CIVIL SERVICE Journal

Vol.16 No.4 April/June 1976

U.S. Civil Service Commission

CIVIL SERVICE Journal
Vol 16 No 4 April/June 1976

ARTICLES

DEPARTMENTS

The Civil Service Journal is published quarterly by the U.S. Civil Service Commission. Editorial inquiries should be sent to the Journal Editor, Office of Public Affairs, Room 5336, U.S. Civil Service Commission, 1900 E Street NW., Washington, D.C. 20415. Telephone 632-5496 or Code 101, Extension 25496. No special permission necessary to quote or reprint materials contained herein; however, when materials are identified as having originated outside the Civil Service Commission, the source should be contacted for reprint permission. The Journal is available on subscription from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, $4.10 a year domestic, $1.05 additional for foreign mailing. Single copy $1.05. Use of funds for printing this publication approved by the Office of Management and Budget by letter of May 2, 1975.

WORTH NOTING

☐ TRAVEL PAY. The Civil Service Commission has defined the types of travel that should be included with other work time in determining overtime pay for Federal employees covered by the Fair Labor Standards Act. Federal employees covered by the Act are also subject to personnel laws contained in title 5 of the U.S. Code, and where one law is more advantageous than the other, the employee is entitled to whichever offers the better benefit.

Generally, under the FLSA, the following can be considered under the heading of "hours worked":

—All travel during regular working hours.

—All travel time that involves performance of work while traveling, such as driving a car.

(Continued—See Inside Back Cover)

personnel costs:

TURNING THE TIDE

by Robert E. Hampton
Chairman
U.S. Civil Service Commission

A LITTLE OVER a year ago a concentrated effort was launched throughout Government to control personnel costs through more effective personnel management. At that time, President Ford challenged Federal managers to use their initiative, imagination, and sound judgment to get the most out of every personnel dollar. The alternatives were hiring and promotion freezes or across-the-board reductions—harsh measures that have been used sometimes in the past.

I am pleased to say that Government managers successfully met the President's challenge. This is demonstrated in a report I sent to the President on cost reduction initiatives and a summary of early results. (In *Report to the President on Cost Reduction Initiatives in Personnel Management,* U.S. Civil Service Commission, November 1975.)

In that report we compared recent personnel expenditures with those of the last 5 years and found encouraging evidence that the tide had begun to turn. Two trends are particularly noteworthy:

While total Federal civilian payroll costs have continued to climb since fiscal 1970, those same costs have declined as a percentage of the total budget, from a high of 15.3 percent in fiscal 1972 to a low of 14 percent last fiscal year. In other words, the rate of increase is falling. The crossover took place last year. That is, during FY 1975, for the first time in 5 years, the percentage rise in payroll costs slipped below the percentage rise in the budget.

Moreover, despite the demand for increased Government services, the total number of civilian employees (including the Postal Service) has held firm at approximately 2.8 million during the past 5 years. This stabilization means that we are presently producing more with about the same number of people. In fact, full-time permanent employment (exclusive of the Postal Service) was actually reduced by 1,952 in fiscal 1975, which represents a reduction of 53,748 from the original estimate in the 1975 budget.

Giving the Lie to Old Myths

These productivity gains are confirmed by studies of Federal productivity conducted annually by the Joint Financial Management Improvement Program (JFMIP). In its last annual report to the President and the Congress, the JFMIP showed a 10.7 percent rise in productivity over the last 7 years, an annual average increase of 1.5 percent. This compares favorably with private sector productivity over the same period, which increased 10.8 percent from 1967–1974—with an average annual rate of change of 1.5 percent.

These measures of Federal productivity cover 65 percent of the Federal civilian work force, some 1.8 million employees. And they give the lie to the old myths about unproductive Government workers.

We have not licked yet the immediate problem of rising actual payroll costs. That figure, fueled by inflation, has continued to rise. In FY 1970, the yearly cost per civilian employee, including salary and benefits, was $10,176; last

year it was $16,250, a 60 percent increase in 5 years. (These figures combine civilian and Postal Service employees. Separating them, the cost per civilian employee in FY 1970 was $10,500, increasing 57 percent to $16,500 in FY 1975. The Postal Service cost per employee was $8,800 in FY 1970, increasing 73 percent to $15,200 in FY 1975.) As in other sectors of the economy, Government has been hard-pressed to keep up with the soaring costs of living. That is added reason to continue our push for increased productivity gains.

Obviously we do not know the exact extent to which improved management actions have contributed to the blunting of personnel costs, but we are convinced that a major part of it is the result of the careful and deliberate actions of Federal managers to use their resources more wisely, and the cooperation of Federal employees and their unions in the nationwide management improvement effort. Sustained over time, this effort offers promise of far-reaching improvements in the cost and delivery of Government services. We are firmly committed to achieving that promise.

Six Target Areas

When we started, we asked agencies to direct special attention to six specific areas that we thought had large potential for cost savings. They are:

- ☐ Cost reduction objectives-setting and review.
- ☐ Work methods, practices, and productivity enhancement.
- ☐ Employee development.
- ☐ Position management and classification.
- ☐ Work force planning and staffing.
- ☐ And the incentives system.

Setting Objectives

Two steps are of vital importance in the management of cost reduction activities: first, the establishment of specific plans and objectives; and second, a regular, recurring review of progress made toward achieving those objectives. One thing we all know is that haphazard stabbing about for improvements in Government organizations seldom brings lasting results. And we were not embarked on a one-time campaign yielding only cosmetic changes.

We want long-term improvements and real results, and rarely do they happen overnight. They come from repeated analysis of organizational problems, and sustained efforts to solve those problems, drawing on the good sense and commitment of both managers and employees.

What has been missing for too long in the personnel management field is the kind of framework for internal review and analysis of personnel-related activities and problems that would make such systematic management improvement possible. That framework, we feel, is now being built into agencies' internal personnel management evaluation systems. And both the CSC and agencies have been working for several years to strengthen these systems.

Together with CSC evaluation activities, agency internal reviews are now being directed to the assessment of cost effectiveness in personnel management—a critical look at objectives and progress made toward achieving them.

Work Methods, Practices, and Productivity Enhancement

Some of the most fruitful initiatives that agencies are undertaking are in the second major area of emphasis—the methods and practices used to carry out an organization's work. Here, the Commission's Clearinghouse on Productivity and Organizational Effectiveness continues to provide leadership in fostering productivity measurement and analysis, and in communicating new strategies for organizational improvement.

Now 2 years old, the Clearinghouse is the focal point for Government-wide dissemination of information about innovative ideas and methods in human resource management. These ideas and methods include flexible work hours, job redesign and work simplification, and more collaborative approaches to solving problems and getting work done, such as labor-management productivity committees and small work teams.

In large part, what this amounts to is commonsense management—freeing up willing but untapped human potential. Government employees display boundless abilities and capacities to perform and contribute when they are given the opportunity. One of management's major challenges is in creating a work environment where people's energies and knowledge are fully utilized.

Agency Actions

A number of agencies already have taken a variety of actions to assure that they are deploying their human resources well. Many of these actions are taken routinely without much fanfare as part of normal day-to-day management. However, as budget constraints were felt during fiscal 1975, agency heads made clear a heightened concern for eliminating obsolete requirements, updating work methods, and establishing more efficient, effective work practices.

Most agencies have implemented productivity-enhancing technological improvements in the personnel management area, such as automatic data processing and word processing. Both large and small agencies are reporting initiatives to automate the paperwork associated with personnel and payroll systems. The objective is not only to hold down the amount of staff required to prepare and process the necessary paperwork, but also to improve its accuracy and timeliness.

But technology is not the only answer to reducing personnel

costs. I am gratified to see an increased awareness among Federal managers of the potential impact of negotiated labor-management agreements on personnel costs. Several agencies have begun to identify the costs associated with union contract proposals in order to encourage cost-consciousness among managers and weigh the possible payoff in benefits to the public.

Successes have also been reported in gaining labor union support of productivity enhancement through contract agreements and cooperative labor-management productivity improvement committees. The Defense Supply Agency has pioneered in this area, working collaboratively with labor representatives in identifying opportunities for productivity improvement and setting joint objectives to achieve those improvements.

Another notable approach to work-methods improvement last year was agency experimentation with changes in organizational arrangements, creating small "work modules" or work teams whose members are often cross-trained so that they can do many different activities while having responsibility for an entire unit of work rather than a fragmented piece of the operation. The Social Security Administration has been a leader in implementing changes along this line. According to early accounts, work organized this way is delivering faster and more accurate service to claimants, and employee satisfaction is substantially improved.

Employee Development

While training can be an effective means of increasing cost effectiveness and enhancing employee productivity, it is also a significant personnel management cost item. Thus agencies are looking at their employee development and training programs not only for results in improved skills, knowledge, and abilities, but also from the standpoint of cost-effective delivery.

Regarding the former, it is clear that more attention is being paid to training managers and supervisors in the techniques of cost-effective management: management by objectives, work planning, and use of productivity measures. As to the latter, many agencies have adopted measures to curtail general training expenses by developing inhouse courses, correspondence courses, and video-taped instruction. A typical example is the U.S. Customs Service, which has cut per diem costs by developing inhouse and correspondence courses and by producing a nationwide video-taped training package for its regions.

Training costs for smaller agencies are being cut by the pooling of facilities, resources, and instructors.

Too often in the past, when the budget belt was tightened, training was the first object of sacrifice. That appears to be happening less often today, but only as training managers are able to show a favorable cost-benefit ratio for the training they provide.

Position Management and Classification

These two areas of personnel management have more direct dollar consequences than any others, and agencies predictably have focused special attention on them, relying in great part on their internal personnel management evaluation systems to identify problems and opportunities for savings.

Most agencies have accelerated their position maintenance review programs—systematically auditing positions to identify and correct misclassifications, outdated positions, and duplication or overlap of duties and functions. Agencies are using this accelerated maintenance program to assure that positions are graded in compliance with appropriate CSC standards established under law. Reviews are also being used to identify specific cost-savings opportunities through a reduced number of supervisory and high-grade positions and better organization of work.

Recent reviews by both the Civil Service Commission and the General Accounting Office indicate that overgrading is a nagging problem and that many agencies have organizations that are too fragmented and too heavily layered with supervision. Some agencies are also top-heavy with deputies, special assistants, and "assistant-to" positions. These problems need concentrated review and corrective action in the months to come.

Work Force Planning and Staffing

Many agencies reported considerable cost savings from better work force planning and increased attention to opportunities for

staffing at lower entrance grades. Nearly all agencies reported that vacancies were scrutinized to assure, first, that the positions were essential, and second, if they might be filled properly at a lower grade level.

Full registers of high-quality eligibles have made it possible to recruit more heavily at the entry or trainee level without sacrificing quality or effectiveness. The truth is that we are in a buyer's market in terms of skilled and well-trained talent. The unemployment picture and the competitive position that pay comparability has given us have brought record numbers of applicants.

By drawing on that high-quality, entry-level pool, agencies are experiencing not only an immediate reduction in salary costs, but reduced turnover due to greater opportunities for promotion and career growth. As a part of this renewed emphasis on entry-level hiring, we are seeing wider agency use of such special staffing programs as the Cooperative Education Program, the Stay-in-School Program, and the Work-Study Program.

A large number of agencies also reported increased use of paraprofessional staff to perform some of the more routine tasks that were formerly included in higher graded professional and technical positions. These job restructuring efforts offer high payoff in terms of reduced personnel costs and better work force utilization. Increased use of paraprofessionals has also meant increased use of special staffing programs, such as the Youth Opportunity Program and Worker-Trainees, and it has strengthened internal upward mobility programs.

Cost-conscious staffing has also brought renewed attention to the advantages of part-time, temporary, and seasonal hiring, and we expect the numbers of employees in those categories to increase substantially during the coming year.

Incentive Systems

Performance evaluation and awards, quality step increases, the suggestion program, and honorary awards of various kinds have been used for many years as a means of motivating improvements in Government operations. Many agencies now are taking further action to increase managerial and employee awareness of incentive systems, and their potential for encouraging and recognizing employee contributions to cost effectiveness.

Agencies also are streamlining the management of their incentive and award programs—improving processing procedures, delegating authority for certain types of awards to field organizations and first-line supervisors, instituting awards for particular occupations or organizational segments, and establishing closer linkages between incentives, MBO, and cost reduction.

President Ford's personal recognition of employees' ideas and suggestions has provided a special boost to this effort. Employees whose contributions resulted in tangible benefits of more than $5,000 received a personal letter of appreciation from the President. By the end of the campaign, 3,130 persons had been recognized in this manner. Many agency heads have followed the President's example by personally recognizing other important employee contributions.

The payoff on the bright ideas and other contributions of Government employees is significant—$216.4 million was saved in fiscal 1975 as a direct result of employee suggestions and special achievements. One out of every 11 employees received either cash or honorary awards for the suggestions they made. The average cash award was a record $105, and the average return in benefits to the Government amounted to $2,368.

That record underscores the old axiom that Government's greatest resource is its people, and dramatizes the potential for improved Government that lies still untapped in many cases.

Moving Ahead

In summary, cost reduction efforts have produced impressive results. We think the tide may have begun to turn. Those efforts must now be made a part of ongoing personnel management systems. Now that the momentum is there, we must keep moving ahead.

The Commission, in cooperation with the Office of Management and Budget, is continuing to build and strengthen appropriate internal administrative systems for review and control of personnel costs. We are looking to the agencies for continued progress on the management improvement goals they have set and on their internal personnel management evaluation systems to monitor that progress and keep us informed.

The six areas of emphasis for improved personnel management will continue to be pursued. Our determination to increase our effectiveness in these areas is going to be reflected in systematic improvements and long-term gains, not one-time efforts.

As I have said many times, good government requires persistent, tenacious attention to good management of the people who work in government organizations. We now have a mechanism going and a momentum established that support that kind of attention. We have begun to demonstrate how the application of modern personnel management techniques can result in more cost-effective Government. With the help of Government managers, employees, and their unions, we are going to continue that job. #

PERSONNEL RESEARCH ROUNDUP

THE CASE FOR WRITTEN TESTS IN FEDERAL EMPLOYMENT

Written tests are under attack. There are daily charges of irrelevance and unfairness levied against their use in employment. Are these charges justified? Are tests fair? Are they really necessary? Why are tests, as opposed to other selection techniques, attacked? What alternatives are there and what are the consequences of these alternatives? These are legitimate questions and deserve to be answered. We propose to answer these and other questions in a number of articles in this column.

It is appropriate that the Civil Service Commission address these issues. This Commission is one of the largest producers and users of written tests in the nation and has a long history of providing national leadership and innovation in the field. In these articles, we will use the work in the research and development of tests done in the Commission to address the questions raised. The first article is introductory. It presents an overview of the Commission's testing program, and tells how some of the basic steps in test development are carried out.

Development and Use of Written Ability Tests in Federal Employment

For over 50 years the U.S. Civil Service Commission has maintained an active program of test research and development. This pioneering effort has established a solid foundation of knowledge and procedures for effectively measuring human abilities and predicting human performance. The beginnings of the program date back to July 1922, when the Commission established a division of test research. That division soon began developing written tests for a variety of jobs, including tests for such diverse occupational groups as clerical workers, policemen, engineers, and investigators.

By 1926 an extensive test development program was in full swing at the Commission. For example, Dr. L. J. O'Rourke, the Director of Personnel Research at that time, showed that by the use of proper tests for the selection of postal clerks, 93 percent of the new personnel selected would be more efficient workers than the current employees at the Post Office. He based the development and use of all his tests on job requirements as shown by sound job analysis procedures, the experience of his staff, and findings in the research literature.

Currently the Commission uses some 60 tests to select personnel for entry-level positions. Last year written and performance tests were used to fill more than half of the competitive positions in the Federal Government. These tests were all developed by trained psychologists in the Personnel Research and Development Center (PRDC), the successor to the Research Division.

Psychological research still shows that of all the personnel measurement methods in common use, standardized tests of abilities, knowledges, and skills

consistently tend to be the most job-related, valid, reliable, and administratively feasible selection methods available when there are large numbers of applicants for a limited number of jobs. The use of good written tests improves the effectiveness of organizations by identifying those most likely to be productive or otherwise effective. O'Rourke's findings in the 1920's continue to hold up. For example, a study currently being conducted by PRDC shows that the staff hired through the use of the new PACE examination will result in millions of dollars of increased efficiency or productivity for the Federal Government.

The Commission's written tests are used mainly for selecting persons for entry-level positions in which extensive experience is neither expected nor required. The tests are mostly designed to predict an untrained applicant's ability to function on the job after being hired. As a result, the majority of the tests measure cognitive abilities, such as the ability to read and comprehend material which is similar to that for the target job, quantitative reasoning, and abstract reasoning. A few tests, such as the librarian equivalency test, measure specific knowledges required for entry into a particular job. Still others measure specific skills such as typing speed and accuracy, which are measured directly by performance tests.

Since a small number of cognitive abilities account for most of the measurable differences in the job performance of workers, only a relatively small number of ability tests are needed. Therefore tests can be selected from this basic kit of ability measures for use alone or in various combinations to predict performance on particular jobs. This selection of various tests and test parts for use in a particular occupation is still based on careful job analysis findings, staff experience, and the test research literature concerning the relationship between test and job performance for various occupations. For the massive needs of the Federal Government, it is both practically necessary and technically sound to select tests from a set of highly reliable ability tests of known composition rather than to develop tests specific to each occupation.

The process of developing ability tests consists of several major steps—constructing the test plan, writing test questions, assembling the test, and developing alternate forms of the test.

Test plan. A test plan is a detailed outline of specifications that defines the fundamental characteristics of the test. This plan is based on the research literature, past experience, and on experimental tryouts of particular model tests. It includes such information as the number of test parts to be included, the timing of the test, the types of questions that will be asked, the number of alternatives for each question, the distribution of answer choices, the manner of presentation, scoring procedures, the arrangement of questions in terms of difficulty, and the overall statistical characteristics of the test. The preparation of such a detailed plan, solidly grounded in research and experience, is a critical stage in the test construction process, since all further developmental work proceeds on the basis of these specifications.

Writing test questions. Test question writing is an art that few people master. Good writers must have an intimate knowledge of the English language in order to produce clear and unambiguous questions. They must also be able to think clearly in order to detect logical and conceptual inconsistencies or weaknesses in the questions and recognize any correct alternative answers in addition to those keyed as correct. Based on the test plan, test questions are written, edited, reviewed, tried out on a representative sample of competitors, revised (if necessary), and tried out again. These tryouts give information on possible ambiguities in the questions and provide statistical data that are used in assembling operational test forms.

Tryouts require at least 10 times as many test-takers as there are questions in the experimental test booklet. For example, in the development of the written test for PACE, 160 experimental tests containing 20 to 30 questions each were initially developed. Each of these tests was tried out on from 350 to 600 people in order to collect the appropriate data. From these data, eight statistically parallel sets of questions were developed for each of nine question types.

Experience has demonstrated that it takes an average of approximately 14 hours of professional staff time to write, edit, revise, and initially try out a single test question. Each new question is reviewed by at least two professional experts in test construction before it is tried out experimentally and again before it is included in the operational test. Many questions are discarded even before they reach the tryout stage. In general, only about one third of the questions selected for tryout ultimately survive the rigorous statistical requirements and eventually get into a test.

Assembling the test. The actual assembly of a test is a fairly extensive operation. The questions that have survived the tryout are assembled according to the test plan and an answer key is then prepared. The questions are checked against each other to determine if, inadvertently, one question could "give away" the answer to another. Finally, the completed test is carefully reviewed by a minimum of three experts, including women and minorities, to insure that there are no errors in the test, that the questions are not offensive to, or inappropriate for, minorities or women, that the test plan was followed, and that the answer key is correct.

Alternate test forms. Beyond simply assembling the initial operational version of a test, many additional forms must be made available. This is to allow competitors the opportunity to recompete on a statistically equivalent form, but with different questions, and to allow a particular form of a test to be withdrawn from use in the event of test compromise (exposure of a test's contents).

The development of alternate test forms is a very costly procedure. These forms must be equivalent replicates in terms of content and statistical characteristics, so that competitors taking any of the various forms can be appropriately ranked on examination registers. In addition to the rigorous development process inherent in such an undertaking, additional studies are often performed to verify that the test forms are indeed statistically equivalent. This process is called equating. Different methods of equating are used, depending on the nature and purpose of the test.

What is required is that all forms of a test be based on the same reference, generally either some absolute level of performance (criterion reference) or the performance of some selected population of competitors (norms reference). The written test used in PACE, for example, is norms-referenced and uses the competitor population of the November 1974 test administration as the reference base to which all future test forms are statistically equated. This allows for precise determination of whether changes in test scores from one administration to another are a result of changes in the labor market or are due to minor errors in the test development process. If the latter should be the case, statistical adjustments can easily be made in ratings before they are issued.

The Commission's testing program, through which positions in more than 275 Federal occupations are now filled, was founded on a solid base. Over the past 50 years, work has broadened and strengthened that base. In addition to constantly seeking out new ways to improve the existing program, the professional staff of PRDC continues to look toward the future. Plans are underway to develop a new written examination to fill a variety of clerical positions on a nationwide basis. Furthermore, in view of the successful adaptation of PACE for deaf and blind applicants, steps are now being taken to develop similar materials for a wide range of Federal tests. Also in the works are new procedures to permit the construction and the administration of written tests through the use of the sophisticated computer technology now available.

It is efforts such as these that will help assure the maintenance of the Commission's high standards of merit hiring by continuing to provide the basis for a sound, up-to-date program of reliable and job-related examining, which is at the heart of the merit system.

—John D. Kraft

CSC CARRIES OUT MERIT TEAM RECOMMENDATIONS

THE CIVIL Service Commission is giving top priority to implementing recommendations of the Merit Staffing Review Team to insure integrity in civil service staffing operations.

The Merit Staffing Review Team, headed by Milton I. Sharon, was formed by the Commission last fall to make a thorough inquiry into CSC's staffing operations to determine if there were practices, procedures, or actions by CSC personnel that may have resulted in or tended to bring about preferential treatment to favored candidates for employment in career positions. The Review Team completed its review and submitted its report and recommendations to the Commission in May.

Upon making the report public, the Commission noted the report "cites deviations from merit practices and identifies certain organizational and procedural problems within the Commission that cause us deep concern. In addition to identifying problems that the Commission had already discovered and remedied, the report reveals others which we must address. It describes instances of misuse of staffing authorities and procedures that facilitated the granting of preferential treatment to individuals, spotlights systemic shortcomings that were subject to misuse both by CSC and agencies, and addresses weaknesses in our enforcement policies and posture prior to 1973."

The Commission stated that it concurred in specific conclusions of the Review Team and would act quickly on the recommendations. Early in June, Executive Director Raymond Jacobson designated Arch S. Ramsay, newly appointed Director of CSC's Bureau of Recruiting and Examining, to lead a special task force for the review and implementation of the Review Team's recommendations. Members of the task force include several directors of personnel of Federal agencies, and the heads of a number of CSC bureaus and offices.

Other Topics May Be Added

In addition to developing plans for implementing the Review Team's recommendations, the task force has been instructed to add other topics that consideration of the recommendations and the report may suggest.

The task force began its work in mid-June and expects to begin submitting specific proposals for implementation of individual recommendations for the Commissioners' consideration during July. The objective of the task force is to complete its work by October 1976.

The Commission believes that carrying out the Review Team's recommendations will do much to assure that staffing operations are fully in accord with merit principles. "The best safeguard against future abuses will stem from system improvements—furnishing agencies with well-qualified people in an efficient manner," declares Executive Director Jacobson. "Otherwise, we can expect attempts at end runs on the system to continue."

In its statement issued upon making public the Review Team's report, the Commission observed:

"The questioned practices cited by the report were the outgrowth of a long history—tracing back to the 1940's—of Commission efforts to assist Federal agencies in meeting their management needs and of a growing emphasis on utilization of flexibilities of the personnel system in the interest of increasing the effectiveness of government operations. As the Review Team notes, the emphasis on service to agencies was stimulated by a succession of outside studies which urged greater decentralization of personnel authorities and a change in the role of the Commission from essentially that of regulator to that of personnel management consultant. In retrospect, it seems clear that the emphasis on flexibility and service, attended by a deemphasis on enforcement during the late 1950's and the 1960's, gradually influenced the Commission's day-to-day operations and contributed to the development of these practices."

The Commission observed that there can be no question that things happened which should not have happened, and that there were errors of omission as well as commission, and said that the Commission concurs with the specific conclusions of the Merit Staffing Review Team.

Team Report Summary

Following is a summary of the Review Team's conclusions and Commission comment on each:

☐ The broad-band unassembled examinations (Mid-Level and Senior-Level) have been subject to

manipulation. As the report notes, we have made changes and plan others to prevent such manipulation, particularly with respect to processing "name request" cases, considering "selective certification" factors, and assuring appropriate competition.

☐ The integration of the functions of the Special Assistant to the Director of the Bureau of Recruiting and Examining with those of the Examining Review Board, without clearcut standards, accountability, and oversight, facilitated preferential treatment for favored candidates. These functions will be separated, the roles and responsibilities clearly defined, and necessary controls and supervision provided to assure that operations are in complete accord with merit principles.

☐ The report states that some Commission officials and employees engaged in inappropriate placement efforts on behalf of specific individuals. As the report also notes, there has been a sharp discontinuance of such practices, and the Commission has banned personal referrals by all of its officials and employees.

☐ The Commission did not respond adequately to indications of political interference in operations of the merit system for a number of years. Since 1973, it has acted effectively, as the record shows. As a result of actions by the Commission, the administration, and agencies, a healthy new attitude and climate prevail throughout Government. The Commission has established new safeguards against possible abuses, and pending legislation sponsored by Rep. David N. Henderson (D-N.C.), Chairman of the House Post Office and Civil Service Committee, would provide additional statutory authorities and safeguards. Should such legislation not be enacted, the Commission will act administratively insofar as possible to strengthen its enforcement capabilities.

☐ There have been deficiencies in communication and coordination within the Commission's organization; the Commissioners, particularly the Vice Chairman and minority Commissioner, were not kept fully and currently informed about all allegations of political interference. This matter has been remedied in large part and will be given further attention. Whatever deficiencies there may have been in coordination between "offices programmatically involved in administration and enforcement of the merit system" (and we find the report unclear on this matter), we believe them to be completely eliminated, but will exercise vigilance to ensure it.

☐ Prior to 1973, there were ambiguities regarding organizational responsibility for investigations into allegations of political interference in personnel actions. That responsibility was clearly placed in the Bureau of Personnel Management Evaluation in 1973, and this is well understood throughout the Commission.

The Commission said that it must take exception to a finding of the report concerning Commission action in authorizing Limited Executive Assignments to certain field positions. "The decision was well within the Commission's authority under E.O. 11315. It was a pragmatic one, made to forestall the possible wholesale removal of top field jobs from the competitive service," CSC said.

The Review Team acknowledged that since 1973 the Commission has taken a number of actions to correct many of the problems it discusses, and that further remedial actions are underway or planned. The Commission's investigations of preferential referral systems in several agencies in 1973 and 1974 signaled important changes and reforms. The improper referral systems were abolished, the agencies were required to take a number of corrective actions, and the Commission took a number of regulatory and other administrative actions to assure the proper application of merit principles. An important result has been to create a renewed appreciation, throughout the Federal service, of the necessity to adhere to merit system requirements.

The Commission expressed the view that the findings of the Review Team should be considered in this light as well as in the perspective indicated in the report: "that the instances of deviation from merit principles be viewed in the context of millions of inquiries and applications processed and names certified to agencies each year by the Commission examining offices, and the hundreds of thousands of appointments made each year within the competitive civil service —the vast majority of which take place well within the parameters of public policy, and within the spirit as well as the letter of the law."→

CONCLUSIONS, RECOMMENDATIONS From "A Self-Inquiry Into Merit Staffing"—Report of the Merit Staffing Review Team

Following are conclusions of the Merit Staffing Review Team, as reported in "A Self-Inquiry Into Merit Staffing":

Examining and Staffing Practices

(1) The principal broad-band unassembled examinations, Mid-Level and Senior-Level, have been subject to manipulation to achieve objectives which are not in accord with the purposes of a merit staffing system. In particular:

—The limitations of the technology for analyzing information on positions and applicants, and for using this information to rate and rank candidates, have permitted wide variation in the interpretation of available guidelines and standards in individual cases.

—The limitations of the technology of broad-band unassembled examining, as well as its judgmental nature, have not been counterbalanced by appropriate procedural checks, such as an orderly system of supervisory and quality assurance reviews.

(2) The failure to observe established procedures and official lines of authority, particularly with respect to the activities of the Special Assistant to the Director of the Bureau of Recruiting and Examining, has minimized the accountability of the examining program.

(3) The absence of clearcut standards on a variety of examining and staffing matters and/or some unwillingness to observe or enforce them (for example, in advanced in-hiring and zone certification) has permitted manipulation of examining decisions in favor of specific individuals or agencies.

(4) The organization of, and the lack of effective review over, the Examining Review Board has permitted that body to place an official imprimatur on questionable examining decisions made in the interest of specific individuals or agencies.

(5) During the period under review, officials of the Civil Service Commission engaged in personal referrals and positive placement efforts in behalf of specific individuals. Although no improprieties may have been intended by their initiators, such efforts sometimes produced results which were not in accord with merit principles, and which compromised the Commission's role as impartial administrator of the Federal merit system.

(6) During the period under review, officials and employees of the Civil Service Commission took, or abetted in various ways, improper or questionable actions in connection with the employment of specific individuals in competitive civil service positions.

Enforcement—Pre-1973

(1) Despite indications of political interference in the operation of the Federal merit system, Civil Service Commission officials failed to respond effectively to such indications, or treated them in a superficial manner.

—The Commission approach to investigation of allegations of political interference in competitive personnel actions was self-defeating: for example, "hard proof" was deemed necessary in order for the Commission to investigate allegations, but such proof was not actively sought.

—Following receipt of allegations, the Commission often relied upon self-inquiry by the agencies to determine whether there had been violations of civil service laws, rules, or regulations.

—Claims of political interference were treated indirectly as personnel program deficiencies rather than confronted directly as violations of civil service laws, rules, and regulations. Corrective action was sought only in terms of program improvements, with few efforts made to undo improper personnel actions or to identify the Government employees or officials responsible for them.

—Efforts to secure compliance were treated informally, often by telephone calls between top-level Commission and agency officials. Regional offices were not asked to take essential follow-up actions to ensure compliance.

(2) The Vice Chairman as well as the minority Commissioner were usually uninformed about allegations of political interference in the merit system and uninvolved in efforts to secure compliance with civil service laws, rules, and regulations.

(3) There was inadequate coordination among the various Commission bureaus and offices programmatically involved in administration and enforcement of the merit system. In particular, the Bureau of Recruiting and Examining was never formally involved to determine how politically favored candidates were certified to agencies through the competitive examining system.

(4) Organizational responsibility for investigations into allegations of political interference in competitive personnel actions was not made clear operationally. Violations of the prohibition against consideration of political affiliation with respect to competitive service positions, essentially merit system violations within the purview of the Bureau of Personnel Management Evaluation, were often confused with violations of the Hatch Act's restrictions on political activity, within the purview of the Office of the General Counsel, and frequently referred to that Office by BPME.

Recommendations

Following are recommendations of the Merit Staffing Review Team

for the Commission's consideration and action:

(1) In January 1975, the Civil Service Commission adopted a Standard of Conduct providing that employment referrals shall not be made by officers and employees of the Commission, except as required by their official duties. This policy of noninvolvement should be extended to participation by Commission officers and employees in processes associated with the evaluation of applicants and/or employees and certification of eligibles in individual cases. Where participation of Commission officers and employees in individual case actions is required to fulfill managerial, supervisory, or policy-determining responsibilities, such participation should be on the record.

(2) The combination of functions assigned to the Special Assistant to the Director, BRE, should be restructured to eliminate incompatible responsibilities, and to reduce the potential for *de facto* control of examining matters which currently reposes in that position. In particular, responsibilities for dealing with agencies on examination rating and certification matters and with inquiries from influential sources on the same matters should be separated. Procedures to ensure that management officials keep themselves adequately informed of the activities of this and other key positions central to the proper functioning of the competitive examining process should be installed.

(3) The operation of the Examining Review Board should be reappraised. The Board should operate under formal procedures which define, among other things, the circumstances under which the Board assumes jurisdiction over individual cases, the basic membership from which individual Boards are drawn, and the number of members required to participate in a Board decision. Parties to an action being considered by the Examining Review Board, including officials in a direct supervisory line over that action, should not sit as members of the ERB for purposes of reviewing the action. Decisions of the Board should be in writing and should state in full the basis for the decision. Decisions should be reviewed and analyzed periodically for their impact on existing examining standards and practices.

(4) Working papers and official forms used in authorizing appointment or pay-setting actions should be reexamined with a view to providing an auditable trail of the decisionmaking process. At a minimum, certificates of eligibles and other authorizing documents should provide for an issuing officer's signature or some other form of authentication. Instructions should require that appointment documents identify specifically the certificate of eligibles or other document which authorizes the action taken.

(5) The broad-band examining concept underlying the Senior-Level and Mid-Level Examinations should be reevaluated. Consideration should be given to finding means of narrowing the excessively broad coverage of those examinations, possibly through experimentation with examinations announced for selected groupings of related occupations, supported by supplemental forms or other more specific means for obtaining from applicants useful information on which to base rating of qualifications.

(6) The principle of open competition assumes a recruiting process which ensures adequate participation by potentially available qualified candidates. Criteria or guidelines for determining the adequacy of the recruiting process are, however, lacking. The Commission should develop such criteria for the guidance of Federal agency officials as well as its own personnel.

(7) The Civil Service Commission should revise its instructions to agencies to require that additional information be provided about candidates who are name-requested for certification from competitive registers. A request for certification of a name-requested candidate should show whether the candidate is currently employed by the Federal Government and under what authority, and whether a request for certification or other action by the Commission has been made to the same or any other Commission office within the preceding 6 months. Similarly, a request for extension of a temporary or special need appointment should show whether a request has been, or is being, made to have the employee certified for career-conditional appointment.

(8) The Civil Service Commission should establish and publicize standards for determining under what circumstances it will investigate allegations of political or other nonmerit intrusions into the competitive civil service. The standards should speak to such matters as the recency of the alleged violation; whether the allegation is signed or anonymous; the degree of specificity required of the allegation; etc.

(9) The Civil Service Commission should move promptly to close the currently existing gap in its authority to discipline agency officials culpably responsible for violating merit system requirements.

(10) The Civil Service Commission should propose to the President that the Civil Service Rules be amended to make the prohibitions against racial, political, or religious discrimination which apply to positions in the competitive service applicable as well to positions in Schedules A and B of the excepted service.

(11) The Civil Service Commission should, by regulation and accompanying procedural instructions published in the most directly applicable portions of the Federal Personnel Manual, provide clear guidance to Government officials on conforming to the requirements of section 3303 of title 5, United

States Code, which prohibits the receipt or consideration of employment recommendations from Members of Congress, except as to the character or residence of an applicant. The Commission should also make full use of its authority to regulate the receipt and disposition of communications from any source which discloses political affiliations or services.

(12) The Commission should develop an administrative climate for, and a systematic approach to dealing with, matters which have an impact on merit system integrity as such matters arise, rather than depending almost entirely on after-the-fact reviews. This approach should consider intra-organizational responsibilities and procedures for compliance as well as coordinated inter-organizational responsibilities and procedures.

(13) The Civil Service Commission should adopt a policy that all matters involving partisan intrusion into the competitive civil service or organized efforts to evade or compromise merit principles which are of sufficient substance for Commission staff to bring to the attention of one Commissioner be brought to the attention of all Commissioners.

(14) Our findings suggest that the Commission's present arrangements for self-evaluation of its internal operations are not sufficient. We believe a thorough reexamination should be made. The Commission should develop the capacity to monitor and evaluate, on an institution-wide basis, the day-to-day implementation of its regulations, policies, and procedures by its own organizations and employees. Such capacity should be established at the highest practicable organizational level—no lower, at least, than the Office of the Deputy Executive Director. #

INTERGOVERNMENTAL PERSPECTIVES

In 1971 the U.S. Civil Service Commission awarded the first grants for personnel management improvement projects in State and local government under the Intergovernmental Personnel Act. Four years later, in 1975, the Commission undertook the first major evaluation of the IPA grant program. In March 1976, this two-part evaluation was completed with the conclusion that the IPA grant program had substantially met its basic objectives and the recommendation that the program be expanded beyond its present limited scope.

384 Projects

The first part of the evaluation consisted of an in-depth analysis of the impact of 384 grant projects by independent consultants using a standardized methodology. These projects accounted for $19 million in grants (half of the funds awarded in fiscal years 1972–74) and $7 million in State and local matching funds. They also represented personnel system improvements affecting more than two million State and local employees. The size of the sample and the methodology used provided the basis for generalizing about the impact of the grant program.

The evaluators applied four questions to each project:

Question #1: Were needs met and problems solved? The evaluators found that most projects had succeeded in meeting their major objectives. In 72 percent of the projects, an important new activity had been initiated; and in 54 percent, IPA activities had been expanded beyond the original intention of the project. Significantly, jurisdictions indicated that 80 percent of the activities begun with IPA assistance would not otherwise have been undertaken due to lack of funds.

Question #2: Did the projects lead to strengthened organizational capacity to meet personnel and management needs on a self-sustaining basis? The evaluators determined that a full 76 percent of completed IPA projects had been continued with State or local funds. In these projects, each original IPA dollar had generated a continuing annual expenditure

of almost two dollars of State and local funds.

Question #3: Did the projects facilitate intergovernmental cooperation? The evaluators found that more than half the projects studied had involved intergovernmental efforts, and that a third had been credited with initiating the first instance of intergovernmental cooperation in personnel management. In two thirds of the completed projects, intergovernmental cooperation had continued after IPA funding ended.

Question #4: Did the projects provide for sharing of results? More than half of the sample projects had used IPA materials in developing their own activities, the evaluators learned. Further, information from more than 80 percent of the completed projects had been distributed to other jurisdictions, which in turn had used information from 35 percent of the projects to make similar improvements.

After identifying characteristics of effective and ineffective grant projects, the evaluators judged about 6 percent of the projects as unsuccessful, and another 14 percent as only partially successful.

In sum, the evaluation offered substantial evidence that the IPA grant program had funded improvements that increased the effectiveness and efficiency of State and local governments.

Panel of Experts

The second part of the evaluation consisted of a report on the IPA grant program by an eight-member panel of experts assembled by the National Academy of Public Administration (NAPA). The mission of this independent panel was to provide guidance to the Commission on administrative, legislative, and policy developments to improve the program.

Heading the panel was Dr. Selma Mushkin, Director of the Public Services Laboratory of Georgetown University. Other panel members were Dean Henry Cohen, New School of Social Research; William Colman, consultant in government affairs; Dr. Martha Derthick, Brookings Institution; Professor William Farber, University of South Dakota; Larry Margolis, Citizens Conference of State Legislatures; and Neal Peirce, *The National Journal.* Donald Cleveland of the Iowa State Association of Counties served as a panel member through mid-February 1976, when he resigned to avoid a conflict of interest upon the receipt of an IPA grant by the Association; before leaving, he concurred with the views in the panel's report.

Following are some of the panel's key recommendations:

Management capacity of State and local governments: The majority of panel members felt that the IPA should be expanded by means of an amendment to replace its present primary focus on personnel administration with a focus on general management. This would include such areas as policy analysis and evaluation activities of the legislature and chief executive, central financial management, and labor-management relations, in addition to personnel administration.

Demonstration component of IPA: The panel recommended that "a portion of IPA resources be utilized for explicit demonstration . . . [projects]" and that the Commission encourage such projects through discretionary grants, judicious use of the IPA direct application provision, and restricted funding of all projects to a maximum of 3 years.

IPA funding: The report stated that the "view of most panel members is that the IPA appropriation for Fiscal Year 1977 should be raised to $20–$25 million." Further, the IPA "should be amended to authorize the Commission to vary the ratio of matching from one fourth or less Federal funds to a maximum of three fourths Federal funds, depending on the nature of the project."

IPA model: The panel concluded that the "IPA represents a distinctive and commendable model of Federal grant management" and that "the administrators of similar grant programs should examine [IPA responsiveness to State and local needs] to see what lessons may be derived from it that are applicable to their programs."

The results of this comprehensive two-part evaluation provide evidence of the value of the IPA grant program. The reports demonstrate the success of previous projects and point the way for future improvements.

—Susan Tejada

an affirmation
of merit principles

THE CIVIL SERVICE AMENDMENTS OF 1976

by Tom Kell
Office of Public Affairs
U.S. Civil Service Commission

MAJOR NEW LEGISLATION to strengthen the merit system and to prevent recurrences of recent abuses and violations of personnel laws and regulations has been introduced by David N. Henderson (D-N.C.), Chairman of the House Committee on Post Office and Civil Service. Known informally as the "Henderson Bill," H.R. 13891 is officially designated the "Civil Service Amendments of 1976."

In opening hearings on the proposed new law in March, Chairman Henderson described the bill as a first step to shoring up the basic principles of the merit system.

"I believe very strongly," he said, "that employment in the Federal public service must be based solely on merit and that there is no place for preferential treatment of any kind in the career service. For the first time since the Civil Service Act of 1883, that principle will be clearly spelled out as a matter of law."

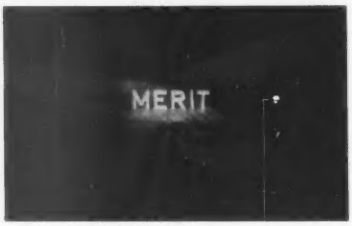
If the Henderson bill does become law, it will affect Federal personnel management in several important ways:

☐ It will require that employment be based on merit, prohibit nonmerit factors in all personnel actions, and clearly prohibit political referrals.

☐ It will clarify, in law, the role of the President, agency heads, and the Civil Service Commission in personnel matters.

☐ It will give the Civil Service Commission statutory investigative and enforcement authority.

☐ It will establish a statutory board for hearing certain employee appeals.



Merit Abuses

The Henderson bill is a direct result of investigations, litigation, and investigative hearings regarding merit system rule bending—and breaking—that started 3 years ago.

At that time, spring 1973, the Civil Service Commission received specific allegations of merit system violations and started investigations of improper preferential referral systems in three Federal agencies.

The investigations revealed that merit violations had, in fact, taken place. In 1974 then Executive Director of the Commission Bernard Rosen issued letters proposing disciplinary actions ranging from removal to suspension of 19 employees of the three agencies.

Although the Commission's efforts to bring disciplinary action against the 19 individuals were not successful, the investigations and other actions did put a stop to the illegal referral systems.

"If our efforts to discipline individuals failed, our actions to ensure the integrity of the merit system did not fail," said Commission Chairman Robert E. Hampton. "We were successful in putting a halt to political abuses in the merit system, with the cooperation and support of the agencies and the top leadership of the executive branch."

Efforts to discipline the 19 failed, Chairman Hampton added, largely because of deficiencies in the authorities the Commission relied on in making the charges.

Although withdrawal of an agency's appointing authority is one thing the Commission can do—and has done—to enforce personnel rules and regulations, this means was not employed due to the individual nature of the offenses. Instead, the Commission preferred charges directly against individuals.

The Commission had never done anything quite like it before.

Because there was no precedent for the action, a completely new procedure was developed to ensure due process for the individuals charged. This procedure, according to Raymond Jacobson, Commission Executive Director since Mr. Rosen's retirement in July 1975, turned out to be "cumbersome and extremely time consuming."

At the outset, the Commission's authority to direct action against an employee of another agency was challenged in court, and prosecution of the cases had to be held in abeyance during months of litigation of this issue. Further delays were encountered as a result of pre-hearing motions that had to be

decided, the process of discovery (giving those charged access to information in CSC possession that might aid their defense), the taking of depositions, pre-hearing conferences, and other legal procedures.

"As the cases moved through these complicated steps," Mr. Jacobson said, "we lost one, then another."

Key decisions turned on the issue of specific enforcement authority upon which the Commission had relied and the interpretation of the definition of "appointing officer," Mr. Jacobson said. The Commission argued that it should be interpreted broadly, but in two cases the Administrative Law Judge disagreed with the interpretation; on the Commission's appeal of this ruling, the Appeals Review Board agreed with the Administrative Law Judge.

"Following a review of each of the remaining cases against the backdrop of these decisions," Mr. Jacobson said, "it became clear that we could not successfully prosecute these cases. Therefore, the General Counsel and I recommended to the Commission, and they approved, a general withdrawal of all charges in the remaining cases."

After the Commission issued its charges, countercharges began to be made. Among them were allegations that individuals inside CSC itself were aware of—and had helped with—some of the kinds of actions on which charges against other-agency personnel were based.

In the face of these allegations, the Commission named a special inquiry team, headed by Milton I. Sharon, retired former Director of the Commission's Philadelphia Region, to conduct an inquiry into recruiting, examining, and staffing operations within the Commission. Work of the special inquiry team was completed in May and its report and recommendations given to the Commission's Executive Director. (*Editor's Note*: The Sharon report is on p. 8 of this issue.)

Congressional Review

The Subcommittee on Manpower and Civil Service of the House Post Office and Civil Service Committee began its own investigation of merit abuses in 1974 and opened hearings on merit abuses in March 1975. In August, the Committee contracted with retired Commission Executive Director Bernard Rosen for the preparation of a monograph to "cover the role of the Civil Service Commission as the central personnel agency of the Federal Government and deal with the strength and weakness of the Federal merit system."

The purpose of the hearings and related activities, of course, was to determine if new or remedial legislative action was necessary to strengthen merit system laws.

Both the hearings and the Rosen monograph indicated it was.

The Subcommittee found, in Chairman Henderson's words, "weakness in the law as well as deficiencies in the ways the law has been administered."

So the Henderson bill, the Civil Service Amendments of 1976, was drafted and introduced on February 25, 1976.

Merit Employment

Possibly the most important single change in existing law that will be made by the Henderson bill is the addition of a new chapter to title 5, U.S. Code, that sets a legal standard for merit employment. Various aspects of merit employment currently are defined in other statutes, Executive orders, rules, and regulations.

A Commission official who provided technical assistance to the Subcommittee staff in the development of the proposed legislation, Fred Kistler, deputy director of the Bureau of Policies and Standards, characterizes the merit employment section as the "kingpin" of the Henderson bill.

Tucked away in the middle of the Henderson bill itself, this section is "the fundamental standard around which almost everything else is built," Mr. Kistler said. "If you were to write the bill in the logical sequence, you'd start out with that. And then you would address who regulates it, who enforces it, and all the rest."

The merit employment section spells out what you must do—and what you must not do—in taking a personnel action.

On one hand, it requires that personnel actions be based on the character, abilities, knowledge, and skills of the individual candidate. On the other, it prohibits consideration of political affiliation or other nonmerit factors such as race, sex, age, or physical handicap. And it applies these negative and positive tests to *all* personnel processes—promotions, performance evaluations, transfers, adverse actions, and reinstatements, as well as to initial examinations and appointments.

This section of the bill also includes standards for administratively excepting positions from the competitive service, standards now found in Executive order. It places strict controls on placing positions in the "political service" (Schedule C and Noncareer Executive Assignments) and it makes merit principles applicable to career-like excepted jobs, with the Commission assigned the job of enforcement.

Another part of the bill takes the ban on considering an individual's political affiliation a step further. It specifically prohibits *all* political and other referrals and recommendations intended to gain an individual improper consideration. It permits an agency official to request information about an individual's character, performance, etc.—but it makes unlawful any unsolicited referral or the furnishing of any but job-related information based on personal knowledge.

Who's in Charge Here?

Another major issue addressed by the Henderson bill is that of the respective roles of the President,

agency heads, and the Civil Service Commission in making rules and regulations and otherwise carrying out the merit employment laws.

The bill makes it clear that the President is the chief personnel management officer for the executive branch and that the Civil Service Commission is his regulatory and enforcement agency for personnel matters. It recognizes that the President has primary rule-making authority and requires that the Commission's regulations be subject to the President's rules—rules that must be consistent with personnel law.

It also casts in law the concepts now in Executive Order 9830 and fixes with each agency head the responsibility for personnel management and for compliance with and enforcement of personnel laws and regulations. It requires the establishment of a personnel office in each agency and requires that the personnel officer be a career employee. It also specifies that the personnel officer be responsible for ensuring on behalf of the agency head that all personnel actions and programs and policies are carried out lawfully.

The bill also gives the Civil Service Commission clear-cut authority to investigate violations of merit laws and to direct disciplinary action against Federal employees who violate them. If the employing agency refuses to take the action directed, the Commission can direct the Comptroller General to stop the employee's pay.

Commenting on this aspect of the Henderson bill, Mr. Kistler points out that the legislative history probably will make it clear that the Subcommittee means the Commission's ordering a disciplinary action to be an "extraordinary authority, a tool of last resort."

"That's because," he said, "the appropriate way to ensure compliance is to rely on responsible heads of agencies to take findings of the Commission or their own findings as to violations of the personnel laws within their agencies and do what needs to be done. We believe that this is in fact what usually will happen.

"What you have in the bill is a mechanism for dealing with that extraordinary instance where an agency chooses to ignore the findings of the Commission and to not discipline its own people, thereby shifting the burden to the Commission to do so."

The Henderson bill, if it becomes law, will give the Commission the authority to do so.

It also would authorize the Commission to direct other agencies to conduct investigations of merit system abuses. This will make more resources—resources in addition to the relatively limited ones of the Civil Service Commission alone—available for merit system investigations.

Procedures for conducting merit system investigations, including reports to Congress on the number of investigations and the amount of funds spent on them, also are spelled out by the bill. In so doing, the bill distinguishes between investigations and *evaluations* of personnel management. Evaluations conducted by the Commission or by agencies to determine the effectiveness of personnel management will not involve the same procedures as those specified for *investigations* of possible violations of merit system law or regulation.

Procedures specified by the bill for charging individuals with merit violations include:

☐ Notification of the individual, in writing, 30 days before the proposed action is to be taken.

☐ A 30-day period to answer the notice.

☐ A personal appearance before the Civil Service Commissioners.

☐ A written copy of the Commissioners' final decision.

If the final decision is adverse, the individual will have the right to appeal the decision.

Appeals

The Henderson bill, finally, modifies the appeals procedure to include appeals not only from agency adverse actions but also from adverse decisions of the Commission that might be made under the new disciplinary powers accorded it by the bill.

As currently written, H.R. 13891 calls for the establishment of a new, statutorily based appeals authority to adjudicate agency disciplinary actions, CSC actions involving individuals charged with merit system violations, Hatch Act violations, and discrimination complaints. All other appeals presumably would remain with the Commission. These include appeals involving matters such as reduction in force, job classification, disability retirement, acceptable level of competence, and performance rating.

Persons who have studied and commented on the Henderson bill tend to support it.

CSC Chairman Hampton, for example, told the Henderson Committee in March that he and the administration endorse the bill's intent.

"We welcome the bill," he said, "as a move toward long-needed reform of the Federal appointment process, which over the years has become more flexible and has therefore provided greater opportunity for abuse."

Like others who testified on the bill, Chairman Hampton also had a number of specific recommendations and suggestions for changes in the law as drafted at that time. Most of the recommendations of Chairman Hampton and others have been adopted or modified in Committee deliberations so that the version now before the House of Representatives enjoys a high degree of support from most interested parties.

And there are quite a few.

Other persons who commented on the bill in its various stages of development include Mortimer M.

Caplin, Chairman of the Board, National Civil Service League; the late Clyde M. Webber, National President, American Federation of Government Employees; Nathan T. Wolkomir, President of the National Federation of Federal Employees; and Frederick C. Mosher, Doherty Professor of Government and Foreign Affairs, University of Virginia.

Also represented in testimony on the bill were the Association of Civilian Technicians, the National Academy of Public Administration, and the International Personnel Management Association.

Each expressed strong overall support for the bill before turning to recommendations for adjustment of specific elements of the proposed new law.

Mr. Caplin, for example, noted that his organization was instrumental in securing passage of the first civil service law, the Pendleton Act of 1883, and stated that "there is much in H.R. 12080 [since changed to 13891] we can approve with relatively little qualification."

Mr. Webber reviewed past abuses, characterized the merit system as "one of the most important internal Federal Government controls to assure that outside forces and personal partisan gain cannot corrupt" the Federal personnel system, and said that "the great merit of H.R. 12080 is that it seeks to redress the destructiveness of the last 6 years."

Mr. Wokomir also reviewed merit abuses in recent years and said, "We sincerely hope that H.R. 12080 will aid in strengthening and improving the merit system; that it will curtail and perhaps even stop political and special-interest actions" that have discredited the merit system and "furthered the gap of credibility in the integrity of Government operations."

Professor Mosher enthusiastically endorsed "those provisions which encourage and add more specific meaning to the principles of merit in Federal employment and which specify types of discriminations which would violate those principles." He observed that some of the provisions of the bill seemed to him "repetitive of earlier legislation, even going back to the Pendleton Act," but added that "reaffirmation at this time by a resounding majority in Congress could be of significant benefit to the public service, the government, and the people of the United States.

"I hope," he said, "that legislation embodying these provisions may soon pass."

So, of course, do many others.

Not least among them is the Chairman of the House Post Office and Civil Service Committee. At press time, Chairman Henderson said he expected that the House would act favorably on the measure this summer. #

APPEALS DIGEST

Discrimination Complaint

Promotion

The complainant, who is white, appealed to the Appeals Review Board from a decision by her agency that racial discrimination had not been shown in her nonselection for promotion to one of eight positions. The Board noted that, while fewer than three quarters of the qualified candidates were black, all eight of those selected were black. It also noted that the official who appointed the promotion panel members had issued instructions less than 2 years earlier to promote minority and female employees "whenever you have minority and female on the qualified list"; that the agency never attempted, during the processing of the complaint, to clarify that statement; and that, although the complainant was fully qualified for promotion, two of those selected lacked the specialized experience needed to qualify.

On the basis of this evidence, the Board reversed the agency's decision, found that the agency had discriminated against the complainant on the basis of her race, and recommended her retroactive promotion. (Decision No. RB071360461.)

Adverse Actions

Administrative error

The appellant was selected for promotion, and reported for duty in her new position. Two days after she began performing the duties of her new position, she was advised that her selection had been made in error, and she was directed to return to her former position. No "Notification of Personnel Action" had been prepared to document the appellant's promotion.

The Federal Employee Appeals Authority field office concluded that the agency had completed all the

discretionary actions necessary to effect the appellant's promotion, and that the appellant's assignment to her former position therefore was covered by part 752B of the civil service regulations. Because the agency had not complied with the procedural requirements set forth in that subpart, the field office reversed the agency's action. (Decision No. DC752B50164.)

Cause of action

On the appellant's reduction-in-rank appeal from a reassignment following the abolishment of his position in a reorganization, the Federal Employee Appeals Authority sustained the adverse action both on procedures and merits. On the appellant's request, the appeal was reopened and considered by the Appeals Review Board, which found for the appellant on the procedural ground that the reason given by the agency did not state a cause of action for reduction in rank. The ARB noted that the reorganization was the sole reason given for the action. The reorganization, the ARB reasoned, explained the abolishment of the appellant's position and the resulting necessity to move him to another position, but the mere fact of reorganization was not cause to move him to a position of lower rank. (Decision No. RB752B60209 (DC752B60108).)

Specificity and detail

The notice of proposed adverse action transmitted to the appellant stated that the agency's decision to remove him was "based on [his] physical disability." The notice further stated that as a result of physical examination of the appellant, the appellant was determined to be "not fit for [his] position."

In reversing the agency's action, the St. Louis field office held that the notice lacked the required specificity and detail in that the notice failed to identify the duties that the appellant allegedly was unable to perform because of his physical disability. Moreover, the notice failed to set forth the objective medical findings that supported the agency's conclusion that the appellant was unfit for continued retention in his position.

The St. Louis field office therefore recommended that the appellant be retroactively restored with attendant benefits. (Decision No. SL752B60023.)

Legal Retirement

Supplemental annuity

The Bureau of Retirement, Insurance, and Occupational Health ruled that the appellant was not qualified for a supplemental annuity based on her temporary Federal service following her retirement. The Bureau's determination was based (1) on its finding that the appellant's retirement had been involuntary and (2) on the provision of 5 U.S.C. 8344(a) that a supplemental annuity cannot be granted to an annuitant whose initial retirement was based on an involuntary separation.

On appeal to the Appeals Review Board, the appellant pointed out that her retirement had been effected at her own request, following notification by her agency that her position would be abolished. She therefore contended that her retirement had been voluntary. The Board noted, however, that the appellant, at the time of her retirement, did not meet the minimum age requirement for a voluntary (i.e., optional) retirement, and that the appellant instead had qualified for a discontinued service annuity based on the agency's decision to abolish her job. The Board found therefore that the appellant's retirement had been involuntary within the meaning of applicable law and regulations, and it affirmed the Bureau's determination. (Decision No. RB083160122.)

—Paul D. Mahoney

SPOTLIGHT ON LABOR RELATIONS

Report on Negotiated Agreements

Federal employee labor relations in 1975 was characterized by continued acceleration in the number and coverage of negotiated agreements. Statistics from the Labor Agreement Information Retrieval System (LAIRS) in CSC's Office of Labor-Management Relations show that the number of employees covered by agreements topped the million mark for the first time last year.

A total of 1,200,336 (59 percent) of nonpostal Federal employees were represented by unions as of November 1975, compared with 1,142,419 (57 percent) in November 1974. (As stated, these percentages are related to *total* employment, including employees not eligible to be in exclusive bargaining units under Executive Order 11491, e.g., supervisors and managers. As such, these percentages are not intended to indicate the level of union representation among *eligible* employees, nor of union *membership*, for which no record is maintained by the Commission.)

Overall, 66 percent (1,799,340) of postal and nonpostal Federal employees were covered under exclusive recognition as of November 1975.

The percentage of white-collar Federal workers covered by exclusive recognition reached 51 percent (789,620) last year—an increase of 3 percent (53,201) from a year earlier. The number of blue-collar Federal employees in exclusive units increased by 4,716 (2 percent) to 410,716 (84 percent). The Postal Service experienced a decline in employee coverage—from 607,380 in 1974 to 599,004 in 1975—reflecting the decline in overall postal employment, while representation as a percentage of total employment remained at 87 percent.

The number of bargaining units in the nonpostal Federal service increased by 125 to 3,608 last year. The average unit contained 333 employees in 1975; in 1974, the average was 328.

Last year, there were continued substantial gains in the number and coverage of negotiated agreements—which extended to 227 additional bargaining units, and covered 90 percent (1,083,017) of all employees under exclusive recognition. Overall, 2,704—or 75 percent—of all units were covered by negotiated agreements.

"BIG SIX" NONPOSTAL UNIONS

Broken down by white-collar and blue-collar representation and by the percentage change in overall exclusive coverage over the year, the following table illustrates how the "Big Six" nonpostal labor organizations fared in 1975:

Organization	Blue Collar	White Collar	% of Change
American Federation of Government Employees	205,496	464,533	+ 3
National Federation of Federal Employees (Ind.)	32,674	103,397	+ 9
National Treasury Employees Union (Ind.)	502	83,366	+ 28
National Association of Government Employees (Ind.)	33,484	44,394	+ 5
Metal Trades Councils	55,382	3,247	.....
International Association of Machinists	29,392	3,467	+ 9

Momentous Decision on Official Time

On February 23, 1976, the Comptroller General issued a decision to set a cap of 160 hours per year on official time for an employee to engage in representational duties. The decision arose from a case in which the European Area Dependents Schools and the Overseas Federation of Teachers negotiated a provision that would allow the State Union Representative, a math teacher, to be in a half-official-time/half-leave-without-pay status for the 3-year period of their new agreement to perform such representational activities. The decision provided for a 90-day transition period for agencies to achieve compliance.

After subsequent discussions with key Federal management and labor officials, who expressed concern that the official-time ceiling could disrupt labor relations and impair efficiency of agency operations, the Comptroller General decided on March 22, 1976, to suspend the effect of his original decision until October 1, 1976. Meanwhile, agencies are not required to amend official time clauses in existing agreements. Where such provisions are negotiated or renegoti-

ated, they should provide for conformance on a prospective basis with the Comptroller General's final decision on the issue (CG Decision B-156287, February 23 and March 22, 1976).

Picketing in a Labor-Management Dispute

Last summer, officers and employee-supporters of the National Treasury Employees Union picketed IRS Service Centers at Brookhaven, N.Y., and Covington, Ky., in connection with an impasse in their negotiations for a multi-unit agreement. This, the Assistant Secretary of Labor (A/SLMR) found, constituted an unfair labor practice under Executive Order 11491 (A/SLMR Decision No. 536, July 29, 1975). On appeal by the union, the Federal Labor Relations Council upheld the Assistant Secretary's ruling that section 19(b)(4) of the order prohibits *all* picketing of an agency in a labor-management dispute. Accordingly, the Council sustained the Assistant Secretary's order to cease and desist from the picketing, and vacated its initial stay of his order to post compliance notices (FLRC No. 75A-96, March 3, 1976).

One week after the Council issued its decision in the case, NTEU filed a civil action in the Federal District Court for the District of Columbia seeking a permanent injunction against enforcement of the order and a declaratory judgment that peaceful picketing for informational purposes is a form of protected free speech under the First Amendment (Civil Action File No. 76-0408, March 11, 1976).

Ins and Outs of Privacy

Since the enactment of the Privacy Act of 1974, many questions have been raised, especially by agencies and labor organizations, about the nature and extent of the Act's effect on the relationships between management and labor in the Federal Government. Special interest has been directed to the far-reaching effects of disclosure of information from personnel records to labor organizations that represent employees under Executive Order 11491. After thorough consideration of these questions, including written comments from agencies and unions, the Commission published an additional notice of "routine use" of information contained in two systems of records (41 Federal Register 11075, March 16, 1976).

The term "routine use" comes from the Privacy Act, and is used to identify the kinds of information that designated individuals or organizations have a legitimate and clearly identifiable need to know—in this case, data contained in pay, leave, and travel records and in general personnel records governed by the Commission. The additional "routine use" notice designates labor organizations holding recognition under E.O. 11491 as having identified information needs that can be fulfilled through disclosure of certain data from these personnel records.

Following a 30-day notice period for further comments and then publication in final form, the Commission will issue more detailed policy guidance on the additional "routine use" through the Federal Personnel Manual System.

LAIRS Reports on Grievance-Arbitration, EEO

CSC's Office of Labor-Management Relations has published two recent reports based on agreements and third-party determinations in its Labor Agreement Information Retrieval System. Copies of the reports are available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22161, for $4.25 and $3.50 in paperback or $2.25 in microfiche.

Negotiated Grievance Procedures and Arbitration in the Federal Government, November 1975—Of the 2,581 labor agreements in the LAIRS file, 2,324 (90 percent) covering 954,236 employees contain provisions for grievance-arbitration, 2,006 of them terminating in binding arbitration. The report specifically analyzes key elements from a sample of negotiated agreements (grievance procedure, scope of grievance, time limits, representation, arbitration provision, official time, adverse action arbitration) and reviews third-party cases involving disputes on grievance and arbitration procedures, grievability, arbitrability, and adverse actions.

Equal Employment Opportunity, January 1976—Of all Federal agreements on file, 1,833 (65 percent) contain an EEO clause of some type, an increase of 507 such clauses from the 1974 LAIRS survey of EEO provisions. Current EEO provisions fall into four major categories: (1) provisions containing an affirmative-action element; (2) provisions of nondiscrimination in promotion and/or training; (3) provisions for union involvement in EEO policy formulation and/or selection of counselors; (4) provisions establishing a joint labor-management EEO committee. There are 19 third-party decisions on the general subject of nondiscrimination; in 13 of these cases the issue was alleged discrimination because of union activities, while the other cases included allegations of sex or age discrimination or disputes over affirmative-action plans.

—Patricia Healy

PUBLIC SERVICE BRIEFING PROGRAM FOR POLICY EXECUTIVES

by James R. Beck, Jr.
Director, Bureau of Training
U.S. Civil Service Commission

AT LAST something has been done about the special situation faced by the new policy executive on entry in Government. This is the man or woman—highly intelligent, well educated, with a background of high-level responsibilities elsewhere in the public or private sector—who has been chosen for a leadership position in the Federal Government.

What these newly appointed policy executives have needed is a broad-based orientation program to help them understand immediately their new roles in the executive branch, and to expand their view beyond the specific duties of their own jobs and the programs of their respective agencies. By systematically enhancing their understanding of the machinery of Government in a planned way, it is possible for these new executives to become more effective in their jobs in a shorter period of time. Their chances of being successful in developing and implementing policies and achieving the mission of their agencies are improved in the process.

Still another benefit of such an orientation is to help the new policy executives understand the current policies, programs, organization, and operations of the Federal Government as rapidly as possible, so that they may contribute optimally to the achievement of national objectives.

Now we have such a program of orientation—a professional activity drawing upon the accomplishments of public administration, and developed to meet the needs of newly appointed policy executives on a continuing basis, year in and year out.

In cooperation with the White House and the Office of Management and Budget, the U.S. Civil Service Commission established the Public Service Briefing Program for Policy Executives, reflecting the commitment of all three and also the agencies in general to the objective of executive development throughout Government. The successful development and implementation of the program demonstrates the ability of Federal Government organizations to cooperate in joint undertakings.

The briefing program also exemplifies the role of the Commission under the Government Employees Training Act—and accomplishment of the mission of the Bureau of Training as the principal Commission office involved—to provide leadership in meeting training needs.

A key ingredient in getting such a program underway was strong Presidential support. President Ford's keen interest in improving the management of government was a moving force behind the effort to "institutionalize" the heretofore occasional or fragmented attempts to properly orient new policy executives.

Even though the briefing program itself is new, recognition of the need for such a systematic and comprehensive orientation activity has a long history. A program of this nature was recommended strongly by the Task Force on Personnel and Civil Service in 1954; the Conference on the Political Executive at Princeton University in 1956; the Bureau of the Budget (now Office of Management and Budget) in 1957 and again in 1958; the Brookings Conference on the

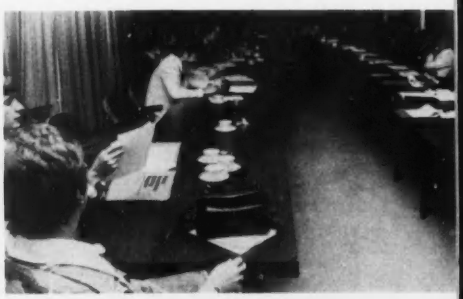
Job of the Federal Executive in 1968; and others.

Participant: "every Presidential appointee-level executive should receive this orientation as soon as possible after entering the D.C. area"

Now we have the makings of a program that will help new policy executives to "hit the ground running," as then CSC Chairman Roger Jones put it in 1960. An articulate spokesman in a long-time crusade for such a program, Chairman Jones had this to say in an article that appeared in the *Journal* that year: ". . . there is really nothing involved except the application of commonsense—advance thinking about the best ways to meet situations which will have to be met in any case. . . . orientation of new political leaders will take place whether we plan for it or not; our only choice is whether it will be handled adequately or inadequately, insofar as we can influence the handling."

Elmer Staats, Comptroller General of the United States, another distinguished public servant concerned about the need for more effective government, spoke out on the subject himself in late 1973 in an address before the National Capital Area Chapter of the American Society for Public Administration. He said: "I believe the lessons learned in recent months suggest that we need an orientation program for new political executives which will accelerate their entry into the Federal structure as effective performers.

"I recommend that the Chair-



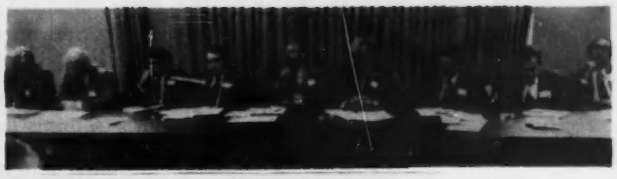
ON THESE PAGES are scenes from recent briefing seminars held at the White House as one phase of the Public Service Briefing Program for Policy Executives. The briefing seminars are conducted for groups of 20-40 new policy executives who hear from Presidential advisors, key officials of Federal departments and agencies, and leaders in the Congress. (*CSC photos*)

man of the Civil Service Commission consult with leaders in the Congress, with the Director of OMB, with the White House on the establishment of this program. It should become mandatory for new political executives and . . . should be a way of reducing the long lead-time for breaking in new appointees by giving them a running start on an understanding of how Government functions in all branches and at all levels—and on how to operate effectively in the Federal setting. I realize that this is not an easy task, but I think the lessons of recent times have shown its importance."

Participant: "excellent in-service training. . . . this type of training should be held periodically through the tenure of my position"

Roger Jones' "hit the ground running," Elmer Staats' "a running start"—these enunciations of the need for orienting key Government executives were several years apart, but sounded a similar note of urgency. From both, and from many others voicing their concern over the problem, has come a reiterated theme: that new policy executives must be prepared for their roles. The preparation must be not only in advance of their taking on a position, but into the early days of it, and on a continuing basis thereafter.

Much of this rationale went into the planning stages of the Public Service Briefing Program, as CSC, OMB, and the White House went about the task of constructing it.



Participant: "excellent range of presentations . . . most helpful in orientation . . . would describe the sessions essential"

First we zeroed in on the three main objectives to be achieved, namely:

—to familiarize new policy executives with key governmental processes, laws, and regulations;

—to acquaint new executives with the dynamics of policy and program administration; the external environment in which Federal executives must operate; and with the role and responsibilities of policy executives; and

—to inform new executives about current government goals, policies, and programs.

Working with these objectives as a base, the program itself was mapped out around four sequential elements (three to be carried out on an interagency basis) for all new policy executives.

The first element involves a pre-entrance orientation accomplished through briefing materials especially prepared by Government agencies and offices for factual documentation of programs, missions, organizational structure, and key offices. The idea is for new policy executives to receive the pre-entrance materials as soon as they have been selected for their positions, or at least by the time they enter on duty.

The second element brings in evening discussion sessions to be held frequently for small groups of policy executives. The atmosphere is casual to give new appointees an opportunity to examine problems of mutual concern, openly and candidly. Some of the matters brought up in free-wheeling discussions are a comparison of steps taken to become acquainted with the job and the organization; problems encountered in moving into the position; how to get a hold on the job through knowledge of budgetary matters, manpower resources, and responsibilities and mission of the office; and relations between noncareer and career executives.

The third element built into the program focuses on 2-day briefing seminars conducted for groups of 20–40 new policy executives. These seminars are held at the White House, where policy executives hear from Presidential advisors, key officials of Federal departments and agencies, and leaders in the Congress.

The agenda is a high-powered one too, concentrating on national goals, policies, and programs; managing in an agency; and the policy executive's role and responsibility. Areas for exploration include relationships between the executive and legislative branches, the role of the Office of Management and Budget, ethics and accountability, relations with the press, the Federal personnel system, intergovernmental relations, impact of law on the functions and role of policy executives, and implementation of Presidential policies.

The fourth element of the briefing program provides for intra-agency orientation, with individual agencies responsible for developing and conducting in-house briefings on their own. The Commission is acting in a coordinating and consulting role, working very closely with the agencies through the Interagency Advisory Group to develop nonmandatory guidelines for the orientations and a system for sharing information and materials.

These internal briefings are provided to policy executives as soon as possible after they take up their assignments with their agencies. The central theme of the briefings is the special circumstances and needs of the agency and the executive's new duties and responsibilities.

Participant: "timely, informative, and educationally stimulating"

We hope that with these four elements of the briefing program in place, any new policy executive can "hit the ground running."

Questionnaires sent to participants reveal enthusiastic endorsement of the program. The consensus is that the structure of the program, the information provided, the quality of the discussions, and the overall setting contribute to an effective learning situation that will help the policy executives do a better job in their agencies.

This input from program participants is helping us prepare for future briefings. The program, only in its infancy now and subject to the usual growing pains, is flexible enough in format to permit adjustments as it matures. And we want the program to be good enough, and substantive enough, to help each new policy executive get a running start on his or her Government tour.

Participant: "particularly enlightening and helpful to me because of my newness to the government scene. . . . has proved rewarding already in my assignment"

Policy executives in several administrations have pointed up the need for a systematic approach in their orientation. These comments were taken into account in designing the program—along with recommendations of the various groups and task forces that had long urged the establishment of professionally designed orientations, and along with agency requests for assistance and guidance.

Listen, for example, to former Secretary of the Army Robert F. Froehlke, who had this to say to a *Nation's Business* interviewer in 1974 when asked if he knew what lay in store for him when he came to Washington: "Most people who come to Washington have a success pattern, a record of accomplishments behind them in their own

fields and they come to the capital confident they are going to make a contribution. Then the first thing they learn is that they don't know what's going on, and this frustrates them until they start finding the right handles."

Going back to 1958, we hear Rufus E. Miles, Jr., on the subject, writing for *Public Administration Review* at a time when he was Director of Administration for the Department of Health, Education, and Welfare. He said: "Closely related to the selection and retention of competent policy-making executives is the facilitation of their adjustment to their new posts. . . . If an official comes to government equipped with the basic skills of general administration, an orientation plan of this kind should help him adapt them to the somewhat different art of public administration. It should help him steer around some of the quagmires and bear traps into which he might otherwise blindly walk. . . . It should improve his first impressions, if he is new to the Federal Government, reduce his initial frustrations, and thus, perhaps, contribute a bit to keeping him longer and improving the acceptability and drawing power of Federal service at the top appointive levels."

So it is that we have utilized the lessons of the past and listened to the people who have walked this road before—all with the aim of building a strong program of orientation that will improve the management of government. The briefing program for new policy executives is working now, and it can work even better as we gain experience with it.

One thing we're stressing in the briefing sessions is the value—in fact, the necessity—of political executives working effectively with career executives. This teamwork can result in a better organized, more efficiently managed organization. The administrative and program know-how of the experienced career administrator can be the new policy executive's guide to effecting a smooth transition from the old world to the new.

A former appointee once commented: "If you and your immediate staff preside in comparative isolation over the department, nurture fears about being captured by the bureaucracy, you will be shut off from an invaluable reservoir of information, ideas, and criticism. And your career staff will not have a clear idea of your own priorities and ideas. Management of your department will suffer as a result."

And effective management of the department, the agency, the program is what we are all here for. With the help of the Public Service Briefing Program, those who are running the course now can be sure that coming in behind are policy executives ready to "hit the ground running." Government will be better for their preparation.

Participant: "a really first-rate seminar. . . . we do have new and better ideas. . . . I hope we can begin to build a more responsive government"

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THE AWARDS STORY

Using the Incentive Awards Program To Support Government Policy

An important aspect of the Federal incentive awards program is its flexibility in affording managers the capability to utilize awards to support government goals and priorities. In keeping with the spirit and intent of the awards program to encourage excellence in performance, employees who demonstrate superior achievement in support of major Government goals may be recognized for their contributions within the framework of this program.

Perhaps the most successful demonstration of such effective use of the incentive awards program is in the area of equal opportunity. Guidelines for agencies' use in granting recognition for EEO achievement were developed in 1970. Since then, more and more agencies have established a system of EEO awards until, at the end of Fiscal Year 1975, 34 agencies reported they have such a system. During the fiscal year, 28 of those agencies reported special recognition for 361 persons for EEO contributions through cash or honor awards granted within the framework of the incentive awards program.

Agency plans for equal opportunity recognition differ according to the needs of the organization. Some permit only awards to agency employees, while others provide for recognition to persons or groups who contribute to the agency's equal opportunity effort. Another aspect of agency plans for EEO awards is recognition of equal opportunity contributions made by employees to the private sector, on their own time, which are not necessarily job-related but which contribute to the major government goal of equal opportunity. Some agency plans provide for

recognition at different organizational levels, with the most significant contributions receiving recognition at agency level. Usually EEO and incentive awards program staffs work closely in administering these awards plans.

The majority of EEO awards are honorary, in the form of a plaque or a certificate, but EEO contributions that meet the criteria for cash awards may be granted such recognition. Top (agency-level) EEO awards usually are granted on an annual basis in limited numbers and are presented by top officials of the agency to emphasize further the importance of the equal opportunity program.

Publicity given EEO awards through agency press releases spotlights the Federal equal opportunity program effort and serves to emphasize that the Government has the support and cooperation of private citizens and groups in this important endeavor.

Using Incentive Awards to Best Advantage

Beset by problems of how to do more with less, today's Federal manager has a valuable tool with which to encourage employees to be more productive and to contribute their constructive ideas for reducing costs and improving Government operations and services to the public. The Federal incentive awards program is sufficiently broad in scope to permit recognition of all types and levels of contributions that exceed normal expectations. Used effectively, it can go a long way toward solving some of these problems.

Measurable or immeasurable, large or small, as long as imagination, creativity, and industry are encouraged within the Federal service, we shall continue to reap benefits from the ideas and superior work performance of concerned employees. It is up to managers and supervisors to create and maintain a climate that fosters such contributions through judicious use of awards to recognize performance excellence, in all its many aspects, as well as good ideas contributed by employees. Information on how to use awards effectively may be found in *A Supervisor's (15-minute) Guide to the Federal Incentive Awards Program,* which may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Stock number 006–000–00848–8 @ 45 cents per copy.

Award-Winning Inventor of Braille Calculator

Deane Blazie, selected as one of America's Ten Outstanding Young Men for 1976, is a computer resources coordinator with the U.S. Army Human Engineering Laboratory at Aberdeen Proving Ground, Md. He invented a braille calculator that currently is being used extensively by blind students at the University of Kentucky. Patents paving the way for commercial development are expected to be awarded shortly. Although prototype models have cost in excess of $2,000 to construct, Mr. Blazie estimates that mass-produced commercial models can be sold for less than $200. The invention represents the world's first known system enabling blind people to use electronic calculators, and thus opens to the blind a variety of previously restricted career fields in business, mathematics, engineering, the sciences, and other disciplines.

The invention was not developed as part of Mr. Blazie's duties and responsibilities at Aberdeen Proving Ground. Inspired and encouraged by a blind friend from his hometown, Mr. Blazie has devoted many hours of his own time over the years to improving the lives of blind persons. He is credited with inventing and developing a variety of devices for the blind. Of further credit to Mr. Blazie is the fact that he refuses personal monetary gain from these inventions, and instead re-invests it in further research for the blind.

—Edith A. Stringer

LEGAL DECISIONS

Freedom of Information—
Vaughn* v. *Rosen

The saga of *Vaughn* v. *Rosen* appears to be fairly typical of agency experience with the Freedom of Information Act over the last several years. Even where an agency has some rather compelling legal arguments for nondisclosure of certain agency records, it is unlikely that the courts will allow anything akin to total nondisclosure of any class of records. Since the quantity of records an individual can request is limited only by his ability to "reasonably describe" the records sought and agreement to pay the usually nominal fees for search and duplication of the records, the onerous administrative burden that can result from a partial victory may make it a hollow victory indeed. The *Vaughn* litigation is illustrative.

The genesis of *Vaughn* was an FOIA request by a law professor in 1972 for all evaluation reports compiled by the Commission's Bureau of Personnel Management Evaluation on agencies for the years 1969 through 1972. Professor Vaughn asserted an interest in these reports in connection with a book he was writing on the merit system. The request encompassed some 2,448 reports filling 17 standard-size, five-drawer, filing cabinets.

The request was denied by the Commission under exemptions (2), (5), and (6) of the Act: Exemption (2) because the reports were described as "related solely to internal personnel rules and practices of an agency"; exemption (5) because the reports reflected interagency deliberations between an agency and the Commission in the course of the latter's role as personnel adviser to agencies; and exemption (6) because the reports contained information about named employees of an agency, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

After exhausting administrative remedies, Professor Vaughn sought to force disclosure in the United States District Court for the District of Columbia. That court, without an opinion, found in favor of the Commission. On appeal, the Court of Appeals reversed and remanded the case to the District Court, directing the Commission to provide more specific justification for withholding the reports under the exemptions claimed. The court suggested that specific parts of the reports claimed to be exempt must be correlated to the exemption or exemptions held to permit nondisclosure.

On remand, the District Court considered nine representative samples of the reports with a page-by-page, paragraph-by-paragraph, justification for application of the exemptions. In an October 1974 decision, the Court found that exemption (2) was inapplicable because the reports were not "related solely to internal personnel rules and practices," but involved Commission assessment of agency compliance with Government-wide personnel policies and practices. Moreover, the Court observed, the "internal" character of the personnel policies being evaluated was controverted by the fact that Federal employment policies are matters of great public interest.

On the exemption (5) claim, the Court said the reports must be divided into two parts—the so-called factual or investigative portions and the recommendatory or "action item" portions. The factual segments, in the opinion of the Court, were not the type of materials protected by exemption (5) since they did not involve deliberations between Commission and agency officials in formulating future agency personnel policy, but represented an assessment of past practices and policies. Recommendations, on the other hand, looked to the future, were for the purpose of shaping agency policies, and therefore were within the scope of communications between agency officials that exemption (5) was intended to protect.

On the applicability of exemption (6), the Court agreed that revealing the identity of evaluated employees in the reports would be a clearly unwarranted invasion of personal privacy. The Court noted that disclosure of an employee's identity with an evaluation and criticism of his job performance is an invasion of personal privacy that outweighs the indefinite interest of an undefined public in obtaining disclosure. Accordingly, the Court sanctioned nondisclosure of material such as case listings, textual references to employees in certain circumstances, and evaluations of particular individuals referred to by name or title.

While this decision represented a partial victory for the Commission and the reasoning had an appealing neatness in the abstract, the practical result was less than satisfactory. In addition to the massive task of culling nonexempt portions of the reports from those found exempt to satisfy Professor Vaughn's request, the specter of labor unions, the press, and grieving employees waiting in the wings for a disclosure-oriented decision made it certain that this time-consuming and costly process would be repeated frequently. More importantly, from a doctrinal standpoint, the Court had seemingly emasculated exemption (2) by confining its scope to intra-agency house-

keeping practices and, with respect to exemption (5), had imposed a fact versus opinion distinction on content of the reports, which, in practice, did not exist.

The trepidation of the Commission with respect to these developments can perhaps be more fully appreciated in view of the 1967 Attorney General's Memorandum on the FOIA, which, in interpreting exemption (2), observed: "(f)or example, the examining, investigative, personnel management, and appellate functions of the Civil Service Commission relate solely to the internal personnel rules and practices of the Government and, as such, are covered by the exclusion. . . ." The Commission, with the endorsement of the Justice Department, decided to appeal the Court's ruling on exemptions (2) and (5).

Before the argument on appeal, two Supreme Court cases, *National Labor Relations Board* v. *Sears, Roebuck & Co.* and *Renegotiation Board* v. *Grumman Aircraft Engineering Corporation,* appeared to give new vitality to the Commission's claim under exemption (5). Both cases, however, involved requests for records generated in the context of a structured, formalized decisionmaking process.

In *Sears,* the Court drew a sharp distinction between post-decisional and pre-decisional materials in describing the ultimate purpose of the privilege behind exemption (5). That purpose, said the Court, is to prevent injury to the quality of agency decisions. The Court noted that the quality of agency decisions would clearly be affected by disclosure of communications received by the decisionmaker on the subject of the decision before it is made. The same would not apply to communications made concerning the decision after it was made so long as it did not result in the disclosure of prior communications and the ingredients of the decisionmaking process.

Even more important to the Commission's argument, the Court observed in a footnote:

"Our emphasis on the need to protect pre-*decisional* documents does not mean that the existence of the privilege turns on the ability of an agency to identify a specific decision in connection with which a memorandum is prepared. Agencies are, and properly should be, engaged in a continuing process of examining their policies; this process will generate memoranda containing recommendations which do not ripen into agency decisions; and the lower courts should be wary of interfering with this process."

The argument pressed on appeal was that although the evaluation process is not structured, formalized decisionmaking, it should nonetheless be protected because it represents a continuing consultative arrangement between the Commission and agencies whereby agency personnel policies are shaped.

The judicial penchant for parsing records under the FOIA into exempt and nonexempt portions was not missing from the fourth *Vaughn* decision by a three-judge Court of Appeals on November 21, 1975. While this proclivity was not unknown in cases decided before the 1974 amendments to the FOIA, Congress endorsed it enthusiastically in amending the Act by adding a provision requiring that "any reasonably segregable portion of a record" be provided after deletion of the portions which are exempt.

Without citing that provision specifically, the Court said that the coverage of exemption (5) extends only to documents that are a direct part of the deliberative process in that they make recommendations or express opinions on legal or policy matters even if the documents are pre-decisional in nature. The Court believed it would be protecting too much if exemption (5) were interpreted to extend to the entire evaluation process and cannily added that it was not saying a "final decision" is necessary before a deliberative process is protected, but that the absence of any assured final decision was indicative of the "amorphous nature" of the mass of information the Commission was trying to protect.

The Court went on to endorse the lower court's view of exemption (2) although one judge, in a concurring opinion, thought it was unlikely that exemption (2) was intended to cover only routine or trivial agency housekeeping practices. Nonetheless, the judge believed the exemption's scope should be limited to *predominantly* "internal" personnel rules and practices of an agency, and here the reports reflected the Commission's Government-wide responsibility for personnel policy rather than being oriented toward practices within an agency. The concurring judge did acknowledge the applicability of exemption (2) to agency self-evaluations.

After over 3 years of controversy, the Commission decided not to appeal the case further. The problem of dealing with the administrative burden wrought by this partial victory, however, remained. In affirming the decision of the lower court, the Court of Appeals sanctioned nondisclosure of recommendations or "action items" in the reports under exemption (5). Not at issue on appeal was the lower court's ruling on the applicability of exemption (6) to references in the reports to specifically identified employees. Faced with the task of separating recommendations in the reports from the so-called factual or evaluative portions and the fragmented picture this would present of the agency evaluation, the Commission decided, as a matter of policy, that only exemption (6) material would be deleted from past reports when requested under the FOIA.

What appeared to be a partial victory in protecting the confidentiality of the evaluation process thus became a Pyrrhic victory in practical effect. Unless Congress and the courts alter their position that exemptions under the FOIA protect only portions of agency records, the *Vaughn* experience seems destined to be repeated.

—Llewellyn M. Fischer

WORTH NOTING CONT.

—All travel time as a passenger while on a 1-day assignment.

On the other hand, travel time as a passenger that involves the employee being away from the official duty station overnight is considered "hours worked" only if within regular working hours. The foregoing is simplified for general information. For complete, binding instructions, see Federal Personnel Manual Letter 551-10, April 30, 1976.

☐ MINORITIES advance in grade. Minority group Americans hold increasing numbers and percentages of the Federal Government's higher graded and better paying "white collar" jobs, the Civil Service Commission said, releasing preliminary findings of a survey of minority employment in full-time Federal civilian jobs as of May 31, 1975.

The Commission's report, covering net changes between May 1974 and May 1975, shows more minorities employed throughout the middle and upper grade groupings of the General Schedule and similar "white collar" pay plans, and fewer minorities at the lowest grades. Minority employment also increased in supervisory jobs under "blue collar" wage systems.

During the 12-month survey period, minority employment increased by 5.5 percent in General Schedule grades GS-5 through 8 (up 4,819 jobs); by 8.7 percent in GS-9 through 11 (up 2,847); by 11.4 percent in GS-12 and 13 (up 1,688); and by 6.8 percent in GS-14 and 15 (up 269). At the top "supergrade" levels (GS-16 through 18) minority employment increased by 10 while nonminority employment declined by 251. At the lowest grade grouping—GS-1 through 4—minority employment decreased during the survey period by 4.4 percent (down 3,944 jobs).

The Commission credited the improved picture for minorities to "upward mobility" programs in Federal agencies and to continued outreach recruiting under equal employment opportunity plans.

Overall, Blacks, Spanish-surnamed Americans, American Indians, and Oriental Americans represented 20.9 percent (509,914) of the full-time Federal civilian work force of 2,438,068 as of May 31, 1975.

☐ HOUSES PASSES flexitime. A 3-year experiment in flexible and compressed work days and work weeks was approved by the U.S. House of Representatives and sent to the U.S. Senate.

Agencies wishing to participate in the program would submit proposals to the Civil Service Commission for review. The Commission would select a limited number of agencies representing a cross-section of geographical locations, size, and occupations as part of a master program plan.

The flexitime bill would allow those Federal agencies selected for participation to set up work schedules along two basic variations, a compressed work week and a flexible work day.

The compressed work week:

This would permit changes in the number of days worked per week. One option, for example, would be a fixed work week of 4 days of 10 hours each. In order to put it into effect, the bill provides that the requirement to pay overtime for work in excess of 8 hours a day would have to be modified for those participating in the experiment.

The flexible work day:

The flexible work day would mean that within the limits established in the organization, an employee could choose the hours he or she wants to work within a 10-hour to 12-hour framework. Usually agencies would have a "core period" generally consisting of 4 to 6 hours that employees are required to work, and total hours in a week should average 40. The employee could, for instance, work 35 hours one week and 45 the next, as long as the average totals 40 hours per week.

Among the benefits claimed by proponents of the experiments are improved productivity, availability of Government services to the public, and availability of more desirable work hours for those who cannot work standard hours—women with young children, students, or the handicapped are given as examples.

☐ FLSA OVERSIGHT. The Civil Service Commission has adopted a system that insures compliance with the Fair Labor Standards Act and gives employees an avenue of complaint when they feel the law has been violated.

Compliance reviews will be part of the Commission's regular evaluations of personnel management, which are conducted by teams from the central office in Washington and from each of 10 regional offices. Special compliance reviews will also be conducted when necessary.

Employees or their representatives have the right to file complaints of FLSA violations directly with the Commission.

Additional details on the Commission's FLSA compliance and complaint system are contained in Federal Personnel Manual Letter No. 551-9 of March 30, 1976.

☐ TWENTY-SEVEN GRADUATE from Executive Development Program. Vice Chairman Georgiana Sheldon of the U.S. Civil Service Commission awarded certificates to 27 outstanding civil servants at a recent ceremony completing the second Federal Executive Development Program.

The program is designed to expand managerial skills and broaden the participant's understanding of his or her agency in relation to the Federal Government as a whole. Fourteen Federal agencies participated in the program, which is jointly sponsored by the Commission and the Office of Management and Budget.

The 27 participants, all GS-15 or equivalent, and their agencies are as follows: Henry D. Angelino, Army; Robert P. Arnold, Office of the Secretary of Defense; H. R. Braswell, Army; Jerry D. Duane, Navy; Charles M. Farbstein of Housing and Urban Development; Lloyd Feldman, Labor; Richard Foster, Commerce; Mary E. Fowler, Agency for International Development; Francis G. Haas of Housing and Urban Development; Richard W. Heimlich, Commerce; Robert Q. Jenkins, Consumer Product Safety Commission; Lonell Johnson of Housing and Urban Development; Caspar M. Kasparian, Office of the Secretary of Defense; Robert L. Krick, Transportation; James H. Lockhart of Health, Education, and Welfare; Robert F. McClernan of Health, Education, and Welfare; John W. Nelson, Commerce; Robert M. Pullin, Army; Howard H. Raiken, Navy; Marvin P. Shelton, Small Business Administration; William T. Schlick, Interior; Walter R. Somerville, Jr., Transportation; Michael L. Springer, Environmental Protection Agency; Peter Stein, Army; Charles P. Teague, Jr., Agriculture; Louis P. True, Jr., of Health, Education, and Welfare; and William F. Waslick, Consumer Product Safety Commission.

☐ FEI DIRECTOR chosen. The U.S. Civil Service Commission has selected Thomas P. Murphy, Ph.D., as Director of the Federal Executive Institute at Charlottesville, Va. He succeeds Dr. Chester A. Newland who is returning to the University of Southern California at Los Angeles.

The Federal Executive Institute is operated by the Commission in close cooperation with the University of Virginia. It serves the training and development requirements of high-level Federal executives, and also serves executives at comparable levels in State and local governments.

One of the Nation's outstanding authorities in the field of public administration, Dr. Murphy is the organizer and current Director of the Institute for Urban Studies at the University of Maryland. Previously, he served as Director of the Graduate Program in Public Administration for the University of Missouri at Kansas City. He is the author of 10 books and numerous other publications on public relations.

☐ STUDY CENTER opened. The Civil Service Commission has opened a new National Independent Study Center in Denver that will offer a variety of correspondence courses for Federal civilian employees throughout the nation and in overseas assignments.

Courses will be offered in management, supervision, management analysis, personnel management, labor relations, financial management, automatic data processing, and communications and office skills.

To enroll in courses offered by the Center, employees must be nominated by their employing departments or agencies.

—Ed Staples