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(FORMER EXECUTIVE DIRECTOR OF
PRESIDENT CARTER'S PERSONNEL MANAGEMENT PROJECT)
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Mr. Chairman and Members of the Committee:

It is a pleasure to again appear before this Committee with respect to Civil Service Reform. Over the past 20 years I have had the privilege of appearing before this Committee in many hearings on many different subjects, as well as meeting with members and staff on numerous occasions. During these years, I have served both Republican and Democratic administrations and have worked closely with both majority and minority members of this Committee. Today, I speak to you as an individual and my comments represent my personal views, although, as you know, I did have the opportunity to serve as Executive Director of the President's Personnel Management Project and therefore have some perspective from that vantage point.

I agree with those who regard this proposed reform as one of the most important proposals ever to come before Congress with respect to improving the effectiveness of our Federal government. I commend the President most strongly for his interest in improving the operation of government and for his remarkable willingness to devote personal time and attention on a sustained basis to a series of important reorganizations. I am particularly pleased that he regards this proposal as the "centerpiece" of his reorganization plan.

My comments with respect to Reorganization Plan No. 2 will also make reference to those elements of HR 11280 which have a direct impact on this plan.

I strongly endorse the President's proposals as embodied in Reorganization Plan No. 2 and HR 11280. There are a few areas in which I suggest modification, but I want to stress that I regard them as steps which should improve his reform and assist in its passage.

First, I would like to underscore the importance of looking at civil service reform from the standpoint of the public, rather than becoming preoccupied with the more limited perspective of either the manager or the employer. As background for my testimony, I would like to first draw heavily upon the ideas contained in the section entitled "Perspectives" which I wrote for the final staff report of the President's Personnel Management Project.

It is the public which suffers from a system which neither permits managers to manage nor provides employees adequate assurance against political abuse. Valuable resources are lost to the public service by a system increasingly too cumbersome to compete effectively for talent. The opportunity for more effective service to the public is denied by a system so tortuous in operation that managers often regard it as almost impossible to remove those who are not performing. It is families everywhere who suffer from mismanagement of social programs caused by incompetent and inexperienced executives appointed on the basis of personal friendship rather than managerial qualifications. It is hardpressed neighborhoods and communities across the nation who are discriminated against on a massive basis by managerial decisions which divert grants elsewhere because of the influence of a mayor, governor, or member of Congress.

The staff recommendations in this report are based on the premise that jobs and programs in the Federal Government belong neither to employees nor to managers. They belong to the people. The public has a right to have an effective Government, which is responsive to their needs as perceived by the President and Congress, but which at the same time is impartially administered.

Managers have no right to impose new spoils systems under the guise of flexibility. Neither do they have a right to mismanage public programs by hiring incompetent cronies. They must, however, be free to manage, or there will be little accountability and citizens will be deprived of the effective Government they have a right to demand. Employees have no right to place their personal gain above the ability of the Government to meet public needs. Neither should they have the right to cling to jobs in which they cannot, or will not, perform adequately. They do, however, have a right to work in a public service that is free of discrimination and partisan political influence, and they have a right to expect advancement to be determined on the basis of merit.

I assume this Committee has copies of the full staff report I submitted to OMB and CSC.

I regard the proposed Merit Protection Board (MSPB) as the cornerstone of the Civil Service Reform.

We have learned that the continued addition of protective procedures does not enable us to withstand determined political pressure. In some respects, excess regulations do the opposite, inviting both manipulation and circumvention in ways which undermine merit. They become a refuge for the marginal and incompetent employee, but an obstacle course for the employee with a valid grievance. When process subsumes substance, the whole system tends to shift emphasis from equity to technical issues, and procedures seem to become ends in themselves.

The system is now vulnerable to abuse, and it also limits the ability of policy leadership to respond to new and changing public program needs, thereby contributing to the negative public perception of the bureaucracy.

Those of us who served in the President's Personnel Management Project believe strongly that political pressures can be withstood and discouraged only by establishing an institution removed from operational issues and actions and more independent of The White House. We agree with the conclusions of many other groups that

the conflicting roles of the existing Civil Service Commission place it in an untenable position with respect to standing up to pressure, not only from The White House, but from department heads, Members of Congress, and special interest groups as well.

The MSPB is an independent agency whose members can be removed only for cause, a considerable strengthening in itself. Further, they serve seven-year nonrenewable terms, thus removing the existing vulnerability of the Civil Service Commissioners to pressure while seeking reappointment.

Perhaps equally important, the members would be spared the external political pressures to bargain and compromise which has been perceived as a problem confronting CSC chairmen and which has blunted the CSC credibility in its investigative and adjudicative roles. We recommended a strong investigative and ombudsman role for the MSPB in the form of a Special Counsel. The public list of the Counsel reports and the agency responses will also add considerable strength. This person has broad powers of investigation in response to allegations of prohibited practices. The language should be clarified, however, to reflect the intent of the Administration by specifying that the office also has a responsibility to initiate investigations. I would further urge that it make spot investigations from time to time even though there are no allegations. It would thus provide a strong deterrent to abuse in much the same way cash audits deter (but do not totally prevent) embezzlement. Further, the MSPB should be required to make special studies which are reported to the President and Congress. It is not enough in this critical area that the Board "may" conduct such studies.

I do disagree, however, with the provision under which a determination of a prohibited personnel practice goes to the President rather than the Board in the case of a Presidential appointee. Particularly in the case of political abuse, I believe the credibility of the process would be stronger if the statement went to the Board and was processed by the Board, with a copy to the President who certainly should be made aware of the action. The IRS and FBI do not make exceptions for Presidential appointees.

I would also suggest that any employee be given the right to a hearing rather than limiting this right as is proposed under Chapter 77 on appeals. The practical result might not differ in most cases, but it may be important to a few employees and I am fearful of this limitation evolving into something more substantive over time.

It also seems to me that the language in chapter 7701 on sustaining the decision of the agency should be modified. Chapter 7701(c) under Section 205 is helpful in striving to provide some criteria for deciding cases, but the wording appears to place far too much burden on the employee, particularly the words "shall be sustained" in conjunction with the third criterion of "arbitrary or capricious".

I believe that the MSPB, not the OPM, needs to determine what personnel actions may be appealed to the Board under the reform legislation. As a footnote, I also object to adding the word "systems" to the title of the Board. Not only does it unnecessarily lengthen

the title, but it places the emphasis on systems or process rather than merit, precisely the opposite of what it should symbolize.

Finally, I would like to underscore the sharp new statutory teeth provided by this bill in Section 1207 under which the MSPB may "impose disciplinary action including removal, demotion, debarment..." and other sanctions, from which there is no administrative appeal. The CSC does not have this power and I believe its deterrent power will be great.

This new independent Board should provide a major ally for career employees against unwarranted and unfair actions.

Frequently overlooked is the statutory role proposed for the General Accounting Office, the second string on our bow for protecting employees and the merit principles. In my view, the statutory listing of prohibited practices, the protection against reprisals, the independent Merit Protection Board and the strong Special Counsel, the public listing of Counsel reports and the agency responses, the new statutory sanctions of the Board, plus the important role for GAO, add up to a tremendously powerful new bulwark against political abuse. No system can totally prevent abuse, but I am confident that had our recommendations been in place during the early 70's, the Nixon White House would have been stopped very soon in its assault upon the career service, if indeed it would have even started.

With this protective bulwark in place, it is then possible to place the operational portion in the Office of Personnel Management, which can better respond to the legitimate needs of policy leadership. Almost all recommendations over the years have urged an agency headed by a single head reporting to the

President. Freed from thousands of individual personnel actions, and by delegating some functions to agencies, the OPM should be able to provide much stronger leadership in many important areas.

There is so much to be done in establishing better workforce planning as an integral part of program planning. It should be related to organizational productivity and integrated with agency budget decisions.

The more effective use of workforce planning, budget and accounting processes, and positive position management would eliminate the need for position ceilings which are not efficient and which create an artificial pressure for high grade positions at the expense of lower grades. It is a hidden cause of some of the grade creep which has plagued us for years.

The productivity effort launched in the early 70's has lagged with little leadership from either OMB or CSC, a situation badly in need of reversal. Pilot projects need to be established in selected agencies to test a variety of administrative management, incentive and penalty practices. Any major delegation to agencies, for example, needs to be tested before proceeding on a government-wide basis. Guidelines would have to be developed, evaluation and monitoring processes developed, and the whole arrangement pilot tested to make sure the advantages of selective decentralization could be achieved without weakening merit. A brief outline of how such testing might be undertaken can be found on page 125 of our Final Staff Report.

I would hope in particular that the proposed reorganization would permit and encourage a major leadership role by OPM in the development of managers and other employees by the various agencies.

Outstanding agencies and managers almost always stress employee development on a broad basis. Their emphasis will vary -- some, like Admiral Richover, stressing on-the-job training under the guidance of the supervisor, others giving more weight to more formal training, often involving CSC and universities. These all have a place. But we cannot continue with the present haphazard and anemic efforts, most of which are not even evaluated.

Far greater emphasis needs to be provided in the training of managers to the development of employees under their supervision, including ways in which to explain what is expected in performance and helping those who experience difficulty in meeting those expectations. We often do very poorly in this area, and needlessly initiate adverse actions.

Special emphasis should be given to agency training programs on public service ethics so managers and other employees can understand and apply these principles in their work.

The OPM, together with OMB and GSA, should be able to provide stronger government-wide leadership in improving the quality of the work environment for Federal employees, an area which can contribute considerably to the well being and the productivity of employees.

It is surprising how many supervisors are unaware of many things they can do to motivate employees, and it is also surprising how many unnecessary disincentives our system develops for employees. I am continually amazed at the gulf which develops between political appointees and careerists, between career managers and their employees, between management and labor, because of poor

communication. Having any impact on these very common types of problems requires a great deal of sustained and skillful leadership. It is very difficult for the CSC with its conflicting roles and handling of volatile issues growing out of large volumes of individual investigations and disposition of cases, and I believe the proposed Office of Personnel Management can help agencies make Federal employment far more pleasant and challenging for career men and women.

I do not share the concern expressed by some that the OPM is too close to the President. There really is not much difference from the present Chairman of the CSC who also reports directly to the President. The minority members of various commissions have not been able to exert much of a restraining influence over White House or Congressional pressures. More important, whatever greater vulnerability there might be is far more than offset by the powerful MSPB and Special Counsel, together with the GAO role.

I would recommend, however, that the five Associate Directors be appointed under the provisions of the competitive service rather than the excepted service.

Citizens have a right to demand federal executives of the highest quality and competence, who will manage public resources and achieve public goals efficiently and economically. Despite the critical need to recruit and develop such executives, we have no fully effective, government-wide system today for selecting, preparing, advancing and managing the men and women who administer the many vital programs that effect every citizen, family and community in this country. On pages 184 and 185 of our Staff Report, we pointed out a number of problems with this existing

system. We spoke of problems of control, problems of pay, problems of mobility, problems of creeping politicization, and we spoke of the inadequate protection against incompetence as follows:

"At present it is possible for cronies and political supporters with little or no managerial experience to be placed in positions responsible for managing billion-dollar Federal programs and for supervising thousands of employees. The public has a right to expect the many billions of dollars of Federal grants and contracts, for example, to be awarded and administered by competent managers and free of political considerations. Greater emphasis is needed on certifying the managerial competence of individuals in top managerial positions."

I am very pleased that under the proposed bill we would for the first time have a statutory limit on the number of non-career executive positions. I have been quite concerned with the shifting of certain groups of positions over the years from career to non-career -- recently, for example, the top field positions of GSA. Without statutory limit, I believe that in time our government executives will become primarily political in nature with devastating results for the public. I would go somewhat further than the proposed legislation does, however, with respect to those positions which would be reserved for people entering through the competitive process, namely, career reserved positions. I would include among these career reserved positions those who have responsibility for personnel administration and grant administration. I do not believe that partisan politics has a place in the administration of these functions any more than in procurement. To the contrary, I believe it is very important that the citizens have assurance that these are administered on a non-political basis. Although I do not equate the non-career position with a political position, I believe nonetheless that the opportunity for politics is much

greater among the non-career positions. Further, with the flexibilities now in the proposed Senior Executive Service, I fail to see a need for drawing from non-career people for the filling of positions in these important categories.

I would also recommend that the assistant secretary for administration be included in the Senior Executive Service, preferably in the career reserve positions. In stating this, however, I want to make it clear that I believe we should be able to draw from outside the government, as well as within, for the filling of a number of people in these posts. Infusion of fresh thinking from qualified experienced people outside government is important in retaining vitality within the Federal service and in bringing the perspective of citizens and other groups outside government from time to time. If our competitive process works properly, this should be possible.

I am very concerned about politics having crept into personnel, grant and contract administration in the past through the use of schedule C appointments for top field positions. I believe these offices and programs should be administered by people selected for competence rather than their political status and I have urged most strongly that these positions be in the career reserved category in the Senior Executive Service.

There also has been some concern about the OPM being headed by a single executive, a concern I do not share.

So far as I know, virtually every individual well versed in the field of management takes the position that an operating agency should be headed by a single executive rather than by a commission.

The advantages in terms of accountability and speed of operation are obvious.

At one time, it was generally agreed that regulatory bodies should be headed by commissions in order to provide greater balance in the deliberative process. More recently, an increasing number of observers have recommended that most regulatory commissions be replaced by single heads on the basis that the multiheaded bodies are cumbersome and slow moving and have not provided the balance that had been anticipated from such an arrangement. A commission also makes possible minority representation from the party not represented in the White House. Again, many people feel that this minority representation has not often proved to be very efficient and is not necessary. We did believe, however -- and the President's proposals reflect this -- that there is sufficient merit in the commission type of organization to warrant providing it for the body handling the adjudicatory responsibilities in the merit system, the Merit Protection Board.

On the other hand, I see no more reason to have the operational part of the Civil Service Commission, the OPM, headed by a commission than for GSA or OMB to be headed by a commission, an arrangement I have never seen advanced. And if one were to take the position that a commission is required for agencies involved in important policymaking, I should think every cabinet department and most independent agencies would have to be headed by a commission. I can think of few things which would contribute more to massive red tape and the inoperability of government than to begin to move in the direction of government by commission.

The President's proposals, as encompassed by Reorganization Plan No. 2 and by HR 11280, are very comprehensive. This is necessary since the system is far too complex to deal with effectively on a piecemeal basis.

As you may know, the majority of the recommendations in these two pieces of legislation are consistent with the recommendations made by our task force during the personnel management project. Most of the people in these task forces were individuals with distinguished careers in the Federal service. Therefore, the recommendations are based on a wealth of diverse background from the perspective of the careerist as well as from the perspective of the various elements of the public to whom we reached out for suggestions.

There has been concern that these recommendations do not really go far enough in providing sufficient flexibility for managers, and it is true that they do not provide the degree of flexibility normally found in industry. We believe, however, that there are some types of flexibility in the private sector which are unwise in the public sector because of the need for public accountability, as well as the need to safeguard against political abuse. We do believe there is enough flexibility in these reforms, if used wisely by qualified managers, to place personnel management in a position to more effectively support the legitimate needs of policy leaders.


There are also those who feel that some of the President's recommendations will lead to greater political abuse. In this respect, this Committee should know that a number of the career

people on this project withstood very heavy political pressures under both Republican and Democratic administrations. I can assure you that these individuals took great pains to develop recommendations which they believed would provide stronger, not weaker, protection against future political intrusion. This is why a number of us who have battled the politics of one administration after another feel so strongly about the establishment of the independent Merit Protection Board.

I have seen these problems, and personally experienced these pressures, in many different forms and a number of different agencies. I have seen at first hand the operation of six Presidencies, in six White Houses. I have objected at every level, including that of the President, to repeated actions in both Republican and Democratic administrations which have substituted politics for competence in the execution of Federal programs. I think it is absolutely wrong, and further, I don't even think it is good politics.

We realize that the proposed reform will not cure all these problems. But there is not the slightest doubt in my mind that the full package of Presidential proposals, together with the modifications I have suggested in Reorganization Plan No. 2 and HR 11280, will provide greater protection to Federal employees against political abuse, and also provide a better work environment and more opportunity for employee development than now exists under our current system. I am convinced that the public will benefit.

In conclusion, I strongly support Reorganization Plan No. 2, together with HR 11280, with some changes I regard as strengthening the legislation, particularly with respect to guarding against



political abuse.

Thank you for the opportunity of again appearing before this Committee, and I will be happy to try to answer any questions that you might have.