general attitudinal environment, did not provide for a prompt and proper response to every case of unintentional error or deliberate manipulation. Despite the fact that the number of such cases were relatively few, their presence evidenced a permissiveness that certainly would not discourage a major attack on the integrity of the system.

The Commission is suitably organized in the central office and the field to carry out an effective compliance and enforcement program

through a combination of its own evaluations, quality control and review of agency evaluations, and review of appeal cases. The staff is competent but undoubtedly needs to be augmented if there is to be a fully credible Commission presence. However, the Commission's enforcement authority is another matter. The enforcement power established by Executive order, which authorizes the Commission to direct an agency to discipline or remove a Federal employee who violates the civil service laws and rules, has been found too narrow and limited to serve as an effective deterrent.

Meaningful compliance with personnel laws and rules can be achieved if (a) favorable institutional attitudes on the importance of compliance reviews and enforcement activities are developed, (b) adequate resources for compliance reviews are provided, and (c) suitable enforcement authority is given to the Commission. Favorable action on the recommendations in this monograph will make good compliance with civil service laws and merit principles highly probable.

CONCLUSIONS

My conclusions as to the adequacy of the organization for Federal personnel administration are as follows:

(1) The basic organization in terms of the present roles of Congress, the Civil Service Commission, and the agencies is sound; however, changes are needed in central organizations of the Executive Branch which impact on government-wide personnel policies and programs, and these are reflected in the recommendations in this Chapter and Chapter V.

(2) The organizational location and role of department and agency personnel directors need to be clarified and enhanced.

(3) Many departments and agencies need to strengthen their organization and capacity for evaluating and improving personnel management and securing compliance with civil service laws and merit principles.

RECOMMENDATIONS

My recommendations are:

(1) That legislation be enacted to improve compliance with civil service laws and merit principles by requiring each department and agency with more than one hundred employees in the competitive service to establish in the competitive service a position of Director, Assistant Administrator, or Assistant Secretary for Personnel Management, the incumbent of which would be directly responsible to an official who has overall direction of the major organizational components of the agency (generally the Head or Deputy Head); that this top personnel official serve as

—the principal advisor to agency officials on civil service and personnel management matters,

—the compliance officer within the agency to assure that civil service laws and merit principles govern personnel practices, and

—the principal source of information on the human resources of the organization;

and that personnel officers at lower levels within each agency have parallel responsibilities and organizational location;

(2) That legislation be enacted to strengthen oversight of the merit system by requiring the Civil Service Commission to report annually to the President and the Congress on violations of civil service laws or merit principles, the corrective action taken, and the adequacy and effectiveness of agency personnel management evaluation systems; that departments and agencies be required to make full use of their internal evaluation systems to maintain the integrity of the merit system by making compliance reviews and disciplining or removing those officials who intentionally or repeatedly violate civil service laws or merit principles; that reports of such reviews, and action taken, be made to the Commission; that if the Commission concludes that an agency's self-evaluations, investigations, or disciplinary action is clearly inadequate, the Commission make such additional reviews and investigations as may be needed and direct the agency as to appropriate disciplinary or removal action; and that the Civil Service Commission publish a guide of penalties for use by departments and agencies and the Commission in connection with officials or employees who deliberately or repeatedly violate civil service laws or merit principles;

(3) That a Federal labor relations law be enacted which provides for a central authority of three members appointed by the President and confirmed by the Senate; that one of the members shall be the Chairman of the Civil Service Commission; that the law establish principles and mechanisms under the central authority for resolving conflict and impasses similar to those used successfully under the Executive Order for Labor-Management Relations; that the legal prohibition on strikes by Federal employees be continued; and that Federal employees continue to be free to join or to refrain from joining unions;

(4) That legislation be enacted to broaden the scope of bargaining by providing that the Civil Service Commission use, insofar as practicable, bilateral mechanisms in the model of the Prevailing Rate Advisory Committee to develop government-wide personnel policies under law; and

(5) That Committees and Subcommittees of the Congress, other than Post Office and Civil Service, finding it necessary to consider legislation which would affect the pay, benefits, or other working conditions of civilian employees of one or more agencies, obtain at the outset the views of the appropriate Post Office and Civil Service Committee and the Civil Service Commission on the proposed legislation and the likely effect on other civilian employees and agencies of the Government.

CHAPTER V.—ROLE OF THE CIVIL SERVICE COMMISSION

Over the years, in fact beginning when it was only seven years old,¹ the Civil Service Commission has been the subject of many studies which have been instrumental in developing and improving Federal personnel administration and the conditions of employment. While there is no longer any doubt as to the need for a central personnel agency, a major issue which continues to reappear is whether there are two separate roles that inherently conflict: effective leadership in personnel management and guardian of the merit principles. Or put another way, is the responsibility to protect the merit system compatible with the role of the central personnel agency for policy making, program development, technical assistance, and selected central personnel services? If the answer is in the negative, we must explore alternatives to the present central arrangements for personnel management. If the answer is in the affirmative, then we should decide on any additional action required to assure that the Commission consistently fulfills its responsibilities.

To examine this critical issue, it would be useful to note the growth in the Civil Service Commission's responsibilities since it was first established. It is essential that we consider further the environment in which the Commission functions, particularly its relations with the Congress, the President, and the Office of Management and Budget. We also need to make an informed judgment on the capacity of the Commission in terms of its Presidential appointees and the adequacy of its organization, staff, funds, and authority for the tasks of leadership in personnel management and protection of merit principles. With this information and the resulting insights, it should be possible to reach sound conclusions on whether the Civil Service Commission can be expected to provide effective leadership and services in personnel management and simultaneously serve as the vigilant guardian of the merit system.

NEW RESPONSIBILITIES FOR THE COMMISSION

During the first fifty years following passage of the Civil Service Act, there was no central personnel agency and no comprehensive personnel management system. The Civil Service Commission was limited to examining and appointment functions. At various times some other central personnel responsibilities were fragmented among a Personnel Classification Board, Bureau of Efficiency, Bureau of

¹ In 1890 the House of Representatives passed a resolution establishing a select Committee on Reform in the Civil Service to investigate "the acts and doings and practical workings of the Civil Service Commission".

Pensions, and Bureau of the Budget.² But many personnel functions that are considered important today were simply not performed.

It is only during the last forty years that a comprehensive and integrated personnel system and a central personnel agency have evolved. At the same time, many departments and agencies have developed substantial managerial capacity and personnel expertise to implement within their organizations the government-wide personnel management policies and programs.

The scope of personnel functions, for which the Commission now has leadership, regulatory, technical assistance, and enforcement responsibilities, ranges from the elementary to the sophisticated: recruitment, examining qualifications, position classification and job evaluation, promotion, training, incentive awards, position management, occupational health, employee suitability, life and health insurance, job redesign, prohibitions on political activity, mobility, manager and executive development, labor relations, performance evaluation, pay, human aspects of productivity, retirement, and the recently added responsibility for improving personnel management in state and local governments. In addition, because of a high regard for the impartiality and the integrity of the Commission, certain duties which are unrelated to the Commission's primary responsibilities have been assigned to it. These relate to designated functions under the Voter Rights Act and the Freedom of Information Act.

CONGRESS AND THE COMMISSION

The relations between Congress and the Civil Service Commission find their roots in the authority of Congress to pass laws, appropriate money, and oversee the way laws are carried out and money is spent. In addition, because of Article II, Section 2 of the Constitution and a deep-seated concern for assuring that government officials and employees are responsive to the will of the citizens as required by the letter and spirit of the law, the Congress has a special interest in the principles, policies, and systems which largely determine who enters the civil service and their subsequent conditions of employment. The members of Congress know that the merit system, administered by the Civil Service Commission, has much to do with the competence and integrity with which the laws are executed.

Communication between the Congress and the Commission centers on personnel policy issues, personnel system problems, and individual cases. Additionally, communication between the Appropriation Subcommittees and the Commission focus on resource needs, program priorities, and progress and problems in achieving goals. In such contacts with the Appropriation Subcommittees, the Commission is instructed by the Administration to defend the amounts and related information included in the President's budget.

The Commission responds to thousands of letters and telephone calls from Congressmen and Senators every year; most simply provide information requested by constituents, but some go into complaints from job applicants or from Federal employees about a particular personnel policy, program, or practice. In dealing with complaint letters, members of Congress and the Commission frequently find it

² Part of the Department of the Treasury.

necessary to explore the appropriateness of current policies as well as the integrity with which they have been carried out.

Individual members of Congress who may have patronage as an objective rarely contact the Commission; instead they deal directly with the employing agency. The Commission does not know how many such contacts are made with agencies, but it presumes that they are relatively few and that for the most part these efforts are properly confined to non-career positions.

Aside from individual cases, and the appropriation process, the Commission's dealings with the Congress are largely but not exclusively through the Post Office and Civil Service Committees and the Subcommittees. General oversight and legislation provide the basis for most of these contacts.

In formulating its position on a bill, the Commission considers relevant knowledge and experience gained (1) by its own bureaus and offices in managing particular personnel programs, (2) from evaluations of personnel management practices in the agencies in Washington and the field, (3) from continuous contacts with agencies, unions, and other concerned citizen groups on a variety of issues, and (4) from the adjudication of employee appeals. It is through the analysis and synthesis of all this information that judgments are formulated in the Commission on the strengths and weaknesses of legislative proposals. Of course, before the Commission can submit its views to the Congress, whether in the form of its own legislative proposals or as comments on proposals initiated elsewhere, it must have the approval of the Office of Management and Budget. Therefore, what the Congress receives, especially on sensitive or controversial issues, is not necessarily the Commission's best professional judgment, but rather a position that reflects compromises with the Office of Management and Budget based, at times, on considerations that have little to do with effective personnel management and a sound merit system.

When a committee holds hearings on a bill that deals primarily with civil service matters, the Commission is asked to testify. Office of Management and Budget approval of the prepared statement is required if the positions taken therein have not been approved previously. In a few cases in recent years where the Chairman of the Commission testified on non-economic issues without first obtaining such clearance, the Commission staff received unmistakable signals from the Office of Management and Budget that such behavior would not be tolerated. Strained institutional relations with the Office of Management and Budget are not in the best interests of any agency in the Executive Branch, if for no other reason than its enormous, and often decisive, influence on personnel ceilings and the amounts to be included for each agency in the President's budget. Besides, clearance with the Office of Management and Budget on policy generally is not a subject for argument because it is well understood that there must be good discipline within the Executive Branch to assure a coordinated approach to legislation. Whether this should apply in the same way to the Civil Service Commission, in view of its unique government-wide responsibilities that impact greatly on the quality and effectiveness with which almost all laws are administered, remains a question; and it will be explored later in this Chapter.

THE PRESIDENT (AND HIS EXECUTIVE OFFICE) AND THE COMMISSION

The Civil Service Act of 1883 established the initial relationship between the President and the Civil Service Commission by providing:

- (1) "That the President is authorized to appoint, by and with the advice and consent of the Senate, three persons, not more than two of whom shall be adherents to the same party, as Civil Service Commissioners . . ."
- (2) "That it shall be the duty of said Commissioners to aid the President, as he may request, in preparing suitable rules for carrying this act into effect . . ."

The "Rules" are established by Executive order and currently there are only nine. In effect, they tell the heads of departments and agencies that the Commission will follow certain stated policies, that the Commission will issue regulations in support of those policies, and that the President expects the head of each organization to see to it that all his appointees and employees abide by them. The "Rules", just as laws, are changed infrequently and thereby help provide stability for the personnel system. Any addition or change in the "Rules" is initiated by the Commission only after extensive consideration within the Commission, with agency officials, and, as appropriate, with representatives of unions and other interest groups. Since the "Rules" are issued and amended by Executive order, they must clear both the Office of Management and Budget and the Department of Justice.

Evolution of a central personnel agency

Until the late 1930s, with the Civil Service Commission performing functions limited to examining and appointment, the relations between the President and the Commission centered largely on reducing the influence of the "spoilsmen", extending competitive examinations to additional positions, and the need for funds to carry on the work of the Commission. There was little personnel management leadership, and even that was fragmented among a number of agencies. Although three major studies made recommendations to centralize leadership for personnel administration in one agency under the President, they received only modest attention and no action. Brief comments on each follow.

In 1927 the Brookings Institution, the Bureau of Public Personnel Administration, and the National Civil Service Reform League were the primary sponsors of a proposal to unify administrative management in the Executive Branch by combining the Bureau of the Budget,³ the Civil Service Commission, the Bureau of Material (predecessor to the General Services Administration), a Bureau of Personnel Administration (to be newly established) and a Bureau of Investigation (to be newly established) to form a "Service of Administration" headed by a Secretary and an Under Secretary. These two top officials, together with the heads of the four Bureaus and the Civil Service Commission would constitute an administrative council which would make the policies of the new "Service of Administration".

In 1931, pursuant to the Welsh Act of 1928, Dr. Herman Feldman, Professor of Industrial Relations at Dartmouth College, submitted a report for the independent Personnel Classification Board on Federal

³ Part of the Department of the Treasury.

wage policies and wage administration. His report, which was published by Congress in 1931 as House Document 773, dealt with more than wage policy and administration. It also explored the need for an integrated personnel program and recommended "the creation of a central personnel agency having a definite responsibility for promoting a personnel program". He suggested that the new agency could be formed by establishing it as a separate office in the Bureau of the Budget, or by expanding the Personnel Classification Board, or by attaching it to the Civil Service Commission and further enlarging its power and resources.

In 1932, the President submitted a draft bill, H.R. 12200, to consolidate personnel functions in a "Civil Service Administration" by transferring to it the duties of the Civil Service Commission, the Personnel Classification Board, and any government-wide personnel responsibilities of other agencies. The Administrator of the new agency would be appointed by the President and confirmed by the Senate for a six-year term. The Civil Service Commission would be replaced by a three-member bipartisan Board of Review also appointed by the President and confirmed by the Senate.

As indicated earlier, none of these proposals received favorable action.

By 1937 the administrative management situation in the Federal government was becoming critical. Old line agencies were given new functions. Many new agencies, organized to deal with the problems of the depression, were staffed mostly outside the competitive service. Overall, government had expanded enormously in size and complexity, and the capacity for central management leadership and coordination was strained to the breaking point.

In this setting the President appointed in 1937 a Committee on Administrative Management (Louis Brownlow, Charles E. Merriam, and Luther Gulick). The Committee recommended a major overhaul of the administrative machinery to give the President more control and better managerial tools. Included were recommendations to establish a United States Civil Service Administration as the central personnel agency which would include the functions of the Civil Service Commission. The agency would be headed by a single executive, the Civil Service Administrator, and seven distinguished citizens serving part-time as a Civil Service Board "to act as watch dog of the merit system and to represent the public interest. . .".

The Committee's Report emphasized the President's responsibility in these terms:

Personnel management is an essential element of executive management. To set it apart or to organize it in a manner unsuited to serve the needs of the Chief Executive and the executive establishments is to render it impotent and ineffective.

Finally, a satisfactory personnel agency would occupy a position close to the Chief Executive. Such an agency can not develop its highest usefulness without the active interest of the Chief Executive, and he, in turn, can not perform his important personnel functions in a satisfactory manner without the constant assistance of a central personnel agency worthy of his respect.

In passing the Reorganization Act of 1939 which established the Executive Office of the President and a budget system under the President's direction and control, the Congress did not take kindly to the recommendations for establishing a central personnel agency under the direct control of the President. In fact, while the Congress authorized the President to reorganize the Executive Branch, subject to a veto by Congress, it specifically excluded the Civil Service Commission at that time. But better personnel management in the departments and agencies could not wait, and to achieve this there had to be central leadership, new laws, and new programs.

The President in 1938 had already ordered the establishment of personnel offices and the designation of a Director of Personnel in all the departments and larger agencies. He next appointed one of his Administrative Assistants, authorized by the Reorganization Act of 1939, as his Liaison Officer for Personnel Management to provide clear evidence of the President's interest in improving personnel management in the Federal government. And with each passing year, through new laws, Executive orders, and the willingness and ability of the Civil Service Commission, more and more of the functions of a central personnel agency were assigned to it.

Executive Order 9830, issued in 1947, has special significance because for the first time there was set forth a clear statement of the comprehensive personnel management responsibilities of the departments and agencies and the Civil Service Commission. Personnel management had matured to the point where the Civil Service Commission and the agencies were expected to provide much of the initiative for further progress, with only occasional involvement by the President in matters requiring legislation, Executive orders, or Presidential memoranda. Statutory landmarks which shaped the role of the Commission during this twenty year period include the Hatch Act of 1939 and 1940, the Veterans Preference Act of 1944, the Classification Act of 1949, the Performance Rating Act of 1950, the Incentive Awards Act of 1954, the Group Life Insurance Act of 1954, the Health Benefits Act of 1957, and the Government Employees Training Act of 1958.

Reporting in 1949, the first Hoover Commission expressed the view that the President needed "continuous staff advice and assistance from someone who is in close touch with the civilian career service of the government". Therefore, it recommended the establishment of an Office of Personnel in the Executive Office of the President and the Director of that Office would also serve as Chairman of the Civil Service Commission. It also recommended more flexibility and decentralization in personnel matters within the Commission, to the agencies, and within the agencies. Finally, the Hoover Commission recommended that the administrative direction of the Commission's work be the responsibility of the Chairman, and that the three Commissioners as a body be responsible for deciding on policy and acting as an appellate unit.

The latter recommendations became law through Reorganization Plan # 5 of 1949. As for the proposal to establish an Office of Personnel in the Executive Office of the President, this did not receive sufficient support then or later, even though it was also urged by subsequent study groups. On the other hand, the recommendations for decentralization received wide support, and the results were evident in further shifts from the Commission's central office to its own

regional offices, from the Commission to the agencies, and in turn within the agencies.

In 1952, the President Elect's Advisory Committee on Government Organization (Nelson Rockefeller, Arthur Flemming, and Milton Eisenhower) included in its Report proposals to improve personnel management by (1) designating the Chairman of the Civil Service Commission as a member of the President's staff to oversee civilian personnel matters, (2) decentralizing personnel management further to the agencies, (3) reorganizing the Civil Service Commission to emphasize its planning and inspection role, and (4) authorizing the President, instead of the Commission, to issue rules and regulations to implement specific statutes on personnel matters. Recommendations two and three further encouraged the Commission to accelerate its efforts in the direction it was already moving. As for recommendation four, despite continued advocacy by the Bureau of the Budget, there was only limited action along this line.

However, the first recommendation was implemented quickly. In 1953, by Executive Order 10452, the Chairman of the Commission was designated advisor to the President on Personnel Management. Simultaneously, the Executive Order abolished the position of the Liaison Officer for Personnel Management established in 1939, a position that at times provided useful policy involvement by the Office of the President, but more often was concerned with individual cases. The two-hat role established in 1953 was abolished in 1957, and, by the same Executive Order, there was created in the White House a Special Assistant for Personnel Management separate and apart from the Chairman of the Commission. While this Executive Order was not revoked until 1965, the position was vacant from 1961 to 1965. These later efforts to establish a separate presence in the White House for personnel management resulted in large measure from a concern that since the Civil Service Commission's responsibilities relate for the most part to the competitive civil service, it would be desirable to have an individual in the White House who could report to the President and represent him on personnel management issues in all personnel systems, including those excepted from the competitive service.

During much of the 1960s the Chairman of the Commission served as an unofficial advisor to the President on personnel management, occasionally attending cabinet meetings and White House staff meetings. In 1965 the President assigned to the Chairman of the Commission the added personal responsibility for identifying and recommending well-qualified persons for Presidential appointments. Both of these roles ended in January 1969 with the change in Administrations.

Currently, the Chairmanship of the Commission includes two major Presidentially assigned duties directly related to the Commission's primary responsibilities: President's Agent on Federal Pay along with the Director of the Office of Management and Budget, and Chairman of the Federal Labor Relations Council.

While the general trend of thinking on the role of the Commission in relation to the President is already clear, in the interest of completeness we need to take note of four other studies and reports in the 1950s and one in 1974.

At an American Assembly meeting on the Federal Government Service in 1954, the participating government officials, business men,

and scholars concluded that Presidential "responsibility for the personnel policies and personnel management of the Federal government" is indispensable; and to equip the President to discharge this responsibility requires "an executive personnel agency to (1) develop and formulate general personnel policies and (2) stimulate, assist, and review personnel management with departments and agencies. Such an agency should have broad jurisdiction in personnel administration. These objectives could be achieved by broadening the functions of the Civil Service Commission or by creating within the Executive Office of the President a personnel agency responsible for a wider range of activities than those yet entrusted to the President's personnel advisor."

In 1955 the second Hoover Commission gave still more support for the course set earlier by recommending expanded delegation of operating personnel functions to the agencies and a much stronger inspection activity to assure "the maintenance of the merit principle". It also recommended the establishment of a "Senior Civil Service made up of career administrators selected by a bipartisan board". This latter recommendation was specifically rejected by the Congress when the Administration attempted to implement it.

The second Hoover Commission also gave major attention to the short tenure of non-career executives and their general lack of preparation for the specific responsibilities they faced. Twenty years later this still continues as a significant problem.

The House Post Office and Civil Service Committee issued a report in 1956 based on "observations, surveys, and studies of the organization, programs, and operations of the Civil Service Commission over the past three years" which recommended:

- maximum delegation of certain Commission functions to departments and agencies,
- legislation to "clarify and strengthen the position of the Civil Service Commission as the Central Government Agency with authority and charged with responsibility for the overall administration of the Federal civil service system",
- legislation to "clearly define the relationship of the Civil Service Commission to other executive agencies and the extent of the authority of the Commission with respect thereto," making certain that "official actions and determinations of the Commission receive proper recognition and compliance",
- Civil Service Commission action to "extend its leadership in personnel administration" providing "guidance and control of personnel programs", and
- Civil Service Commission action which evidence "freedom from influence or domination by any other agency".

The Committee Report recommended expansion of the Commission's inspection activities, and greater protection for the integrity of the examining operation by the appointment of Commission employees as "permanent executive secretaries of agency examining boards". The latter was achieved in the late 1960s when agency boards of examiners were abolished and thereafter such work was performed by Commission employees.

The Committee Report also urged that the position of Commission Chairman be recognized as a full-time job and that the Presidentially appointed, Senate confirmed, bipartisan Commission should be con-

tinued. Shortly after the Report was filed, legislation was enacted which established six year staggered terms for the Commissioners. However, this did not prevent the President, in November 1973, from requesting and obtaining the resignations of the Chairman of the Commission along with hundreds of other Presidential appointees.

In 1957 the Senate Post Office and Civil Service Committee released a two part staff paper with Part I prepared by the Committee staff and Part II prepared by its consultant, James R. Watson. The Committee staff recommended that the Civil Service Act be revised to redefine and modernize the role of the Commission, that the many civil service laws and rules be superseded by new legislation which would establish the basic personnel policies of the government, and that the Civil Service Commissioners be prohibited by law from serving the government in any other capacity. The Committee Consultant recommended that an Office of Personnel Management headed by a Director of Personnel be established in the Executive Office of the President to operate the personnel system and carry out the executive responsibility for improving personnel management. He also recommended that "an advisory committee of seven members should be created, to be known as the President's Personnel Advisory Committee" to "avoid suspicion of politics". He recommended that the Civil Service Commission "be recognized as the independent 'watchdog' agency" maintaining civil service integrity and "its duties should be primarily appellate and rule-making and not operating".

While the Senate Post Office and Civil Service Commission did not adopt the staff paper, Senator Clark from Pennsylvania did introduce legislation each year from 1958 to 1961 designed to transfer virtually all of the operating functions of the Commission to the Executive Office of the President where a new Office of Personnel Management would be established. The bills did not have wide support and never came to a vote in the Senate.

In 1974 the National Academy for Public Administration, at the request of the Ervin Committee, prepared a report entitled "Watergate: Its Implications for Responsible Government", which includes observations and recommendations concerning personnel management and the Civil Service Commission. The Academy panel called particular attention to "the failures of interface between career and political public servants", generally short tenure of political executives, the excessive number of personal and confidential advisors to the President and agencies, and the need for the Congress, the President, and the Civil Service Commission to "require and superintend strict enforcement of the laws and regulations forbidding political considerations in career personnel actions". While "not prepared to make specific recommendations about the reorganization of civil service administration", the report states that "serious consideration be given to the establishment of a new and separate agency" to perform the Commission's "watchdog" and appellate functions.

Three major ideas, aside from the Presidential personnel system discussed in the preceding Chapter, permeate most of the studies and recommendations highlighted in this Chapter. They have significantly influenced the development of the Commission and its relations with the President and the agencies.

- (1) Departments and agencies have the basic responsibility for personnel management because they are accountable for doing the work required by law; they must have maximum feasible authority to match this responsibility.
- (2) Excluding elected officials and a small number of their appointees, the work of the government should be done by those best qualified; this requires fair and impartial treatment of applicants and employees which can be assured by merit principles, policies and standards, and a central agency to oversee and enforce them.
- (3) The need for central personnel management leadership and common services provides compelling justification for a central agency.

For the last twenty to twenty-five years there has been little disagreement with these three basic ideas. With regard to the first, effective personnel management in the employing organization, enormous progress has been made in the departments and agencies since the President first directed in 1938 that they establish personnel offices. This progress is due primarily to new laws such as those dealing with classification, training, and incentive awards; clear encouragement from the President as in Executive Order 9830; extensive delegations of authority from the Civil Service Commission in such matters as hiring, promotion, reassignment, and reduction in force; technical assistance from the Commission in all areas of personnel management; and a strong desire within the agencies to better manage their own internal affairs. Now, many departments and agencies have major units where personnel management is excellent, some where the quality is uneven, and others where it is poor. The challenge is to bring them all up to a fully effective level.

On the second idea, the application of merit principles in personnel processes and decisions, the long term trend shows solid progress, but compliance and enforcement is not as good as it should and can be. A new awareness is spreading among managers and personnel officials that agencies have the primary responsibility to act on personnel matter in accordance with law and other public policies. However, internally operated compliance reviews and enforcement actions are adequate in only a few agencies. The Civil Service Commission's compliance reviews are significant but too few and too infrequent to provide both the necessary independent evaluations and to fill the gaps in agency reviews. As for the Commission's Presidentially established enforcement authority, recent decisions indicate that the Commission finds it almost worthless.

The third major idea, a central personnel agency to provide leadership and certain common services in personnel management has become a reality for the competitive service in the development and expansion of the Civil Service Commission.

The progress made in the last thirty-five to forty years as a result of these three central ideas have fundamentally altered the conditions which gave birth to them.

But largely unaffected by the second and third of these ideas are the agencies excepted from the competitive service. While the Commission is authorized and does provide leadership and services to them in a few areas of personnel management (primarily equal employment

opportunity, training, incentive awards, and retirement), for the most part these agencies receive little assistance or oversight on personnel management from the Executive Branch or Congress.

Reorganization plan No. 2 of 1970

The President's message accompanying the Reorganization Plan No. 2 of 1970 states in part:

Not the least of the President's needs as Chief Executive is direct capability in the Executive Office for insuring that talented executives are used to the full extent of their abilities. Effective, coordinated efforts for executive manpower development have been hampered by *lack of a reliable system for forecasting the needs for executive talent and appraising leadership potential*. Both are crucial to the success of an enterprise—whether private or public.

The Office of Management and Budget will be charged with advising the President on the *development of new programs to recruit, train, motivate, deploy, and evaluate* the men and women who make up the top ranks of the civil service, in the broadest sense of that term. It will not deal with individuals, but will rely on the talented professionals of the Civil Service Commission and the departments and agencies themselves to administer these programs. Under the leadership of the Office of Management and Budget there will *be joint efforts to see to it* that all executive talent is well utilized wherever it may be needed throughout the Executive Branch, and to assure that executive training and motivation meet not only today's needs but those of the years ahead.

At a White House meeting on March 4, 1970, the Chairman of the Civil Service Commission first learned of the Ash Council proposal to charge the Office of Management and Budget with the responsibility of advising the President on policies and programs relating to the recruitment, development, and utilization of "the men and women who make up the top ranks of the civil service"; and that a Division of Executive Development would be set up in the proposed Office of Management and Budget. In a memorandum of March 9, 1970 to John Erlichman, Assistant to the President for Domestic Affairs, the Chairman of the Commission argued that:

- this was not the way to improve executive manpower management;
- problems in executive manpower needed to be addressed in a systematic way through changes in administrative practice within existing law and by changes in law where needed, and that the Commission is well along in developing a new personnel system for executive manpower;
- it would result in serious fragmentation of the Commission's leadership role as the central personnel agency; and
- the Chairman of the Civil Service Commission needs to relate to the President in personnel as the Budget Director relates to the President on budget and management matters.

By memorandum of March 12, 1970, Mr. Erlichman informed the Chairman that the President was pleased with the initiatives being taken by the Civil Service Commission and that the Ash Council had

been asked to review its recommendations, and had done so. He said that the Council recognized the progressive actions being taken by the Commission but they stood by their recommendation that the Office of Management and Budget should have a supplemental role as they had proposed. He said that the Council believed this would not detract in any way from the traditional responsibilities of the Civil Service Commission or the relationship of the Commission to the President. Mr. Erlichman said the recommendations were not designed to displace the Commission's responsibility for managing the Federal Government's personnel system, and that the President would proceed as the Council recommended.

In hearings on Reorganization Plan No. 2 during April and May 1970 before the Executive and Legislative Reorganization Subcommittee of the House Committee on Government Operations, a number of witnesses opposed the Plan. They expressed the belief that it would downgrade the authority and responsibility of the Civil Service Commission by imposing the Office of Management and Budget as a layer between the Civil Service Commission and the President, and that this would be detrimental to the merit system and the interests of the nation. Witnesses who expressed such concerns included the following:

Congressman David Henderson:

What does this mean? I fear that it simply means that, in time, a political patronage system, controlled by the White House, in which appointments and promotions to the top career positions in the executive branch would be politically motivated. Maybe President Nixon does not have this in mind; but the possibilities are always at hand . . . I believe our government would be much better off by investing more responsibilities, personnel know-how, and funds in the Civil Service Commission rather than depleting this "watchdog" agency.

Subsequently in a debate on the House floor, Congressman Henderson said in part:

As a Member of Congress and as vice chairman of the House Committee on Post Office and Civil Service, I oppose the President's Reorganization Plan No. 2 because I feel it could be used as a basis for downgrading the statutory authority of the Civil Service Commission, endangering the nonpolitical nature of the civil service system, and making the system subservient to the Executive Office of the President . . .

Robert Ramspeck, former United States Representative, and former Chairman of the United States Civil Service Commission, referred to his service on the second Hoover Commission Task Force headed by Princeton University President Dodd and including in its membership the heads of several large corporations. He said in part:

and from the beginning, their [business executives] sole objective seemed to be to find out some method by which the new President [Eisenhower] could get control of this great bureaucracy. As a result of their feelings about it, they came up with a proposal that the Civil Service Commission have

removed from it everything except appellate jurisdiction and that a director of personnel get set up in the White House as a part of the Executive Office of the President. Well, we argued over that during one meeting for practically four hours. I finally said to one of the business men who was advocating it on the ground that that is the way corporations ran, I said to him, "Would you still be in favor of this plan if Mr. Truman was in the White House?" He looked a little shocked and finally he looked up at me and said, "Well, you have convinced me."

John F. Griner, National President, American Federation of Government Employees, opposed Part I of Reorganization Plan #2 because it

would seriously undermine and, perhaps, irreparably shatter the still uncompleted structure of the Federal employee merit system . . . Political influence, special interests, manipulations, exceptional criteria will creep into the system, whether we like it or not, and no matter how upright the Administrations are . . . We are opposed to it because it would destroy the Federal employee merit system through the introduction of three major flaws it incorporates. First, it destroys the organization of the Civil Service Commission, which is finally emerging, after eighty-seven years of trial and error, as a responsible institution representing management in the administration of the Federal employee merit system . . . second, it introduces the false concept that good management and the Federal employee merit system are contradictory. Third, it produces confusion and increases costs by assigning to two separate agencies, the Office of Management and Budget and the Civil Service Commission, apparent ultimate administrative jurisdiction over Federal employee personnel policies. These three flaws or defects, if allowed to stand, will demoralize the Federal employee service and produce tensions and conflicts detrimental to the good of management, employee, and the general public.

Nathan Wolkowir, President, National Federation of Federal Employees:

We are very concerned about that portion of the plan . . . which could have a strong and adverse effect upon the career civil service system . . . the Civil Service Commission can advise effectively the President on the development of programs "to recruit, train, motivate, deploy, and evaluate the men and women who make up the top ranks of the civil service" . . .

Administration witnesses disagreed with the views expressed above and held that Reorganization Plan #2 was in no way adverse to the merit system, that it took nothing away from the Civil Service Commission, and that the Office of Management and Budget would supplement the Civil Service Commission efforts, would coordinate the many different personnel systems that exist in addition to the civil service system, and would give leadership to manpower planning.

The Report of the House Committee on Government Operations recommending disapproval of Reorganization Plan #2 stated in part:

The Plan, read together with those paragraphs of the President's accompanying message which spell out his intentions in respect to the Federal Civil Service, could be used as a basis for downgrading the statutory authority of the Civil Service Commission, endangering the nonpolitical nature of the Civil Service system, and making the system subservient to the Executive Office of the President.

In the House debate on the resolution to disapprove Reorganization Plan #2, Congressman Erlenborn (Illinois) said:

To again set at rest any fears anyone may have, let me point out that on the very last page of the report issued by the committee, there is a letter to the Chairman of our subcommittee from the Chairman of the United States Civil Service Commission, Robert E. Hampton, endorsing this plan. Certainly he would not be endorsing a plan which would downgrade the importance of or the functions of the Civil Service Commission.

Chairman Hampton's letter to the Subcommittee dated May 5, 1970 does not reflect any of the concerns about Reorganization Plan #2 that he expressed earlier to the White House because, as the Commission is presently structured, once the President made his decision, the Chairman's obligation to the President was to defend the Administration position.

Reorganization Plan No. 2 was not disapproved by the Congress and became effective July 1, 1970 with the issuance of Executive Order 11541. The new dimension was that, as the White House message transmitting the Reorganization Plan to Congress stated, the Office of Management and Budget "would be the President's principal arm for the exercise of his managerial functions". On August 7, 1970, the Office of Management and Budget announced the establishment of a separate division entitled the "Division of Executive Development and Labor Relations" headed by an Assistant Director with three Branches: Executive Development and Training, Labor Management Relations, and Personnel Policy and Compensation.

The role of the Office of Management and Budget in personnel management is largely a product of the personal interests of individuals occupying its key positions. For example, when changes in the Executive order on labor management relations were being prepared for the President's consideration in 1971, the then Associate Director of the Office of Management and Budget, exceptionally knowledgeable in labor relations and a forceful advocate, engaged in lengthy discussions with the Commission's Chairman and myself on the respective roles of the Office of Management and Budget and the Civil Service Commission in labor management relations. Despite the logic of the arguments against fragmenting the responsibility for policy guidance to the agencies, and the tenaciousness of the Commission's Chairman, when the Associate Director finally pronounced that "you guys in the Commission better realize there is a new kid on the block", there was only one thing to do; an accommodation was reached on wording the Executive Order. The Commission would provide policy guidance on

labor relations to agencies in conjunction with the Office of Management and Budget. Little of major value has come from this "in conjunction with" clause, but it did produce unnecessary confusion and uncertainty in both the agencies and the Commission.

Further uncertainty was created during this period in the matter of determining which positions should be classified at the supergrade level, a responsibility assigned by law to the Civil Service Commission. A high official of the Office of Management and Budget indicated to the Chairman of the Commission that they had a need to know how the Commission was planning to redistribute a substantial number of unfilled supergrade spaces that had been withdrawn from the agencies. They would then advise the Commission as to whether the proposed distribution adequately reflected the high priorities of the Administration. The Commission provided the proposed distribution, and while no changes were made as a result of the Office of Management and Budget review, many months elapsed before the Commission was able to advise the agencies of the distribution and allocations. In the meantime, agencies having great need for these spaces had to do without them, and the Commission's reputation suffered as it publicly maintained the fiction that it was still studying the agency submissions.

In this same connection, when the Civil Service Commission prepared a plan in 1971, including draft legislation, for a new personnel system for executives, before the Office of Management and Budget would clear the legislative proposal for submission to Congress, the Commission was obliged to include in it a provision that the distribution of supergrades would be made by the Commission in collaboration with the Office of Management and Budget. Although the bill did not become law, the Senate did eliminate the collaborative role for the Office of Management and Budget when it considered and passed the bill.

The stated purposes of the Administration, in connection with Reorganization Plan No. 2 of 1970, for the greater Office of Management and Budget involvement in personnel management have not been achieved. Aside from several specific actions, taken jointly with the Commission, which encouraged agencies to give more attention to the development of their executives, there is no evidence that the Office of Management and Budget has made any significant progress toward fulfilling the original promise of 1970 with regard to:

- forecasting executive manpower needs in *all* personnel systems,
- devising new programs to recruit, train, motivate, deploy, and evaluate top career people,
- assuring that all executive talent is well utilized, and
- improving the coordination and consistency of standards among the various competitive and excepted personnel systems.

In terms of these expectations, performance after five years can only be rated as weak or non-existent, while many of the adverse predictions have proven distressingly accurate. This is not a reflection on the able staff in the Office of Management and Budget that would be concerned with such matters. Rather, it reflects an inappropriate institutional assignment. It is unreasonable to expect the Office of Management and Budget to have the personnel management expertise and continuing communications with agencies necessary to fulfill these expectations. And if it did, it would be regularly overlapping some Civil Service Commission activities and creating new uncertainties in the agencies.

Even more important, the fact that after the Reorganization Plan became effective the Commission was no longer able, except in rare circumstances, to place directly before the President its views on important personnel management problems had unfortunate policy consequences. During these years, the President made personnel policy decisions, impacting significantly on government effectiveness, without the first-hand views of his best informed advisors. These included

- restraining the Commission from working with Congress to develop a blue collar wage system bill
- deferral of general schedule pay increases
- reduction of average grade
- refusal to propose quadrennial pay adjustment in January 1973.

The benefits expected as a result of the President's decisions in these matters were, in most cases, not realized, and, in any event, they were quickly exceeded by substantial liabilities.

In the case of the blue collar wage system bill, the President reluctantly signed a bill for political reasons which he had intended to veto on substantive grounds; it contained provisions that in administration resulted in major problems which might well have been minimized if the Commission had been permitted to work with the Congressional Subcommittee drafting the legislation. The deferral of General Schedule pay increases were repeatedly overruled by the Congress because it placed burdens on Federal employees at a time when similar action was not being required in other parts of the economy. Complying with the President's order to each agency to reduce average grade by a specified amount during a designated period would have required numerous unfair if not illegal actions by Federal managers, and therefore various devices were used to provide an appearance of more progress than the facts warranted. As for the decision in January 1973 not to propose a quadrennial adjustment in executive, legislative, and judicial pay, it is generally recognized that this was ill-advised and has had disastrous long-term consequences.

In all of the above, if the views of the Chairman of the Commission were presented to the President, it was done in summary form by the Director of the Office of Management and Budget. Memoranda sent by the Chairman of the Commission to the President were referred to the Director of the Office of Management and Budget. The Commission rarely heard if its views got to the President in any form.

It is impossible to predict whether the President would have come to the same decisions if the Commission had argued its own views, but there is reason to believe that it may well have made a difference on some of these issues. This belief rests in part on an event in 1974 when the Office of Management and Budget asked me to attend a meeting to discuss an urgent matter. At the meeting I was advised that in the interest of more economical operations we needed to draw up a directive which would impose a freeze on promotions government-wide. I pointed out the basic unfairness of such an across-the-board action since persons could be hired from outside to fill positions but well-qualified employees serving in lower grade positions could not be promoted to them. I also explained that violations of the classification law and job standards would result, and that promotion provisions in hundreds of agreements signed by unions and agency management would probably

be nullified. Finally, I suggested that alternative ways of achieving the necessary economies should be explored.

Office of Management and Budget officials sympathized with my concerns but told me that as a result of a discussion between the President and the Director of the Office of Management and Budget, a decision had been made by the President, and it was up to us to implement it in the most sensible manner possible. Expressing serious doubt that the President had been informed of the likely adverse consequences of the decision because those discussing it with him were not sufficiently knowledgeable in this area, I stated that it would be irresponsible for the Commission to participate in the drafting and issuance of such a directive without further White House consideration of the impact of the decision. I strongly urged that the matter be reopened and that the Chairman of the Commission have the opportunity to present a contrary view to the President before any action was taken. On the following day, with top Office of Management and Budget officials present, the Chairman of the Commission presented the case to the President, whereupon the President decided not to impose a freeze on promotions.

These episodes reveal clearly the risks involved in the President making personnel management decisions on the advice of people who are not well-informed on the subject. This is all the more important since he has precious little time available for managing the Executive Branch. The fact of the matter is that practically all of the President's attention must be given to foreign policy, broad national defense issues, and major economic, social, and political problems at home.

Fortunately, now, each year there are only a few policy issues in personnel management on which it becomes necessary to have a personal decision by the President. Generally these involve major economic considerations as on pay and benefits, or fundamental personnel policy such as a law on labor relations. When it becomes necessary for the President to deal with personnel management issues, the Chairman of the Commission should certainly be one, if not his principal advisor. Personnel policy decisions made by the President impact on an exceedingly complex array of policies, practices, and relationships in thousands of locations and organizational units in the Government. Despite the breadth of knowledge possessed by top officials in the Office of Management and Budget, they simply cannot have readily available all the critical personnel information and insights that the President ought to have as he deliberates on alternative courses of action.

Recognizing that personnel policy questions may well arise when the President and his budget or economic advisors are discussing unrelated issues, if the President is inclined toward reaching a decision then and there, the best counsel he could probably be given would be: "Mr. President, it would be useful to get the advice of the Civil Service Commission Chairman. There may be things going on that we don't know but that should be considered before you make a decision. He may also be able to propose other ways of achieving your objective." It is a disservice to the nation to isolate the President from the best professional source of information and perspective on Federal personnel policies and practices, when he is dealing with issues that affect the very lifeblood of Government—the people who make the laws come alive by carrying on the essential services and operations.

THE COMMISSION'S ORGANIZATION AND CAPACITY

Change has been the dominant characteristic of the Commission's organization over the last thirty-five years. Two forces motivated major overhauls in the headquarters and field structure as well as more limited but important organizational innovations: constantly increasing responsibilities as the Commission evolved into the central personnel agency, and the will to change on the part of the political-career leadership of the Commission.

The Commissioners

The United States Civil Service Commission is headed by three Commissioners appointed by the President by and with the advice and consent of the Senate. Since 1956 they each have six-year overlapping terms. None of the Commissioners "may hold another office or position in the government of the United States". "The President may remove a Commissioner".⁴ Required by the original Civil Service Act and still in effect is the provision that no more than two of the Commissioners shall be of the same political party; one of the Commissioners is designated by the President as Chairman. Since 1950, the Chairman rather than the three Commissioners acting as a body, is directed by law to serve as the Chief Executive of the Commission with authority to appoint and supervise the employees of the Commission.

The President also designates one of the Commissioners as Vice Chairman who performs the duties of the Chairman when the Chairman is absent or disabled or the office is vacant. When both the Chairman and Vice Chairman are absent or disabled or the offices are vacant, the remaining Commissioner acts as Chairman.

Also established by law is the position of Executive Director, "appointed in the competitive service by the Chairman". Except for certain authority retained by the Chairman and Commissioners, the Executive Director is delegated broad authority for the day-to-day management and operation of the Civil Service Commission. In the absence or disability of all three Commissioners, or when their offices are vacant, the Executive Director performs the functions vested in the Chairman. The Executive Director may not sit as a member or acting member of the Commission.

With rare exception, the designated Chairmen have brought to the task, and demonstrated throughout their tenure, exceptional ability and great dedication to the cause of improving Federal personnel management under merit principles. In instances affecting the integrity of the merit system where one might criticize their action or lack of action, generally it is quite obvious that their behavior was directly related to the prevailing views that "the Commission must be an arm of the President", "the Commission must be more flexible and responsive", "agency managers must be given more discretion", "restraining the spoilsman is no longer a major issue", and the overall compelling thought that the Chairman is part of the Administration and needs to act as a "member of the team". And for a Chairman who does not act as a "member of the team", there can be subtle or even pointed kinds of peer pressure. One Chairman experienced consider-

⁴ Public Law 89-554, September 6, 1966, 80 Stat. 398-399.

able frostiness from important members of the White House team when he opposed a plan drawn up by a White House assistant which would have politicized thousands of appointments to summer jobs, and for another Chairman winter came early in the White House when the Commission persisted in its investigations of abuses of the merit system.

On the other hand, the performance of the Commissioners not designated Chairmen has been quite uneven—some were excellent and others left much to be desired. The policy recommending, policy making, and appellate responsibilities of the Commissioners acting as a body are important in their substance and scope. Their decisions, which require agreement by two of the three Commissioners, influence greatly the effectiveness of government operations because they relate directly to the quality and motivation of the workforce. The Commissioners' responsibilities acting as a body include:

- Approval of government-wide policies under law dealing with equal employment opportunity, recruiting, examinations, selection, training and employee development, incentive awards, promotion, job evaluation, classification, pay, performance evaluation, adverse actions, health and life insurance, ethics, political activity of Federal employees, appointments of administrative law judges, freedom of information relating to personnel records, employee productivity, suitability for Federal employment, reduction in force, and retirement;
- Recommending legislation on a wide range of personnel management issues;
- Final decisions in disciplinary cases involving administrative law judges;
- Reconsidering decisions on appeals when specified criteria are met in equal employment opportunity, adverse action, reduction in force, and other cases that have been acted on by the Commission's Appeals Review Board;
- Providing guidance to the Appeals Review Board and the Federal Employee Appeals Authority in the resolution of issues when: no existing Commission policy covers the case; applicable Commission regulations appear to be unclear or in conflict with the law; or application of existing Commission policy is obviously unreasonable in the case at hand;
- Approval of additions or deletions to the schedule of pay differentials authorized for irregular or intermittent hazardous duty;
- Approval of allowances based on duty at remote work sites;
- Approval of stipends for medical and dental student trainees;
- Allocation of individual positions in the Federal service into Grades GS-16, 17, and 18;
- Excepting positions from the competitive service or revoking such exceptions;
- Final decision to remove a Federal employee based on reasonable doubt as to loyalty;
- Approval of requests from individual agencies for major reduction-in-force determinations for early retirement purposes under Public Law 93-39;

- Approval of all personnel actions in the Civil Service Commission affecting the Chairman and members of the Appeals Review Board, the Director and Assistant Director of the Federal Employee Appeals Authority, and the Administrative Law Judge;
- Approval of the annual and supplemental budget requests of the Commission

The policy issues that the Commissioners as a body must decide are generally complex, far-reaching, and often controversial. The quality of persons brought into the Federal service, the further development of these employees, their motivation to do the best they are capable of doing, and the retention of the best performers, all are, to an important degree, affected by the professional soundness and basic fairness of the personnel policy decisions made by the Commissioners.

Regrettably, too often only two of the three Commissioners have been present to discuss and act on important matters requiring the decision of the Commissioners. Rarely do the Commissioners as a body initiate consideration of a new policy or the reexamination of an existing policy.

Of the three Commissioner positions, the most demanding is that of Chairman. Nevertheless, the Vice Chairman and other Commissioner positions also require wise, broad-gauged, fair-minded incumbents who will dedicate themselves full time to the study and resolution of policy and appellate issues facing the Commission. This should involve not only intense work within the Commission, but also extensive contacts with members of Congress and other interested individuals and groups having a broad constituency. Such contacts to be meaningful and productive would need to reflect a thorough understanding of the underlying reasons for the policy problem, the possible alternative solutions, the views of interested parties, and a capacity to discuss all these in term of the "public interest".

The Chairman is deeply involved, both within and outside the Commission, in all important policy issues from their very inception. But intelligent and hardworking individuals who occupied the position of Vice Chairman in recent years did not find it possible to become well-informed on the major policies, programs, and problems of the Commission. One Vice Chairman served only for two years of an unexpired term, followed by appointment to another agency. In the case of another Vice Chairman, who served in the position for almost five years, simultaneous service in another Presidentially appointed position precluded this individual from spending enough time in the Commission to be effective.

The public interest would be better served if all Civil Service Commissioners were able to devote their full time to the business of the Commission. Also, appointment for a full term whenever a vacancy occurs, rather than for the unexpired portion of a term, would increase the likelihood of attracting outstanding people who would remain in the position long enough to make a solid contribution. Any real benefits lost by eliminating the requirement for overlapping terms could be further minimized by appointing the Chairman for a longer non-renewable term. Additional stability and professional independence could be assured by establishing a "sense of the Congress" that Civil Service Commissioners be removed during their term only for mal-

feasance, non-feasance, or other conduct that adversely affects their ability to perform the duties of the offices. While in no way challenging the President's power to remove, an expression of Congressional concern along this line, in view of the unique responsibilities of the Commission, could be expected to receive serious consideration by the President.

The full responsibilities of the Chairman and Vice Chairman of the Civil Service Commission are far heavier than for the third Commissioner. Therefore it would be feasible and useful to establish an additional important responsibility for the latter position, namely continuing oversight of the Commission's appellate responsibilities. Designating this duty in the position would also encourage the nomination of persons for it who would have desirable qualifications in the quasi-judicial area of the Commission's work.

With the major political parties constituting a vital part of our democratic system of government, there has been no serious question about the need for a bipartisan Civil Service Commission to assure a non-partisan central personnel agency. Foreclosing the possibility of all three Civil Service Commissioners being of the same political party has given to the American people confidence that the Civil Service Commission will not be dominated by one of the political parties and will be impartial in all its operations. This confidence would be further enhanced by requiring Senate confirmation not only for appointment as a Commissioner, but also for appointment to the specific positions of Chairman and Vice Chairman, thereby leaving open the possibility that, at times, the head of the Civil Service Commission would be of a different political party than the President.

The Commissioner positions are presently set at Executive Level IV with the Chairman at Level III. Comparing their responsibilities with those of other positions in Executive Level III and IV, it is plain that these positions are graded too low. As an issue of pay and rank, this is no minor matter.

Organization

Under the policy direction of the Commissioners and the executive leadership of the Chairman, the Commission's staff is organized primarily by major function in Washington and the field. At headquarters, there are bureaus for recruiting and examining, training, investigations, retirement/insurance and occupational health, executive manpower, intergovernmental personnel, classification standards and pay, evaluation, and internal administrative support. All the bureaus and several staff offices such as those dealing with equal opportunity, administrative law judges, incentive awards, and public affairs carry out their policy development and program management responsibilities under the guidance and direction of the Commission's Executive Director and Deputy Executive Director. The latter also directs the field operations of the Commission, which consist of ten Regional Offices and sixty-five area offices. Reporting directly to the Commissioners are the Office of the General Counsel, the Appeals Review Board, the Federal Employee Appeals Authority, the Prevailing Rate Advisory Committee, and the Executive Assistant to the Commissioners.

In the field, the regional offices also have major organizational units devoted to recruiting and examining, training, investigations, inter-

governmental personnel, evaluation, and internal administrative support. Sixty-five area offices report to the regional offices. They are concerned mainly with recruiting and examining, and many of them are also involved to a limited degree in training and evaluation.

A number of continuing inter-bureau/office committees have been established within the Commission to assure appropriate horizontal communication and joint consideration of problems and issues which cross organizational lines. At the apex is the Executive Planning Group, consisting of senior career officials and chaired by the Executive Director. This Group meets weekly to consider major policy, program, and priority issues.

Overall, the organization of the Commission is suitable to its current responsibilities involving leadership, policy and program development, program management, technical assistance, and compliance. However, as recommended in the preceding Chapter, establishment of additional mechanisms modeled on the Prevailing Rate Advisory Committee would provide for a useful increase of bilateralism in the Commission's policy making role.

Staff

As of October 1975 the Commission had 6,720 full-time permanent employees of which about 2,800 are fully qualified professionals. There are also several hundred additional professionals who have not yet reached the full journeyman level. Amongst the professionals are some of the nation's outstanding experts on test development, job analysis, staffing, training, pay, classification, equal employment opportunity, and labor relations in the public service. Over two hundred of the Commission's professional and executive staff have exceptionally broad experience in personnel management and constitute a major resource for assessing personnel policies and dealing with complex personnel management problems and programs that bridge two or more specialized areas. Many have worked in other agencies and some in other levels of government.

The average age of the professional staff is forty and their average length of service is fifteen years. They are a well-educated group with four out of five having a bachelor's degree or better despite a variety of upward mobility programs which have moved some employees without college education from clerical and technical occupations into professional jobs. Significant numbers of the professionals hold advanced degrees: 364 masters, 33 doctorates, and 122 in law.

Women and members of minority groups are found in significant numbers among the professionals. Of the 1232 professionals at grades 9 and 11, 409 or thirty-three percent are women and 234 or nineteen percent are minorities. Among the 1496 in professional and managerial positions in grades 12 through 15, 268 or eighteen percent are women and 162 or eleven percent are minorities. Among the sixty-two employees in the top grades of 16 through 18 there are one woman and one member of a minority group. The trend in recent years shows a dramatic increase of women and minorities in the professional and supervisory positions at grades 9 through 15. With large numbers of women and members of minority groups now receiving valuable experience in these grades, it is reasonable to assume that in the years ahead as they compete for promotion, they will begin to appear in increasing numbers in the super-grade positions.

The career executives in the Civil Service Commission are exceptionally well-endowed with education and relevant training, first rate experience, and deep commitment to the work of the Commission and the public interest. In view of their broad government-wide responsibilities, and in comparison to the grade levels of key jobs in other agencies, having only the position of Executive Director in the executive pay level is inappropriate. That position was established by statute above General Schedule 18 in 1959 when the responsibilities of the Commission were narrower and far less complex than they are today. Not only should the grade of that position be raised to Level IV, but the positions of Deputy Executive Director, General Counsel, and at least four of the ten bureau directors warrant assignment to Executive Level V.

Funds

For a great many years as the Commission's role and management systems were evolving, and with financially conservative political and career leadership, the appropriation requests submitted to the Office of Management and Budget have invariably been exceeded by the requirements of a growing workload. The Office of Management and Budget, charged with holding down the size of the increases in the President's budget, usually made substantial cuts in the Commission's "no frills" request, causing new responsibilities assigned by law to the Commission to be funded by reducing planned expenditures on existing programs which were already underfunded. Requests for essential long-term improvements were often reduced or eliminated. Recognizing a very lean situation, the Appropriations Subcommittees in both the House and Senate generally made only very modest downward adjustments in the President's requests for the Commission.

Despite careful planning and prudent management, the Commission has not been able to consistently carry out all its responsibilities in an acceptable manner. This has been due mainly to both inadequate funds, and personnel ceilings set by the Office of Management and Budget that have been substantially lower than the authorized funds would permit. Although most of the Commission's work is done very well, there have been a number of occasions when daily service to agencies, applicants, and employees were not timely, and the quality of the work has, at times, fallen short of what it should and could have been. Moreover, the more fundamental work that the central personnel agency should do continuously, such as improving examinations and revising and updating qualifications requirements and classification standards to stay abreast of changes in occupations and technology, have been seriously underfunded with resulting long term negative impacts on the quality of the civil service and the effectiveness of government.

The amount of additional funds required to permit the central personnel agency to carry out the responsibilities assigned to it in a fully satisfactory manner are relatively small. For fiscal year 1975 it would have been about fifteen percent of the ninety-five million dollar operating budget for salaries and expenses. With more than two million employees affected by the Commission's policies and programs, and an annual payroll and benefits of almost forty million dollars, it is reasonable to assume that the improvements in standards and selection

methods, oversight, assistance, and enforcement would easily yield benefits exceeding the increased cost.

Authorities

The size and complexity of the Federal Government make it essential for the departments and agencies to continue to have the authority to determine the grades of jobs, to appoint, to promote, to reassign, to discipline, and to take other personnel actions in accordance with the civil service laws and merit principles. Almost one million personnel actions are taken each year, and the President and Congress should be able to rely on the Civil Service Commission to hold agency officials accountable for their personnel actions.

There are only two ways for the Commission to do this. One is to promptly review every personnel action and instruct corrective action for any that are in violation of laws or merit principles. This is obviously impractical. It would necessitate an enormous increase in the size of the Commission staff, and would represent an unjustifiable vote of "no confidence" in the vast majority of managers and personnel people who do their personnel work conscientiously and properly. The preferable way is for the Commission to sample the personnel actions during regular evaluations or as a result of complaints, and to require agencies to hold their employees accountable for complying with civil service laws and rules.

Accountability can be made meaningful by enacting the legislation proposed in Chapter IV which would authorize the Commission to require the employing agencies to discipline or remove any employee who *repeatedly* or *deliberately* violates or assists or cooperates in the violation of the civil service laws or merit principles. The judicious use of this authority would provide an added motivation for agency officials and employees to act on personnel matters in accordance with civil service laws and merit principles. Agency evaluation systems, operating in accordance with standards established by the Commission, and periodically audited by the Commission, can fulfill part of this same compliance review and enforcement responsibility, and thereby reduce the amount of direct review by the Commission.

For agencies excepted by statute from the competitive service, neither the President nor the Congress has a systematic means of determining the effectiveness of personnel management, and the degree of compliance with applicable laws and rules. In view of the expertise in the Civil Service Commission, it appears that it would be useful to the President, the Congress, and the excepted agencies to have the Commission not only conduct such reviews and provide assistance where needed, but also serve as a complete central personnel agency by reporting to and advising the President and the Congress on the overall state of personnel management in the Executive Branch, inequities among the different systems, weaknesses within them, and possible courses of action to achieve needed improvements.

Compatibility of Civil Service Commission roles

With the information discussed in this and earlier chapters at hand, consideration can now be given to the question: is it reasonable to expect one central agency to provide effective leadership in Federal personnel management and simultaneously serve as the dependable guardian of the merit system? Or are these two roles not only separate and distinct, but fundamentally incompatible?

As described earlier, the major centralized institutional responsibilities for Federal personnel management are to:

- recommend legislation;
- encourage departments and agencies to improve their personnel management;
- promulgate government-wide personnel policies and standards under law;
- develop personnel programs;
- centrally operate certain personnel services;
- provide technical assistance to the agencies;
- evaluate the effectiveness of personnel management in the agencies;
- adjudicate employee appeals; and
- secure compliance with civil service laws and merit principles thereby protecting the merit system.

Having previously discussed these functions and the organizations for carrying them out, the interrelationship between them is now very apparent. They are in fact a continuum, a closed loop. While it is traditional to think first about making policy, it is not unusual to have management problems or employee complaints in agencies lead to technical advice or evaluation by the central agency. This in turn may lead to conclusions that a policy has not been complied with and corrective action must be taken, or that a change in policy is needed.

For example, the Commission sets policy in position classification by establishing classification standards. Application of the standards to particular duties to determine the grade of a specific job is the responsibility of the agency. However, in the course of giving technical advice to an agency on interpreting the standard, or following through on a letter from a Congressman about a complaint from a constituent, or making a regular personnel management evaluation, or adjudicating an appeal, the Commission may conclude that the agency erred in interpreting the standard and therefore corrective action is needed. Or the Commission may conclude that the standard is not sound and the policy represented by it should be changed. Or the Commission may conclude that agency officials are deliberately exaggerating the duties in the position description in order to place the job at a higher grade than would be justified, thus creating a need for action to protect the merit system.

In these and many other situations, the responsibility to initiate such technical assistance, policy change, or corrective and enforcement action as may be needed to improve personnel management or safeguard the merit system can not be separated on any logical or practical basis. The same reasoning would apply to equal employment opportunity, merit promotion, and other areas of personnel management. In fact, the need for corrective action and the effectiveness of the compliance and enforcement process is often dependent on the understanding that comes from the central agency's "other role".

The system for deciding employee appeals, the quasi-judicial function of the Civil Service Commission, has been the subject of numerous studies in recent years. Separate studies of the adverse action appellate system were made in 1972 and 1973 by two independent bodies: the Administrative Conference of the United States and the United States General Accounting Office. One of the reasons for these studies was a concern about possible conflict between the Civil Service Commission's

role in appeals and its other responsibilities. Neither of these studies found such conflict. Nevertheless, based on its own study completed during the same period, the Commission completely overhauled the appellate system as discussed in Chapter IV and at the same time separated the appeals operation from the Commission organization that is under the Executive Director. A new Federal Employee Appeals Authority and an Appeals Review Board report directly to the Commissioners. These changes have received favorable reactions from the General Accounting Office, the Administrative Conference, and the Congress.

As for the open competitive examining system, operating it with integrity and protecting it are indivisible. Any problem about honest or competent performance with regard to the competitive examining system, by anyone in the central agency or any other agency, should be dealt with fairly and swiftly to assure continued public confidence in the merit system. Setting up another organization to police the merit system and the agency responsible for it duplicates unnecessarily the work of the Civil Service Commission and the oversight Committees of the Congress.

In summary, it is evident that to split the central leadership and merit system program responsibilities from the responsibility for protecting the merit system would result in near fatal fragmentation. The capacity to meet all these central responsibilities would be seriously weakened because the natural interrelationships would have been severed. Moreover, the investigative and guardian functions would be so isolated from the daily operations of the central personnel agency and all the other agencies, that only the most serious and notorious violations would be likely to reach a central enforcement agency. While it could be said that this is precisely what occurred in the recent efforts to subvert the merit system, the information and analysis in this monograph indicate that such a conclusion would be a gross oversimplification.

Systematic subversion is a complex matter, and the actions needed to successfully discourage it in the future must be far more specific than establishing a separate agency. It is my belief that a separate agency would provide the American people with the illusion, rather than the reality, of adequate protection for the merit system. On the other hand, it is my conviction that adoption of the recommendations in this and the earlier Chapters would give justifiable assurance that the integrity of the merit system will be strengthened and preserved as we continue to improve personnel management in the Executive Branch of the Government.

CONCLUSIONS

My conclusions as to the role of the Civil Service Commission are as follows:

(1) A single central personnel agency, responsible to the President but more accountable to Congress than at present, can serve the public interest better and more economically than two agencies, wherein one would be responsible for leadership and central operations in personnel management, and the other would be guardian of the merit system; the two roles are not only compatible, but, in fact, each complements and increases the effectiveness of the other;

(2) Establishing the Office of Management and Budget as "the President's arm for the exercise of his managerial functions," and simultaneously weakening instead of reinforcing the leadership and professional independence of the Civil Service Commission, has produced unnecessary uncertainty as to the role and importance of the central personnel agency; this needs to be dispelled as quickly as possible;

(3) the Civil Service Commission, having evolved as the central personnel agency during the past thirty-five years, is carrying out reasonably well a complex array of very important responsibilities; but it requires additional funds, staff, and enforcement authority to meet in a fully adequate manner the government-wide responsibilities placed on it by the President and the Congress;

(4) the employment conditions for Civil Service Commissioners need changing to provide greater assurance that the quality of their performance will be equal to their responsibilities.

RECOMMENDATIONS

My recommendations are:

(1) That legislation be enacted requiring the Civil Service Commission, on matters of interest to the Congress, to present its own views directly to the appropriate Committees of Congress, thereby recognizing that the unique responsibilities of the Commission require increased accountability to the Congress, and that the public interest can be served best by having the Commission communicate candidly and freely with both the President and the Congress;

(2) That legislation be enacted broadening the authority and responsibilities of the Civil Service Commission to include all personnel systems in the Executive Branch with particular regard to:

- determining their compliance with applicable laws and rules,
- evaluating the effectiveness of their personnel policies, programs, and practices,

- assisting the agencies to achieve needed improvements, and
- advising the President and the Congress on the overall state of personnel management, inequities between the personnel systems, and the need for new laws or changes in existing laws;

(3) That legislation be enacted to eliminate confusion, uncertainty, and duplication inherent in Reorganization Plan No. 2 of 1970, and to clarify the role of the Civil Service Commission as the central personnel agency, by terminating the Office of Management and Budget's responsibility to advise the President "on the development of new programs to recruit, train, motivate, deploy, and evaluate the men and women who make up the top ranks of the civil service";

(4) That legislation be enacted to assure the professional independence of the Civil Service Commission under law by requiring it to submit requests for appropriations and personnel ceiling, with accompanying justification, not only to the Office of Management and Budget in connection with the preparation of the President's budget, but that copies also be given to the designated Subcommittees on Appropriations when the President's budget is sent to the Congress; and

(5) That legislation be enacted to further assure the high competence and professional independence of the Commission by providing that

- the Chairman of the United States Civil Service Commission be nominated by the President and confirmed by the Senate for a nine year non-renewable term;
- the Vice Chairman of the United States Civil Service Commission be nominated by the President and confirmed by the Senate for a six year term;
- the third Commissioner be nominated by the President and confirmed by the Senate for a six year term, and that the responsibilities of this Commissioner also include continuing oversight of the Commission's appellate responsibilities;
- when any of the three Commissioner positions becomes vacant, appointment to that position be for the full term of the particular vacancy;
- no more than two of the Commissioners be of the same political party;
- a Commissioner relinquish any other position except those incidental to service as a Civil Service Commissioner;
- the position of Chairman be in Executive Level II, Vice Chairman and third Commissioner in Level III, Executive Director in Level IV, and six positions in Level V: Deputy Executive Director, General Counsel, and four bureau directors; and
- although the President may remove, independently and at his pleasure, any Civil Service Commissioner, Congress conclude that the public interest would be served best if Civil Service Commissioners are removed during their term only for such cause as malfeasance, non-feasance, or other conduct which impairs their ability to properly carry out the duties of the offices.



