CIVIL SERVICE REFORM II: PERFORMANCE AND ACCOUNTABILITY

HEARING

BEFORE THE

SUBCOMMITTEE ON
CIVIL SERVICE

OF THE

COMMITTEE ON GOVERNMENT
REFORM AND OVERSIGHT
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

OCTOBER 26, 1995

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CIVIL SERVICE REFORM II: PERFORMANCE AND ACCOUNTABILITY

THURSDAY, OCTOBER 26, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL SERVICE,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:10 a.m., in room 2154, Rayburn House Office Building, Hon. John L. Mica (chairman of the subcommittee) presiding.

Present: Representatives Mica, Morella, Bass, and Moran.

Staff present: George Nesterczuk, staff director; Garry Ewing, counsel; Susan Mosychuk and Ned Lynch, professional staff members; Caroline Fiel, clerk; Cedric Hendricks, minority professional staff; and Jean Gosa, minority staff assistant.

Mr. MICA. Good morning. I would like to call this meeting of the House Subcommittee on Civil Service to order and welcome you to this hearing. This hearing is a continuation of the subcommittee's series of hearings on topics related to civil service reform.

Today, we'll examine comparisons between management in the private sector and the public sector. We're attempting, as we define characteristics of successful organizations, to adapt those traits as much as possible to public sector management.

It's obvious that Federal agencies have major problems in managing people, as well as programs. We are fortunate today to have some people who can shed some light on some of the programs and some of the management techniques that are so important in improving our civil service system.

Those management challenges reflect changes that have confronted the private organizations during the past decade. Federal agencies are only now coming to grips with the fiscal constraints that the private sector has addressed during that timeframe. We need to reach some agreement about how to resolve those challenges for the coming years.

It's obvious that the ways in which managers evaluate performance and provide direction to Federal employees is one part of the system that I believe truly needs repair. Our current system ties the hands of managers who really want to do a good job. It's a fine demonstration of the "Lake Woebegon effect," where nearly everyone scores better than average.

The Office of Personnel Management statistics for fiscal year 1993 indicate that 99.6 percent of the Federal employees who were rated received evaluations of fully successful or better. I'm not certain what the data tell us when only 0.4 percent are rated less

than fully successful. I can recognize problems, however, when more than 73 percent of those employees were rated, as is termed, fully successful or outstanding.

Federal programs are really not performing at the Federal level in a manner of excellence that these individual ratings would lead any rational observer to expect. Indeed, recent laws, such as the Chief Financial Officers Act and the Government Performance and Results Act, both directed major provisions to improving the measures the Federal Government uses to assess its programs.

We know that the vast majority of Federal employees work hard to make their agencies as effective as possible, but we also know that the system is very reluctant to act against poor performers. Of even greater concern, the poor performers know this and sometimes use this. Few factors can corrode the morale of an organization more steadily than the knowledge that people who work hard and perform well are rewarded nearly the same as those who don't measure up or really don't perform.

The Merit Systems Protection Board reports that 78 percent of Federal managers who responded to their survey had managed an employee with serious problems. Only 23 percent of those managers initiated personnel actions to demote or terminate those employees.

Some managers reported being confused about the differences between authorities provided under chapter 43, which addresses performance problems, and chapter 75 of title 5, which deals with cases involving misconduct. Others expressed reservations about the level of support that they would receive from a senior agency manager or management.

During our October 12 hearing, administration witnesses estimated that acting against a poor performer requires about 5 hours per week of a manager's time. Is this why so few people in Federal employment ever get fired or face disciplinary measures? I think we have to ask ourselves some of these questions. Is this why only 0.4 percent of employees are rated less than successful?

I am fully committed to the principle that people who operate effectively should be rewarded for their efforts. The flip side of the coin is, we need accountability when the job isn't done right. Unfortunately, accountability doesn't happen often enough in the Federal sector.

To help the subcommittee explore these issues, we have convened two panels. Our first panel consists of Mr. Courtney Wheeler, assistant general counsel of Marriott International, who will provide the experience of a leading private organization.

He will be followed by Ms. Sandra O'Neil, of the Society for Human Resource Management, who will explore private sector practices in a more general fashion.

Dr. Joyce Shields will testify on the basis of the Hay Group's consulting experience for both private corporations and Government agencies, including both civilian and defense agencies.

Mr. Frank Cipolla, director of the Center for Human Resources Management of the National Academy of Public Administration, will examine the topic based on his work with the academy and also his extensive public service career.

Our second panel will focus upon the Government's management of its personnel resources. Evangeline Swift, Director of the Merit Systems Protection Board's Office of Policy and Evaluation, will report on the Board's activities and its studies of related issues.

Federal employee organizations will be heard from on two levels. We'll hear from Gerry Shaw, general counsel of the Senior Executives Association, who will reflect on the perspectives of people who invariably play an important role in each decision, and we'll also hear from Bob Tobias, national president of the National Treasury Employees Union, who will discuss the views of rank and file employees.

The Office of Personnel Management was invited to participate as a member of this panel, but has chosen to submit written testimony.

[The prepared statement of Hon. John L. Mica follows:]

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Opening Statement of the Honorable John L. Mica
Chairman, Subcommittee on Civil Service
Hearing on Performance and Accountability
October 26, 1995

Good morning, and welcome to this hearing, a continuation of this Subcommittee's series of hearings on topics related to civil service reform. Today, we will examine comparisons between management in the private sector and the public sector. We are attempting as to define characteristics of successful organizations and to adapt those traits, as much as possible, to public sector management.

It's obvious that federal agencies have major problems in managing people as well as programs. Those management challenges reflect changes that have confronted private organizations for more than ten years. Federal agencies are only now coming to grips with the fiscal constraints that the private sector addressed then. We need to reach some agreement about how to resolve those challenges for the coming years.

It's rather obvious that the ways in which managers evaluate performance and provide direction to federal employees is one part of the system that is truly broken. Our current system ties the hands of managers who want to do good jobs. It is a fine demonstration of the 'Lake Woebegon Effect,' where nearly everyone is better than average. The Office of Personnel Management's statistics for fiscal year 1993 indicate that 99.6 percent of federal employees who were rated received evaluations of "fully successful" or better. I'm not certain what the data tell us when only 0.4 percent are rated less than "fully successful." I can recognize problems, however, when more than 73 percent of those employees were rated "exceeds fully successful" or "outstanding."

Federal programs are not performing at the level of excellence that these individual ratings would lead any rational observer to expect. Indeed, recent laws such as the Chief Financial Officers Act and the Government Performance and Results Act both directed major provisions to improving the measures the federal government uses to assess its programs. We know that the vast majority of federal employees work hard to make their agencies as effective as possible. But we also know that the system is very reluctant to act against poor performers. Of even greater concern, the poor performers know this, too. Few factors can corrode the morale of an organization more steadily than the knowledge that people who work hard and perform well are rewarded nearly the same as those who don't measure up.

The Merit Systems Protection Board reports that 78 percent of federal managers who responded to their survey had managed a problem employee. Only 23 percent of those managers initiated personnel actions to demote or terminate those employees. Some managers reported being confused about the differences between authorities provided under Chapter 43 (which addresses performance problems) and

Chapter 75 of Title 5, which deals with cases involving misconduct. Others expressed reservations about the level of support that they would receive from senior agency management.

During our October 12 hearing, administration witnesses estimated that acting against a poor performer requires about five hours per week of a manager's time. Is this why so few people in federal employment ever get fired or face stiff disciplinary measures? Is this why only 0.4 percent of employees are rated less than fully successful? I am fully committed to the principle that people who operate effectively should be rewarded for their efforts. The flip side of the coin is the need for accountability when the job isn't done right. That doesn't happen often enough in the federal sector.

To help the Subcommittee explore these issues, we have convened two panels. Our first panel consists of Mr. Courtney Wheeler, assistant general counsel of Marriott International, who will provide the experience of a leading private firm. He will be followed by Ms. Sandra O'Neil of the Society for Human Resource Management, who will explore private sector practices more generally. Dr. Joyce Shields will testify on the basis of the Hay Group's consulting experience for both private corporations and government agencies, including both civilian and defense agencies. Mr. Frank Cipolla, Director of the Center for Human Resources Management of the National Academy of Public Administration, will examine the topic based on his work with the Academy and his extensive public service career.

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Mr. MICA. I think we have all of our panelists here, but before we get to you, I would like to see if any other Members have opening statements. The vice chairman of the panel, Mr. Bass.

Mr. BASS. Thank you very much, Mr. Chairman. I will make a very brief opening statement. First of all, I'm interested in the "Lake Woebegon effect." Maybe you have a new term now that will be commonly used nationwide. I commend you for your imagination there. I appreciate the subject of this hearing today and the fact that you've brought into the committee room today representatives of private industry.

The problems that we will be addressing in this hearing are nothing new. As one who has been in charge of supervising employees in my own business for many years, I think the problems in private industry are much the same as those that exist in the Federal Government, perhaps the only difference being that, in the Federal Government, you're generally not using your own resources, so there's less of an incentive to make the system work as efficiently as possible.

Second, there's less flexibility in how you can treat employees because of the layers of oversight that exist, going all the way up to the Executive and Congress. The lack of flexibility makes it more difficult to work with the Federal Government, but I think that we can bring some of the ideas that private industry has developed into our Federal work force system, understanding that there are no absolute answers to these problems and, as I said at the beginning, they are not new.

With that, I'll yield back, Mr. Chairman.

Mr. MICA. I thank you, and I now yield to Mrs. Morella.

Mrs. MORELLA. Thank you, Mr. Chairman. Again, I want to thank you for calling this hearing. The earlier hearings on civil service reform have provided solid information and established a very good base for our continued discussions. I know that the chairman has a principal interest in performance management, and I, too, have a keen interest in this subject and look forward to today's dialog with the two panels.

I don't plan to give a lengthy statement, but I would like to mention some of the issues that I hope to explore today, specifically the pass-fail initiative, the 360-degree evaluations, the administration's poor performance proposal, and performance management accountability.

I've made it no secret that I have problems with some of these initiatives, particularly the poor performer proposal that would authorize a pay reduction of up to 25 percent for as long as 120 days. I think this is a very penal concept, and it would shock me if a good manager would even consider using it.

In thinking about the pass-fail system, I'm reminded of an article written by Dr. Donald Devine, former Director of OPM, that revealed this as a further weakening of the system. As a former professor, there were a lot of students who wished they could have had a pass-fail option in my classes. Unless someone can educate me on the benefits of this system, I'm willing to remain open-minded, but I am inclined with Dr. Devine's assessment.

I have heard some wonderful things about the 360-degree evaluation, but without proper structure and accountability, the evalua-

tion system has the potential of being a popularity contest where no one gets a true rating.

To reference the earlier hearings, I want to say that I was a little disappointed in some of the sentiments expressed by some of the agency officials. I don't know how my subcommittee colleagues felt, but it seems that many of these agency officials want more flexibility while, at the same time, they don't want accountability. I don't think we're in a position to continue to ignore accountability in performance management.

There is a statement in Mr. Bruce Moyer's testimony of October 13 that I feel is quite appropriate. I was disappointed that I was unable to be here yesterday to explore some of it with him, but I was attending a markup of my bill in the Science Committee.

In his testimony, Mr. Moyer said that, "We need to find new ways to reduce administrative burdens, encourage supervisors to deal head-on with performance problems, and establish greater accountability for performance," and that's exactly what we should be looking for here.

The Civil Service Reform Act of 1978 was a good piece of legislation for its time. It had its successes and its failures, but, regardless, it would not be applicable to today's management philosophies and workplace environments. It's time for change, and I look forward to working with the chairman on this reform, and again I would like to thank you, Mr. Chairman, for calling this hearing.

[The prepared statement of Hon. Constance A. Morella follows:]

STATEMENT OF THE
HONORABLE CONSTANCE A. MORELLA
HEARING ON CIVIL SERVICE REFORM II:
PERFORMANCE AND ACCOUNTABILITY
SUBCOMMITTEE ON CIVIL SERVICE
OCTOBER 26, 1995

I would like to thank Chairman Mica for calling this hearing. The earlier hearings on civil service reform have provided solid information and have established a good base for our continued discussions. I know the Chairman has a principle interest in performance management. I, too, have a keen interest in this subject, and I look forward to today's dialogue.

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I have heard some wonderful things about 360 degree evaluation. But without the proper structure and accountability, his evaluation system has the potential of being a popularity contest where no one get's a true rating.

To reference the earlier hearings, I want to say that I was a little disappointed in some of the sentiments expressed by some of the agency officials. I do not know how my Subcommittee colleagues felt, but it seems that many of these agency officials want more flexibility, while at the same time, they don't want the accountability. And I don't think we are in a position to continue to ignore accountability in performance management.

There was a statement in Mr. Bruce Moyer's testimony of October 13th that I feel is very appropriate. I want to say how disappointed I was that I was unable to be here yesterday to explore some of this with him, but I was attending a mark-up of my bill in the Science Committee. In his testimony, Mr. Moyer said that, "We need to find new ways to reduce administrative burdens, encourage supervisors to deal head-on with performance problems, and establish greater accountability for performance." That is exactly what we should be looking for here.

The Civil Service Reform Act of 1978 was a good piece of 'egislation for its time. It had its successes and its failures, but, regardless, it would not be applicable to today's management philosophies and workplace environments. It is time for change.

I look forward to working with the Chairman on this reform, and I would again like to thank him for calling this hearing.

Mr. MICA. Thank you so much for your comments. As you may know, this subcommittee is part of the Government Reform and Oversight Committee, and has investigative, audit, and other functions. It is the custom of our subcommittee to swear in our witnesses, so if you wouldn't mind, would you stand and I'll swear you in.

[Witnesses sworn.]

Mr. MICA. Thank you. I was a little distracted with your hand.

Dr. SHIELDS. I'm very sincere.

Mr. MICA. Sorry to make you use the wounded right hand. I want to welcome all of you to the panel. This is an important series of hearings. I view them as very important, because I think they will lead to an actual reform in our civil service system.

As Mrs. Morella said, we have a law that served us well in 1978. We've seen some dramatic changes in the private sector, just in the last decade, where folks have a job one day and they're out the door the next. Industry has changed, and activities change, and the whole role of the Federal Government is being reexamined.

We particularly want to pay attention to our subject today, which deals with performance accountability. All of you offer a wide variety of experience and knowledge, so we look forward to your testimony.

I'll first recognize Mr. Courtney Bryan Wheeler with Marriott International. We have your full written statement, which will be made part of the record. If you would like to summarize, it will give us an opportunity to informally discuss some of the issues in your viewpoint.

Mr. Wheeler, you're recognized.

STATEMENTS OF COURTNEY BRYAN WHEELER, ASSISTANT GENERAL COUNSEL, MARRIOTT INTERNATIONAL; SANDRA O'NEIL, SPHR, SOCIETY FOR HUMAN RESOURCE MANAGEMENT; DR. JOYCE L. SHIELDS, PRESIDENT, HAY GROUP; FRANK CIPOLLA, DIRECTOR, CENTER FOR HUMAN RESOURCE MANAGEMENT, NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

Mr. WHEELER. Thank you, Mr. Chairman. Good morning, Mr. Chairman and members of the subcommittee. I appreciate the opportunity to testify concerning how business addresses the problems involved with performance and accountability in the work force. I hope that my comments in some small way will assist the committee in their civil service reform efforts.

Just as this committee is doing, business regularly reassesses methods of personnel operation in search for more effective means of managing their work force. That process invariably focuses on the very issue which is the focal point of these hearings, the optimization of employee performance.

Business addresses performance optimization from two perspectives—first, how to improve technical capabilities in the results produced by their work force, and, second, how to enhance the level of individual accountability within the organization. Improving technical or functional capabilities is far easier than accomplishing or improving in the relatively low levels of individual accountability that exist in many organizations.

Over the past decade, businesses have implemented numerous technical and functional programs, such as empowerment, TQM, and a host of others. It has been my experience that despite the virtues of these programs—and they are many—none significantly impacts the issues of individual accountability in a meaningful way.

Individual accountability is the keystone for an organization's successful accomplishment of its own goals and objectives. While the operation results may be improved through the use of team or group efforts, the maximization of individual performance in a personal nature is the key to successful business operations.

Optimization of employee performance requires a personnel system that accomplishes four goals. First, it has to hire high quality employees. Second, it has to provide not only technical, but the administrative training that is necessary to make sure that you have optimization of that work. Third, you need to insure a reliable performance assessment system. And, finally, there has to be in place a method to correct and remove employees whose conduct or performance is substandard.

The hiring of competent, personally accountable employees can only be achieved through a multifaceted recruiting process that focuses on both the applicant's technical capabilities, as well as his or her abilities to function within the organization's environment. Through screening for both requirements, this can be accomplished.

Unfortunately, many organizations, when hiring at the low- and mid-level manager situation, emphasize technical capabilities while minimizing the investigation of the applicant's capacity to function within the organization's work environment. This can result in the hiring of unsuited employees who later burden the organization.

Similarly, many organizations focus their training programs almost exclusively on operational issues. While technical training is essential, it is equally important to develop a management work force which holds employees accountable for their performance. To accomplish this goal, training must focus, in addition, on the methodology of handling personnel issues, especially evaluations and disciplinary actions.

Because managers lack the appropriate training, they often view performance and conduct problems as individual matters. They fail to appreciate the relationship between managerial decisions in one situation and those in another, or between the decisions made today regarding one employee and those which may be taken at some future time to the same employee.

The performance assessment provides probably the best example of the lack of individual accountability in today's business organizations. This is a process which is intended to identify talented employees, develop potential, and document performers who fail to perform.

In many cases, today's performance assessment process simply doesn't do that. This failure stems from inadequate training of managers, managers' desire to avoid confrontation with their subordinates, a limited opportunity to provide rewards for superior performers, and poorly designed evaluation criteria.

Finally, the development of effective procedures to correct or discipline employees whose performance or conduct is substandard is

critical to optimizing employee performance. However, despite the established procedures, managers often fail to take effective, timely action to correct such problems.

That failure is attributable to many factors, the most significant being inadequate training, fear of litigation, and the formation in some organizations of something which can be best described as a human resource bureaucracy. Only by effectively dealing with these issues can managers truly optimize employee performance.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Wheeler follows:]

TESTIMONY OF COURTNEY B. WHEELER
BEFORE
THE HOUSE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT'S
SUBCOMMITTEE ON CIVIL SERVICE

An organization's ability to achieve current objectives and position itself to successfully meet future challenges is predicated on its ability to maintain a workforce whose performance, as a whole, exceeds minimum acceptable standards. Optimizing employee performance on a sustained basis is, perhaps, the most difficult challenge facing any organization. The keystone to meeting this challenge requires the implementation of effective personnel systems grounded on individual accountability. To support the optimization of employee performance, a personnel system must accomplish four goals: hire high quality employees; provide the technical and administrative training required to do the job; insure reliable performance assessments; and provide an effective and expeditious means of correcting or eliminating employees for misconduct or poor performance.

Good recruiting practices are critical if employee performance is to be maximized. Though good recruiting practices cannot insure subsequent good performance, poor practices guarantee the employment of some workers whose performance will be substandard. Good recruiting practices can identify and weed out applicants with poor performance potential. It is my experience that many poorly performing employees with less than

two years of service should not have been hired in the first place. In most cases, unsuitable employees are hired due to inadequate, nonexistent or disregarded hiring practices or standards.

Identifying quality applicants is best achieved through a formal, multi-faceted hiring process consisting of four steps. They are developing hiring standards for each position, aptitude screening, screening for job knowledge, and thorough reference checks. Hiring decisions for every position, whether hourly or management, should be measured against written requirements delineating the minimum capabilities which an applicant must possess at the time of hiring. These standards will vary according to the employer's need to hire fully trained individuals and its ability both in terms of time and manpower to provide developmental training. The standards should be absolute and should not be disregarded unless the employer's needs change. Hiring an applicant who possesses the ability to learn, but does not have the minimum skills needed to perform in a position from the date of hire, invariably produces an employee whose performance fails to meet the employers expectations and creates a dissatisfied employer and a disgruntled employee.

Initial screening to determine an applicant's aptitude for employment with an employer generally, and a specific position in particular, helps identify applicants whose work style and ethos are compatible with the employer's work environment. Achieving optimal employee performance requires workers who are technically

and attitudinally suited for employment. Technically capable employees may fail to perform satisfactorily because their work style is incompatible with that of the organization. Employers, including some divisions within my company, rely on the job interview to ascertain whether an applicant is attitudinally suited for employment. In my experience, employee interviews are, at the very best, an inexact method of making such a determination. The quality of the employment decision can be substantially affected by the interviewer's skills. This is especially true where, as is often the case, managers are not trained in conducting interviews. Moreover, a skilled interviewee may falsely portray himself or herself. It is not uncommon to hear managers state that the employee they hired turned out to be completely different than the applicant they interviewed.

The most effective, and certainly the most consistent method of determining an applicant's aptitude for employment is the standardized test. A properly prepared and validated test generally provides the employer with a more reliable indication of an applicant's aptitude for employment. The focus of such tests is the applicant's concept of work, work style, and work expectations. Substantial coordination between the test developer and the employer is required to develop a test which achieves the employer's employment objectives. Close coordination enables the test developer to understand the employer's business and employment needs and to develop

appropriate questions which enable the employer to get an insight into how the applicant would work in the employer's business environment.

Some divisions in my company have successfully used the Greentree test to evaluate applicant's aptitude for employment. Where Greentree is used, the post-hire work record of employees has generally been superior to employees hired prior to implementation of the testing procedure. The Greentree employees tend to perform better, have fewer incidents of disciplinary action, are more satisfied with their jobs, and have fewer complaints than those who did not undergo the testing process.

Employer evaluation of an applicant's technical knowledge is usually accomplished through the interview process or testing. Testing has limited value since most job tests are limited in scope to particular job requirements (typing/word processing skills, math skills for cash handlers, etc.) and do not evaluate the full range of technical skills needed to successfully perform the job. Interviews, while excellent tools for evaluating an applicant's technical knowledge, often fail to fulfill their potential because the manager lacks the skills necessary to conduct an effective, informative interview.

The lack of managerial accountability is most clearly seen in the performance assessment process. Intended to provide management with a multi-purpose tool to identify talented employees, develop employee potential, and document poor performers, the performance assessment process in most

organizations fails to achieve its purpose. And, in many cases, it creates adverse personnel situations. The performance assessment process fails for four reasons: inadequate training of managers, managers' desire to avoid confrontation, the limited opportunity to reward superior performers, and poorly designed evaluation criteria.

Managers frequently receive little to no training in the methodology of the performance review process. As a result, performance reviews tend to reflect what the reviewing manager considers important rather than what the employer needs to know about an employee's performance. Even where the rating manager understands the performance review process, the lack of training in how to write performance reviews so that necessary information is clearly articulated renders the review worthless. Reviews prepared in this manner do not provide organizations with the information needed to make sound personnel decisions regarding promotions and assignments.

Managers, like other people seek to avoid confrontation. This human trait is inherently at odds with the performance assessment process which, if it is to be effective, may require the reviewer to communicate unfavorable opinions and information. To avoid potential confrontation, managers fail to articulate an employee's performance shortcomings. Even where an employee's performance has met standards, managers are frequently reluctant to tell a subordinate who has done a credible job that he or she is "average." Rating an employee as "average" is considered the

equivalent of telling someone they have a loathsome disease. To avoid these unpleasant situations, managers inflate ratings. Such reviews frequently contain non-specific, unsupported comments concerning performance that provide neither the reviewed employee nor the corporate management needed information concerning current performance or potential ability.

American companies are increasingly under financial pressures to control costs while increasing productivity. This results in increased constraints being placed on wage increases and other forms of compensation. In many companies, merit increases are capped at the 4% to 5% level for the best performers. Employees rated average receive far less. Managers dislike telling employees who have worked hard and performed competently during the rating period that they will receive a one, two or three percent increase amounting to little more than $20 per week, before taxes. To avoid this problem, managers often inflate ratings in order to award higher annual raises.

Poorly conceived performance criteria also operate to inflate ratings and blur the distinction between exceptional, average, and substandard performers. It is not uncommon for average or inadequate performers to "legitimately" receive good performance reviews because the review standards fail to require consideration of all essential job functions. Similarly, many criteria which should be rated as simply met standard or failed to meet standard , such as attendance, support of equal opportunity, etc., are subjected to more complex rating schemes.

Because anything less than a max rating appears to indicate some problem with the employee's performance in these such areas, employees are routinely given maximum ratings in these categories, thus skewing the results of the final evaluation. Preventing inflated ratings is, at the very least, a difficult task. Indeed, it may be impossible. If any progress in this area is to be made, methods for holding raters accountable for inflated ratings must be implemented. This in itself would be a daunting undertaking.

Optimizing employee performance requires the implementation and use of disciplinary and non-disciplinary procedures to correct misconduct, improve substandard performance, and terminate employees who fail to meet required conduct or performance standards. Managerial accountability is the keystone of a program that successfully addresses substandard performance or conduct. However, the success of corrective action programs is often affected adversely by management's failure to assume responsibility for addressing performance or conduct issues in an appropriate and timely manner. Management's failure in this regard is attributable to several factors: inadequate training, fear of litigation, and the formation of a "human resource bureaucracy."

Management accountability cannot exist in the absence of appropriate training. It is my experience that minor performance and conduct issues are often permitted to develop into significant problems because managers are inadequately trained in

handling personnel issues. Most management training focuses on technical and operational issues. Little training is provided on personnel issues, and that which is provided tends to be functional in nature (procedures for handling personnel paperwork or the basics of disciplinary policies). Training rarely focuses on four critical areas. They are: (1) the "nuts and bolts" issues regarding the imposition of non-disciplinary or disciplinary actions; (2) the relationship between individual instances of inappropriate conduct or poor performance and management's ability to impose more severe corrective action in the future; (3) the global relationship between the unsatisfactory conduct and performance of one employee and management's ability to address conduct or performance issues of other employees; and (4) the relationship between the imposition of corrective measures and the company's ability to defend itself in the event of employee litigation. Training issues exist at all levels of management. Expecting poorly trained managers to assume responsibility for handling personnel issues properly is unrealistic.

Three factors cause inadequate personnel training: supervisor ignorance, operational needs, and financial constraints. Upper mid-level and senior management often have not had appropriate personnel training and therefore do not understand the importance of addressing personnel problems quickly and appropriately. As a result, senior management either fails to provide the necessary personnel training for

subordinates or mandate such training when it is available. The "right sizing" of corporate America has created significant time pressures for mid and lower level management. Increased operational responsibilities and work loads have reduced the time available for training. As a result, managers tend to utilize the limited training time available for operational development. Additionally, as time constraints increase, managers tend to pass off administrative matters, such as personnel issues, to other staff personnel. This results in human resource personnel being given with the responsibility of handling personnel issues that are best addressed by on-site management. Human resource personnel, while valuable adjuncts to managers in addressing performance or conduct issues, cannot replace the operational manager who is in the best position to properly evaluate the needs of the business in relationship to the resolution of employee performance and conduct issues. Financial constraints adversely impact training availability. Increasing emphasis on reducing overhead costs results in the curtailment of administrative programs that are viewed as non-revenue enhancing. Personnel training programs that do not directly result in increased profitability are frequently reduced or eliminated. Managers often fail to recognize that monies expended for personnel training significantly reduce the direct and indirect financial costs associated with inadequately or improperly addressed personnel problems.

It has been my experience that resolving the problem of inadequate personnel training can only be addressed effectively by senior level management. Managers accomplish what they perceive is important to the superiors. Understandably, this means bottom line operational results. Only when senior management directs that subordinate managers participate in personnel training will managers adjust their work schedules to include such training.

One division within my company has addressed the training problem by mandating that every manager attend forty hours of continuing personnel training annually. Training opportunities are provided on the unit and regional levels. At the regional level, the Cluster Training format is used. Cluster Training seminars, which are generally one week in duration, are held four times a year in major locations with substantial company operations. Operational and staff managers, including human resource managers and corporate attorneys, present a compendium of seminars on various management issues, including training on personnel matters. Some senior managers within that division have expanded on the training obligation by requiring that their managers attend specified personnel management seminars. Where senior management exhibits interest in personnel training, the number of lower level managers enrolling in personnel seminars is substantially increased. Concomitantly, personnel issues in operations run by managers who have attended personnel training programs tend to be less severe and occur less frequently than in

units where less emphasis is placed on personnel training. The importance of personnel training is best emphasized by the comments of managers attending the seminars addressing personnel issues. Training evaluations completed by those managers routinely contain the comment that the managers' supervisors should be required to attend personnel training seminars.

Fear of litigation causes many managers to abandon their managerial responsibility to make timely, effective, and necessary personnel decisions in the hope of avoiding costly, and in some cases financially ruinous, litigation. In making personnel decisions, managers regularly weigh the risk of being sued against the immediate benefit to be gained by taking or not taking a particular personnel action. Unless the immediate operational benefit in disciplining or terminating a poorly performing employee clearly outweighs the potential legal risk of doing so, some mangers simply will not deal with adverse personnel issues. The result is a continual decline in the performance not only of the undisciplined poor employee, but also of good employees who conclude that acceptable performance standards are acceptable. This methodology of decision making, if allowed to progress to its ultimate conclusion, permanently undermines management's authority and significantly dissipates the business' productivity.

Unlike other factors impeding the proper handling of performance and conduct issues, management's fear of litigation is not easily addressed. The myriad of common law claims in

conjunction with the myriad of federal, state, county and city laws and ordinances permitting the filing of legal actions which are the underpinning of management's fear of litigation can only be addressed with any degree of success by a major revision in corporate personnel policies. That revision involves the adoption of employment agreements providing for binding arbitration of employee claims. Even then, current federal and state laws may limit the use of compelled binding arbitration to resolve statutory claims. At this time, for example, federal and state courts are divided on the question of whether non-union employers can require employees to arbitrate discrimination claims pursuant to an employment agreement. Though it appears that the majority of federal and state courts which have ruled on the issue hold that properly executed employment agreements containing arbitration clauses operate to bar litigation of such issues, the matter will not be resolved until either the Supreme Court decides the question or Congress enacts legislation addressing the issue. And, even were the issue to be resolved in favor of the arbitrability of all employment disputes, adopting a policy of binding arbitration constitutes a major change in management's handling of employee issues. In deciding whether to adopt such a drastic alteration of the employer-employee relationship, management would weigh the benefit of reduced exposure to the potential of substantial and unpredictable jury verdicts against the perceived diminution of management's absolute authority to control the workplace and the possibility

that the number of employees who would challenge adverse personnel actions would increase. It is by no means certain how the majority of companies would decide that question. The number of non-union companies which have adopted some form of arbitration of employee claims is relatively small. While at least some of the companies who have adopted the arbitral approach to dispute resolution are pleased with the results, there is insufficient reliable data available to determine whether such an approach is feasible on a large scale.

The creation of what can best be called the "human resource bureaucracy" also impacts managers' ability to effectively manage personnel problems. The implementation of well-reasoned personnel policies is essential to the proper functioning of any business. Personnel policies provide a necessary framework for managers and non-management employees to articulate issues, address problems, and resolve disputes within an organization. However, as in administrative environment, the implementation of personnel policies can become so bureaucratic that the system ceases to function in accordance with its fundamental tenant, namely that personnel policies are designed to support business' primary goal - profitable operation. When this occurs, personnel decisions cease to be substantive decisions, and instead become matters of form. It is not uncommon to hear operational managers complain that they are prevented from taking a necessary personnel action because "human resources" disapproves of the proposed personnel action due to technical "violations" of the

company's personnel policies. While, in my experience, many such complaints are the product of a manager's dissatisfaction with the human resource professional's wise and well-reasoned counsel, especially in view of the litigious nature of our society, there are too many instances where the advice is grounded on matters of form rather than the substantive nature of the employee's misconduct or poor performance.

The resolution of this problem requires the implementation of personnel policies that are equitable yet simple, bereft of unnecessary paperwork, easily learned by inexperienced managers, and expeditious. Too often personnel policies appear to be the near equivalent of legal requirements which create pseudo-constitutional rights. Not only are such policies difficult to administer in today's fast paced business environment, they often promote needless personnel conflict, require the services of large numbers of human resource personnel to administer, and, in the end, frequently fail to resolve the employee's complaint that his or her "rights" were violated. Any examination of the burgeoning litigation alleging breach of an employment contract in states where laws recognize the existence of an employment contract solely on the basis that the employer promulgated an employee handbook evidences these problems.

My company has approached this issue by establishing a limited number of offenses which warrant immediate termination without prior warning and a universal rule providing for the termination of employees who receive a specified number of

written warnings in a twelve month period (3 for non-management employees and 2 for management employees). Under what is named the Guarantee of Fair Treatment process, employees can appeal adverse personnel actions to higher authority. All non-management and most management employees are provided an initial appeal to a regional authority followed by a final appeal at the division level. Senior management may appeal adverse actions to the division level with a final appeal to the corporate level. While employees are free to obtain advice from private counsel, counsel is not permitted to represent the employee during these administrative proceedings. This policy reduces the potential for appeal reviews to become adversarial in nature. The appellate authority's decision is final and not subject to further internal review. Though the majority of personnel actions are upheld, appellate authorities have modified or set aside adverse personnel actions where, in their opinion, the disciplinary action was unwarranted or overly severe. The system operates efficiently and expeditiously.

In addition to the Guarantee of Fair Treatment, one division has permitted individual operating units to adopt an alternative form of employee grievance resolution called Peer Review. Employees electing the Peer Review process forgo a review of their complaint under the Guarantee of Fair Treatment process. The Peer Review process provides employees with the option of having their appeal of a disciplinary action heard and decided by a panel of employees. (Issues involving allegations of

discrimination or sexual harassment cannot be reviewed under the Peer review process.) Employees electing the Peer Review process are accorded the opportunity to confront the evidence against them and to present any evidence they deem material to a decision of their grievance. As with the Guarantee of Fair Treatment, attorneys cannot participate in the process. The Peer Review option is available to management and non-management employees. The decision of the Peer Review panel is binding on the employee and management. Employees select the panel from a group of management and non-management employees who have received special training in evaluating evidence and making fair, impartial decisions. Non-management panels consist of three non-management and two management employees. Management panels consist of three management and two non-management employees. The panel's decision is arrived at by a secret written ballot. The Peer Review process has been well received by management and non-management employees and has worked extremely well. With a single exception, employees whose disciplinary actions have been upheld by a Peer Review panel have not pursued their grievance to litigation.

No personnel management system operates perfectly all the time. At times, managers who should be terminated are not because managers responsible for identifying and documenting the performance failures have failed to do so. In some cases, the company is faced with an immediate operational need to remove the manager. Doing so without following established procedures can

result in litigation. Recognizing this dilemma, my company instituted an Income Extension Program, one provision of which provided for limited severance (one week per year of service) to be paid to management employees who voluntarily agree to leave the company rather than undergo the rigors of improving their substandard performance. Only employees who do not have active disciplinary actions are eligible for the limited severance benefit. Initial concerns that the program would cause managers to "take the easy way out" when dealing with substandard performers have not been supported by the results. The program is used only in limited circumstances and only when pressing business considerations preclude the use of the company's normal corrective action policies.

Mr. MICA. We thank you and would like to call now on Sandra O'Neil, with the Society for Human Resource Management.

You're recognized.

Ms. O'NEIL. Thank you, Mr. Chairman. My name is Sandra O'Neil. I'm the vice president of HR Associates in Miami, FL. I am here today on behalf of the Society for Human Resource Management [SHRM]. SHRM is the leading voice of the human resource profession, representing the interests of more than 67,000 members.

I also have the pleasure to tell you that I'm the daughter of retired career Federal employees. My mother was a civil servant for 23 years and my step-dad was for 30 years. I learned from them the value of hard work.

However, frequently, the topic of discussion at our dinner table was their frustration due to a perceived lack of focus on achieving a high level of performance within their agency. My mom, who's a particularly hard worker, would oftentimes be depressed after her annual review, either because she was highly rated and saw nothing come of it or, for some unknown reason, had not received her usual glowing evaluation.

In preparing for this testimony, I called and asked them, "Did you ever see a link between your daily work and the agency's goals?" Unfortunately, the answer they gave me, both of them, was negative.

I believe focus has to initially start at the organizational level in order for performance management to be successful. Motorola's corporation-wide "six sigma" defect-free goal is an example of an organization-wide measure. Such measures provide employees a window into the company's values and beliefs and best define an employee's necessary behavior.

We all know the symptoms of performance management illness, such as how much managers dislike completing the appraisal forms. The diseases underlying these symptoms relate to a company's culture, its expectations for its managers, and whether there are compelling business reasons for being effective at performance.

I would like to highlight the following principles of effective private sector performance management as you consider changes to the Government system.

The first principle that I've seen companies follow is that they measure what counts. High-performance companies take the measurement of performance very seriously. At Citibank, for instance, the branch manager's bonus is linked to customer satisfaction ratings.

The second principle is that they benchmark performance management practices. High-performing companies are both learners as well as innovators. They continually search out the best practices. They compare themselves to the best, and they make adjustments fairly rapidly.

A third principle is that they try to set order-of-magnitude performance improvement targets, as opposed to little incremental targets. They set their sights high and their performance expectations and targets affect employees' confidence and optimism.

Fourth, performance management is a process; it's not an annual event. It should be a cyclical process. Managers are expected to

manage performance all year, rather than rate it once a year. Companies tell it like it is, and they try and tell it often. Performance feedback is candid and constructive. There's a differentiation between poor, good, and great performance, and there has got to be positive and negative confidences allocated as appropriate.

A fifth principle is that they do frequently get 360-degree feedback. High-performance companies get performance feedback from all sources that have relevant data. These sources can be peers, supervisors, subordinates, customers, oneself—hence the term, "360-degree feedback." Each employee's situation is different, so it's important to focus on the individuals that have opportunities to observe performance.

A sixth principle is, they who use it own it. Line management is held accountable.

A seventh principle revolves around the issue of grades. People should be assessed, not rated. No one wants to be a 3 on a 5-point scale, no matter what the labels are. One approach has been to shift to a 3-point scale—outstanding, meets standards, and needs improvement.

Research has shown that people generally agree on the extreme cases, the best and the worst. If there is an interest in identifying poor performers and in giving recognition to outstanding workers, the 3-point scale seems to work in some organizations.

An eighth principle, the whole concept of base pay is being rethought in these organizations. For example, skill-based programs have a future orientation. The message of skill-based pay is that an employee's value depends on what he or she can do. The more employees can do, the higher their value, and this will be reflected on their salary.

It tends to move away from the whole focus on promotion as a means in order to accomplish a pay increase. One firm in south Florida has replaced its traditional merit program with what we've called learning contracts. Each employee contracts with their supervisor regarding the specific skills and abilities they will be responsible for adding to their personal repertoire.

A ninth principle, a lot of companies are using non-cash recognition rewards. I mean going beyond these employee of the month and employee of the year plaque kind of program. These nontraditional awards are being used in every sector of American industry to reward employees for productivity and quality improvements.

Noncash awards have a leverage value; they've got trophy value. Every time an employee sits in that lounge chair or plays with that set of golf clubs, the employee is reminded that it's earned for personal achievement and improving performance. That memory can last for years.

Finally, performance management should not be abandoned. It does need to be selectively reinvented. As America moves toward a balanced budget, I believe the need to do more with less, the imperative of motivating employees in a strict sense of accountability, will face the Government as never before.

I believe, as my parents believed, that implementing the key principles of performance management will assist public employers to meet the challenges ahead and to continue to improve quality

customer service for all of America's citizens. I thank you for the opportunity to be here.

[The prepared statement of Ms. O'Neil follows:]

SANDRA O'NEIL, SPHR
VICE PRESIDENT H R ASSOCIATES

Mr. Chairman and Members of the Subcommittee:

My name is Sandra O'Neil, and I am the vice president of H R Associates located in Miami, Florida. I am here today on behalf of the Society for Human Resource Management (SHRM). SHRM is the leading voice of the human resource profession, representing the interests of more than 67,000 professional and student members from around the world. SHRM provides its membership with education and information services, conferences and seminars, government and media representation, and publications that equip human resource professionals for their roles as leaders and decision makers within their organizations. The Society is a founding member and Secretariat of the World Federation of Personnel Management Associations (WFPMA) which links human resource associations in 55 nations. We commend the Subcommittee for holding this hearing to examine the important issue of performance management in the federal government.

As the daughter of retired career federal employees (my mother was a civil servant for 23 years; my step-father for 30 years), I learned the value of hard work. However, frequently, the topic of discussion at the dinner table was their frustration due to a perceived lack of focus on achieving a high level of performance within their agency. My mom, who is a particularly hard worker, would often times be depressed after her annual review, either because she was highly rated (but saw nothing come of it) or for some inexplicable reason she had not received her usual glowing evaluation. In preparing for this testimony, I called and asked them "Did you ever see a link between your daily work and the agency's goals?" Unfortunately, the answer was negative.

Whether the process is formal or informal, every organization assesses its performance and that of its people. In successful private sector firms, performance is measured not only for each employee, but also for every business unit, plant, department, cost center, and function. Organization units are often measured on customer satisfaction or cost per unit; teams can be measured on cycle time; individuals, on such measures as collaboration.

The performance management process can be vastly different depending on the organization. The owner of a 70 person multi-color printer of catalogs in Miami measures business performance on profitability, translated into such measures as the number of re-dos at the work team level. Individuals are measured by their skill level, as well as such basics in a small firm as attendance. The multinational pharmaceutical company, by contrast, has a formal system to measure, manage, and appraise performance of its sixty thousand employees working in fifty-three countries. The system is replete with "official" forms, procedures, policies, and computerized databases containing summary appraisals, developmental needs, and even statistics on ratings distributions.

Focus must initially begin at the organization level in order for performance management to be successful. Motorola's corporation wide "six sigma" defect-free goal is an example of an organization wide measure. Federal Express uses organization-wide measures; a Service Quality Index (SQI) that drives customer satisfaction are identified and communicated to all seventy-five thousand employees daily. Levi Strauss and Johnson & Johnson are examples of companies that regularly poll their people to ensure that corporate values are operating.

I would like to encourage the Subcommittee members to examine the following principles of effective private sector performance management as you consider changes to the government's system:

What Gets Measured Gets Done. If something is important to a company, or public agency -- innovation, safety, customer service, community involvement, environmental protection, leadership -- it should be measured. For example, companies that say that they value collaboration but do not measure and reward it will convince no one. Unfortunately, many unimportant things also get measured and hence get done!

American Express and USAA consistently assess customer satisfaction. USAA has developed a "family of measures" (customer satisfaction, quality, development of people) used to guide performance reviews, which are updated monthly. Quality-driven companies like Xerox have numerous quality-based measures. Learning organizations that do not measure (and reward) learning are hard-pressed to sustain the belief that learning counts.

DuPont has retooled their compensation structure for senior scientists to reflect competencies and development. Effective performance measurement provides employees a window into values, beliefs, and behavior. Values, such as customer service, typically show up as performance measures that are goal-defined.

Both the small printing firm and the global pharmaceutical company must make numerous

decisions about each of their employees; these decisions influence the company's ability to execute corporate strategies. They decide whom to pay more, whom to promote, whom to move to what position, whom to hold accountable for what goals, and whom to coach. Many companies are also making tough decisions about whom to lay off and whose job to eliminate. These critical decisions are made, to a large degree, on the basis of performance.

The diseases underlying performance management systems symptoms (managers' dislike of completing the forms; the rater may not be in the best position to judge performance; etc.) relate to a company's culture (how important is high performance?), its expectations for its managers (are they accountable for measuring, assessing, managing, rewarding, and developing performance?), and whether there are compelling business reasons (profit, revenue, and productivity) for being effective at performance management. If performance-based culture and values, managerial performance management accountability, and individual-level performance linkages are the underlying causes of performance management problems, they are also the keys to its lasting improvement. High-performing companies have discovered this linkage and use it to make performance management work.

Measure what counts. High-performance companies take the measurement of performance very seriously. Overnight delivery at Federal Express, customer service at USAA, quality at Xerox, drug development cycle time at Merck, and productivity at General Electric are all examples. At Citibank, the branch manager's bonus is linked to customer satisfaction ratings. All of these high-performing companies have determined what is important, communicate it repeatedly, set a

challenging target for it, and measure it incessantly. Further, high-performing companies expect their managers to operate the performance management system via ongoing communication, coaching, assessing, feedback, reward, and development; it is a process, not an annual event. They do not simply delegate performance management to the human resources department, it is an issue with managerial accountability.

Benchmark performance management practices. High-performing companies are both learners and innovators. They continually search out the best practices and compare themselves to the best. Performance management benchmarking consists of diagnosis, learning, and applications.

Set order-of-magnitude performance improvement targets. High-performing companies set their sights high, and their performance expectations and targets affect their confidence and optimism. Incremental improvement, or even "stretch" goals, lead to a little more effort but rarely require a rethinking of the status quo.

Measure performance of teams. Excellence in execution necessitates collaboration across numerous boundaries: functional, hierarchical, and in the private sector, country and division. Participation on cross-functional teams cannot be seen merely as a committee assignment or an extra task; it must be regarded as a critical priority. To ensure giving proper weight to team work, team performance must be measured and rewarded. Companies are using such measures as team behavior (such as listening), team process (decision making), and team results. Companies like Kodak have learned that rewards must come from teams, not functions, if teams

are to prosper.

Manage performance as a process, not an event. In high-performance companies, performance management is a cyclical process: determine what and how to measure; link organization to unit to process to team to individual goals; set and communicate performance expectations; monitor, coach, and provide ongoing feedback; assess, develop, and reward performance. Managers at all levels are expected to manage performance all year rather than rate it once a year. If people do not know what counts and what is expected at the outset of a performance cycle, there is little chance they will attain (or agree on how well they attained) the goals at the end of the cycle. Further, these companies tell it like it is and tell it often; performance feedback is candid and constructive. There is also differentiation between poor, good, and great performers; positive and negative consequences are allocated, as appropriate.

Get "360-degree" feedback. High performance companies get performance feedback from all sources who have relevant data. Sources can be peers, subordinates, customers, suppliers, oneself, and superiors--hence the term 360-degree feedback. This is an approach that is consistent with the total quality management philosophy. Each employee's situation is different, so it is important to focus on the individuals who have opportunities to observe performance. This recognizes that the supervisor may not have the best vantage point for assessing a subordinate's performance. It also serves to diminish the adverse consequences that can be triggered when the supervisor is the sole source of performance feedback.

They who use it own it. Line management should be held accountable, not the human resources department, for performance management practices and improvement. Flexibility is allowed at the local manager level.

Give "grades". People are assessed, not rated. No one wants to be a three on a five-point scale, no matter what the labels are. A basic concern that was raised by W. Edwards Deming and the total quality process is the reliance on performance ratings scales (five points for "outstanding", one point for "unsatisfactory") in the appraisal process, particularly when the rating is the basis for merit increases. In response to this, several prominent companies have eliminated the use of a rating scale and now give supervisors the discretion to determine increases. Eliminating the scale gives supervisor considerably more latitude and makes their job more difficult. This also runs contrary to the consistency goal. A related change is the shift to a three-point rating scale: outstanding, meets standards, needs improvement. Research has shown that people generally agree on the extreme cases, the best and the worst. By using a three-point scale, companies can more easily identify individuals who warrant special attention: because 75 to 85 percent of the workers tend to meet expectations, they are rated in the middle category; thereby minimizing the problems associated with subjective ratings that make finer distinctions. For the great many organizations with an interest in identifying poor performers and giving recognition to outstanding workers, the three-point scale seems to work.

Recognize that Base Pay is Being Rethought. Organizations have long focused on the components of the job, using classification or point factor job evaluation systems to "value" the

job within the company. Job evaluation systems promote bureaucratic management, reinforce and overemphasize the job hierarchy, discourage individual initiative, and emphasize stated job duties rather than individual capabilities or performance. The emphasis is on changing jobs for a promotion rather than on individual skill development. Some companies are shifting to focus base pay on the individual and not on the job.

Skill Based Programs Have a Future Orientation. The message of skill-based pay is that the employee's value depends on what he or she can do. The more employees can do, the higher their value, and this will be reflected in their salary. The concept is also compatible with the TQM philosophy in that it de-emphasizes past performance and conceptually reinforces the importance of continuous skill improvement.

A similar program concept is competency-based pay. Skills are normally thought of in the context of hourly or nonexempt workers who focus on manual tasks. The concept of a skill is less relevant to jobs involving cognitive use of professional or technical knowledge. For some job families, mental capabilities and expertise -- competencies -- are the relevant basis for assessing individual value. For each family, management has to identify the relevant competencies and define performance expectations. These may be specific to the job family, such as knowledge of Securities and Exchange Commission reporting requirements, or more generic, such as verbal communication. The goal is to provide an incentive for workers to increase the depth and breadth of their skills. In the same way, the most competent workers can be expected to make the most significant contribution. One firm in South Florida has replaced its

traditional merit matrix program with learning contracts. Each employee contracts with their supervisor regarding the specific skills and abilities they will be responsible for adding to their personal repertoire; the performance contract time frames will vary, based on the time needed to develop the repertoire, from six months to twenty-four months; the pay adjustment upon completion also varies based on the significance of the added capabilities.

Use Non-Cash Recognition Rewards. There is additional leverage to be gained by using noncash awards instead of, or in addition to, cash to improve an organization's performance and competitiveness. These nontraditional awards are being used in every sector of North American industry -- manufacturing, health care, service, distribution -- to reward employees for performance improvement of productivity, quality, education, cost reduction, and long-time accident reduction. Cash awards, in the amounts that organizations can afford to pay, often do not have the leverage of noncash awards of equal cost. The average payment value for operational performance plans in a recent study conducted for the Consortium for Alternative Rewards is $660 per employee per year, or 2.5% of the base pay. If you break down $660 into monthly payments and take out taxes, the net award is about $40 a month. That may not be terribly motivating. However, 40 dollars worth of points accumulated over a period of time and used to purchase a camcorder or VCR will be remembered and appreciated by the individual and the family for a long time. Noncash awards have what is called trophy value -- every time the employee sits in that lounge chair or plays with that set of golf clubs, the employee is reminded that it was earned for a personal achievement in improving performance. That memory can last for years, reinforcing the employee's belief that he or she can continue to improve performance.

This continual reinforcement pays far greater dividends than a cash bonus that may be barely remembered a year later, or a "merit" increase that may be considered an entitlement.

Performance management should not be abandoned, but does need to be selectively reinvented. Organizations are moving from the dysfunctional aspects to ones that fit their business strategies. Performance management arose in the first place to fill a need: people want to be guided and encouraged to develop particular skills and to direct their performance toward critical organizational outcomes. That need still exists.

Conclusion

Employers that use performance management to meet their employees' needs in innovative ways will find themselves consistently providing high quality products and service. This truth applies to both private and public sector employers.

Since the federal government has no competitors, government employers have not traditionally faced the keen challenges that have changed the culture in many private sector companies. However, as America moves toward a balanced budget, I believe that the need to do more with less, the imperative of motivating employees, and a strict sense of accountability will face the government as never before. I believe, as my parents believe, that implementing key principles of performance management will assist public employers to meet the challenges ahead and to continue to provide quality customer service for all American citizens.

I appreciate the opportunity to address the Subcommittee and hope that you will continue to turn to SHRM for human resource expertise on the issues of performance and accountability.

I would be happy to answer any questions.

Mr. MICA. We thank you, and now I'll call on our wounded witness, Dr. Joyce Shields, president of the Hay Group.

Welcome.

Ms. SHIELDS. Thank you. I am pleased to be here.

Mr. Chairman and members of the subcommittee, I am pleased to have the opportunity to talk with you today about Government reform. I have been with the Hay Group for the last 10 years, and, in that role, I've had the opportunity to look at both public and private sector organizations in our consulting assignments.

But prior to that, I spent 19 years with the Federal Government, and, in my last position there, I was the director of the Manpower and Personnel Research Laboratory. So I have a great respect for the professionalism of the Federal employee and a number of the very good things that are happening in the Federal Government, as well.

As you know, many things are happening in both the public and private sector organizations that are leading to and underscore the need for change within civil service today. I would like to make three observations today.

One, I think that there are practices and principles in the private sector that can be used effectively in the public sector.

At the same time, there are significant differences in the leadership and management responsibilities and requirements in the public and private sector. However, there are methodologies that can make explicit what are the competencies and the requirements of the public sector leader and manager so that one can hold both agencies and individuals accountable.

Third, the role of the personnel manager and the competencies of the personnel manager in the public sector will have to change in order to successfully implement civil service reform.

As you know, the world of work in the private sector is changing, and organizations that are the most successful, are focused on aligning the mission, the individual work cultures, and their human performance systems.

Organizations are moving from hierarchical, functional types of organizations to the consideration of other types of work cultures, such as process work cultures that are focused more on customer satisfaction and continuous improvement; time-based types of organizations that are focused on flexibility and agility; network types of organizations that are focused on being able to flexibly respond to changing demands in organizations and then are configuring different alliances and ways of working together.

All of these ways of doing work force you to think about different ways of managing personnel. The most successful organizations are those that align their personnel and human resource management systems with the mission and work culture that will allow you to achieve that strategy.

So those organizations where the human resource systems are aligned with the strategy and mission of the organization have been found to be most successful within the private sector. The implication, then, for the public sector is that your human resource systems, or the public sector human resource systems, must be designed and managed around the differences in agency and organizational mission.

Turning to the differences in leadership and management requirements in the public and private sector, within the public sector there is a much greater functional integration, a lack of consensus over how to measure performance and productivity, whereas within the private sector, you have much greater access to feedback, and the actual performance expectations are much easier to assess.

There is a lot less opportunity within the public sector for unilateral change. There is much less opportunity to symbolically assert one's position or status within the public sector, and there are many more constraints that have to be dealt with.

What we've found is that there are ways for making explicit what the job competency requirements are for superior performers, so that one looks not only at what are the skills and experiences that are required in the public sector, but also, what are the underlying values, traits, and motives that contribute to the superior performance.

In research that was begun many years ago at Harvard by David McClelland, we found that in every job, in public or private sector, there are individuals who perform more effectively than others and that there are methodologies, then, for describing and making explicit what those behavioral competencies are.

In work that we've done with the Air Force, one public organization, we have made and worked with them to make those explicit where they're now being used for performance management, for training and development of employees.

Last, I think that the role of the personnel manager is changing. The effectiveness within the public and the private sector of good personnel management lies squarely on the shoulders of the line manager, and the personnel manager's role then changes to one of being an internal consultant and helping the personnel manager to achieve the results of the organization.

So, in summary, I would just like to say that there are many types of things which I believe can assist the public personnel manager and the Federal Government in achieving significant civil service reform by giving organizations more flexibility in making explicit what those behaviors and competencies are of the superior performer.

[The prepared statement of Ms. Shields follows:]

Statement by:
Joyce L. Shields, Ph. D.
Managing Director of Human Resources Planning and Development for North America
The Hay Group

Mr. Chairman and Members of the Subcommittee:

I am very pleased to have the opportunity to talk with you about issues encompassed in the performance and management of Government employees and would like to thank the Chairman and Members of the Subcommittee to be able to participate and provide my views. For the last ten years, I have worked with the Hay Group, consulting in the field of human resources management for both the private and public sectors. Prior to joining the Hay Group, I worked in the Federal Government, with the Department of the Army, finishing there as a Senior Executive.

In my role with the Department of the Army, I was Director of the Manpower and Personnel Research Laboratory. My experience with the public sector gave me great respect for the professionals in the Federal Government. At the same time, my current work with the private sector gives me the opportunity to compare the two environments.

Both public and private sector organizations are experiencing some basic changes in the world of work that are impacting the way people are hired, managed, and rewarded. As a variety of pressures create the need to reduce costs, the number of workers needed to produce a product or service is steadily declining. At the same time, the need for employees with multiple skills and competencies is increasing. Organizations are being restructured around teams and processes rather than individual jobs. As the public becomes more demanding in its service requirements, organization designs and strategies are being determined by the customer. Organizations that reinforce bureaucracy and pre-engineered or outdated responses are viewed as less efficient and less effective than those that provide customers with the best-tailored solutions in the shortest time. These

changes, as you are aware, underscore the need for a review of matters related to civil service reform.

I would like to offer three observations:

- First, there are practices and principles in the private sector that can be used effectively by the public sector.
- Second, there are significant differences in leadership and management requirements in the public and private sector, and there are methodologies available that can help to make explicit the competencies required for effective leadership and management.
- Third, the role and competencies of personnel managers in the public sector must be carefully re-examined with a view toward change.

Private Sector Observations

To respond to the changing world of work, organizations are learning to adapt their human resource management systems to specific unit goals and priorities. Human resource management programs, policies, and procedures no longer can be designed and promulgated based on the assumption that they can be centrally designed and locally applied with equal effectiveness. Personnel management must be viewed as a process that focuses on individual organizational goals, aligned with the desired work culture, and measured based on operating results.

We have found that the success of human resource management is contingent upon the proper alignment of the following factors:

- Organization mission
- Work culture
- Human resource systems

If any one of the factors is poorly defined or misaligned with the other factors, then the organization will not achieve superior performance. Each of these factors can be defined in the following way:

Organization mission is crucial to define why the organization exists in the first place. What is the purpose of the organization? To what end are people showing up for work every day? High-performing organizations have a clearly-defined mission, providing the work force with a results-oriented focus for their daily work. In addition, leading organizations have a well-articulated vision that defines where the organization is headed, laying out a road map in terms of performance expectations for the future that can be followed by its employees. The mission and vision of the organization drives the work culture.

Work culture defines how people within the organization are to interact with each other, interface with their customers, and make individual decisions in their work. Work culture is created by the leadership within the organization, and is demonstrated by organizational values and individual behaviors. For instance, through our research, we have identified four basic work cultures models that are exhibited by most organizations today. Complex organizations are formed of intersecting work cultures. These work cultures require organizations to structure themselves differently to do the work; and value and reward different skills and competencies in their people. These work culture models are:

Functional Model. This is the most common model, and the most prevalent within the Federal Government. Work in these organizations is designed around the technical specialization of individuals and is directed through management hierarchies. Performance is measured through reliability and quality, and rewards are based on technical proficiencies and internal equity.

Process Model. This model is driven by customer satisfaction and continuous improvement and is prevalent in the manufacturing industry. Work in these organizations is designed around customer-focused processes, with planning, execution, and control integrated as close to the customer as possible. Performance is measured through customer satisfaction and process benchmarking, and rewards are based on competencies valued by customers and often incorporate measures of team results.

Time-Based Model. This model is focused on flexibility and agility and has emerged in the financial industries. Work in these organizations is organized around multi-functional expertise, directed through a limited management hierarchy, and often focuses on cross-functional work groups. Performance is measured in terms of "speed to market," and rewards are based on competencies of both individuals and work groups, with linkages to program results.

Network Model. This model is the least prevalent, but is growing in popularity and is demonstrated in the construction industry. This model focuses on responsiveness and flexibility relative to the changing needs of the customer. Work is designed around temporary work groups that are formed based on needed technical proficiencies and competencies to complete a specific project. Performance is measured in terms of return on investment, and rewards are based on market rates for individual competencies and team results.

As mentioned previously, most complex organizations have a mix of these work cultures and as the world of work is changing in the private sector, organizations are reforming and changing their infrastructure to support and reinforce the new work cultures. The type of work culture desired by an individual organization, or work unit within a larger organization, has a direct implication for the human resource system that is built to support and reinforce the desired work culture.

Human resource systems need to be designed to support the organization's prevalent or desired work culture and mission. When designed appropriately, they provide a clear message to employees about how they can contribute to the organization's success. As described above, the work culture has direct implications for the organization's most effective work process design, job design, performance management approach, and reward strategy. In the most successful organization, systems and processes to select employees, train and develop them, manage them, and compensate them, are aligned with the organization's mission and work culture.

As organizations today are moving away from functional work models to process or time-based models, they are changing the way they view their work force. Employees are no longer seen as narrow specialists with a fixed set of technical skills; rather, they are seen as dynamic individuals with competencies and abilities to contribute to team and group performance. Workers are selected based on their capacity to expand their skills, develop needed competencies, and adapt to the changing demands of the organization. Performance is measured and rewarded based on results; a focus on responding to customer requirements, flexibly and quickly, is valued over longevity and meeting "minimum requirements."

The implication for federal personnel management is that human resource management systems must be designed and developed around the changing needs of individual departments, agencies and work units. Management systems, to be effective, must be aligned with organization mission and work culture. This is an interesting challenge in the public sector where Congress and the Administration may not always agree on organization mission or desired work culture.

Differences in Leadership and Management Requirements

How can the principles and practices from the private sector be translated to the public sector? First, one must understand that there are significant differences in the roles of the public and private sector leaders.

Public Sector	Private Sector
Greater functional integration; lack of consensus over measures of performance and productivity.	Greater access to performance feedback and specific measures of productivity, i.e., profit, market share, waste.
Less opportunity for individual, unilateral change; more bureaucratic obstacles.	Less formalization; more opportunity to establish goals and plans, and to solve problems.
More standard operating procedures and detailed policies and regulations; higher routinization.	Fewer policies and standardized procedures; less routinization; greater need to make strategic decisions; access to a greater amount and variety of information.
Less opportunity to symbolically assert one's status.	More access to symbols of power

More constraints and more organizational review of presentations.	Frequent presentations to multiple levels within organization.

Our research has also shown that there are unique competencies that are associated with different organizations. Hay has developed and employed a methodology to identify and tailor the competencies that are most appropriate to a specific organization's mission and work culture. This grew out of David McClelland's research at Harvard many years ago.

Job competencies are the critical characteristics that cause or predict outstanding job performance in an organization. The concept of job competencies arose out of a methodology called Job Competency Assessment which is formulated around three basic assumptions:

- In every job, some people perform more effectively than others. These people also approach their jobs differently from the average worker.
- These differences in approach relate directly to specific characteristics or competencies of the superior performers that are often absent in the fully successful performers.
- The best way to discover the characteristics that relate to effective performance in an organization is to study its top performers.

Often our "gut feelings" tell us when someone is a high performer in a job, but we can not tell exactly why it is so; the qualities that lead to high performance levels are often difficult to identify. However, traditional job analysis approaches focus entirely on the tasks performed in a job, rather than on top performers. An error in this approach is that it will usually lead to a definition of what is required for average or even minimum performance. Job competency assessment takes a more direct approach by focusing on the superior rather than the average performers, and identifying what they do when they are in critical job situations. We have provided you a copy of Competency Assessment Methods, History and State of the Art, by Lyle M. Spencer, Jr., Ph.D., David C. McClelland, Ph.D., and Signe M. Spencer, which provides an easy to read overview of competencies.

Job competency models can be developed to describe job requirements. These models are comprised of several individual competencies, which include knowledge, skills, attitudes, values, and motives. These characteristics exist at various levels in a person, with the inner levels (values and motives) representing characteristics that are more enduring, and often have a wider range of effect on the individual's behavior. Further, the more complex the job, the more important job competencies are relative to technical or task mastery.

Different types of competencies are associated with different aspects of human behavior and with the ability to demonstrate such behavior. For example, an "influence" competency would be associated with specific actions, such as having an impact on others, convincing them to perform certain activities, inspiring them to work toward organizational objectives. A "planning" competency, on the other hand, would be associated with specific actions such as setting goals, assessing risks, and developing a sequence of actions to reach a goal. These two types of competencies involve different aspects of human behavior on the job.

The importance of competencies is often overlooked in favor of specialized job-related knowledge. This is partly because skill and knowledge have a more observable effect on an individual's performance. However, many scientists believe that although knowledge is important, it is essential to focus on the competencies that allow employees to use the facts and concepts contained in the knowledge. If I asked you to describe the best people that ever worked for you, you would probably describe how they accomplished their work, not their technical knowledge.

We have been working with the Air Force to develop and use managerial competency models as part of the civilian career management system. The models identify and document the critical characteristics that are found in the most highly successful individuals occupying civilian positions within the Air Force environment. These competency models are used for the:

- Identification and budgetary justification of training and development needs;
- Assessment of employees to identify managerial development needs;
- Assessment of employees to assist in ranking them for higher-graded supervisor, managerial, and leadership jobs (i.e., for promotions); and
- Streamlined feedback and coaching of individual employees to enhance performance.

Individual competency models have been developed for several career programs or areas including: Acquisition Program Management; Logistics, Contracting and Manufacturing; Financial Management; Communications and Computers; Scientists and Engineers; and Civilian Personnel. All of the models were developed based upon extensive data collected from Air Force personnel in the target areas. This user involvement has led to employee acceptance of the approach. Management procedures or products based upon the models currently being used by the Air Force include:

- Personnel assessment forms and procedures designed to minimize scoring inflation;
- Training and development guides for targeting limited resources towards the most need and benefit;
- Communication seminars and videos so that employees and supervisors understand and accept the program; and
- Development of software system integrating all elements into a paper-less environment.

These products and procedures have been in place for several years and have been used to assess thousands of employees for use in ranking for promotions and to identify training and development needs across several different career areas.

The Changing Role of the Personnel Manager

How can alignment between mission, work culture, and management systems be achieved in Federal Government? Two basic factors we have found predict whether an organization can achieve "high-performance" status:

- Effective leadership
- Human resource system focused on superior performance

Effective Leadership. Individuals who lead high-performing organizations clearly articulate organization mission, establish a compelling vision of the future, and reinforce consistent values and performance goals. These leaders also create a strategy that integrates critical success factors in operations with critical success factors in human resources management. In other words, human resources is seen as an "enabler" to achieve organizational outcomes, not an "administrative" or "compliance" function.

Accountability for performance management is placed squarely on the line manager and individual performer. The role of the personnel manager shifts to one of internal consultant to the line manager.

Organization leadership extends to the human resources function, where the most effective human resource managers are able to contribute directly to organization mission, vision, and strategy by helping to identify core competencies required for high-performance, and designing personnel management systems to select, develop, manage, and reward desired competencies. Human resources, to be effective, must be repositioned away from the traditional "administrator" of payroll and benefits to an "active change agent" or "business partner" which anticipates and supports the evolving operational requirements of the organization.

Human resource management must become a strategic partner in the leadership of the organization of the future. Its value-added will be to help make the linkage between organization goals and the people that will need to perform the work to achieve those

goals. Human resource management must learn to identify the skills and behavioral characteristics of superior performance, and train front-line managers to hire and develop those skills in their work force. Performance management must become an ongoing process focused on planning, coaching, and providing feedback to employees. Reward systems must be designed to directly support organization mission and reinforce the desired work culture.

Human Resource Systems Focused on Superior Performance. If you aim for mediocre performance, you will achieve mediocre performance. In industry today, high-performing organizations do not settle for "acceptable" performance, they set their targets on "best in the industry" or "world class" performance. Customer satisfaction and financial viability are key measures for organization performance. For individual jobs, measures of superior performance also must be established. How do you build a human resource system focused on superior performance? There are four basic steps to constructing such a system:

Step 1: Identify job requirements that are aligned with organization mission and work culture. Jobs in Federal Government have been described typically in terms of tasks, activities, and functions that need to be performed, often based on minimum requirements. Leading-edge organizations (i.e., the U.S. Air Force) have begun to describe jobs not only in terms of results (what needs to be done), but also in terms of *how* work should be done, with a focus on superior performance and desired behaviors that reinforce the work culture.

Step 2: Use a selection process that enables you to hire the right person for the job. Since superior performance can be predicted during the selection process, it is much easier to hire a superior performer in the first place than it is to try to train a mediocre performer to become a superior performer. High-performing organizations use methods and tools to objectively measure the "fit" between a job candidate and the job requirements. Often times, poor performance is the result of

a misfit between an individual and the job, not the result of a lack of capability. Superior performing organizations build systems that allow them to fill jobs with superior performers, not just those who meet minimum requirements. This involves not only determining the knowledge, skills, and abilities of applicants, but also their values, motives, and attitudes. Today, the government focuses almost solely on knowledge, skills, and abilities.

Step 3: Once an individual is in a job, continuously measure individual performance, provide feedback, and develop capabilities that support the desired work culture. Performance management systems should be focused on the critical success factors for the job and organization. High-performing organizations design systems and train managers to provide employees with objective feedback so they understand performance expectations, take corrective actions, and recognize accomplishments. Ongoing coaching and training are critical roles of managers within organizations, allowing employees to continuously improve performance. Managers must change from being "controllers" of work to "enablers" of the work force. For example, Bill Lindner, Florida's Secretary for the Department of Management Services (DMS), is taking steps to change the DMS culture from "regulator to a resource" for their customers.

Step 4: Tie rewards to desired individual, team, or unit performance. Superior performance must be rewarded to be sustained. Reward systems must be tied to organization mission and critical success factors, and must support and reinforce the desired work culture. Compensation that is clearly linked to performance motivates employees. Compensation that is disconnected from performance breeds discontent and reinforces poor performance. Direct linkages must be made between the way work is organized and how outcomes are achieved; reward systems must be aligned with individual, team and unit performance objectives.

In conclusion, our research and our experiences in both the public and private sectors have convinced us that it is possible for organizations to increase performance. It requires effective leadership and a human resource system that focuses all of its elements (selection, training, promotion, reward, etc) on superior performance. The implications go well beyond the personnel managers' staff role to all line managers. This results not only in organizations that work, but in organizations people want to work for.

In closing, Mr. Chairman, I would agree with other witnesses that it appears to be a propitious time to address issues related to civil service reform. You or other members of the Subcommittee may have questions and I would be pleased to answer them.

Mr. MICA. We thank you, Dr. Shields, and now I would like to recognize Mr. Frank Cipolla, who is director of the Center for Human Resource Management, the National Academy of Public Administration. Welcome.

Mr. CIPOLLA. Thank you, Mr. Chairman. The last member of the panel to speak has the expectation of giving the shortest summary, so I'll try to do that and see if I turn out to be a poor performer or someone who meets the performance expectations.

Mr. MICA. We're grading all of you. Go ahead.

Mr. CIPOLLA. The National Academy of Public Administration is an organization which, as you know, is chartered by the Congress to do work to improve governance and governance processes at all levels of government.

In connection with that work, over the past year and in the current year, we at the Center for Human Resource Management have been working with more than 30 agencies of Government in helping them address the human resource management challenge of the current Federal environment. A good deal of that work has focused on performance management and accountability issues.

Now, what I would like to do is to summarize five key points that we have gleaned from some of that research and studies, and then comment briefly on those. The points are these—and I might say, in making these observations, that we're not commenting strictly on what we learned from the private sector. We're also commenting on innovations that have been instituted in other public organizations.

These are some of the major trends that we've observed in the important area of accountability and performance. First, any performance management system must have an individual and organizational performance link that focuses on expectations and outcome. Second, defining intended outcomes early on and working the flow down to the individual is the best way to address the performance issue.

Third, in Federal agencies, there is a logical potential link between organizational and individual performance management through the GPRA, the Government Performance and Results Act. Fourth, the multiple appellate systems for providing employee due process need to be streamlined.

And finally—and one that has implications well beyond the subject of this particular hearing—and that is that rethinking the concept of career- and tenure-based employment should be part of any comprehensive civil service reform proposals.

Now, just some brief observations. Performance accountability issues have long been ongoing themes in the public service environment. They've been referenced in the Civil Service Reform Act of 1978 and its attempt to link performance and pay incentives in establishing procedures to make it easier for managers to fire incompetent employees.

Despite these and other previous efforts, we still don't have an employee performance management system that works well, especially in terms of the problems of addressing the poor performer, and that issue is still with us.

But our belief is that the focus has been at the wrong end of the performance management spectrum, and much more needs to be

done at the front end, that is, establishing expectations and outcomes. As I said earlier, the GPRA provides that kind of opportunity.

If progressive organizations have made success in new performance management systems, it has been in viewing the individual in terms of contributions to the work of the team and the work of the organization. So our testimony stresses that linkage and, in fact, provides some information that could be helpful in developing models that will succeed in doing that.

At the risk of taking any more time, I think I will quit and will be willing to respond to any questions you have.

[The prepared statement of Mr. Cipolla follows:]

Statement of Frank P. Cipolla

Director, Center for Human Resources Management

National Academy of Public Administration

Before the

Subcommittee on Civil Service

Committee on Government Reform and Oversight

Good morning, Mr. Chairman and members of the Subcommittee. Thank you for the opportunity to speak on this important issue of performance and accountability, a key component of civil service reform. We are pleased to respond to your request to testify on the basis of work being conducted through the Academy's Center for Human Resources Management.

The National Academy of Public Administration is an organization chartered by Congress to improve governance at all levels. The Academy's Center for Human Resources Management has a number of projects and studies underway on behalf of individual agencies to assist their leadership in today's changing human resources management environment. Our primary focus is our work with a consortium of agencies to address common concerns and develop initiatives to help human resources leaders and line managers successfully meet the challenges confronting their organizations. Our purpose in presenting this testimony is to provide information about trends and developments identified in our work. This past year we worked with 31 agencies to research best practices and lessons learned from the private sector, other public levels, and at

the federal level; identified trends; and linked this research with examples of high performing organizations. The research, interviews, and analyses have been compiled into a series of publications on innovative approaches to human resources management, a guide to broad-banding alternatives, managing downsizing efforts, and transforming the human resources management program. A new consortium of agencies has just been set up for fiscal year 1996. Its focus will be on transforming the "best practices" and "lessons learned" into practical projects to improve the current federal work environment. A panel of advisors, including NAPA Fellows and other experts, oversees our projects, including the consortium efforts.

In our projects and activities relating to performance management, we work closely with NAPA's Program on Improving Government Performance, which focuses on implementation of the Government Performance and Results Act (GPRA). Our discussions continue to reflect two key needs: (1) a stronger connection between individual and organizational performance management and (2) greater emphasis on setting expectations rather than the appraisal process. In short, when addressing the "poor performer" issue, attention has focused on the wrong part of the process. GPRA should provide an opportunity to shift the focus and help managers better concentrate on expected contributions from employees and on their own accountability for the work of the organization.

Performance and accountability issues are ongoing themes in the public administration environment. Previous reform efforts such as the Civil Service Reform Act of 1978 linked performance with pay incentives and established procedures intended to make it easier for

managers to fire incompetent employees. Concern over fraud, waste, and abuse led to additional reform intended to "clean up" government waste, including removing poor performers. Despite these previous efforts, we still don't have an employee performance management system that works well and the problems of addressing the poor performer issue are still with us. Federal managers feel that earlier efforts did not work; they "did little to make the system responsive to their needs."

These issues are complex. They cannot be addressed independent from other human resource management issues. As with many federal administrative procedures, there is much overlap and the intersection among procedures makes it difficult to correct one without changing or impacting others. How should a focus on performance and accountability matters be defined? Why doesn't the current system work? Is the system broken? Are we focusing on the right part of the system?

Exploration of some of these questions may help us better focus on the key issues of performance and accountability. Whether the current system works, is broken, should be fixed or totally replaced revolves around the purpose of performance and work in the organizational climate, how it is measured, and how accountability is executed in rewarding the good performer as well as taking action against the poor performer. The philosophy of having an employee performance management program is based on the premise that an individual's contributions do make a difference. But a difference towards what outcome? Work can be defined as an "intended outcome of purposeful activity." Organizations and supervisors measure effort rather

than outcomes because outcomes are more difficult to define and the contribution of an individual to an outcome is even more difficult.

Our research indicates that one of the fundamental problems with the issue of the "poor performer" is the inability to identify sub-par performance in terms of expected contributions rather than the difficulty in figuring out what to do about the employee after the fact. The federal employee performance management system has not been linked sufficiently to organizational performance. All government agencies are using strategic planning tools to define the goals and performance objectives of the organization. Agency success in attaining these goals will be measured via GPRA. Since these goals can only be met through the efforts of employees, individually and in teams, we have in GPRA a method and a purpose for linking individual and organizational performance.

The new regulations issued by the Office of Personnel Management (OPM) in August 1995 allow for aligning individual and organizational performance to a greater extent. In our initial efforts to define a link between employee performance management and GPRA, the NAPA Center for Human Resources Management has developed a model for bridging the two systems (individual and organizational performance) using as a starting point the performance contracts between the President and each of his cabinet secretaries. Their contracts get further refined at succeeding subordinate levels. Accountability is built in to individual performance agreements, based in the agency's strategic plan. Other models could also be developed. All

models should be flexible enough to be customized to meet the needs and objectives of individual organizations.

The regulations allow agencies to customize their performance management systems in line with their organizational needs. For instance, an agency can decide if its system should be linked with or totally separated from the awards and recognition system. Some agencies have already de-linked pay and performance - and they did so with the approval of OPM, using the pre-August 1995 regulations. Many agencies may feel that they are constrained from making such a drastic change. The Army Management Engineering College has such a system and several other agencies are about to pilot test systems with a similar focus. The new regulations have also eliminated a number of the more labor-intensive administrative requirements for detailed documentation and levels of review. On the whole, the new OPM regulations are a substantial improvement over the former ones and OPM's leadership role will be an important factor in progress by agencies as they implement system changes.

Unfortunately, the system improvements generated by the new regulations do not cover the poor performer aspect of employee performance management. There is a strong feeling among managers, as you heard at the opening set of hearings, that they feel constrained from taking action on the poor performer by the myriad of appeal routes the employee has available and the likelihood that at some point the case will be settled rather than resolved. In response to OPM's request for a review of the "Draft Specifications for HRM Reform Legislation," dated January 20, 1995, the Academy's Standing Panel on the Public Service pointed out that the

proposal did not adequately resolve the poor performer problem, the real problems being (1) the administrative process for dealing with poor performers is too litigious, complex, and time-consuming and (2) the processes and structures the federal government has set up go too far in the effort to provide due process.

The appeals structure with its multiple jurisdictions is an issue that Congress has already identified and expects further review and reports on possible consolidation and streamlining. For your information, the consortium of agencies I described earlier has asked NAPA to undertake a review of the multiple jurisdiction issue on their behalf with the objective of facilitating a recommended solution. The results of our review can be made available should you wish to see them.

Earlier research associated with President Carter's Civil Service Reform revealed that another aspect of the "serious performer" issue was the failure of too many managers to address the problem early enough or skillfully enough. We are told that although the appeal process was even then blamed for much of the failure to address the problem, detailed analyses at that time showed a far more serious difficulty of equipping and motivating supervisors to carry out their responsibility to deal effectively with poor or marginal employees. Since our studies have not focused on this dimension of poor performers, we are not in a position to advise the Committee on the extent to which this situation still exists.

Performance management is an integral process in all of the high performing organizations that our Center staff has studied. How these organizations use their performance management systems is quite varied and different. The axiom that "no one size fits all" is a valid one when it comes to human resources systems generally, including performance management. Each successful organization decides on its own objectives for its system. We have available a number of case studies from the private sector, other public sector entities, and some federal agencies that provide benchmarks, best practices, lessons learned, and contain some tools, forms and related material.

We have identified a variety of performance management systems used by high performing organizations from this material. The following are a few examples from what we have reviewed: (1) The State of Washington has a system that emphasizes individual accountability for program results and management skills. It is used as a tool for developing and refining skills to meet future needs instead of being used to keep score on past events: (2) At Weyerhaueser, all employees set four to six performance goals which are linked to company and unit business goals. A team-based, cascading approach is used to create alignment and ownership of goals. Clear goals and measures are communicated from top to bottom; (3) At AT&T, the performance management system measures individual, team, and organizational performance, is driven by customer expectations and requirements and measured by the level of customer satisfaction. It uses 360 degree feedback and is skill-based in its focus on the developmental aspects of employee performance; and (4) The General Accounting Office (GAO)

uses a performance management system linked to its broad-banding job classification and pay system.

One of the factors driving some of the new approaches to performance management involves some fundamental re-thinking of one of the key tenets of the civil service - the concept of career and tenure-based employment systems. Some organizations are viewing employment in a different fashion as significant segments of the workforce become more "contingent" in nature.

- The government of Australia this past year completed a substantial overhaul of the statutory base for its public service. One of the conclusions reached was the removal of the concept of "office" and the recognition of different tenure arrangements to match the needs of organizations.

- The government of New Zealand now uses a system of performance agreements beginning with fixed-term 5-year contracts for chief executives with performance-based criteria.

- Many private companies in the U.S. view their employment relationship with their employees under a "new deal" which stresses job security less and value-added employee contributions more.

The impact of this kind of philosophical shift necessitates a good deal of cultural change, but it does provide a different basis for performance management. Goals and expectations are inextricably linked to the work and mission objectives of the organization. Agreements reflecting those performance expectations are controlled by time and specific targets for accomplishment within those timeframes. There is no employment guarantee beyond the timeframe of the agreements.

As a summary, I will restate the major trends that NAPA has observed in this important area of accountability and performance:

- Any performance management system must have an individual and organizational performance link, that focuses on expectations;

- Defining intended outcomes early on and working a flow down to the individual is the best way to address the issue;

- In federal agencies, there is a logical potential link between organizational and individual performance through GPRA;

- Multiple, appellate systems for providing employee due process need to be streamlined; and

- Rethinking the concept of career and tenure-based employment should be part of any comprehensive civil service reform proposals

Mr. MICA. Thank you. You didn't say as much as the others, but when you talked about looking at the multiple appellate process, you got my attention. We appreciate all of your testimony.

I wanted to take just a moment, if I may, and recognize two visitors we have today observing our subcommittee process and the subject of our subcommittee hearing. We have, from the Cabinet of Ministers of the Ukraine, Mr. Selivon, First Deputy Minister of Cabinet Ministers, and Mr. Ivan Tymchenko. If you could stand, we welcome you. [Applause.]

We hope that you learn something from our process, and we're delighted to have you at our subcommittee hearing as observers today.

With that, I will return to our witnesses. I'm going to reverse the process. Usually, I get to ask the question first, being the chairman, but I'm going to reverse the order and start with Mrs. Morella first for questions. She is probably the most knowledgeable. Mr. Bass and I are new to the panel and the process, and we're fast, quick learners, but we want to give Mrs. Morella the opportunity, so we'll reverse the order of questions.

Mrs. MORELLA. With a preface. I would, I think, grade you all maybe an "A," including the chairman and the vice chairman of the committee. I don't know whether to say I grade you a pass, an "A," a highly satisfactory, or whether I wait for the 360-degree evaluations to all come in from all of the corners.

But my question to all of you is: Do you think that the pass-fail rating is a satisfactory way to measure performance? I would start off, then, with Mr. Wheeler, and go through.

Mr. WHEELER. Madam Congresswoman, I think the pass-fail method, as an overall rating system, is unsatisfactory, because it fails to identify those performers who are exceptionally good or exceptionally bad. People can fail and be close to passing; people can pass and be close to failing. I think, if we're looking to optimize employee performance, there needs to be some gradation so you can separate different levels of management performance or lack of performance.

I do, however, think that the pass-fail rating in some areas within a performance evaluation is certainly better than what many evaluations now have. I can tell you, from the private sector, I routinely am frustrated when I have to defend at trial evaluations on simplistic matters like EEO support, attendance, things of that nature, where the employee either is successful or not successful.

You come to work every day; that's expected. Why should you get a 1 on a 5-point scale, which technically means you're exceptional? You either support affirmative action and EEO opportunities or you don't. In those areas, I think pass-fail is very important.

Too often, performance evaluations use one system for all types of ratings, and, as a result, you automatically inflate poor performance ratings, because the person may come to work all the time, may support affirmative action, may do any of those things which are pass-fail items. Those are rated very highly. Very important issues may be rated low, yet the person passes, because the overall evaluation is brought up by less significant evaluators. So I think you really need a combination.

Mrs. MORELLA. Thank you. I appreciate the answer. For all of you, you might pick up on those points. My second point would be, if you do have a pass-fail, how do you measure gradations? Do you say, "This is a high pass?" "This is a low fail?"

Then, also, if you might comment on whether the private sector utilizes this in any way. Mr. Wheeler, do you know whether the private sector utilizes this?

Mr. WHEELER. I'm sorry, ma'am, I didn't hear.

Mrs. MORELLA. In your experience, are there private sector organizations that employ that?

Mr. WHEELER. Employ the pass-fail?

Mrs. MORELLA. Yes.

Mr. WHEELER. Yes, ma'am, there are. I spoke with my compatriots in other companies and with attorneys that I deal with routinely, and there are some private organizations that do use pass-fail.

In some organizations, especially very small ones, it may be very successful. An operation that employs 20 or 30 or 40 people, the evaluation is done on a daily basis, almost in a familial atmosphere. When you run an organization that has 100,000, 200,000, or 500,000 employees, you don't have that familial basis, and the ability to use pass-fail is severely reduced, if not completely eliminated.

Mrs. MORELLA. Thank you. Ms. O'Neil.

Ms. O'NEIL. It reminds me of my college course. I took advanced calculus, and as soon as I found out that I needed 62 points to pass, I got 62 points, and I stopped doing any more.

I'm not so certain that I would be supportive of that kind of approach. I think the United States is a nation of individual achievers, and I just don't see that that would be a motivational approach for individual people, in terms of helping to drive their behaviors and their accomplishments. We have several hundred clients, and I have no clients that use such a measure, such a method, so I personally cannot speak to how it might be successful.

Mrs. MORELLA. I think you talk about a 3-point scale.

Ms. O'NEIL. Yes, Congresswoman. We have used a 3-point scale because, again, what you are doing is focusing on both ends, if you will, of the Bell curve. Most people are somewhere in that middle. They're doing a good job; they're accomplishing their goals; they're doing what you want them to do.

You focus your attention to some extent on people that are having some trouble, that are not achieving, and you also focus on recognizing and rewarding the truly outstanding performers.

Mrs. MORELLA. Thank you. Ms. Shields.

Ms. SHIELDS. I would like to ask what purpose are we using an evaluation system for, what is the goal of your particular system, pass-fail for making what types of decisions?

For the purpose of performance management, we would like to focus on exactly what the expectations of the superior performer are, what types of things that individuals should do to contribute maximally to the organization, so that we would want to have different standards for them in being able to give feedback to employees on more of a daily basis. So the pass-fail for what purpose, I would ask you, is one of the things that we would look at.

In addition, if you're looking to determine rewards for employees, you would set up different types of systems. If you're looking to provide information for the development of employees, you would set up other types of systems. So that I think just a simple pass-fail is not giving the organization or the individual the type of information that's required for superior performance.

Mrs. MORELLA. So you would go along with what Mr. Wheeler said, that, in some instances—affirmative, attendance—that might be OK.

Ms. SHIELDS. It might be appropriate.

Mrs. MORELLA. But not in terms of achievement.

Ms. SHIELDS. It's for what purpose you would look.

Mr. CIPOLLA. I would agree with both Dr. Shields and Mr. Wheeler. I think the important question to ask, along with whether pass-fail is the proper kind of a system, is what's the rest of the system?

You ask about gradations in performance, especially above simply meeting minimum requirements and, therefore, passing. It depends on how you design the incentive system and the performance awards system and how that complements the performance management and performance evaluation process. So it's difficult to look at it as a single question.

I think it's safe to say that most organizations, public and private, that are instituting new performance evaluation systems, use, typically, a three-level system. But there are others who use pass-fail. There are others who use even a five-level system, as we have in the Federal Government over the past years.

Mrs. MORELLA. So there is the variation. I have a number of other questions, but I wanted to pick up on what Ms. O'Neil had mentioned in her testimony and her statement that she submitted, and that is, in terms of the rewards, I think she focused pretty much on the concept that non-cash rewards are far more meaningful. I just wondered if any of you wanted to comment on that, for the recognition for superior performance, versus cash awards. Anyone want to comment on it?

Ms. SHIELDS. I think a lot of organizations are moving toward looking at the total way that you can emphasize superior performance, and there are a number of alternative means that organizations are currently looking at, given declining dollars.

In addition, if you really look at compensation systems, as we have, many times you find that there is a very little bit of money that differentiates what goes to the most outstanding performer and the average performer. Unfortunately, not only is it a very little bit of money, but many employees don't understand why they got more money than the other employee did.

And so, we found that those organizations that emphasize reward, where good things happen to good people and bad things happen to bad people, where it's in all of the systems and the signs that you send out—those people who have the opportunity to go to training, those people who get development opportunities, those people who are rewarded in a number of different senses—those are the signs that you're sending with regard to reward.

Mr. WHEELER. Madam Congresswoman, my experience has taught me that, with the exception, perhaps, of a plaque for em-

ployee of the month or employee of the year, there is no such thing as a non-cash reward. It may be noncash to the person who receives it. It was certainly cash to the organization that gives it, because they have to buy it or they have to spend manpower and time in working the program. So every award, in some fashion, has an articulable cost.

Companies in the private sector manage the reward system from a cost analysis. How much does it cost to put the reward in, and what are the benefits that are going to be gotten out of it?

Now, in terms of giving gifts, as I like to call them, rather than a cash bonus, for some hourly employee positions, it works very well. My experience, in talking to human resources managers at my company that use that sort of approach, find that hourly employees tend to like the stereo, the television, et cetera, rather than a $50 or a $60 or $100 check, in some areas.

When it comes to management, my experience has been that managers prefer cash to anything else, even above intangibles such as deferred stock or stock options, which may go up or down. In today's world, they like the green stuff.

Mrs. MORELLA. I think you put it pretty clearly. You've all kind of alluded to the fact that managers also need training. You need to train and educate managers.

I just want to ask one final question of you. There's a strong linkage between classification systems and performance management, and I wonder, how must this classification system in government change? To what degree must it change to achieve performance management reform? If any of you would like to comment on that.

Mr. CIPOLLA. I would be happy to comment on that. If I understood your question, how much has it changed? Not nearly enough. How much does it need to change? An awful lot, the classification system.

Its relationship to performance management, I think, is one that we don't think about frequently enough. Our performance management and our performance evaluation system in Government is position-based. We tend to think of employee responsibilities in terms of what's in that position description, what we can put our arms around or circumscribe at any point in time.

That simply isn't the modern world. It isn't the modern world of work, where employees' contributions have to be viewed as part of what a team does, what a larger organization, what a larger group does. So the implications for a classification system that is based on a position, I think, are obvious.

We need to really move to a broader concept of managing work and, thereby, managing performance, as well. But we would strongly favor, as I think you know, approaches like broad-banding in organizations where they would work. In some they would work, and in others they wouldn't. There are a number of studies now that indicate the criteria or the factors that have to be considered before employing that kind of a system.

Mrs. MORELLA. Anyone else like to comment on that?

Ms. O'NEIL. I would definitely agree. It has been our finding in the private sector that the traditional classification point factor job-based systems just seem to promote a continuation of some of the bureaucracies and the focus on the job, not the individual.

Some more progressive, I think, approaches, are to focus on the individual and that person's skills and competencies. Dr. Shields had alluded to that in her comments, in terms of modeling the behaviors of your high performers, developing a profile of their competencies, really using that kind of a method to focus on what employees should be achieving, which is, personally, becoming stronger, more knowledgeable, more competent, and using that as a method to adjust base pay. It's a difficult process to do, but I think the companies that have undertaken it have found it to be very rewarding.

Mrs. MORELLA. I think I've used my allocation of time, unless anyone else would like to comment on it, so I would yield back to the chairman.

Mr. MICA. I thank you. We'll get back, if you have additional questions. I'll recognize the vice chairman, Mr. Bass.

Mr. BASS. Thank you very much, Mr. Chairman.

I appreciated your interesting testimony. I could only think, Mr. Wheeler, about your four criteria for hiring, to continue the line of my colleague from Maryland. No. 1, hire great employees. We all know that's the case. We're in the process, now—at least I am—of understanding and receiving the type of training, and we know what's going to happen with the assessment procedure and their methods of correction for poor performance, as it applies to Members of Congress.

Mr. MICA. That's funny.

Mr. BASS. It's correct.

Mrs. MORELLA. That's right.

Mr. BASS. And rarely is it a positive evaluation.

In your business, Mr. Wheeler, performance evaluation is substantially easier to evaluate, because you have a series of businesses, and if you make money, they're doing OK. If they're losing money, they've failed. You can move to any level of assessment that you wish, right down to the person who's making the beds, and so forth.

I think—is there not a difference in individual performance and collective performance in your business? Is there any way that you can apply those standards, or is it possible to apply those standards to a bureaucracy, which has entirely different standards of performance?

As I think it was Ms. O'Neil who pointed out, one of the major problems is to measure performance. Is there any simple mechanism whereby we can evaluate performance in government that may have some parallels to private industry?

Mr. WHEELER. I would think that there is, Mr. Congressman, but I'm not sure I agree with the assessment that performance in the business—at least in the large business sector, the mega organizations—is as simplistic as, if you make money, you're successful; if you don't, you're not.

In fact, that is one of the major difficulties that major organizations have. There are many managers who are technically competent and who can make money. The difficulty comes, is that they have other serious performance weaknesses that don't show up on the operational level—that is, their interaction with the client to make money.

So they can bring the dollar in, but they may cost the company money because they don't practice good management techniques. They abuse their employees; they discriminate; they do a variety of things which don't impact the making of money, but cause the company, ultimately, to lose money. There is a whole litany—and I could go on indefinitely, and I won't—on those types of problems.

So I think that, in the private sector, there is the same type of concern and same type of problem of how to manage employees outside the narrow profitability line, if you will. We face those challenges every day.

I think, in most big companies, you have a bureaucracy of sorts. You have staffs that are extremely large. How do you measure the performance of staff personnel? I'm sure you all run into those problems annually when you review your staffs. So does private industry. I see those problems coming across my desk daily with people who simply haven't performed well, but have been rated well because they're in a staff position.

How do we address those issues? It's very, very difficult. I think the first way you address those is by training the managers who have to do the evaluations, and this has to come down from senior management. Senior management, in many organizations, does not put the training emphasis on what I call the administrative side of performance. They put it on the technical side.

Managers who have oversight responsibility have to be trained in the methodology of discipline, in the methodology of evaluating, so they understand the interrelationship between what they do with employee X or Y and what that may cost the company. Not how much the company will make, but what it will cost the company if they fail to take the appropriate action later on.

That's the way I think you solve that problem. I've seen it work. In those suborganizations within our company where senior managers have stressed the administrative or methodology training, I have seen an improvement in the performance of the managers, as well as the overall performance of the organization. It's a slow process.

Ms. SHIELDS. Could I comment on that, as well? As far as the methodology, I believe, that's being used, both in the private sector, as well as the public sector, and organizations are finding, as Mr. Wheeler was commenting, that it's not just what an individual achieves, but how they go about doing that particular work.

You can define that and make it explicit about what the expectations are with regard to how people actually help to create capacity within their organizations, so that it deals with the behaviors that individuals demonstrate as they're going about doing their work on a day-to-day basis.

You can make and put into, as organizations are doing, models and make it very explicit what the expectations for performance are, not only with regard to the technical aspects of the job, but how people go about doing the work.

Mr. BASS. Any other comments? You don't have to comment.

Mr. CIPOLLA. I would like to extend Dr. Shields' comment a bit, if I might. The question arises, how do we establish those expectations? What's the format, or what's the approach?

Many organizations, now, even in the private sector and in other governments, are using performance agreements, starting at the top of the organization. In fact, we have, in our own Government, requirements emanating from the National Performance Review and the GPRA that would have executives establish performance agreements where expectations are identified and, then, those expectations cascade down the organization chain, and employees have goals clarified in the process.

In Australia and in New Zealand, those agreements are backed up by fixed-term contracts. At the end of 5 years, if those expectations aren't met, the individuals either go someplace else or they leave government. We have many large organizations attempting that sort of approach.

There are ways, if the focus is on outcomes, rather than effort. We tend, in Government, to evaluate effort and don't focus enough time and attention on outcome, projected outcome.

Mr. BASS. Let me change the subject ever so slightly, and this will be my last question, Mr. Chairman. As a member of the Budget Committee, in the process of evaluating the whole Federal Government and all the agencies, corporations, and so forth, all kinds of individuals have come in to see me, in essence, to protect their appropriation.

It has been my observation that the very small groups whose leader, if you will, comes in, and this group knows that they're on the line; they are working as a team. It's almost reminiscent of the ads you see on television of a major car manufacturer, where these teams of people are producing cars, and they put notes in the glove box for the owner to find, and so forth.

There seems to be a difference, across the board, from groups that come in to see me. I don't know how to quantify that, but I'm trying to focus here, in this question, on the collective performance versus the individual performance and a mechanism, perhaps, to establish incentives for collective groups of individuals to perform better, maybe, in comparison to other groups, as they deal with much larger issues—that is, continued existence, in this instance, or success and so forth, rather in a subjective fashion, but rather in a more objective way.

I'm sorry, I guess I'm being somewhat vague about this, but I'm wondering if you could comment on that, if anybody has any comments on that, on the observation, or if we're developing standards for agency evaluation and performance and creating an atmosphere of competition, but in a positive way. Does anybody have any observations?

Ms. O'NEIL. What I was thinking of as I listened to you speak, Mr. Congressman, was an old approach that started back in the 1930's with something that was called gain-sharing. It worked in a manufacturing environment and really focused on productivity improvement.

Because so many of our industries and our companies are service-focused, that technique or that methodology has been somewhat revised into something that's called goal-sharing or success-sharing or something along those lines.

But really, as an organization, they focus on things like productivity improvements, turn-around time improvements, quality im-

provements, and people are rewarded as a group that usually includes both exempts and nonexempts, management and nonmanagement people.

But the focus is on accomplishing things together, as a group. There would be an overall measurement for that organization or for that plant or facility. So it can be a very powerful tool in terms of focusing people really on what matters within that particular organization.

Mr. BASS. And the strong individuals can pull the weaker ones along, and it improves the whole process.

Ms. O'NEIL. Yes. You tend to start, then, focusing on some peer pressure issues. People's annual increase may depend on accomplishing whatever it is, and the intent and, what I've seen, success is that you do tend to pull along the weaker ones. There also has to be, I think, a methodology, though, for the organization to let go folks that maybe aren't able to accomplish at the standards that are needed.

Mr. WHEELER. Mr. Congressman. In small organizations or small groups, the team approach may be effective, because you can still evaluate the individual performance within the team when it's needed. There's a risk in the team approach, of course, that the weaker and, perhaps, substandardly performing employee will get pulled along and will not be let go. That's a drag on the organization.

But if you go to the large group or the large organization evaluation approach on the team methodology, I have not seen that work effectively. In fact, what I have seen is, on an individual basis, members within that team have decided that they don't like that approach.

In my own company, I've seen this with respect to bonuses. Certain levels of managers in different groups and different organizations within the company get bonuses. Ten years ago, it was pretty much an individually based system. If you did very well, and your unit did well, then you got a bonus. If you didn't, then you didn't get your bonus.

Then that expanded to the district you were in. If the district did well, you got a bonus. Well, that was not too bad, because you only had 6 to 12 people, managers like yourself, in your district, so you could use peer pressure.

But then, in order to force greater change within the organization as a whole, that bonus eligibility was then driven to the regional level. It became impossible, then, for managers to work and put peer pressure on each other to get bonuses.

And now, in parts of the organization, it has gone to the entire division, which means nationwide within certain groups. If the division makes a bonus, then managers in the field who are bonus eligible may get a bonus.

What has happened is that managers in the field in some areas who are doing very well realize that managers in other areas simply are not doing as well, and that, as a result, nobody's going to get a bonus. That's a disincentive.

I think, if you use a team approach and you're going to link some sort of reward to that, it has to be on a manageable group, where each person has a vested interest in keeping other members of the

group happy. You can't make it so large that nobody does. So making it on terms of an entire agency, I think, would be very difficult to work with.

Ms. SHIELDS. I think the team approach is very, very difficult to manage. There are many, many, many different types of teams. But what we're finding is that many successful organizations, who are successfully managing people, that are going for goals that are organizationwide, are being more successful as organizations than those who are going for single, individual performance against their own particular goals.

But the complexity of leading and managing teams and setting bonuses is great. There are many, many books. It's probably the management topic that's most being written about today: of exactly how to get the power of individuals working toward a common goal.

But certainly, that has to be one of the major objectives within the Federal Government. Whenever a particular agency does not control a particular outcome, and there's an interaction across many agencies, the consideration of how to get that particular power, I think, is very worthwhile in considering.

Mr. BASS. Thank you, Mr. Chairman.

Mr. MICA. Thank you, Mr. Bass. I haven't asked my questions, and I would like to get a couple of minutes in at this point. One of the things that I get as chairman is letters from all over the country. Some of them have some excellent suggestions.

I want to share with the panelists, witnesses, and the audience, this letter from a Federal civil servant in Vermont. It's dated October 17. I won't identify the individual, but let me read just one of his statements here. He has a number of things that are very interesting.

He said, "Compared to private sector workers, Federal employees are safer than Texas armadillos in an M–1 tank." Did you hear that? "Compared to private sector workers, Federal employees are safer than a Texas armadillo in an M–1 tank."

If I could ask Mr. Cipolla to comment. You also tweaked my interest with your comments relating to the problems with the multiple appellate process, but how do you respond to something like this?

Mr. CIPOLLA. Well, the multiple appellate process and the perceptions of it are what contribute to that image, to a large extent, of safety and protection. The problem is that the growing number of people who agree that that process needs to be streamlined, needs to be made more expeditious, have not found the solution yet.

I know that the 30-plus agencies that we're working with are so concerned about it that they've asked us to help facilitate a solution, or a proposal, at least, to that end. But they continue to report their views that a large part of the constraint, or restraint, on the part of managers to take the kinds of actions that ought to be taken with poor performers is the view that they're going to lose on appeal.

Now, in many cases, that's just an escape mechanism. In other cases, it is a reality in the minds of people. But I can't let the point go without saying that, notwithstanding all the training, managers also need to develop the skills to deal with poor performers.

The accountability issue needs to be addressed and ingrained. In other words, managers simply have to be willing to take the actions when they can be supported and not hide behind the multiple appellate mechanism until we can find a way to fix it.

There really is no excuse, in some cases, for managers working around incompetent or poor performers and living with that. As a matter of fact, there is no incentive, frequently, for them to take the action. They live with it.

Mr. MICA. Did you want to comment, Dr. Shields, maybe about the armadillos and the tank?

Ms. SHIELDS. The armadillo? Maybe I should comment on the tank, given my history. I think that there are employees in large private sector organizations that might feel the same way, because if there is anything that I've found, in looking at both the private and the public sector, it is that managers hate to confront poor performers. Even when they're given the opportunity to confront poor performers, you find that they don't do that.

So there are many excuses that people may hide behind, but providing coaching, feedback, or dealing with performance problems, I've found to be one of those things least well done and least frequently done in both the private and the public sector.

I think it goes back to some of Mr. Wheeler's comments with regard to training managers with regard to how to provide the feedback, how to confront employees in a productive way to increase performance.

Mr. MICA. Well, that raises my next question for Mr. Wheeler. You know, the other problem is we've created such a convoluted and extensive appeals process that the manager is frustrated. I'm told the average length of one appeal is 18 months, and most people are so frustrated by the process that they won't even undertake it.

Mr. Wheeler, in your testimony, you state that managerial accountability is the keystone in a program that successfully addresses substandard performance. But, you know, when I and the public look at incidents—for example, I will use Waco, because I sat in this room for many days.

Every report that came to us said that there was incompetence, there was malfeasance, misfeasance, nonfeasance, and all types of improper actions by various individuals. I think I shared the frustration of the public in that nobody got fired. I'm wondering how you can achieve managerial accountability and how high up the management chain do we need to go at the Federal level to correct this?

Mr. WHEELER. Mr. Chairman, I don't perceive there's any significant difference between the problem that you face with the civil servant in the Federal employee system and that which is faced by large organizations in the private sector. I, too, deal on a weekly basis with the same type of issues that you've described in Waco.

Employees or managers at a mid level or a lower level don't perform well or commit misconduct. Their superiors don't take an appropriate action to deal with that. When it's finally brought to light—in my case, it's generally in a lawsuit, and that's when I first learn of it—and I inquire as to why that didn't happen, well, the district manager or the second tier manager just didn't do it.

His superior doesn't deal with it, because that individual, overall, is a good performer. He makes a lot of money; he does his job technically well. It was just this one thing that he didn't do well. This is what I was alluding to earlier about the difference between performance based in terms of dollar income and the other parts of management that you need.

How do you resolve this? You have to resolve it from the top down. It will not resolve itself from the bottom up. The very senior managers in any organization have to go to the level below them and say, "You didn't manage well. You didn't handle this situation. You do everything else well, but this problem is so significant that you're going to get dinged."

When that happens, and each subsequent level of management begins to operate this same way, then you will get change. In my own organization, I have seen that happen. We have some vice presidents who operate under that methodology.

They will tell subordinates who are excellent performers, "You did not use good judgment in handling this personnel problem. There are going to be repercussions. Here is your disciplinary action. Here is your written warning"—whatever. There is some action taken.

In those districts, you get accountability. You go to other areas, where you have a different management philosophy, where that isn't done, and you have a total absence of accountability by management. But it has to start at the top. It can't start at the middle and work down.

Ms. SHIELDS. Could I add just one thing, please, sir?

Mr. MICA. Sure.

Ms. SHIELDS. I believe, also, that the focus needs to be on the front end, rather than dealing with poor performance after it has happened, taking the actions on a day-to-day basis that really emphasizes good performance and that has a focus on what you expect of employees, so that it is instilled on a day-to-day basis, because if you get to the point of appeals and litigation, I believe you've already failed.

Mr. MICA. Thank you. Ms. O'Neil, you were talking about some noncash recognition; was that you?

Ms. O'NEIL. Yes, sir.

Mr. MICA. You talked about golf clubs and things?

Ms. O'NEIL. Yes, sir.

Mr. MICA. Do you have any other ideas?

Ms. O'NEIL. Yes, sir.

Mr. MICA. That caught my attention, but there are some things we can't do in the public sector that you can do in the private sector. Maybe you could elaborate a little bit on what you had in mind. Maybe there are some innovative incentives that we aren't doing at the Federal level, other than golf clubs.

Ms. O'NEIL. Other than the golf clubs?

Mr. MICA. Yes.

Ms. O'NEIL. Other than, maybe, a trip to Miami or the Caribbean?

Mr. MICA. Causing more heartburn.

Ms. O'NEIL. What happens is that when you use cash rewards, first of all, what you can actually afford to do tends not to be moti-

vational, when you've using very wide-based awards. You know, the average cash award is something like $660. If you divide that out by 12 months and take out taxes and everything else, you don't end up with much.

So the value of the noncash award is that, No. 1, you leverage it beyond the cash basis, and, No. 2, as I've mentioned, you have that trophy. The people have something that they maintain, that their family uses.

So what a lot of companies have done, they have gone to accumulating a point system, for instance. They use catalogs where people can purchase, as they accumulate points, something that's meaningful to them.

Mr. MICA. Well, I thank you, and we are paying attention to you. I rarely leave the hearings I chair, except when my wife calls with an emergency or the Speaker calls. The good news is my wife is happy today, but I've got to meet with the Speaker and the Florida delegation for just a few minutes.

I'm going to turn the chair over to Mr. Bass, who will continue. Mr. Moran had some questions and hasn't had an opportunity. So, Mr. Bass, would you assume the chair, please.

Mr. BASS [presiding]. Thank you very much, Mr. Chairman.

Congresswoman Morella, do you have any further questions you would like to address to the panel?

Mrs. MORELLA. I just would like to ask the panel, you know, you talked about the need for managers' understanding, starting at the top, et cetera, understanding performance, expectations and all.

Can managers be trained, and should they be trained as such? Should there be a training course, because some people show the potential but they need to know what is required? Or is it something that's innate, that you don't hire somebody for unless they're absolutely ready for it? Any comments on that?

Ms. SHIELDS. I believe Mr. Wheeler spoke of the necessity of training in his testimony, and I definitely agree with that aspect of development. But I think that developing managers over a very long period of time is through a set of experiences, through providing coaching and feedback, through selecting people and providing significant training on leader and management behaviors and competencies.

I think one of the things that has happened—at least my experience—in the Federal Government, when people were asked to go to personnel management training, they thought of it as simply a series of administrative procedures that they didn't really care very much about in the first place, "took time away from their real job," and really wasn't focused on what they wanted to be doing.

So I think if the emphasis can be put back more on being a very, very successful performer, yourself, through the success of the people that you manage, and then understanding how to acquire those particular skills and competencies and motivating and coaching and providing feedback to employees, you can put together a successful management and training and development program to achieve those objectives.

Mr. CIPOLLA. I would agree with that. I think that, though, we should be careful in how we use training, because it simply can't be a substitute for fortitude. When actions are required and man-

agers are accountable for accomplishing them, they need to understand what that accountability is and act on it.

Now, to the extent that that can be imbued in training courses that deal with these other aspects, that's fine, but it's a tremendous challenge. The only way, really, as Dr. Shields says, is to expose managers to the whole process and get them involved as much as possible, up front, in establishing those outcomes and expectations so that they can then understand what's being expected of them and what's being expected of the people that comprise their team.

Mr. WHEELER. I think when we talk about training, Madame Congresswoman, we shouldn't focus on, even on the personnel side, what would truly be functional or operational training. That's, how do you fill out the form? How do you do the written warning? Et cetera, in the technical sense.

When we speak of training, we have to focus on the methodology, the "Why do you do it?" What the result of doing it, what the result of not doing it is, what's going to happen 6 months down the road if you have another problem with this employee.

This type of training, I think, needs to be at all levels, from entry-level manager on up. You cannot start with a mid-level manager or a senior manager and unlearn 10 years or 15 years of knowledge that they've gained by discussing things with other people who have never been trained, either.

I do a fair amount of training, both within my company and, also, in the private arena through SMU. My experience has been that, when you get a group of junior managers, zero to maybe 4 or 5 years, and you go through one of these methodology training programs on how you use the disciplinary process or how you use the performance process to achieve your goals and what the results are if you don't, invariably, a third or more of the comments that will come back on the evaluation forms for the training seminar, "My manager should be required to attend this course." Or, and in many cases, "My human resource manager should be required to attend this course."

They tell us all the things that are wrong. Those comments are not uncommon, which tells me that we do a lot of training, perhaps, in personnel matters, but we don't do the right type of training. You need to develop managers from the beginning.

To get to your question of whether you can develop managers, yes, you can. There are some people, obviously, who are innately that way, but the majority of people need to be developed.

Ms. O'NEIL. If I could make one brief comment, in the training focus, you also need to focus on training every single employee—not just the managers, but the employees—on how to establish performance standards, because people focus on the responsibilities, but they don't focus on establishing the standards for what is good performance, what is outstanding performance, and that's something that can also be trained.

Mrs. MORELLA. Thank you. I want to thank you all, and I want to thank you, Mr. Chairman.

Mr. BASS. Thank you very much, Mrs. Morella.

Mr. Moran wanted to ask questions of the panel here today. Unfortunately, he had another commitment, another testimony to give, and, without objection, we will submit these questions to the

panel members in writing and hope that you will have an opportunity to respond.

I'll terminate with one observation for you to think about. I just noticed that there is—you notice these nameplates, all of them in front of everybody's place here. I notice that there's one in front of me that is behind this little decoration here. I'm wondering, when you think about, as you go home, how you would have evaluated the person who put nameplates in front of every single place, including one here. Is that over-performance or incompetence?

Thank you very much. We'll excuse you at this time.

At this time, we'll call our second panel. We have Evangeline W. Swift, Director of the Office of Policy and Evaluation of the Merit Systems Protection Board; G. Jerry Shaw, general counsel, Senior Executives Association; Robert M. Tobias, national president of the National Treasury Employees Union.

As is customary before this committee and other subcommittees, as well as the full committee, we would like to get an oath from you folks, if you could please stand and raise your right hand.

[Witnesses sworn.]

Mr. BASS. Thank you. You may be seated. Let the record show that the witnesses answered in the affirmative. We will begin with Ms. Swift.

STATEMENTS OF EVANGELINE W. SWIFT, DIRECTOR, OFFICE OF POLICY AND EVALUATION, U.S. MERIT SYSTEMS PROTECTION BOARD; G. JERRY SHAW, GENERAL COUNSEL, SENIOR EXECUTIVES ASSOCIATION; AND ROBERT M. TOBIAS, NATIONAL PRESIDENT, THE NATIONAL TREASURY EMPLOYEES UNION

Ms. SWIFT. Thank you, Mr. Chairman. It's a pleasure to appear before you today to discuss an issue of great importance to the vitality, efficiency, and effectiveness of the Federal civil service.

I am here in my capacity as Director of Office of Policy and Evaluation for the U.S. Merit Systems Protection Board. I request that my full statement and the September 1995 issue paper, "Removing Poor Performers in the Federal Service," be included in the record.

Mr. BASS. Without objection, so ordered.

Ms. SWIFT. Thank you. Before I discuss the specific issue of poorly performing Federal employees, may I say that I agree fully with the sentiment in the recent media advisory expressing a commitment to the principle that "people who operate effectively should be rewarded for their efforts."

Too often, the debate on how to deal with poor performers overshadows the fact that the overwhelming majority of Federal employees are well qualified, hard working, and committed to doing a good job.

The issue of dealing with poor performers needs to be addressed on a larger level, and you are laying the groundwork here today. Seventeen years after the passage of the Civil Service Reform Act of 1978, the evidence suggests that the problem is not with the goals inherent in the framework of CSRA, but the failure to adequately meet those objectives.

As we revisit the Government's current performance management system, two goals identified in 1978 are still worth pursuing.

The performance management system should be as straightforward and uncomplicated as possible, while still protecting the public's interest in ensuring that Federal employees are not subjected to arbitrary actions unrelated to the efficiency of the service.

The system must be timely, especially starting from the point when the need to take formal action is first identified to the point when a final, binding decision is issued, if the action is contested. There is a growing consensus, as you know, that it is time to reexamine the Government's response to Federal employees who cannot or will not adequately carry out their responsibilities.

In fiscal year 1994, a total of 8,775 appeals were received by the Board. Of these, only 204, or 2 percent, were appeals of performance-based removals or reductions in grade taken under chapter 43 procedures.

In fiscal year 1994, final action was taken by the Board on 224 appeals of chapter 43 performance-based actions. Of the 46 appeals that were adjudicated on the merits, the Board affirmed the agency's actions 63 percent of the time.

By contrast, 3,768, or 43 percent, of the appeals filed with the Board in fiscal year 1994 involved adverse actions, such as removals or reductions in grade, because of misconduct, as well as actions for inadequate performance, taken under chapter 75 procedures.

In fiscal year 1994, final action was taken by the Board on 3,519 appeals of personnel actions taken under chapter 75 procedures. Of the 780 appeals that were adjudicated on the merits, the Board affirmed the agency's actions 70 percent of the time. I am submitting for the record a 10-year statistical history of the Board's appeals workload and adjudication record.

Appellants contesting a proposed personnel action may also raise as an affirmative defense, an allegation that the action constitutes a prohibited personnel practice, such as reprisals for whistleblowing or discrimination. While we do not track all such defenses, we do know that in fiscal year 1994, of the 224 chapter 43 appeals decided by the Board, 109 involved an affirmative defense of discrimination.

Separate from the adjudicatory function and as another part of the Board's statutory responsibility, my office has conducted a number of studies over the years focused on performance management issues. In September 1995, the MSPB released an issue paper titled "Removing Poor Performers in the Federal Service." This paper draws from the results of a recent survey of some 5,700 managers and supervisors.

Among the findings, very few Federal managers bother to use performance-based removal actions, in part because they simply do not understand either the chapter 43 or chapter 75 provisions for taking such actions. Supervisors report that they frequently receive inadequate or confusing advice and assistance from their own agency experts.

Many supervisors and managers believe, incorrectly, that only chapter 43 procedures can be used to address a poor performance problem, and they perceive those procedures to be too complicated, time-consuming, or onerous.

Many supervisors also believe that if they take formal action against a poor performer, there is a real possibility that higher-

level management will not support them, their decisions will be reversed upon review or appeal, or they will be falsely accused of having acted for discriminatory reasons.

In contrast to the disincentives and perceived personal risk associated with attempting to remove a poor performer, many supervisors see little downside cost, and, actually, no cost at all, in not taking any action.

When examining the reluctance of Federal managers to remove poor performers from the Federal service, it is useful, I think, to note that supervisors report that they do take some action to deal with performance problems, such as informal counseling, giving a less than satisfactory rating, or placing an employee on a performance improvement plan.

The positive actions supervisors take typically stop, however, short of formal action to remove. While supervisors take actions, or decline to take actions based on their perception that the removal process is difficult, it is also important, I think, to recognize that their perceptions are sometimes inaccurate.

For example, even though many supervisors would agree with the statement that it's very difficult, if not almost impossible, to fire an employee, the fact of the matter is that most removal actions that are taken against employees are not even contested, and when they are contested, the management decision is upheld, certainly, in a majority of the cases.

It has been estimated, for example, that on an average, only 20 percent of all removals and demotions are appealed to the MSPB, and, at the Board, our records show that with regard to the outcome of all initial appeals that are not dismissed, in fiscal year 1994, the agency action was overturned or the penalty imposed by the agency reduced only 13 percent of the time.

While remaining mindful, as I mentioned earlier, that the majority of Federal employees are well-qualified, hard-working, and committed to doing a good job, the challenge in efforts to improve the Federal Government's response to poor performers will be to develop alternatives that address both perceptions and the reality regarding how we deal with poor performers and strike a reasonable balance between the need to encourage and enable the taking of timely corrective action and the need to protect employees from arbitrary, nonmeritorious actions.

Mr. Chairman, this concludes my formal testimony, and I'll be happy to answer any questions. Thank you.

[The prepared statement of Ms. Swift follows:]

STATEMENT OF EVANGELINE W. SWIFT

DIRECTOR, POLICY AND EVALUATION

U.S. MERIT SYSTEMS PROTECTION BOARD

Chairman Mica, Ranking Member Moran, and Members of the Subcommittee:

It's a pleasure to appear before you to discuss an issue of great importance to the vitality, efficiency, and effectiveness of the Federal civil service. I am here in my capacity as Director of Policy and Evaluation for the U.S. Merit Systems Protection Board.

The Board was established by the Civil Service Reform Act of 1978 as an independent, quasi-judicial agency in the executive branch with responsibility to adjudicate Federal employee appeals from personnel actions taken against them. Approximately two million Federal employees--two-thirds of the Federal workforce--have appeal rights to the Board. In addition, the Board is charged with conducting independent studies of major civil service issues and reviewing the significant actions of the Office of Personnel Management. It is this latter responsibility which my office carries out for the Board.

Mr. Chairman, we were pleased to respond to a recent request from Subcommittee staff seeking a number of the reports of past MSPB studies. We believe these reports contain objective and useful information on a variety of important civil service and human resource management issues. In your invitation to testify you asked that we summarize a recent MSPB issue paper titled "Removing Poor Performers in the Federal Service." This latter paper provides some of the most current Federal data and analysis on the perceptions and experiences of Federal managers and supervisors on the issue of poor performers. You also requested certain statistical information regarding the Board's adjudicatory function. I am pleased to provide this information as part of my testimony.

Before I discuss the specific issue of poorly performing Federal employees, may I say that I agree fully with the sentiment in your media advisory dated October 20, 1995, expressing a commitment to the principle that "people who operate effectively should be rewarded for their efforts." Too often the debate on how to deal with poor performers overshadows the fact that the overwhelming majority of Federal employees are well-qualified, hard-working, and committed to doing a good job.

Effective performance management, of course, not only deals with poor performers but it also engenders good performance and ensures accountability, in part, through a focus on how well the mission of the organization is being accomplished. In this context, the process for dealing with poor performers is one part of a larger system intended to achieve effective and efficient Government service.

In examining that part of the system intended to address the removal of poor performers, we need to separate perception from reality--if they are not the same--and deal appropriately with both. There is little to be gained in trying to fine tune a specific aspect of the process for dealing with poor performers that may be working well within the parameters established for it.

What we have learned from our studies is that the issue of dealing with poor performers needs to be addressed on a larger level. In this regard, we note that the underlying objectives of the Civil Service Reform Act of 1978 (CSRA) with regard to performance management are still valid. Seventeen years after passage of the CSRA, the evidence suggests that the problem is not with the goals inherent in the framework of the CSRA but with the failure to adequately meet those objectives. As we revisit the Government's current performance management system--and specifically the elements dealing with poor performers--two basic points are worth bearing in mind:

1. The entire system should be as straight-forward and uncomplicated as possible while still protecting the public's interest in ensuring that Federal employees are not subjected to arbitrary actions unrelated to the efficiency of the service.

2. The system must be timely, especially starting from the point when the need to take formal action is first identified to the point when a final, binding decision is issued if the action is contested.

Without losing sight of this larger perspective, however, there is a growing consensus that it is time to re-examine the Government response to Federal employees who cannot or will not adequately carry out their assigned responsibilities. Within this context, the following is a summary of the statistical information you requested regarding the Board's adjudicatory process:

- In fiscal year 1994, a total of 8,775 appeals were received by the Board. Of these, only 204 or about 2 percent were appeals of performance-based removals or reductions in grade taken under what is referred to as Chapter 43 procedures--that is, actions taken under an agency appraisal system that has been approved by the Office of Personnel Management (OPM).

- By contrast, 3,768 or about 43 percent of the appeals filed with the Board in FY 1994 involved adverse actions such as removals or reductions in grade taken under Chapter 75 procedures to promote the efficiency of the service. Chapter 75 actions can be based on misconduct--offenses such as excessive absence without leave, disruptive behavior on the job, substance abuse, sexual harassment--as well as inadequate performance.

The remaining appeals filed with the Board, and which are not taken under Chapter 43 or Chapter 75 procedures, primarily involve whistleblower cases, disputes over retirement benefits, reduction-in-force actions, and termination of probationers.

- In FY 1994, final action was taken by the Board on 224 appeals of Chapter 43 performance-based actions. Many of the appeals were settled or dismissed for a variety of reasons. Of the 46 appeals that were adjudicated on the merits, the Board affirmed the agency's action 63 percent of the time (29 of 46 cases).

- By comparison, in FY 1994, final action was taken by the Board on 3,519 appeals of personnel actions taken under Chapter 75 procedures. Again, many of these were settled or dismissed. Of the 780 appeals that were adjudicated on the merits, the Board affirmed the agency's action 70 percent of the time (544 of 780 cases).

I am submitting for the record a 10 year statistical history of the Board's appeals workload and the adjudication record for Chapter 43 and 75 actions. You will find that although fiscal year 1994 was a year of peak workload in terms of appeals received and decided, the final disposition of those appeals was fairly typical in comparison to previous years.

- Appellants contesting a proposed personnel action may raise as an "affirmative defense" an allegation that the action constitutes a prohibited personnel practice (under 5 U.S.C. § 2302(b)(2))--such as political coercion, granting of an unauthorized preference, and nepotism as well as whistleblowing and discrimination. In addition, appellants may raise other defenses challenging the legal or factual basis of an action in conjunction with an affirmative defense.

While we do not track all such defenses, we do know that in FY 1994, of the 224 Chapter 43 appeals decided by the Board, 109 involved an affirmative defense of discrimination and 26 of these cases were decided on the merits. We have tracked some of this data since 1990, and I have attached a summary of that data.

Separate from the adjudicatory function and as another part of the Board's statutory responsibility, my office has conducted a number of studies over the years focused on performance management issues. In September 1995, the MSPB released an issue paper titled "Removing Poor Performers in the Federal Service." The paper draws from the results of a recent survey of over 5,700 managers and supervisors. Among the findings from this study and some related data-gathering are the following:

- Very few Federal managers bother to use the performance-based removal actions established by the law, in part, because they do not understand either the Chapter 43 or Chapter 75 provisions but believe them to be difficult to use.

- Supervisors report that they frequently receive inadequate or confusing advice and assistance from agency "experts" on removal procedures.

- Many supervisors and managers believe, incorrectly, that only Chapter 43 procedures can be used to address a poor performance problem and they perceive those procedures to be too complicated, time consuming, or onerous.

- Already reluctant to create an unpleasant work environment, many supervisors also believe that if they take formal action against a poor performer there is a real possibility that (1) higher level management will not support them, (2) their

decisions will be reversed upon review or appeal, or (3) they will be falsely accused of having acted for discriminatory reasons.

- In contrast to the disincentives and perceived personal risks associated with attempting to remove a poor performer, many supervisors see little downside cost associated with not taking action in their belief that they can work around the deficiencies of a poor performer and still get the mission of the work unit accomplished. In short, they believe it is simply not worth the effort to attempt to remove an employee who cannot or will not perform adequately.

When examining the reluctance of Federal managers to remove poor performers from the Federal Service, it is important to note that according to our survey data, supervisors report that they do take some action to deal with performance problems but those actions usually stop short of formal action to remove. For example, 3 out of every 4 supervisors (78 percent) said they had experience with at least one employee with a performance problem since becoming a supervisor. Among these supervisors, 89 percent said they counseled the employee with the performance problem and 26 percent said they gave the employee a less than satisfactory performance rating. Therefore, while most supervisors report that they took some positive action to address a performance problem, for most supervisors it stopped short of formal action. Fewer than one out of every four supervisors (23 percent) who claimed they had supervised a poor performer proposed the demotion or removal of that employee.

My remarks to this point have concentrated on the perceptions of supervisors regarding the difficulty of the process of removing a poor performer. While supervisors take actions--or decline to take actions--based on these perceptions, it is also important that we recognize that these perceptions are sometimes inaccurate. For

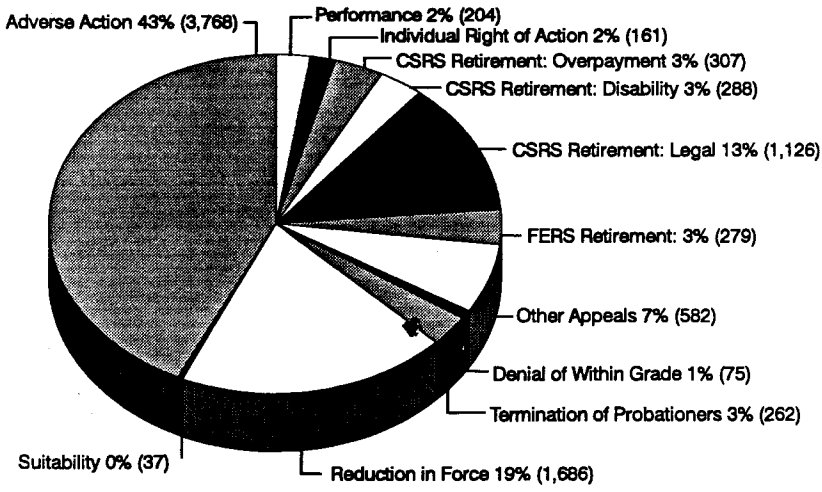
example, even though many supervisors would agree with the statement that it's very difficult if not almost impossible to try to fire an employee, the fact of the matter is that most removal actions that are taken against employees are not even contested--and when they are contested, most of the time the management decision is upheld. Based on estimates provided by knowledgeable agency officials from a number of Federal agencies, on average only about 20 percent of all removals and demotions are appealed to MSPB. And, at the Board, our records show that with regard to the outcome of initial appeals that are not dismissed, the agency action is overturned or the penalty imposed by the agency is reduced only about 13 percent of the time.

Finally, in a recent "customer satisfaction" survey that my office conducted for the Board, we received a total of 571 responses from agency or appellant representatives who have appeared before the Board. These individuals, who have had first hand experience with that portion of the appeals process administered by the Board, provide fairly positive feedback on that process. In short, the large majority of representatives report that questions addressed to MSPB judges and staff are answered promptly and courteously; the information is helpful; the rulings issued by MSPB are fair, reasonable, easy to understand, and consistent with the law; and they agree that the Board's standard of issuing an initial decision within 120 days of receipt of the appeal is appropriate (actual experience is that the average processing time for an initial appeal is between 80 and 90 days).

Mr. Chairman, this concludes my formal testimony and I will be happy to answer any questions that you or other members of the Subcommittee may have. Thank you.

U.S. Merit Systems Protection Board
Initial Appeals of Agency Actions - FY 1994

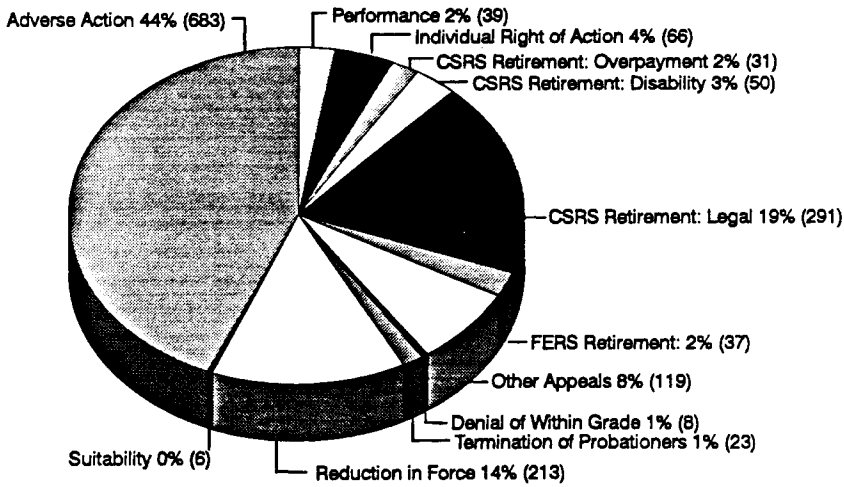
Types of Initial Appeals--Filed



Total Number of Initial Appeals: 8,775
Percentages do not total 100% because of rounding.

U.S. Merit Systems Protection Board
Petitions for Review (PFR's) of Initial Appeals - FY 1994

Types of PFR's--Filed



Total Number of PFR's: 1,566

CHAPTER 43 PERFORMANCE-BASED ACTIONS[1] AND CHAPTER 75 ADVERSE ACTIONS[2]
INITIAL APPEALS FILED[3] - FY 1985-1994

Fiscal Year	Total Appeals	Chapter 43 *	Chapter 75 *
1994	8,775	204 (2%)	3,768 (43%)
1993	6,938	251 (4%)	3,599 (52%)
1992	7,361	224 (3%)	3,735 (51%)
1991	7,677	276 (4%)	3,970 (52%)
1990	6,795	286 (4%)	3,520 (52%)
1989	6,968	244 (4%)	3,365 (48%)
1988	6,614	263 (4%)	3,441 (52%)
1987	6,460	311 (5%)	3,256 (50%)
1986	6,740	310 (5%)	3,404 (51%)
1985	6,415	335 (5%)	3,244 (51%)

[1] Chapter 43 actions are performance-based removals and reductions in grade effected under an agency performance appraisal system that has been approved by OPM.

[2] Chapter 75 actions are removals, reductions in grade or pay, suspensions for more than 14 days, and furloughs of 30 days or less for such cause as will promote the efficiency of the service.

[3] Reviewed by administrative judges.

* Percentages in these columns are of total appeals filed.

CHAPTER 43 PERFORMANCE-BASED ACTIONS AND CHAPTER 75 ADVERSE ACTIONS
PETITIONS FOR REVIEW (PFRs) FILED[1] - FY 1987-1994

Fiscal Year	Total PFRs	Chapter 43 *	Chapter 75 *
1994	1,566	39 (2%)	683 (44%)
1993	1,418	47 (3%)	763 (54%)
1992	1,428	50 (4%)	700 (49%)
1991	1,436	60 (4%)	651 (45%)
1990	1,323	48 (4%)	625 (47%)
1989	1,212	49 (4%)	560 (46%)
1988	1,312	67 (5%)	629 (48%)
1987	1,367	79 (6%)	721 (53%)

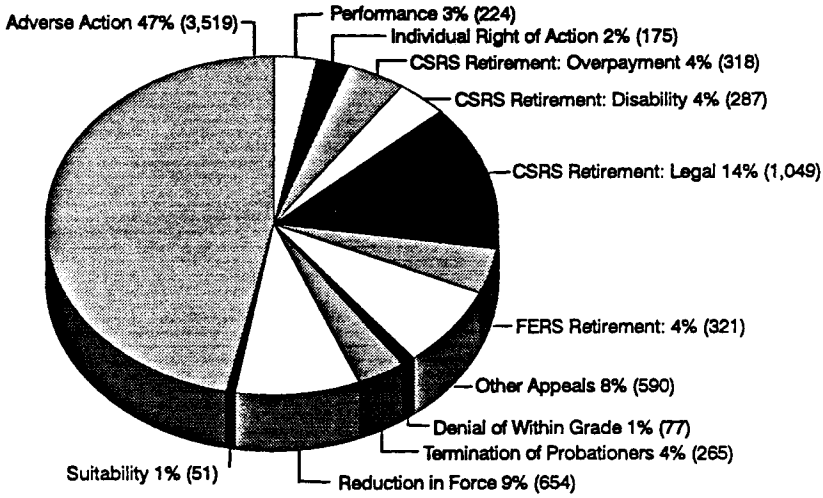
[1] Reviewed by full three-member Board.

* Percentages in these columns are of total PFRs filed.

NOTE: Data is available beginning FY 1987.

U.S. Merit Systems Protection Board
Initial Appeals of Agency Actions - FY 1994

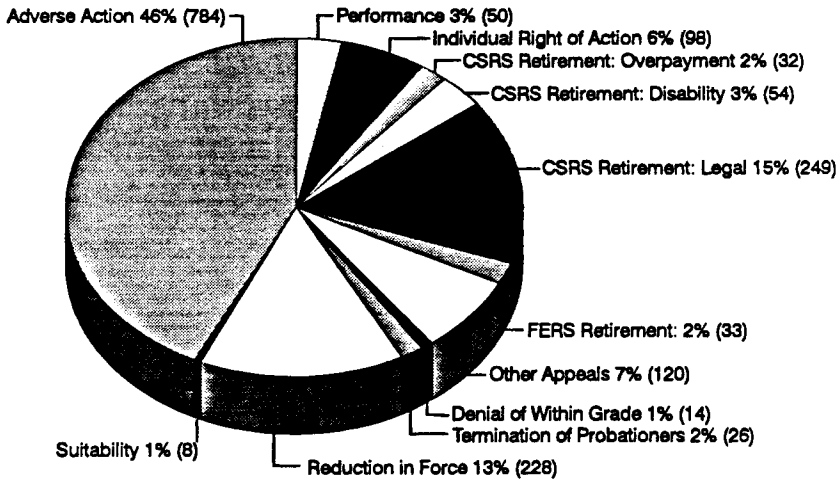
Types of Initial Appeals--Decisions



Total Number of Initial Appeals: 7,530
Percentages do not total 100% because of rounding.

U.S. Merit Systems Protection Board
Petitions for Review (PFR's) of Initial Appeals - FY1994

Types of PFR's--Decisions



Total Number of PFR's: 1,696
Percentages do not total 100% because of rounding.

CHAPTER 43 PERFORMANCE-BASED ACTIONS AND CHAPTER 75 ADVERSE ACTIONS
INITIAL APPEALS DECIDED[1] - FY 1985-1994

Fiscal Year	Total Appeals	Chapter 43 *	Chapter 75 *	Chapter 43 Decided on Merits **	Chapter 75 Decided on Merits **	Chapter 43 Affirmed ***	Chapter 75 Affirmed ***
1994	7,530	224 (3%)	3,519 (47%)	46	780	29 (63%)	544 (70%)
1993	6,861	251 (4%)	3,675 (54%)	71	841	56 (79%)	640 (76%)
1992	7,294	225 (3%)	3,645 (50%)	61	816	39 (64%)	581 (71%)
1991	7,525	278 (4%)	3,913 (52%)	77	845	62 (81%)	610 (72%)
1990	6,932	279 (4%)	3,529 (51%)	80	799	61 (76%)	575 (72%)
1989	6,953	253 (4%)	3,373 (49%)	65	730	54 (83%)	526 (72%)
1988	6,402	273 (4%)	3,348 (52%)	78	876	61 (78%)	660 (75%)
1987	6,512	308 (5%)	3,303 (51%)	116	1,167	90 (78%)	898 (77%)
1986	6,849	329 (5%)	3,474 (51%)	****	1,387	****	1,050 (76%)
1985	6,523	321 (5%)	3,283 (50%)	****	1,475	****	1,151 (78%)

[1] Reviewed by administrative judges.

* Percentages in these columns are of total appeals decided.

** Appeals decided on the merits are those not dismissed or settled.

*** Percentages in these columns are of appeals "Decided on Merits."

**** Prior to FY 1987, disposition information for Chapter 43 appeals is not available because Chapter 43 appeals were included with other miscellaneous appeals in an "Other" category in disposition reports.

CHAPTER 43 PERFORMANCE-BASED ACTIONS AND CHAPTER 75 ADVERSE ACTIONS
PETITIONS FOR REVIEW (PFRs) DECIDED[1] - FY 1985-1994

Fiscal Year	Total PFRs	Chapter 43 *	Chapter 75 *
1994	1,696	50 (3%)	784 (46%)
1993	1,317	44 (3%)	702 (53%)
1992	1,612	62 (4%)	769 (48%)
1991	1,503	62 (4%)	686 (46%)
1990	1,310	45 (3%)	570 (44%)
1989	1,141	54 (5%)	539 (47%)
1988	1,229	68 (6%)	577 (47%)
1987	1,388	77 (6%)	797 (57%)
1986	1,396	82 (6%)	762 (55%)
1985	2,174	284 (13%)	1,211 (56%)

[1] Reviewed by full three-member Board.

* Percentages in these columns are of total PFRs decided.

CHAPTER 43 APPEALS WITH WHISTLEBLOWER OR DISCRIMINATION DEFENSE[1]

Decided - FY 1990-1994

Fiscal Year	Total Chapter 43	Whistleblower Defense *	Discrimination Defense	Discrimination Not Decided **	Discrimination Decided	Discrimination Not Sustained	Discrimination Sustained
1994	224	18	109	83	26	26	0
1993	251	24	131	96	35	33	2
1992	225	17	121	84	37	35	2
1991	278	34	125	93	32	30	2
1990	279	11	143	101	42	42	0

[1] Discrimination claims that may be raised include discrimination based on age, color, disability, national origin, race, religion, and sex; more than one type of discrimination may be alleged in a single appeal. In the Chapter 43 cases covered by this 5-year report, the most frequent type of discrimination alleged was race (238 allegations), followed by disability and age (208 allegations each) and sex (180 allegations).

* The Board's Case Management System does not track whether a whistleblower defense is sustained--only whether the appeal is dismissed, settled, agency action affirmed or reversed, etc.

** Discrimination issue is not decided if the appeal is dismissed or settled, or the discrimination issue is withdrawn.

NOTE: Data is available beginning FY 1990. Appellants may raise affirmative defenses based on prohibited personnel practices--such as political coercion, granting unauthorized preference, and nepotism--as well as whistleblowing and discrimination. Whistleblower and discrimination defenses are the only affirmative defenses included in reports from the Case Management System. In addition, appellants may raise other defenses challenging the legal or factual basis of an action in conjunction with an affirmative defense.

MIXED CASES - EEOC/MSPB/SPECIAL PANEL DECISIONS
FY 1987-1994

Fiscal Year	MSPB Decisions Reviewed by EEOC	EEOC Dismissed or Agreed with MSPB *	EEOC Disagreed with MSPB *	EEOC Decisions Reviewed by MSPB **	Board Adopted EEOC Decision ***	Board Did Not Adopt EEOC Decision ***	Special Panel Decision
1994	200	197	3	3	3	0	0
1993	109	108	1	1	1	0	0
1992	147	145	2	2	2	0	0
1991	136	134	2	2	2	0	0
1990	119	114	5	5	5	0	0
1989	127	126	1	3	2	1	0
1988	142	138	4	12	8	4	0
1987	390	366	24	22	21	1	1

* Figures in these columns total the number of decisions issued by EEOC during the fiscal year on review of MSPB mixed case decisions.

** Figures in this column are cases that MSPB reviewed during the fiscal year in which EEOC disagreed. Because the MSPB review may be of a case decided by EEOC in an earlier fiscal year, the number is not always the same as the number of cases in which EEOC disagreed with MSPB in that fiscal year.

*** Figures in these columns total the number of EEOC decisions in disagreement reviewed by MSPB during the fiscal year. Not all cases in which MSPB does not adopt the EEOC decision are certified to the Special Panel; cases are not certified if the EEOC decision was based on discrimination issues that were not before MSPB when its decision was issued.

THE MIXED CASE PROCESS, INCLUDING SPECIAL PANEL DECISIONS

As part of the Civil Service Reform Act of 1978, Congress sought to ensure that the civil rights of Federal workers received significant assurances of protection. To that end, decisions of the MSPB in mixed cases--those raising one or more issues of discrimination in connection with an appealable personnel action--may be appealed to the EEOC for review of the discrimination issue(s). If the EEOC disagrees with the MSPB decision on discrimination, the case is returned to the Board. If the Board adopts the EEOC decision, it becomes final and is then subject to judicial review in the appropriate district court.

If the Board does not adopt the EEOC decision, the case may be certified to the Special Panel for resolution. (The Board will not certify the case to the Special Panel if the EEOC decision was based on discrimination issues that were not before the Board when its decision was issued.) The Special Panel is made up of a Chairman appointed by the President, one member of the Board appointed by the MSPB Chairman, and one EEOC commissioner appointed by the EEOC Chairman. The decision issued by the Special Panel is final and is then subject to judicial review in the appropriate district court.

Since MSPB began operations in 1979, only four cases have been certified to the Special Panel. The Special Panel issued decisions in three of those cases, as follows:

1986 - *Ignacio v. U.S. Postal Service* - Agreed with EEOC

1986 - *Lynch v. Department of Education* - Agreed with MSPB

1987 - *Shoemaker v. Department of the Army* - Agreed with MSPB - This was a Chapter 43 performance case with a defense of handicap discrimination.

The fourth case certified to the Special Panel was dismissed for failure to prosecute. No cases have been certified to the Special Panel since 1987.

APPENDIX C

Special Panel

During Fiscal Year 1986 the Special Panel issued its first two decisions:

Ignacio v. U.S. Postal Service (February 27, 1986).

In a split decision, the Special Panel held that Federal agencies must consider reassignment as a reasonable accommodation for physically handicapped employees prior to taking a removal action. The majority held that the decision of the EEOC, requiring consideration of reassignment prior to removal, is reasonable and consistent with the Rehabilitation Act. The majority set forth its view of the Panel's jurisdiction in reviewing cases certified to it.

Lynch v. Department of Education (August 22, 1986).

The Special Panel in a split decision adopted the Board's opinion that removal of a handicapped employee was lawful because the agency had attempted to accommodate the employee's handicap and the medication used to treat it. The majority of the Panel held that the agency was not required to provide training to the employee as an accommodation where there was no indication that training would improve the employee's performance.

APPENDIX C
SPECIAL PANEL DECISION

During Fiscal Year 1987 the Special Panel issued one decision:

Shoemaker v. Department of the Army
(September 2, 1987)

Handicap Discrimination - Accommodation

In a unanimous decision, the Special Panel adopted the Board's decision in this case, which involved a Chapter 43 performance-based removal.

The appellant had been a Federal employee for approximately 24 years when he advised the agency that he intended to apply for disability retirement because of an ocular disability (double vision). Following this notification, the appellant received notice of proposed removal for failure to meet two critical elements of his position. The appellant's most recent performance rating had been "marginally satisfactory."

The appellant's removal was effected by the agency on May 25, 1983, and on May 31, 1983 the appellant was notified by OPM that his disability retirement application was granted. Thereafter, the appellant filed an appeal of his removal with MSPB, contending that his removal was the result of handicap and age discrimination, and that the agency had committed harmful procedural error by failing to hold the removal action in abeyance while his disability retirement application was pending with OPM.

The appellant's removal under Chapter 43 was sustained by the administrative judge, who found that the agency was under no obligation to hold the removal action in abeyance pending OPM's decision on his disability retirement application. The administrative judge also found that the agency was not required to reassign the appellant as an accommodation to his handicap; however, this was prior to the Special Panel decision in *Ignacio v. USPS*, which requires Federal agencies to consider reassignment as a reasonable accommodation for physically handicapped employees.

On review, the EEOC found that the agency's unexplained failure to hold the removal action in abeyance was the result of handicap discrimination. (No age discrimination was found.) When the case was referred to the Board, it disagreed, holding that EEOC's decision had been based solely on its reading of an internal Department of the Army regulation which was inapplicable to Chapter 43 cases and which, additionally, had been superceded by a regulation which contained no provision requiring that removal actions be held in abeyance pending a determination on a disability retirement application. Although the Board agreed with EEOC that under the Special Panel's decision in *Ignacio*, the agency had to consider reassignment, it found that the evidence indicated no positions existed to which the appellant could be reassigned.

The case was referred to the Special Panel for resolution. In its decision, the Panel agreed with the Board that the EEOC's decision was based on its interpretation of the agency's regulation and, therefore, on civil service law. It further found that the agency's regulation did not require that the removal action be held in abeyance. Thus, the Panel deferred to the Board's determination and no handicap discrimination was found.

In their separate concurring opinion, EEOC Chairman Thomas and Board Member Devaney stated that when OPM granted the appellant's application for disability retirement one week after his removal, the agency had the discretion to amend its records to show that he was on sick leave until the effective date of his retirement, and that his separation was by retirement. They noted that the agency's failure to do so resulted in an expenditure of time and money "completely out of proportion to the legal merits of the case."

Mr. BASS. Thank you very much. The Chair recognizes Mr. Shaw.

Mr. SHAW. Thank you, Mr. Chairman and members of the subcommittee for the opportunity to testify here before you.

The image of the lazy bureaucrat is often the public image of Federal workers today. It is a false image. However, we all know there are poorly performing employees, but none of us know how many. An October 1990 GAO report on performance management estimated that 5.7 percent of Federal employees were poor performers. While the number is not that high, the number is not insignificant.

Many have speculated about why managers do not take action against these employees. The September 1995 MSPB issue paper recommends that the chapter 43 appeals process be done away with and the multilevel of reviews that Federal employees can utilize in challenging performance actions be reduced.

John Sturdivant, national president of AFGE, a week or so ago before this subcommittee, alleged that the problem is that managers need to stop "whining" about how hard it is to get rid of poor performers. He stated that the problem is "timid or incompetent managers who either will not or cannot rout them out."

The real reason, however, is not because of the system, and it is not because they are poor managers. It is because to take an action against a poorly performing employee is to invite a plethora of attacks by the employee on the manager.

Just a few of these include filing an EEO complaint; making anonymous allegations about the manager on the IG hotline; filing an agency grievance or a grievance under the collective bargaining agreement; alleging to the Office of Special Counsel that the manager's actions are really being taken against them because they are a whistleblower; writing letters to their Members of Congress and alleging all kinds of nefarious activities; and filing an unfair labor practice charge with the Federal Labor Relations Authority, if they are affiliated with the union.

This is only a partial list. Other actions can be taken and allegations made which are only limited by the imagination of the employee. If the manager prevails against all these actions, it could be years later.

Then, the manager will have to defend the action all over again at the Merit Systems Protection Board, because each and every one of these allegations can be raised as affirmative defenses before the MSPB.

If the employee prevails on any one of the myriad of challenges, they will be put back in their jobs, given back pay and attorney's fees, and, in some instances, paid substantial monetary damages. This is true even if the manager has proven that the employee has performed at the unsatisfactory level and should be removed for poor performance.

The aftermath is a thoroughly demoralized manager, a demoralized office staff, and the establishment of an attitude within the agency that taking performance-based actions is just not worth it. Is it any wonder that 26 percent of the 5,700 managers, or nearly 1,500, surveyed by MSPB believe that they would not be supported by higher management?

It's not higher management's fault. They know that they'll have to deal with, devote resources to, and, in some instances, adjudicate allegations against the supervisor that resulted from taking the action. This cost in staff and dollars has got to be factored into their decision process on whether or not to support an action.

In an informal survey of its career executive members conducted by the SEA last month, 95 percent of the respondents said that they have employees who are "frequent filers." That is, they file EEO grievances, IG allegations, et cetera, on a regular basis; 92 percent of the respondents said that some, to all, of the complaints are frivolous; 91 percent verified that the complaint systems are abused in order to intimidate a supervisor or agency management from taking action against them. They stated that this is a common occurrence.

Also, 33 percent said that their agency does not deal effectively with poorly performing employees, and 56 percent said that the agency only sometimes does; 90 percent of the executives said that their agencies are inclined to settle complaints even when they may not be valid in order to avoid the time and expense involved in defending the supervisor or the agency action.

The September MSPB report identified inadequate assistance provided by agency personnel and legal staff. Ironically, one of the reasons for this is because of the policy followed by the MSPB, itself. Administrative MSPB judges are given very short time limits—120 days—to complete the cases that are appealed to them.

They are encouraged to settle about 50 percent of all the cases appealed. Agency attorneys and personnel counsel inform their agency managers of this, and the result is that they know they really only have a 50–50 chance of prevailing on appeal.

In many agencies, settlements of EEO complaints are nearly mandatory. SEA has had many anguished telephone calls from Government executives who are being forced by their political superiors to settle EEO complaints that they know are not valid. Many of these settlements involve substantial cash payments to the complainants.

The tragic part of this is that over 55 percent of those responding to the SEA survey state that there are legitimate complaints by employees in their agency which are not filed because of the plethora of frivolous complaints that are clogging the system.

Is there an answer? We propose that current law be changed to prevent an employee from raising affirmative defenses before the agency or the MSPB in performance cases under section 4303. The PIP should be limited to 30 days—the performance improvement period—and the substantial evidence standard must be retained.

The only issue, when the employee does his or her oral reply or written reply prior to the agency decision, should be, "Is the employee performance acceptable under his or her critical elements and performance standards?" If it is, the employee should be reassigned, demoted, or removed—if it is not. Excuse me.

The same standard should prevail at the MSPB on appeal. Employees would not be denied the ability to file all their other actions. However, the first query by all these enforcement agencies should be, "Are these allegations being made by an employee who

is being considered for removal or demotion for unacceptable performance?" This should be taken into consideration.

There should be a mechanism established in law allowing the agencies or EEOC to summarily dismiss frivolous complaints. If the employee chooses to pursue his or her case, there should be equitable remedies, but the employee must not be placed back in the position from which he or she was removed for unsatisfactory performance.

Under the Whistleblower Protection Act, the Office of Special Counsel has the authority to intervene at the MSPB and get a stay of an action taken against employees. Similar authority should be given by law to the EEOC where EEO allegations are alleged, and this would prevent any abuse of the system. Employees should not be deprived of their right to raise affirmative defense in conduct cases, because they are totally different.

We thank you for your consideration of our testimony and our proposal. I'm sorry I took so long.

[NOTE.—Due to high printing costs, the Senior Executives Association "Poor Performers" survey can be found in subcommittee files.]

[The prepared statement of Mr. Shaw follows:]

G. JERRY SHAW

GENERAL COUNSEL

TO THE SENIOR EXECUTIVES ASSOCIATION

Thank you Mr. Chairman and Members of the Subcommittee for giving us the opportunity to testify on this important subject. As you know, the Senior Executives Association is a professional, non-profit association which represents the interests of career members of the Senior Executive Service, Senior Level and Senior Technical employees and career executives in other equivalent positions.

One of the enduring images of the Works Project Administration (WPA) which provided jobs for a huge number of American citizens during the Depression in the 1930's is the "lazy" group of workers leaning against their shovels watching one other worker actually perform on the job. We all know that in most instances this was a false image, and many of the great federal buildings still in use in the Washington, D.C. area are products of the efforts of the workers who toiled on the WPA projects.

The image of the lazy bureaucrat who sits at a desk all day and shuffles papers from one side to the other, comes to work late, leaves early, takes long lunch hours, and abuses his/her sick leave, is the often identified image of federal employees today. The WPA stereotype was a false image of workers then and the lazy bureaucrat is a false image of federal employees today.

However, it is an image that is sometimes reinforced by a small group of federal employees who do abuse the system. We all know there are poorly performing employees, but what none of us know is how many. The October 1990 GAO report on performance management, which was based on site visits and 550 questionnaires to a governmentwide sample of supervisors, estimated that 5.7% of federal employees were poor performers (See GAO/GGD-91-7). While we do not believe that the number is this high, the number is not insignificant.

Many have speculated about why managers do not take action against poorly performing employees to remove them from federal service, and many have suggested solutions. The September 1995 MSPB issue paper on removing poor performers recommends, for example, that the Chapter 43 appeals process be done away with, implying that that might solve the problem. The MSPB paper also encourages a reduction in the multiplicity of forums for appeal and the multi-levels of review that federal employees can utilize in challenging performance actions. It also discusses changes to the Reduction In Force (RIF) laws, so that performance can be taken into consideration in RIFs.

In the statement by John Sturdivant, National President of AFGE, before this subcommittee on October 13, 1995, he alleged that the problem is that managers need to stop "whining" about how hard it is to get rid of poor performers. Mr. Sturdivant

said they need to "stop making excuses" and just do it. He stated that the problem is "timid or incompetent managers who either will not or cannot rout them out." His suggestion for fixing the problem is obviously aggressive and competent managers and a "one bite at the apple" process by which employees could have their performance actions reviewed by an arbitrator under the collective bargaining agreement, or a hearing at the MSPB. He believes that the process should then end.

We disagree with Mr. Sturdivant, whose union has aggressively defended these alleged poor performers for many years, but his suggestions, as well as those of GAO and MSPB have merit, and many of them would help. The real reason, however, that managers do not take actions against poorly performing employees is not because of the system, and it is not because they are poor managers; it is because to take an action against a poorly performing employee is to invite a plethora of attacks by the employee on the manager. Employees who are even suspicious that a supervisor may be thinking that their performance is less than fully successful routinely do the following, often with the assistance of their union representative:

1. They file an EEO complaint alleging discrimination of some kind by the manager. The most common allegation is handicap

discrimination, which protects people with disabilities, including alcoholism and drug dependency.[1]

2. They call and make an anonymous (and often false or grossly exaggerated) allegation about the manager on an IG "Hotline". Invariably an investigation results, and the more outrageous the allegation, the more vigorous and lengthy the investigation.

3. They file an agency grievance or a grievance under the collective bargaining agreement. Often these grievances are about some minor technicality, having nothing to do with the substance of the action, but rather the "process" that has been used in supervising or evaluating the employee.

4. They allege at the Office of Special Counsel that the manager's actions are being taken against them because they are a "whistleblower," for example, because they made the anonymous allegation to the IG's Hotline mentioned above. The OSC and the MSPB have prosecuted actions against managers and executives where the whistleblower had made an allegation, based on his/her illegal search through tax

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[1]In a comparative study on the filing of EEO complaints that SEA did last year for the period 1982 - 1992, we found that federal employees in general file EEO complaints at a rate seven times that of private sector employees. However, they prevail on these complaints at a rate 33% lower than those in the private sector. (See attached exhibit for additional information.)

information at the Internal Revenue Service, for actions which were taken as much as five years after the "whistleblowing" by the perpetrator. The OSC has sought to fire, debar from federal employment and fine federal managers and executives based on supervisory actions taken years after the alleged whistleblowing, whether the "whistleblowing" allegations had any merit or not. We are not blaming the OSC, because clearly the law as it now stands allows them to take such actions.

5. They write a letter to their Member of Congress and allege all kinds of nefarious activities on the part of the supervisor and the installation where they work, alleging the misuse of funds, equipment and everything else they can think of.

6. If they are a union member or an official in the union, they file an unfair labor practice charge with the Federal Labor Relations Authority, alleging that the manager is taking these actions against him/her because of his/her affiliation with the union.

This is a partial list. Other actions can be taken which are only limited by the imagination of the employee. These steps are often taken by employees before the manager has taken any action against them. Often the manager has merely expressed displeasure

to the employee about his/her performance. If the manager prevails against the IG investigation, EEO complaint, unfair labor practice charge, Office of Special Counsel investigation, grievance procedure, congressional inquiry, or even a GAO inquiry (they have a hotline too), and winds up taking the performance based action, it will probably be years later. Then the manager will have to defend the action all over again at the MSPB because each and every one of these allegations, as well as allegations concerning other portions of the 11 separate prohibited personnel practices listed at 5 U.S.C., Section 7302(b) can be raised as "affirmative defenses" before the MSPB.

If the employee prevails on any of the myriad of challenges, they will be put back in their jobs, given back pay and attorney's fees, and, in some instances, paid substantial monetary damages. This is true <u>even if the manager has proven that the employee has performed at the unsatisfactory level and should be removed for poor performance</u>.

The aftermath of even attempting to take an action against a poorly performing employee in the face of all these hurdles is a thoroughly demoralized manager, a demoralized office staff who know that the unsatisfactory employee got away with it, and the establishment of an attitude within the agency that taking performance based actions just is not worth it. Is it any wonder that 26% (1,482) of the 5,700 mangers surveyed by the MSPB in their recent report believed that they would not be supported by

higher management if they took action against an employee? This is not to place blame on higher levels of management. They know that they will have to deal with, devote resources to, and, in some instances, adjudicate allegations against the supervisor that resulted from taking the performance action. Before they support the supervisor, they must weigh and balance what is in the interest of their agency, and whether the cost in staff and dollars that will have to be expended in defending the supervisor is worth the benefit that will be received, i.e., the removal of one employee.

In an informal survey of its career executive members conducted by the Senior Executives Association (attached to this testimony), 95% of the respondents said they have employees with performance problems in their agency who are "frequent filers," that is, they file grievances, IG allegations, whistleblower complaints, EEO complaints and other complaints on a regular basis. 92% of the respondents said that some to all of the complaints are frivolous. 91% verified that the complaint systems are abused in order to intimidate a supervisor or agency management from taking an action against a poor performer. They stated that this is a "common occurrence". 33% of the respondents said that their agency does not deal effectively with poorly performing employees, and 56% said that the agency only "sometimes" does. In addition, 90% of the executives said that their agencies are inclined to settle complaints even when they

may not be valid in order to avoid the time and expense involved in defending the supervisor or agency.

In the September 1995 MSPB Report cited above, one of the problems identified was inadequate assistance provided by agency personnel and legal staff. Ironically, one of the reasons for this is because of a policy followed by the MSPB itself. MSPB Administrative Judges are given very short time limits (120 days) to complete the cases that are appealed to them. In order to meet these time limits, and at the urging of their agency, they are encouraged to settle about 50% of all of the cases appealed. These settlement statistics are highly touted in the MSPB annual reports. However, as a result of the pressure on the Administrative Judges to settle and, in turn, the pressure by the Administrative Judges on agency counsel and personnel offices to settle by giving something to the employee who appeals, agency managers are told that they really only have a 50-50 chance of prevailing on appeal. While the MSPB study indicates that rarely are performance cases reversed by the Board, in fact, those reversals come in the 50% of the cases that are not settled by the Administrative Judges before they are adjudicated.

In many agencies, settlements of EEO complaints are nearly mandatory. SEA has had many anguished telephone calls from government executives who are being forced to settle EEO complaints that the executives know are not valid and that have

no basis in fact or in law. Many of these settlements involve substantial cash payments to the complainants and the payments of attorney's fees. SEA believes that it is the agency's responsibility (including the heads of the agencies who often encourage these practices) to not utilize hard earned taxpayer dollars to "pay off" employees whose complaints have no basis in fact or law. The tragic part about this is that over 55% of those responding to the SEA survey state that there are legitimate complaints by employees in their agency which are <u>not filed</u> because of the plethora of frivolous complaints that are clogging up the system. We leave it to you, Mr. Chairman, and your staff to read the written comments that we received from the frustrated and discouraged career SES employees who responded to the survey.

A reasonable person might ask, "Can there be a solution to this myriad of problems?" Well, SEA has one to suggest.

We propose that current law be changed to prevent an employee from raising "affirmative defenses" before the agency or the MSPB in performance cases under 5 U.S.C., Section 4303. The current requirements for a Performance Improvement Period (which should be limited to a maximum of 30 days) prior to action and retaining the substantial evidence standard would remain. The only issue when the employee does his/her oral or written reply prior to the agency decision, and on appeal to the MSPB, should

be "Is the employee's performance unacceptable under his/her critical elements and performance standards?" If it is, the employee should be reassigned, demoted or removed. On appeal to the MSPB, the only issue should be "Is the employee's performance unacceptable under his/her critical elements and performance standards?" If so, the reassignment, demotion or removal should be sustained. Section 7701 of Title 5 should be amended to exclude all affirmative defenses in §4303 appeals except for harmful procedural error or an error of law which would have resulted in a different decision. Then the MSPB could reverse the action.

Employees would not be denied the ability to file all of their other actions, e.g., EEO complaints, Special Counsel charges and IG allegations. However, the first query by all of these enforcement agencies should be: "Are these allegations being made by an employee who is being considered for removal or demotion for unacceptable performance?" If so, these officials should require a higher standard of proof of the allegations before initiating an investigation against the manager or agency. Meanwhile, the performance case should be allowed to proceed without other matters interfering with it, and decided under the standards set forth above.

In addition, there should be a mechanism established in law allowing the agencies or EEOC to summarily dismiss frivolous EEO

complaints. They have become a terrible burden for agencies, and have so overwhelmed the EEO system that valid complaints are often ignored or "lost," or, at best, take years to be recognized and dealt with fairly.

If an employee chooses to pursue his/her EEO case, OSC case, IG case, etc., he/she would be free to do so, even if he/she had been removed for poor performance from federal service. However, if he/she prevailed before one of these investigative or appellate agencies, that entity could order the employee to be made whole for his/her losses. However, there should be other remedies available which do not require forcing an agency to reinstate an employee who had been proven incapable of performing the job which he/she had previously occupied at a fully successful level. Other monetary or equitable remedies should be provided which would make the employee whole, but the employee must not be placed back in the position from which he/she was removed for unsatisfactory performance.

The civil rights and whistleblower communities might allege that employees will be fired willy-nilly, and there would be no way under our proposal to prevent this. However, under the Whistleblower Protection Act, the Office of Special Counsel has the authority to intervene at the MSPB and get a "stay" of the action being taken against the employee. This authority should remain with the Office of Special Counsel, so that if partisan

political activity, whistleblower reprisal, or other prohibited personnel practices are occurring, the MSPB could stay the action. The employee could then be retained in his/her position until after a thorough investigation and remedy determination was completed.

Similar authority should be given by statute to the EEOC where EEO violations are alleged, and strong evidence exists that they may have occurred. If it appears that the adverse action is primarily motivated by racial or handicap discrimination, gender discrimination, sexual harassment, age discrimination or other violations of EEO laws, the EEOC should be able to go before the MSPB and request a "stay" of the action until after the agency has completed it's investigation and a determination has been made. Obviously, the standard of proof and the procedure before the MSPB should be the same for the EEOC as is currently required of the OSC, so that the authority is not misused by the agencies. With these two stay remedies, employees would be adequately protected from <u>real</u> discrimination and <u>real</u> whistleblower reprisal.

The OSC only initiated disciplinary actions against managers and supervisors before the MSPB whistleblower reprisal or other prohibited personnel practices in 10 cases in 1994. Statistics also show that, of the cases appealed to the MSPB over the last eight years, only 3/10 of 1% of them have resulted in a finding

of discrimination as an affirmative defense against an adverse action. Clearly then the supervisors and managers have not been abusing their authority in either whistleblower or EEO cases.

Employees should not, however, be deprived of a right to raise affirmative defenses before the MSPB in conduct cases under Chapter 75 of Title 5. Conduct cases could be much more easily fabricated and more speciously taken against employees. Thus, the availability of affirmative defenses is important in conduct cases. Performance cases, on the other hand, are generally not precipitous actions, but deal with performance that has taken place over a number of months and often a year or more. Performance is not one specific incident as is conduct and, thus, is not as likely to be subject to arbitrary or wrongful motives. We believe this system would restore the balance between the ability of an agency to remove an employee for unsatisfactory performance and the employee's right to fairness, due process and an appeal to MSPB.

The system in the private sector is similar to what we have proposed. Private companies can remove poorly performing employees without regard to whether employees allege that the removal is because of discrimination or other illegal action. The employee, however, has the option of filing a discrimination complaint with the EEOC and pursuing it and has the option of filing suit in court if they believe the removal was improper

under state or federal law. Similar, but better, MSPB options would remain available to federal employees in performance cases, but could not so readily be used to intimidate managers into ignoring unacceptable performance.

We thank you for your consideration of our testimony and our proposal. We would be pleased to answer any questions you might have.

COMPARATIVE STUDY OF COMPLAINTS AND CHARGES OF DISCRIMINATION

YEAR	NUMBER OF EMPLOYEES IN FEDERAL WORKFORCE*1	NUMBER OF EMPLOYEES IN PRIVATE SECTOR *2	NUMBER OF EMPLOYEES IN EEOC*3
1982	2,008,605	84,010,000	-
1983	-	85,297,000	3,055
1984	2,023,333	89,235,000	3,015
1985	-	91,119,000	2,975
1986	2,083,985	93,255,000	3,100
1987	-	95,640,000	3,100
1988	2,125,148	97,854,000	3,224
1989	-	99,873,000	2,942
1990	2,150,359	100,174,000	2,934
1991	-	98,976,000	2,934
1992	2,175,715	99,512,000	-

*1 U.S. Office of Personnel Management, Central Personnel Data File 1992, (compiled biannually).
*2 Current Population Survey, U.S. Department of Labor, Bureau of Labor Statistics, 1993.
*3 Federal Sector Report on EEO Complaints and Appeals - Fiscal years 1983 through 1991, Equal Employment Opportunity Commission (EEOC).

COMPARATIVE STUDY OF COMPLAINTS AND CHARGES OF DISCRIMINATION

YEAR	# of EEO Complaints Filed by Federal Government Employees*4	# of Complaints per Thousand Employees in Federal Government	# of EEO Charges Filed by Private Sector Employees*5	# of Complaints per Thousand Employees in Private Sector	# of EEO Complaints Filed by Employees of EEOC*6	# of Complaints per Thousand Employees in EEOC
1982	13,861	-	-	-	-	-
1983	16,770	6.9	70,252	.82	105	34.4
1984	17,916	-	71,197	.80	114	37.8
1985	19,386	8.8	-	-	104	34.9
1986	18,167	-	65,666	.70	60	19.4
1987	15,931	8.7	62,074	.65	71	22.9
1988	15,972	-	58,853	.60	106	32.9
1989	16,174	7.5	59,411	.59	73	24.8
1990	17,107	-	62,135	.62	79	27.0
1991	17,696	7.9	64,342	.65	93	31.7
1992	-	-	70,399	-	-	-

*4 and * 6 Federal Sector Report on EEO Complaints and Appeals, Fiscal years 1983 through 1991, Equal Employment Opportunity Commission.

*5 Annual Report, Equal Employment Opportunity Commission, Fiscal years 1983 through 1990 and EEOC "News" 2/26/91, 12/1/92 and 8/10/93.

COMPARATIVE STUDY OF COMPLAINTS AND CHARGES OF DISCRIMINATION

YEAR	# of Findings of Discrimination Made in Federal Government Sector*7	Percentile of Discrimination Cases Sustained in Federal Government Sector*8	# of Findings of Discrimination Made in Private Sector*9	Percentile of Discrimination Cases Sustained in Private Sector*10	# of Findings of Discrimination Made in EEOC	Percentile of Discrimination Cases Sustained in EEOC
1982	338	2.4 /hundred	1,970	-	-	-
1983	363	2.2 /hundred	2,162	3.1 /hundred	2	1.9 /hundred
1984	348	1.9 /hundred	2,531	3.6 /hundred	2	1.8 /hundred
1985	235	1.2 /hundred	1,953	-	4	3.8 /hundred
1986	246	1.4 /hundred	1,863	2.8 /hundred	0	0
1987	244	1.5 /hundred	1,412	2.3 /hundred	4	5.6 /hundred
1988	323	2.0 /hundred	1,938	1.6 /hundred	1	1 /hundred
1989	412	2.5 /hundred	1,941	3.3 /hundred	0	0
1990	250	1.5 /hundred	2,973	4.8 /hundred	0	0
1991	244	1.4 /hundred	1,735	2.7 /hundred	0	0
1992	-	-	1,606	2.3 /hundred	-	-

*7 Report on Pre-Complaint Counseling & Complaint Processing by Federal Agencies, EEOC, 1982-1992, "Complaint Inventory Summary". The figures represent federal agencies actions on recommended decisions received from the EEOC.

*8, *10 This study demonstrates that substantially more discrimination complaints are filed per thousand workers in the federal government workforce than in the private sector, however, a smaller percentile of discrimination cases are found valid in the federal workforce than in the private sector.

*9 "Enforcement Statistics" FY 1982 through FY 1992, EEOC Office of Federal Program Operations.

COMPARATIVE STUDY OF COMPLAINTS AND CHARGES OF DISCRIMINATION

YEAR	# of Women & Afro-Americans in the Federal Government Work Force*11	% of Total Federal Government Work Force	# of Women & Afro-Americans in Private Sector Work Force*12	% of Total Private Sector Work Force	# of Women & Afro-Americans in EEOC*13	% of Total EEOC Work Force
1982	1,099,999	55%	42,374,000	50%	1,676	57%
1983	-	-	43,270,000	51%	1,681	58%
1984	1,126,970	56%	45,675,000	51%	1,613	58%
1985	-	-	47,161,000	52%	1,871	61%
1986	1,200,952	58%	48,515,000	52%	1,787	61%
1987	-	-	50,265,000	53%	1,721	62%
1988	1,247,151	59%	51,699,000	53%	1,972	64%
1989	-	-	52,952,000	52%	1,714	65%
1990	1,283,971	60%	52,271,000	52%	1,752	65%
1991	-	-	52,829,000	53%	-	-
1992	1,306,271	60%	53,213,000	53%	-	-

*11 U.S. Office of Personnel Management, Central Personnel Data File 1992, (compiled biannually).
*12 Current Population Survey, U.S. Department of Labor, (DoL) Bureau of Labor Statistics 1993. The DoL measures minorities as Afro-Americans, thus, figures taken from OPM and EEOC reflect statistics for women and Afro-Americans. Asian Americans and Hispanics are not included in the minority category for this study.
*13 "Federal Agency Trend Summary for Agencies With 500 or More Employees, 1982 Through 1990", Office of Communications and Legislative Affairs, EEOC.

Mr. BASS. Thank you very much. The Chair now recognizes Mr. Tobias.

Mr. TOBIAS. Thank you very much, Mr. Chairman. Thank you for allowing NTEU to testify on this most important subject.

I start with the proposition that civilian employees of the U.S. Government are hard-working, loyal, and competent public servants. However, they've been demeaned, degraded, and devalued by politicians who fail to look at the facts and seek to advance their own political agenda.

As a result, it's not surprising there is a public perception that we have a poor performer problem in the Federal Government, which rests, it is alleged, on the inability and unwillingness of managers to terminate poor performers.

It's not the inability, Mr. Chairman. The process is easier and the burden of proof less than most situations in the private sector. It's the failure to engage the perceived poor performer and provide support, assistance, and training, and it's the failure to make a decision, not the inability to make a decision to discharge.

A recent MSPB survey that Ms. Swift referred to reveals that 77 percent of the supervisors who work with a perceived poor performer took no personnel action against the employee, but that's not the fault of the system. The MSPB indicates that only 20 percent of discharges are challenged. Thus, 80 percent of all removals are unchallenged. Of those who challenge, only 17 percent of the poor performer cases are reversed.

Therefore, of 100 discharged Federal employees, 3.4 are reversed, an incredibly small number. This statistic provides little basis for the management complaint that poor performers can't be discharged. When a decision is made, it sticks.

The MSPB survey revealed the reasons, why decisions to discharge are not made, are founded on the lack of understanding in how to use the current system. Managers lack the basic training to use the system. This is not an indictment of the system, itself, but rather an indictment of those who use the system.

Now, we do, however, recognize that this ingrained perception has to be dealt with, even if it's wrong. Our proposal is to do it exactly as they do it in the private sector. Allow the parties to fashion their own procedure through the collective bargaining process, where a union exists, and allow the agencies to fashion it independently, where a union doesn't exist. We would be willing to give up the statutory protections in chapter 43 and 75 and challenge the managers to create a process that we can both live with, that we can both accept, that we can both understand.

We would also be willing to give up the FLRA and EEOC and court appeals after an arbitrator's decision. In short, once the arbitrator decided, that would be it. There wouldn't be any further appeals. We wouldn't be talking about 18 months to decide cases. We believe creating our own process and making it work faster will remove any perceived problem and any basis for legitimate complaint.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Tobias follows:]

TESTIMONY OF
ROBERT M. TOBIAS
NATIONAL PRESIDENT

Mr. Chairman and Members of this Subcommittee, my name is Robert M. Tobias. I am the National President of the National Treasury Employees Union. NTEU is the exclusive representative for fourteen diverse agencies throughout the federal government. These agencies include, but are not limited to the Internal Revenue Service, the Customs Service, Pension Benefit Guaranty Corporation, Health and Human Services, Nuclear Regulatory Commission, Federal Election Commission, Department of Energy, Federal Communication Commission, the Federal Deposit Insurance Corporation, Food and Consumer Services, and the Patent and Trademark Office. Each of these agencies provide a very distinct and meaningful contribution to our Nation. Therefore, it is essential to ensure that employees at these agencies are performing at the optimum level and if there is truly an employee that is unable to perform his/her job satisfactorily, after adequate guidance and management, that employee ought be terminated.

In my testimony today, I will address the actual and perceived reasons why managers fail to take actions against federal employees. I will also propose suggestions for changing the termination processes for federal employees so that we can all move on to more pressing problems in the government.

It is NTEU's position that civilian employees of the United States Government are hardworking, loyal, and competent public

servants. I am disturbed that the focus of this debate is on the "poor employee performer." This focus is far too narrow. Often times poor performers are simply good performers that have not been properly trained.

There seems to be a public perception that the "poor performer" problem rests with the inability of managers to terminate employees. This is simply not true. Invariably there will be an occasional poor performer in the federal government. We believe that the burden rests with the manager to properly counsel and train that employee and if that is unsuccessful, there are adequate procedures to terminate that employee. This is not happening.

According to a survey recently conducted by The Merit System Protection Board, with over 5,700 managers and supervisors responding, 78% of government supervisors said they had supervised an employee for poor performance; yet, only 23% of these supervisors proposed removing or demoting these employees. (U.S. Merit Systems Protection Board, Issue Paper: Removing Poor Performers in the Federal Service, September, 1995.) In other words, 77% of supervisors who worked with poor performers, in the federal government, took no personnel action against that poor performing employee despite the fact that the supervisor believed that the employee was not performing in a satisfactory manner. Therefore, the majority of alleged "poor performers" remain in the federal government not because the system favors employees; but

rather because managers don't use the system.

When managers do properly employ the system - the outcome indicates that poor performers are discharged and stay discharged. The MSPB estimates that only 20% of all removals and demotions are ever appealed. Thus, 80% of the time, supervisors remove employees and there is no challenge to the removal. The other 20% of the time, when employees challenge their removals, penalties are reduced or actions are reversed only 17% of the time.

These statistics overwhelmingly indicate that when supervisors make a decision, it sticks. The statistics also reveal little basis for the management complaint that poor performers cannot be discharged. Nevertheless, it is important to understand why the managers are not using the system.

The MSPB in its' survey concluded that there were various factors that discouraged managers from taking formal action against employees. These factors included:

1. Supervisors did not understand the procedures to remove employees.
2. Supervisors receive inadequate training on how to remove employees.
3. Supervisors erroneously believe that they must use Chapter 43 procedures to remove an employee. They believe that this procedure is too onerous.

4. Supervisors are afraid to take action against a poor performer because they believe that higher management will not support them, their decisions will be reversed on appeal, or they will be accused of acting in a discriminatory manner.

The reasons for not taking action against an employee clearly indicate that supervisors are not receiving adequate guidance on these issues. Except for the belief that the removal procedures are too onerous, none of the reasons cited for failing to take action against a poor performer would change if the procedures were revised. Nevertheless, NTEU is ready and willing to discuss changes to the removal procedures in order to change public perception and move on to more pressing issues facing the government.

Under current law, there are two statutory procedures that are used to terminate a federal employee. Under Chapter 75, agencies must establish by a preponderance of the evidence that the termination of a federal employee promotes the efficiency of the service and all relevant factors were considered prior to terminating the employee. Under these procedures, prior to termination, an employee is entitled to 30 day advance notice as to the reasons why they are being terminated, has an opportunity to respond orally or in writing to the person making the charges, and has a right to a final agency determination in writing listing the reasons for the termination decision. Thereafter, an employee may appeal the decision to a neutral third party.

The other statutory procedure for terminating a federal employee is under Chapter 43 and is generally used for performance removals. Agencies under Chapter 43 must prove by substantial evidence that an employee is being terminated because he/she performed unacceptably in at least one of his/her critical elements. Under this procedure, prior to termination, an employee is entitled to an "opportunity period." During the opportunity period, the employee is offered assistance to improve his/her performance. If the employee's performance does not improve during this period, the employee is entitled to 30 days notice of a proposed removal and specific examples of unacceptable performance from the agency in writing. The employee may respond orally or in writing to the proposed termination and, the agency provides a final agency determination listing the specific reasons for the termination decision. Thereafter, an employee may appeal the decision to a third party.

There has been much focus on the alleged inadequacy of Chapter 43 removals. Some have suggested that there should only be one statutory procedure for removals. NTEU would not oppose such a change. However, we strongly believe that employees, as a precondition to any unacceptable performance action, should be given the opportunity to improve their performance after receiving adequate guidance and supervision. This period of counseling and clear work expectations can often transform employees with performance problems. Thereafter the agency should be required to prove by a "preponderance of the evidence" that this employee was

still performing in an unacceptable manner. As long as these standards were incorporated into a removal process, NTEU would not be opposed to making one system for removals based on the current Chapter 43 and Chapter 75 removal provisions.

I would also like to pose a novel approach to this problem. Members on both sides of the aisle in this Subcommittee have expressed concern that it is too difficult to remove an employee from the federal government. The unspoken message has been that a poor performer in the federal government is tolerated while the same poor performer in the private sector would be terminated. NTEU would be willing to accept the challenge of being put on the same footing as the private sector.

In the private sector, parties negotiate what procedures are to be used when an employer wishes to terminate an employee for poor performance. There are no statutory mandates as to what must be done. The responsibilities would fall upon the affected parties to craft a procedure that both parties could live with in their collective bargaining agreement. This would also allow the managers, who are alleging that it is too difficult to terminate a federal employee, the opportunity to build a termination process to their liking. We would welcome the opportunity to be a part of this challenge and change.

Finally, many have complained that the termination process is too long and has too many layers of appeal. Again, NTEU is ready

to address this problem. We would be willing to eliminate the appeal process to both court and the Federal Labor Relations Authority (FLRA) after an arbitrator has issued a removal decision. In other words, arbitrators' decisions in removal cases for federal employees would be binding and not subject to appeal to the FLRA or to court.

We have no set formula as to what should be done in this area. We have suggested some far reaching solutions and would explore other ideas as well in the context of civil service reform. Although others may believe differently, NTEU gains nothing by having truly poor performers remain in the Federal Government.

Thank you for the opportunity to testify before this Subcommittee. I would be happy to answer any questions that you have on this issue.

Mr. BASS. Thank you very much, Mr. Tobias. I appreciate your testimony. We have a series of votes in process right now. What I would like to do is to recess this committee for 30 minutes.

[Recess.]

Mr. BASS. The Subcommittee on Civil Service will be in order and will be heard. For those of you who weren't here 20 minutes ago, we heard testimony from the three panelists, and now it's time for questions.

I will begin with Ms. Swift. Ms. Swift, how would you respond to Mr. Shaw's concern that the 120-day period that your agency has set as a target to complete a decision pushes MSPB toward settlement in at least half of the appeals cases?

Ms. SWIFT. It seems to me that in debating the Civil Service Reform Act in 1978, the problem was that people died before they got their decisions, and the big complaint was, in those days, that it just took too long. So the 120-day standard, which, as I recall, was not there in 1978, was put in to make the decisions go faster so that people and agencies could have final action. And so a 120-day standard was set up.

We have found that we complete our cases in approximately 96 days at the initial decision stage and 96 days before the Board. Managers that we surveyed found this to be a very positive thing.

We did a customer survey a few months ago, and this was one of the positives. They were overwhelmingly positive that the Board decided a case in x period of time, and it didn't take a long time. Federal managers and the evidence that we have do not support Mr. Shaw's contention.

Mr. BASS. Do you have any comments on that?

Mr. SHAW. Well, we are not criticizing the 120 days to decision at all. I mean, we think it is really a good system. The problem is not the 120 days; it's the pressure on the administrative judges to settle 50 percent of their cases. I'm not overstating that. That's in the Merit Systems Protection Board annual reports, and they are very, very proud of it.

I would be proud of it, too, except that to settle, you usually have to give something to both sides, and the perception, therefore, of personnelists and attorneys in the agencies, which they then tell the managers, is, "Look, we're going to have to settle. Therefore, let's give them something now and not go through the process." That's the result. I'm just talking about a result that the law of unintended results has come about.

Mr. TOBIAS. Settlement means people agree. I mean, no one's arm is broken in this process. Settlement means that people agree that that's how the case ought to be resolved. And so, to say that there is extreme pressure—my goodness. I mean, these folks are adults, and they make rational decisions, we assume.

So, to say that, because 50 percent settle, that that's a bad thing, it seems to me we ought to be celebrating the fact that decisions are achieved and we're on to the next case.

Ms. SWIFT. Could I make one point? We don't force anyone to settle. It's part of the whole legal system that settlements are encouraged. We encourage and we provide the forum. We don't force anybody to settle at all. Mr. Shaw appears before us many times and has gotten some decent settlements, as I recall.

Mr. SHAW. Absolutely. That's the system. And again, all I am saying is that since the agencies take the attitude, "We have to settle," then they will settle long before they get to the MSPB, there, especially in the face of an EEO complaint and a special counsel complaint, whistleblower investigation, et cetera. It's just not worth it.

The point is not that the 120 days is too short or that settlement's a bad thing. The point is that the agencies will not stand up to poor performers because of the ability of poor performers to use the multiplicity of systems to totally bog down the process, and the agencies throw up their hands and get out.

There has only been, 300—I think the MSPB report said, or I read somewhere—there has only been 300-and-some performance cases adjudicated in the last whatever period of time. I mean, not a lot of them are getting there.

Mr. BASS. Thank you. It's interesting. Mr. Shaw also stated in his testimony that settlements of EEO complaints are nearly mandatory and alleged that Government executives are being forced to settle EEO complaints that are not only invalid, but have, perhaps, no basis of fact. Could you make observations on that?

Ms. SWIFT. Well, there's no different standard for EEO than any other, if they bring it up during the process. Settlement is the same. There is no difference if it has an EEO element than if it does not.

I don't know where Mr. Shaw is getting the mandatory. We have no mandatory requirements. Settlement is, by its very nature, an agreement between the parties. We cannot mandate that they settle. I don't know what he means by that, actually.

Mr. SHAW. I'm not talking about Merit Systems Protection Board decisions. In fact, less than three-tenths of 1 percent of the MSPB decisions decide for the employee on the basis of these affirmative defenses. No question about that. Once they get to MSPB, they're fine.

The settlement comes at the agency level, where managers are told, "We're not going to go through this process. You settle this case." I'll point to Department of Agriculture. They're famous for it, absolutely famous for it. They have paid off employees with thousands and thousands of taxpayer dollars in order to get rid of the system.

They had a famous case that was on the national news about they paid some employee a couple of hundred thousand dollars, and everybody agreed. It was just, "Get rid of them." The employee had become such a big problem, and the agency couldn't get rid of them any other way, so they bought them out during the EEO process.

And it's not isolated. I had a call from a Department of Agriculture executive, as recently as last week, who said that his political manager had told him, "You settle this case."

And he said, "It has no merit."

And he said, "I don't care. You get us out of this. We don't want to waste the resources on it."

Mr. TOBIAS. That's not system; that's judgment. That's not the system. We're not talking about a bad system here, we're talking about bad judgment by people who are administering a pretty good

system. That's a whole different issue and a whole different discussion than we're having right now.

Mr. SHAW. Well, I don't agree with that, because I don't think that—I'm not talking about system. I don't think the system is the problem. I mean, we can tinker with chapter 43, or we can tinker with chapter 75 in title 5. We can mess around the edges, and you can do all kinds of things.

Mr. Tobias proposed and MSPB proposed we essentially go back to the system before the Civil Service Reform Act. What we had in the early 1970's is you had to prove your case by a preponderance of the evidence. One would wind up in hearings, trying to get rid of a scientist, where the scientist would bring in three Nobel Prize winners who say, "Yeah, this is a good scientist."

The agency says, "He hasn't done anything for 3 years."

"Yeah, but he's working on an important project." I mean it got bogged down into absolute minutiae, and, based on a preponderance of the evidence, you could not deal with it.

OK, that's gone in performance cases, and that's good, because the standard of evidence now is substantial evidence, which is something that most agencies can meet. PIP's are a problem; people don't like them. Tough nuggets. Everybody ought to have a chance, especially on performance.

But what we're talking about is, we have to solve the ability of the employee to throw up this entire smoke screen that the agency is forced by law to deal with, that they don't deal with because it is so expensive, it takes so much resources, and the management—I mean, I'm not saying this. The managers are saying this. All you've got to do is read the MSPB survey. Read SEA surveys. The managers are saying that's exactly what's stopping them.

It's not the system. It's not the appeals process. It's the ability of an employee to intimidate the hell out of an agency because it takes too much time and effort to deal with them. And it happens day in and day out. Everybody can deny it if they want to, but the fact of the matter is, that's what the surveys show.

Mr. BASS. Thank you. One last question of you, Ms. Swift. The subcommittee's attention has recently been drawn to a decision in *Walsh* v. *the Department of Veterans Affairs,* a 1994 decision where the Board held that Federal employees cannot be punished for making false statements to agency investigators.

One critical element of any investigator's job is an ability to be a credible witness in a trial. If that decision is applied to law enforcement agents, how could they possibly perform their job?

Ms. SWIFT. Well, I hate to duck a question, Mr. Chairman, but the *Walsh* decision was driven by controlling Federal circuit precedent. It is presently pending before the court because the Office of Personnel Management has appealed it, and since it is pending and is still in litigation, I think it inappropriate for me to comment on this matter at this time.

Mr. BASS. Thank you very much. I'll recognize Mr. Mica.

Mr. MICA. Thank you. Mr. Tobias, and maybe the other panel members, under what conditions should an agency be able to terminate an employee without a 30-day advance notice?

Mr. TOBIAS. None. The law says 30 days. So I don't think there are any situations under which termination should occur sooner than 30 days. That's what the law requires.

Mr. MICA. What if we change the law?

Mr. TOBIAS. Are you suggesting, can we live with something less than 30 days?

Mr. MICA. Yes, and under what circumstances can somebody be terminated?

Mr. SHAW. Can I clarify for a moment? Are we talking about performance cases?

Mr. MICA. Well, performance, other instances.

Mr. SHAW. Conduct, also?

Mr. MICA. Conduct, yes.

Mr. TOBIAS. Well, as one of the many participants in the National Performance Review, NTEU agreed to shorten the notice period to 15 days. And we could live with 15 days, but I don't think, Mr. Mica, that the delay that's often attributed to processing discharge actions is associated with the 30-day period. The delay comes at the end, not at the beginning.

The delay comes once a decision is made, and, in my testimony, I'm suggesting that we eliminate the protections that are currently in law under chapter 43 and chapter 75 and, instead, allow the parties to bargain whatever protections they would bargain, exactly as in the private sector, and that an arbitrator would make a decision, and that would be the end of it. There would be no appeal to a court; there would be no appeal to FLRA.

That would significantly shorten the time period under discussion. And I suggest further that agencies create procedures for those who are not represented by unions and for their managers and that there be a similar process, so that we wouldn't have the delays that are associated with the MSPB. I think that would have a significant impact on shortening the time period around these issues.

Mr. SHAW. I would like to go back to the first part of your question on shortening the 30-day notice period. I don't have a problem with that on chapter 43 cases, on performance cases, if they have been given a performance improvement period. I mean, to walk into somebody's office and say, "You're not performing. You're fired. Get out of here in a week," I don't think meets the normal standards of justice, if it's based on performance.

On the conduct cases, employees typically need 30 days to be able to defend themselves, because they don't even know what the charges are until they're given that letter saying, "We propose to remove you from the Federal Government in no fewer than 30 days from the date of this letter."

And it takes every bit of that—having represented many employees in conduct cases—to be able to prepare a response to the agency so that you get basic due process, because this is your notice. That notice letter is the first time they know for sure what they're being charged with. So I would not favor that.

What was your point? I'm sorry. I've got to start writing the danged stuff down.

Mr. MICA. Ms. Swift, did you want to respond?

Ms. SWIFT. Well, anything that improves the efficiency of the process, I think, would be welcomed by the managers. Our work shows that the basic problem isn't after it comes to the MSPB, but the basic problem is in trying to decide what to do.

So a lot of people are confused about the system, which avenues to go to. It's one of the hardest things they have to do. People do not like to fire people. You heard that from the private sector this morning. It seems to be a part of our system, that we don't like to fire people, look them in face and tell them that they are not doing a good job, and, therefore, they're going to be removed.

It seems to me that anything that shortens or improves the process would be looked upon very positively by the managers that we survey.

Mr. MICA. Mr. Shaw, if you want to comment.

Mr. SHAW. Yes. We have no problem with doing away with chapter 43 performance cases and only using 75, so long as, in performance cases, the standard of evidence necessary to sustain the action is substantial evidence. If we go back to preponderance of the evidence in performance cases, we're never going to get any of them done, because it turns into an interminable process.

As far as the procedure, you know, we're not concerned with it. MSPB is not delaying cases I don't think. I think they're very timely. MSPB serves a very useful function that an arbitrator does not serve, in that MSPB Board members are appointed by the President and confirmed by the Senate. They have to undergo that process. There are policy determinations that go into the decisions that MSPB makes.

Arbitrators are whoever's off the street that somebody can agree with will adjudicate a case, and while sometimes they're good and sometimes they're bad, I certainly don't think they should be setting public policy by their decisions in the Federal Government.

Ms. SWIFT. Could I comment?

Mr. MICA. Ms. Swift, maybe you can comment. Your September 1995 issue paper identifies the current "multi-level, multi-agency appeal process" as deterring supervisors from taking performance-based actions they believe are warranted. Do you have any specific recommendations on how to correct that? You were going to comment.

Ms. SWIFT. I was actually going to comment on the chapter 75 cases that Jerry was talking about. Actually, performance cases are also brought under chapter 75.

Mr. SHAW. Yes.

Ms. SWIFT. And we looked at 1 month worth of cases while we were working on this September report, and approximately 40 percent of that month's decisions under chapter 75 were taken based on performance. So it's not true that only performance-based actions were taken—there's a great deal more than that that are taken in the Federal Government. But, under chapter 43, which was set up to deal with performance, only 224 were decided last year.

Mr. SHAW. Rather than getting into a dispute about whether or not chapter 43 serves a purpose, we would not have any problem with that, so long as substantial evidence prevailed in performance cases, period.

Mr. MICA. Let me shift back to Mr. Tobias for a second. Does your organization have a grievance procedure or procedures that employees can use in place of a formal appeals process? Within the union or within your organization?

Mr. TOBIAS. We negotiate—you mean for the union staff?

Mr. MICA. Well, yes.

Mr. TOBIAS. Is that your question?

Mr. MICA. Yes, for your own folks.

Mr. TOBIAS. Yes, we do.

Mr. MICA. And how does that work?

Mr. TOBIAS. It works.

Mr. MICA. I mean, how is it structured? I mean do they get multiple appeals?

Mr. TOBIAS. Well, of course they get multiple appeals. They file grievances, and it goes to arbitration, and the arbitrator decides, and that's it. I'm proposing the same approach for the Federal sector.

Mr. MICA. I'm just trying to find out what you do internally and see if that provides a model.

Mr. TOBIAS. I do just that—it's a model. It is indeed a model.

Mr. MICA. It's a great one. OK. Well, what about in counseling employees? Do you recommend they use the Federal process rather than the grievance procedures?

Mr. TOBIAS. I do not recommend that they use the MSPB. We recommend people go to arbitration, not the MSPB, and that's why I don't have any problem suggesting that the MSPB be eliminated.

I think that when you have a collective bargaining agreement, that the parties ought to decide the processes to be used, and that the arbitrator's decision will be definitive, and that there be no appeal after that. So I don't have a problem with saying that the MSPB ought to be eliminated.

Mr. MICA. Mr. Shaw, would the SEA support prohibiting a similar judicial review of MSPB's decision in performance-based actions?

Mr. SHAW. You mean the Federal circuit court of appeals, sir, abolishing that review? Yes, we would support that.

Mr. MICA. OK.

Mr. TOBIAS. Just to make it clear, Mr. Mica, I'm suggesting not only for performance-based cases. I'm suggesting conduct cases, as well.

Mr. MICA. Great.

Mr. TOBIAS. Just to set the record straight.

Mr. MICA. Well, we're pleased that you're willing to come forward and put some of these on the table. We had Mr. Sturdivant at the table at one of the previous hearings. He's willing to deal, and you all certainly represent a large portion of the public employment sector, and our goal here is to try to come up with some positive changes that respond, also, to your needs and concerns.

We appreciate your willingness to deal with us, and we hope we can do it in a positive fashion. I'll yield back.

Mr. BASS. Thank you, Mr. Mica. Mr. Moran.

Mr. MORAN. Thank you, Mr. Bass. I'm sorry I missed the earlier group—we had the reconciliation bill on the floor today—but I

wanted to raise some points, because we're trying to achieve a balance.

I do think that there are some people who feel that the Federal Government should be run like a business, and I don't think it should be run like a business in the most important aspect, which is that of trying to generate a profit.

Golden Rule Insurance Co., for example, 40 percent of its revenues went into profit last year, so clearly it was very successful from the standpoint of making it a profitable business, and Medicare fund could not have been competitive, with only a 2-percent share going into administrative costs. I'm sure it would have operated at a loss, but the real criteria is how well it served its customers.

So I think that the line of questioning that gets to how can we, as objectively as possible, measure that performance, measure that response to customers' desires and needs, is what we're looking for. We're not looking for as much internal profit generation as the external responsiveness.

I think, on many criteria, the Federal Government performs very well. I was interested to see what the Vice President talked about last night, and he certainly made mention of the fact that Business Week recognized the Social Security Administration as having the best response on the telephone, even better than the other private corporations that had traditionally gotten that award.

But there are any number of areas where we can, nevertheless, improve the Federal Government, and that's what we're about, trying to come up with some legislation that is balanced.

I do think we are going to give more flexibility to managers in terms of developing a performance-based system with more rewards for good performance and—maybe punishment is too strong a word—but disincentives for poor performance. But, if we do that, we've got to find ways to constructively offer people who are not performing satisfactorily an alternative to losing their employment.

One of the ideas that was brought up earlier this week—I guess it was us that brought it up. It's the idea of setting up a continuing education account so that workers who avail themselves of that opportunity to improve their skills and their knowledge base would have that effort partially subsidized by the Federal Government, and it would also be rewarded, ultimately.

I want to hear what thoughts you've had along those lines. I also would like to know your reaction to the other side of the coin, and that is, when people are not performing up to the level deemed satisfactory by their supervisor, that it be reflected in whether or not they get a step increase—maybe, even, cost-of-living increase has been suggested. And people who are performing satisfactorily might get a full cost-of-living increase, and those who are not might get partial or none. The same thing could be applied to step increases.

There are tools that could be employed to achieve this, but I think we would like to hear from you whether you think they would be effective and consistent and, in the long run, help to better serve the customers of the Federal Government, the American taxpayers. So shall we start with Mr. Tobias?

Mr. MICA [presiding]. Mr. Moran, if we could have him go first, and then excuse himself. I know he was trying to catch a plane.

Mr. MORAN. Oh, I didn't realize that. I'm sorry.

Mr. TOBIAS. Actually, I have decided to stay here, Mr. Mica. Thank you for your consideration.

Mr. MICA. It has gotten interesting.

Mr. MORAN. Go on, then, Mr. Tobias.

Mr. TOBIAS. I think a continuing education account is a good idea, and I think that, oftentimes, the first thing that's cut when budgets get tight are training and education and infrastructure support. I think that the first panel highlighted over and over again the need for training to supplement achieving goals and objectives.

With respect to poor performers not receiving step increases, I certainly agree with that. That's what step increases are all about. If somebody is not performing, they shouldn't receive a step increase.

I would oppose, however, failure to provide what you described as a COLA increase. The increases that the Federal Government pays to employees are an attempt to achieve some sort of equality with the private sector, and what we've seen is that we're still some 28 percent behind the private sector. So this is not pay based on merit, but pay based on an attempt to attract a qualified work force.

So I don't think that that pay ought to be made part of performance. We have promotions, which are evaluated in connection with performance and with in-grades, which are evaluated in connection with performance, but not basic pay. That, I think, is basic pay and ought not be part of the performance system.

Mr. MORAN. Thank you, Mr. Tobias. Mr. Shaw.

Mr. SHAW. I don't disagree with anything Mr. Tobias said. I agree with him.

Mr. MORAN. Ms. Swift.

Mr. TOBIAS. Let the record reflect that.

Mr. MORAN. Do you want that to apply to everything he has said throughout his career, or just this particular response?

Mr. SHAW. Just this single instance, thank you, sir.

Mr. MORAN. Just this single instance? OK.

Ms. SWIFT. I believe that everybody is in agreement that the system needs better education and training, certainly for managers. One of the problems that the system has right now is that it's changing. Managers are required to enter into more line manager, more personnel, more budget action, than they've ever had to do before.

In the past, we had these segregated departments that did it for us. With the new goal of flexibility, we have line managers that came up in the old hierarchical system, and they're—I train them all the time, and they just feel helpless. They're standing out there; they don't know exactly what to do. They're getting a limited amount of training.

They were successful in the old system, as—for example, myself. I was a great litigator, so what did they do? They made me a manager, with zippo training. So I think that we have a lot of that. And then, the type of training that is provided, many times, is not ade-

quate to the needs of the people who are involved, and it's too often self-selection. People say, "Oh, I think today I need training in whatever." I think that management, top management of the organizations, have to spend more time concentrating on how to better select people, because we really select people based upon how well they're doing in some other area, not or how they're going to be as managers.

And I think, second, if you have a better selection of supervisors, and you also have better training for all employees in the system, I think you would have a better system, because we all know that the first thing cut is training.

You know your training money is going to go. That's absolutely the first thing cut. And with low budgets, we're going to get less and less training. So any sort of thing that would assist in the training arena would be useful.

Mr. SHAW. I think training for supervisors and managers should be absolutely mandatory. SEA sponsored a course, beginning in 1985, on how to rehabilitate or remove the problem employee, because the fact is that most managers have no idea how the system works, have no idea of what their rights are, have no idea that they have the right to approve or deny leave. I mean it goes on and on and on, and the reason is because they haven't been trained.

I went from a GS–11 in the Government to an SES, and I never had a day of training in management. It's not good, and I think it should be absolutely mandatory, and the money should be there. I think the idea of a continuing education fund, where it cannot be touched for anything else—an individual line item that can't be transferred—is an excellent idea.

Mr. MORAN. Glad to hear you say that, Mr. Shaw. I think we're going to pursue legislation that would do that, because we're finding, both in the public and the private sector, certainly, that people who are content with a static level of skills and knowledge fall below even equilibrium in terms of their ability to be competitive in the work force. Whether it be a public or a private work force, it's not adequate to rest on your educational laurels. You have to continue enhancing them.

It was interesting that Jim King told the chairman and me, at a meeting with the Vice President, about a group that worked for the Postal Service, where they offered an incentive—this gets into another subject, but it's the subject of the hearing, largely. I think it was only $50 each, if that particular unit was the highest performing, and they got the highest performance of any of the units?

Do you remember that, Mr. Chairman?

Mr. MICA. Yes.

Mr. MORAN. It was amazing how small the incentive was that was needed to activate a unit performance. So it seems as though it's more than just the money itself. It's the opportunity to compete and show how well you can do. I think we ought to also have that kind of approach available within the work force.

I won't ask any further questions, because I think Connie wants to ask some questions before we go to vote.

Mr. MICA. Yes, we are running a little short on time, so we'll yield the next 3 minutes to Mrs. Morella.

Mrs. MORELLA. Oh, that's really great.

Mr. MORAN. Thank you.

Mrs. MORELLA. I appreciate reading your testimony and, also, getting the benefit of your expertise and your experience. I was interested—I got a big kick out of the survey of the Senior Executives Association and the "frequent filers"—and I just wondered, when you talk about putting together a program for the managers and the need for training of managers, do you ever talk about who the frequent filers are, and do you ever talk about what managers seem to be the ones that are subjected to the poor performance, the managers who have the frequent filers? Jerry, I'm just kind of curious.

Mr. SHAW. I'm not sure that I understand the question, Mrs. Morella. Are managers sometimes frequent filers who are poor performers?

Mrs. MORELLA. No, who have—do you ever talk about—you know, since you have—matter of fact, it's pretty shocking. It says that—of the fact that you have these frequent filers—incidentally, one of the other questions you asked is about whether or not the complaints are frivolous, and 76 percent of the people who responded either said, "Most of the time," "Many of them are," and "Some of them are."

Mr. SHAW. That's true.

Mrs. MORELLA. That's a pretty high percentage. What I'm wondering is, do you ever look at who these frequent filers are? I mean, in common, you know, as kind of a support network. Second, do you seem to find the same managers who have most of the frequent filers?

Mr. SHAW. I understand that. To the extent that we know, frequent filers tend to be individuals who have performance problems, because it's an excellent defense to use against actions being taken against you. We do not have any statistics or any information about whether or not the frequent filers are those who have the same manager, but, in my own personal experience, that has not been the situation.

I would add that the term, "frequent filers," did not come from us. It came from a panel where the heads of the agencies of MSPB, EEOC, and others were there, and one of the agency heads used it, because they recognize it, too. They know that it's a truism, and they know that they have to look at these with some—make sure that they're examined, on the one hand, and on the other hand, they have to deal with all of the complaints.

There is no mechanism for getting rid of frivolous complaints. That's why we suggested that there be some way to get rid of frivolous complaints, and I think it should be a labor-management partnership on that. I mean I think there should be a panel set up to get rid of frivolous complaints in an agency, and it should be a cooperative undertaking.

Mrs. MORELLA. I think Bob wants to say something about that, Jerry.

Mr. TOBIAS. Well, I hope that this hearing doesn't focus solely on alleged frequent filers. I mean the issue of poor performers and how performers are dealt with is a serious question, a serious issue, not in reality, but in perception. This esoteric issue of frequent filers applies to such a small number of folks, and it's not

clear that they are frivolous. Some are; some aren't. And so, to have this hearing focus on such a small piece of the action misses the doughnut. We're looking at the hole, not at the doughnut, here.

Mrs. MORELLA. I agree. I agree, and I don't think the hearing has, frankly, focused on this. I think that the survey is a very interesting survey, and I think we've been talking throughout about what we do need for performance management.

And this goes to Ms. Swift. How do you create a performance management system that is, in quoting you, "straightforward and uncomplicated as possible, while ensuring that Federal employees are not subjected to arbitrary actions unrelated to the efficiency of the service"? I think this is what we're getting at, in many ways which deal with training of managers, deal with the kind of support network they have and what they compare.

Ms. Swift, would you like to comment?

Ms. SWIFT. Yes. Well, I think a performance management system should be simple. It should be something that we understand. Agencies should not add to the system. That was what happened, for example, in the chapter 43 cases. It was supposed to be a simple system. It was supposed to help managers remove employees.

You had a very low standard of evidence, in comparison to the preponderance of the evidence standard. It was supposed to be timely. You were supposed to give the employee an opportunity to improve.

And yet, what happened is, you have agencies that created this plethora of rules and regulations around performance removals, and you had all kinds of documentation required. You had performance improvement plans required, when that was not what the statute said. It says, "an opportunity to improve." That is not necessarily a performance improvement plan.

As you know, that was the language used only in PMRS, which is sunsetted. But agencies, once they create a system, never change it. So now you have this enormous system out here, dealing with poor performers, that looks larger than the chapter 75 procedures which were supposedly more complicated in the first place.

Mr. MICA. I don't want to cut anyone short, and I would like everyone to have an opportunity to respond, but we have less than 5 minutes to vote. I will conclude the hearing at this time. I also invite additional comments for the record from our panelists, and will be submitting some questions to you and would like your response, which will all become part of the official record.

There being no further business, I declare this meeting adjourned. Thank you.

[Whereupon, at 12 p.m., the hearing was adjourned.]

[Additional information for the hearing record follows:]

STATEMENT OF
ALLAN HEUERMAN
ASSOCIATE DIRECTOR
HUMAN RESOURCES SYSTEMS SERVICE
U.S. OFFICE OF PERSONNEL MANAGEMENT

before the

SUBCOMMITTEE ON CIVIL SERVICE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
U.S. HOUSE OF REPRESENTATIVES

on

PERFORMANCE AND ACCOUNTABILITY IN THE FEDERAL GOVERNMENT

OCTOBER 26, 1995

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I APPRECIATE THE OPPORTUNITY TO DISCUSS PERFORMANCE MANAGEMENT, ACCOUNTABILITY, AND DEALING WITH POOR PERFORMERS IN THE FEDERAL GOVERNMENT.

MR. CHAIRMAN, FIRST LET ME SAY THAT THE VAST MAJORITY OF FEDERAL EMPLOYEES ARE HARD-WORKING AND ARE COMMITTED TO DOING A GOOD JOB. THEREFORE, IN CONSIDERING THE ISSUE OF PERFORMANCE MANAGEMENT, WE NEED TO FOCUS ON DEVOTING OUR RESOURCES AND ENERGY TO IMPROVING AND PROMOTING GOOD PERFORMANCE. WHILE THE ISSUE OF ADDRESSING POOR PERFORMANCE IS IMPORTANT, OUR ULTIMATE OBJECTIVE IS TO FOSTER EXCELLENCE THROUGHOUT THE FEDERAL WORKFORCE AND THEREBY MINIMIZE INSTANCES OF POOR PERFORMANCE.

CLEARLY, PROMOTING GOOD PERFORMANCE REQUIRES THAT WE ADDRESS POOR PERFORMANCE, BUT IT DEMANDS THAT WE DO MUCH MORE. CREATING AN EFFECTIVE WORKFORCE IS A MULTI-FACETED PROCESS INCLUDING EFFECTIVE

JOB DESIGN, SELECTION OF HIGHLY QUALIFIED CANDIDATES, QUALITY SUPERVISION, EFFECTIVE TRAINING, APPROPRIATE COMPENSATION AND FAIR TREATMENT. IN THIS CONTEXT, PERFORMANCE MANAGEMENT CAN MOST EFFECTIVELY RECOGNIZE AND REWARD GOOD PERFORMANCE, AND IDENTIFY AND CORRECT POOR PERFORMANCE. THESE ELEMENTS ALL CONTRIBUTE TO EMPLOYEES DOING THEIR BEST WORK. CONSEQUENTLY, THEY REPRESENT THE FIRST LINE OF DEFENSE AGAINST POOR PERFORMANCE.

POOR PERFORMANCE MOST OFTEN RESULTS FROM FAILURE TO ADEQUATELY ASSESS THE SKILLS NEEDED FOR THE JOB, FAILURE TO SELECT THE RIGHT CANDIDATE, INADEQUATE TRAINING, POOR COMMUNICATION ABOUT PERFORMANCE, OR SOME COMBINATION OF THESE. IF EMPLOYEES TRULY UNDERSTAND WHAT IS EXPECTED OF THEM, AND IF SUPERVISORS MONITOR PERFORMANCE EFFECTIVELY, PROVIDING BOTH POSITIVE AND NEGATIVE FEEDBACK WHEN APPROPRIATE, AND TARGETED TRAINING WHEN NEEDED, PERFORMANCE PROBLEMS CAN BE DEALT WITH AT THE EARLIEST POSSIBLE STAGES, INCLUDING REMOVAL IF OTHER CORRECTIVE ACTIONS HAVE FAILED.

EFFECTIVE PERFORMANCE MANAGEMENT ALSO REQUIRES A GOVERNMENTWIDE SYSTEM THAT PROVIDES A PROPER BALANCE BETWEEN GOVERNMENTWIDE STANDARDS AND AGENCY FLEXIBILITY. FOR SEVERAL YEARS, OPM, IN COLLABORATION WITH AGENCIES, UNIONS, MANAGEMENT ASSOCIATIONS AND EXPERTS FROM THE ACADEMIC AND PRIVATE SECTORS, HAS ASSESSED AND TAKEN STEPS TO IMPROVE THE PERFORMANCE MANAGEMENT SYSTEM. THIS APPRAISAL, AS WELL AS AGENCY EXPERIENCE, REVEALED SEVERAL BASIC WEAKNESSES IN THE GOVERNMENTWIDE SYSTEM:

- FIRST, THE SYSTEM IMPOSED A LEVEL OF DETAILED REQUIREMENTS ON AGENCIES WHICH PREVENTED THEM FROM DESIGNING AND TAKING OWNERSHIP OF THEIR APPRAISAL PROGRAMS--A SURE WAY OF CREATING PROGRAMS THAT DON'T WORK.

- SECOND, THE SYSTEM REQUIRED THE ANNUAL SUMMARY RATING TO DO TOO MUCH. IT WAS TIED DIRECTLY TO PAY, AWARDS, PROMOTIONS, AND STEP INCREASES. THIS LINKAGE CONTRIBUTED TO SIGNIFICANT RATING INFLATION, THUS UNDERCUTTING THE PURPOSE OF THE APPRAISALS.

- THIRD, AN EXCLUSIVE EMPHASIS ON DISTINCTIONS AMONG INDIVIDUALS DIMINISHED THE USEFULNESS OF PERFORMANCE APPRAISAL IN AN ENVIRONMENT WHERE, BECAUSE OF DELAYERING, COOPERATION AND TEAMWORK ARE MORE IMPORTANT THAN IN THE PAST.

THE FIRST TWO SYSTEM WEAKNESSES IN PARTICULAR LED TO THE ABOLISHMENT IN 1993 OF THE PMRS, THE GOVERNMENTWIDE SYSTEM FOR GS-13, 14, AND 15 MANAGERS AND SUPERVISORS.

OPM'S NEW PERFORMANCE MANAGEMENT REGULATIONS, WHICH WERE PUBLISHED LAST AUGUST, CREATE AN OPPORTUNITY TO ADDRESS THESE DEFECTS BY PROVIDING AGENCIES GREATER FLEXIBILITY IN DESIGNING THEIR OWN RATING SYSTEMS, WITHIN BROAD GOVERNMENTWIDE GUIDELINES. ALTHOUGH AGENCY APPRAISAL SYSTEMS WILL STILL REQUIRE OPM APPROVAL, THE NEW

REGULATIONS GO A LONG WAY TOWARD DECENTRALIZING PERFORMANCE MANAGEMENT.

IN ADDITION TO HAVING AUTHORITY TO VARY THE NUMBER OF PERFORMANCE LEVELS THEY USE, AGENCIES, UNDER OUR NEW REGULATIONS, WILL BE ABLE TO ALLOW SUPERVISORS TO EXERCISE MORE DISCRETION IN THE TYPES OF EVALUATION TECHNIQUES THEY USE IN EVALUATING PERFORMANCE. AGENCIES WILL BE ABLE TO USE TEAM EVALUATIONS, AS WELL AS PEER AND CUSTOMER EVALUATIONS, AND INCREASE EMPLOYEE INVOLVEMENT IN THE APPRAISAL PROCESS. FOR INSTANCE, TEAM PERFORMANCE COULD BE INCLUDED IN A SUMMARY RATING, BUT A POOR PERFORMER WHO WAS A MEMBER OF A SUCCESSFUL TEAM COULD NOT AVOID ACCOUNTABILITY FOR HIS OR HER POOR PERFORMANCE. EMPLOYEE PERFORMANCE PLANS MUST INCLUDE AT LEAST ONE CRITICAL INDIVIDUAL PERFORMANCE ELEMENT. EACH EMPLOYEE STILL MUST MEET THE RETENTION LEVEL IN ALL CRITICAL INDIVIDUAL PERFORMANCE ELEMENTS TO BE RETAINED IN HIS OR HER POSITION. WITH THIS GREATER FLEXIBILITY AND DISCRETION, MANAGERS AND SUPERVISORS ALSO WILL BE HELD ACCOUNTABLE FOR PROVIDING APPROPRIATE FEEDBACK UNDER THESE NEW STRUCTURES AND FOR ADDRESSING PERFORMANCE DEFICIENCIES. IT IS OUR HOPE THAT THE NEW REGULATIONS WILL HELP AGENCIES FOCUS MORE INTENTLY ON IMPROVING ORGANIZATIONAL PERFORMANCE, THEREBY ENSURING APPRAISALS THAT ARE MORE RESULTS-ORIENTED AND LESS PROCESS-ORIENTED.

OUR NEW REGULATIONS PERMIT, BUT NEITHER ENCOURAGE NOR DISCOURAGE, TWO LEVEL APPRAISAL SYSTEMS, OFTEN REFERRED TO AS "PASS-FAIL"

APPRAISALS. THE LAW HAS ALWAYS ALLOWED A "PASS-FAIL" APPROACH, ALTHOUGH OUR REGULATIONS DID NOT. EVEN THOUGH WE WANT TO LEAVE IT UP TO EACH AGENCY TO DECIDE WHETHER TO TRY A "PASS-FAIL" SYSTEM, SOME AGENCIES SEE CERTAIN POTENTIAL ADVANTAGES TO THIS APPRAISAL METHOD. FIRST, IT REMOVES THE SPOTLIGHT FROM THE RATING ITSELF SO THAT THE EMPLOYEE AND HIS OR HER SUPERVISOR CAN ENGAGE IN AN HONEST DISCUSSION OF THE EMPLOYEE'S STRENGTHS AND AREAS THAT NEED IMPROVEMENT. "PASS-FAIL" APPRAISALS CAN REDUCE INDIVIDUAL COMPETITION AND ENCOURAGE COOPERATION AND TEAMWORK, WHICH ARE NEEDED IN MOST ORGANIZATIONS IN THE 1990'S. ALSO, "PASS-FAIL" IS AN OBVIOUS WAY TO COMBAT RATING INFLATION. IT IS IMPORTANT TO KEEP IN MIND THAT MANAGEMENT WOULD STILL BE ABLE TO MAKE OTHER PERFORMANCE DISTINCTIONS AMONG EMPLOYEES WHO "PASS" FOR OTHER PURPOSES, SUCH AS GRANTING AWARDS AND SELECTING FOR PROMOTION. AND WE ARE ALSO AWARE THAT SOME AGENCIES THAT WERE ONCE INTERESTED IN "PASS-FAIL" APPRAISALS HAVE DECIDED NOT TO USE THEM. THE POINT IS SIMPLY THAT AGENCIES USUALLY ARE IN THE BEST POSITION TO KNOW WHAT KIND OF APPRAISAL SYSTEM MOST EFFECTIVELY PROMOTES GOOD PERFORMANCE BY THEIR WORKFORCE.

WE BELIEVE THAT OUR EFFORTS TO PROVIDE AGENCIES WITH A PERFORMANCE MANAGEMENT STRUCTURE THAT ENHANCES AND ENCOURAGES GOOD PERFORMANCE WILL REDUCE POOR PERFORMANCE IN THE WORKPLACE. I WANT TO EMPHASIZE THAT, DURING THE DEVELOPMENT OF OUR REGULATIONS, AGENCIES ARGUED REPEATEDLY THAT REGULATIONS ON PERFORMANCE MANAGEMENT SHOULD NOT BE AIMED AT THE TINY PERCENTAGE OF EMPLOYEES WHO ARE NOT PERFORMING,

BUT SHOULD BE DESIGNED TO ENABLE AGENCIES TO PROMOTE BETTER PERFORMANCE THROUGHOUT THE WORKFORCE.

WE RECOGNIZE, HOWEVER, THAT EVEN THE BEST SYSTEM AND THE BEST EFFORTS OF OUR BEST SUPERVISORS WILL NEVER PREVENT ALL INSTANCES OF POOR PERFORMANCE. FOR THIS REASON, ALL EFFECTIVE APPRAISAL SYSTEMS MUST HAVE A USABLE MECHANISM FOR RESOLVING PERFORMANCE DEFICIENCIES.

TO LOOK AT WHETHER WE ARE SUCCESSFUL IN DEALING WITH POOR PERFORMERS, WE MUST BEGIN WITH A LOOK AT THE CIVIL SERVICE REFORM ACT OF 1978. THAT LAW CREATED A SEPARATE PROCESS (UNDER CHAPTER 43 OF TITLE 5) TO DEAL WITH EMPLOYEES WHO DON'T PERFORM ACCEPTABLY. ALTHOUGH THIS NEW PROCESS WAS INTENDED TO MAKE IT EASIER TO REMOVE POOR PERFORMERS, MANAGERS PERCEIVE IT AS CUMBERSOME AND CONFUSING.

FEDERAL MANAGERS CURRENTLY HAVE TWO METHODS OF REMOVING POOR PERFORMERS: ONE IS ESTABLISHED UNDER CHAPTER 43 AND THE OTHER IS AUTHORIZED BY CHAPTER 75 OF TITLE 5 OF THE UNITED STATES CODE. BOTH CHAPTER 43 AND CHAPTER 75 REQUIRE DUE PROCESS IN THE FORM OF A PROPOSAL WHICH STATES THE REASON FOR ACTION AGAINST THE EMPLOYEE, THE EMPLOYEE'S RIGHT TO RESPOND, AND A FINAL WRITTEN DECISION. CHAPTER 75 REQUIRES AGENCIES TO PROVE, BY A PREPONDERANCE OF THE EVIDENCE, THAT THE PROPOSED ACTION WILL PROMOTE THE EFFICIENCY OF THE SERVICE. CHAPTER 43 HAS A LOWER BURDEN OF PROOF (SUBSTANTIAL EVIDENCE), BUT REQUIRES THE AGENCY TO PROVIDE AN OPPORTUNITY TO

IMPROVE AND ASSISTANCE FOR POOR PERFORMERS.

WHEN ACTION IS TAKEN, MANAGERS' DECISIONS ARE SUBJECT TO REVIEW BY VARIOUS THIRD PARTIES. THIS THIRD-PARTY REVIEW IS ESPECIALLY PROBLEMATIC IN DEALING WITH POOR PERFORMERS UNDER CHAPTER 43, AND SOME ACTIONS ARE REVERSED BASED ON FAILURE TO MEET CERTAIN REQUIREMENTS NOT INITIALLY ENVISIONED BY THE LAW. FOR EXAMPLE, THE PERFORMANCE STANDARDS AND OPPORTUNITY PERIOD ARE SUBJECT TO HYPER-TECHNICAL REVIEW. AS A RESULT, ACTIONS CAN BE AND ARE REVERSED BASED ON WHAT MIGHT BE CONSIDERED FAIRLY TECHNICAL GROUNDS THAT HAVE NOTHING TO DO WITH WHETHER OR NOT THE EMPLOYEE PERFORMED AT AN ACCEPTABLE LEVEL. THE ADDITIONAL TIME NEEDED TO COMPLETE ACTION UNDER CHAPTER 43, AND THE POTENTIAL FOR GREATER SCRUTINY DURING THE APPEALS PROCESS, HAVE CREATED THE PERCEPTION AMONG MANY MANAGERS THAT THE SYSTEM DOES NOT ALLOW THEM TO DEAL EFFECTIVELY WITH POOR PERFORMERS.

THAT'S A SHORT DESCRIPTION OF THE CURRENT PROCESS AND ITS SHORTCOMINGS. LET'S LOOK AT WHAT THE NUMBERS TELL US ABOUT HOW WELL THE SYSTEM IS BEING USED. IN FISCAL YEAR 1994, THERE WERE 364 REMOVALS BASED SOLELY ON PERFORMANCE, 155 DEMOTIONS BASED SOLELY ON PERFORMANCE, AND 314 REMOVALS INVOLVING A COMBINATION OF PERFORMANCE AND MISCONDUCT. THIS RELATIVELY SMALL NUMBER OF PERFORMANCE-BASED ACTIONS IN THE FEDERAL GOVERNMENT DO NOT GIVE US THE FULL PICTURE. FOR EXAMPLE, THEY DO NOT INCLUDE ACTIONS WHERE THE TERMINATION OCCURS DURING AN EMPLOYEE'S PROBATIONARY PERIOD OR

WHERE THE EMPLOYEE DOES NOT HAVE APPEAL RIGHTS. THESE NUMBERS ALSO DO NOT INCLUDE SITUATIONS WHERE AN EMPLOYEE WHO IS NOTIFIED OF HIS OR HER UNACCEPTABLE PERFORMANCE, IMPROVES TO AN ACCEPTABLE LEVEL, OR REQUESTS A VOLUNTARY DEMOTION, OR VOLUNTARILY LEAVES THE JOB, OR IS REASSIGNED TO A MORE SUITABLE TYPE OF WORK. FINALLY, THE INCREASING USE OF ALTERNATIVE DISPUTE RESOLUTION TECHNIQUES RESOLVES MANY PROBLEMS BEFORE A FORMAL ACTION IS TAKEN AGAINST THE EMPLOYEE. THESE TECHNIQUES ARE LESS TIME CONSUMING AND MORE COST EFFICIENT THAN TRADITIONAL EFFORTS TO REMOVE THE EMPLOYEE. IN SUMMARY, WE BELIEVE THAT MANAGERS ARE DEALING MORE EFFECTIVELY WITH POOR PERFORMERS THAN THE DATA ON OFFICIAL REMOVALS MIGHT SUGGEST. NEVERTHELESS, WE ARE CONVINCED THAT BOTH REAL AND PERCEIVED PROBLEMS EXIST THAT NEED TO BE FIXED TO HELP MANAGERS ADDRESS PERFORMANCE DEFICIENCIES.

TO EFFECTIVELY ADDRESS THESE PROBLEMS, WE ALSO NEED TO EXAMINE WHAT ACCOUNTS FOR THE PERCEPTION AMONG MANY SUPERVISORS THAT NOTHING CAN BE DONE ABOUT POOR PERFORMERS. PART OF THE PROBLEM IS THAT SUPERVISORS ARE CONFUSED BY THE SYSTEM'S COMPLEXITY AND FEAR THEY WILL LOSE THEIR CASE ON APPEAL. FOR EXAMPLE, DESPITE THE FACT THAT MOST ACTIONS UNDER CHAPTER 43 ARE SUSTAINED BEFORE THE MSPB, THE AGENCY LOSSES ARE THE ONES SUPERVISORS HEAR ABOUT AND ARE THE BASIS FOR THEIR DREAD OF THE APPELLATE PROCESS. WE ARE ALSO AWARE THAT SUPERVISORS BELIEVE THERE IS A LACK OF TRAINING, INFORMATION AND TECHNICAL SUPPORT IN DEALING WITH PROBLEM EMPLOYEES.

THERE IS ALSO THE PROBLEM OF LACK OF SUPPORT FROM TOP MANAGEMENT. THE GENERAL ACCOUNTING OFFICE, IN ITS 1990 REPORT "PERFORMANCE MANAGEMENT: HOW WELL IS THE GOVERNMENT DEALING WITH POOR PERFORMERS?", NOTED THAT, WHILE MOST SUPERVISORS INDICATED THEY WERE WILLING TO TAKE PERFORMANCE-BASED ACTIONS WHEN NEEDED, THEY FELT A LACK OF SUPPORT FROM UPPER MANAGEMENT. IT IS HUMAN NATURE TO AVOID DEALING WITH THE UNPLEASANT TASK OF TELLING SOMEONE THAT HIS OR HER WORK IS INADEQUATE. FROM THE TOP LEVEL DOWN, MANAGEMENT NEEDS TO SUPPORT ANY INITIATIVE TAKEN BY A SUPERVISOR TO DEAL FORTHRIGHTLY WITH PERFORMANCE PROBLEMS. FOR EXAMPLE, WHEN A SUPERVISOR HAS TO FOCUS ON ASSISTING AN EMPLOYEE WHO IS FAILING, THAT PROCESS TAKES ITS TOLL ON THE ENTIRE ORGANIZATION. MANAGEMENT NEEDS TO DEMONSTRATE SUPPORT VERY CLEARLY, SO THAT SUPERVISORS WILL BE MORE LIKELY TO ASSUME RESPONSIBILITY FOR ADDRESSING PERFORMANCE PROBLEMS. THE TOP LEVELS OF MANAGEMENT ALSO HAVE RESPONSIBILITY FOR ASSURING THAT MANAGERS AND SUPERVISORS ARE TRAINED IN THE PERFORMANCE MANAGEMENT SYSTEM, INCLUDING METHODS FOR IDENTIFYING POOR PERFORMERS AND WAYS TO CORRECT DEFICIENCIES.

WE HAVE WORKED WITH THE NATIONAL PERFORMANCE REVIEW AND FEDERAL AGENCIES IN DEVELOPING PERFORMANCE MANAGEMENT PROPOSALS FOR CIVIL SERVICE REFORM. INCLUDED IN THIS REFORM INITIATIVE ARE PROVISIONS FOR ALLOWING A PROBATIONARY PERIOD LONGER THAN ONE YEAR FOR SOME JOBS, SHORTENING THE NOTICE PERIOD FOR TAKING AN ACTION AGAINST A POOR PERFORMER, STREAMLINING THE "DUAL-TRACK" PROCESS FOR TAKING A PERFORMANCE-BASED ACTION BY ELIMINATING THE SEPARATE PROCESS UNDER

CHAPTER 43 OF TITLE 5, AND ELIMINATING APPEAL RIGHTS FOR DENIAL OF A WITHIN-GRADE PAY INCREASE. WE BELIEVE THESE CHANGES WILL ENHANCE MANAGERS' ABILITY TO RESOLVE PERFORMANCE PROBLEMS WHILE RETAINING EMPLOYEES' DUE PROCESS RIGHTS. CONSOLIDATING ALL ACTIONS UNDER CHAPTER 75 SHOULD REDUCE SUPERVISORS' CONFUSION AND TAKE AWAY SOME OF THE PERCEPTION THAT PERFORMANCE PROBLEMS ARE TOO TOUGH TO HANDLE.

EVEN IF THESE SYSTEM CHANGES RELATED TO AGENCY ACTIONS ARE ENACTED, OTHER SYSTEM FACTORS REMAIN THAT AFFECT AN AGENCY'S ABILITY TO ADDRESS POOR PERFORMANCE. PERHAPS MOST SIGNIFICANT OF THESE FACTORS IS THAT OF DUE PROCESS AND THE MULTIPLE FORUMS AVAILABLE FOR A THIRD-PARTY REVIEW OF AN AGENCY'S ACTION. THE APPEALS PROCESS PRESENTS A DAUNTING LEGAL PICTURE TO A SUPERVISOR WHO IS FACED WITH ADDRESSING POOR PERFORMANCE BY A SUBORDINATE. A RELATED ISSUE IS THAT OF EXPANDED EMPLOYEE COVERAGE. SINCE THE DUE PROCESS AMENDMENTS OF 1990, MORE EMPLOYEES HAVE ACCESS TO THESE MANY APPEAL FORUMS THAN IN PREVIOUS YEARS. WE ARE PLEASED THAT THE SUBCOMMITTEE PLANS TO REVIEW THE APPEALS PROCEDURES FOR FEDERAL EMPLOYEES.

OPM IS COMMITTED TO ASSISTING AGENCIES WITH THEIR EFFORTS TO ACHIEVE A HIGH PERFORMING WORKFORCE, WHICH INCLUDES DEALING WITH THOSE EMPLOYEES WHO ARE UNABLE TO PERFORM EFFICIENTLY AND EFFECTIVELY. AT THIS TIME, OPM'S OFFICE OF MERIT SYSTEMS OVERSIGHT AND EFFECTIVENESS IS DEVELOPING AN AGENDA FOR ITS STAFF THAT WILL EXAMINE PERFORMANCE MANAGEMENT SYSTEMS.

IN ADDITION, OPM HAS A MULTI-FACETED PROGRAM TO ASSIST AGENCIES. FOR EXAMPLE, OPM CONDUCTS PRACTITIONERS' CONFERENCES, WORKSHOPS AND AGENCY BRIEFINGS THROUGHOUT THE YEAR CONCERNING PERFORMANCE MANAGEMENT. WE SEND WRITTEN GUIDANCE TO ALL AGENCIES ON ISSUES AND PRECEDENTIAL CASE LAW RELATING TO PERFORMANCE-BASED ACTIONS. WE PROVIDE TECHNICAL ASSISTANCE TO AGENCIES. OPM TAKES A CAREFUL LOOK AT ALL DECISIONS OF THE MSPB AND ARBITRATORS INVOLVING PERFORMANCE-BASED ACTIONS. WE EXERCISE OUR AUTHORITY TO INTERVENE IN ANY CASE WHERE WE BELIEVE THE DECISION IS ERRONEOUS AND WILL HAVE A DETRIMENTAL IMPACT ON FEDERAL AGENCIES' ABILITY TO TAKE PERFORMANCE-BASED ACTIONS.

WHILE ALL OF THESE INITIATIVES ARE CONTINUING, WE ALSO RECOGNIZE THAT THE FEDERAL WORKFORCE IS OPERATING IN A CHALLENGING ENVIRONMENT CHARACTERIZED BY SHRINKING RESOURCES AND CHANGING MISSIONS. DOWNSIZING IS FORCING AGENCIES TO MAXIMIZE THE PRODUCTIVITY OF REMAINING STAFF. CONSEQUENTLY, MANAGERS AND SUPERVISORS ARE WORKING HARD TO DEVELOP NEW PERFORMANCE SYSTEMS THAT INVOLVE AND MOTIVATE EMPLOYEES. WE ARE SEEING A MOVEMENT TOWARD MORE ORGANIZATIONAL AND PERSONAL ACCOUNTABILITY FOR THE QUALITY OF WORK PRODUCTS AND SERVICES. AT OPM, WE RECOGNIZE THAT IT IS ESSENTIAL FOR US TO PROVIDE MANAGERS AND SUPERVISORS WITH A SYSTEM THAT SUPPORTS THESE INITIATIVES AND ALLOWS THEM TO HOLD ALL INDIVIDUALS ACCOUNTABLE FOR MEETING PERFORMANCE EXPECTATIONS.

1) Please provide a ten year history of the frequency distributions of employee performance ratings.

See attached table.

Percentage Distributions of Performance Ratings

	Unacceptable	Minimally Successful	Fully Successful	Exceeds Fully Successful	Outstanding	Average Rating	Number of Ratings Reported
GS 13-15 (Supervisors and Management Officials)							
FY 1994	0.06	0.13	13.97	44.40	41.44	4.27	154,543
FY 1993	0.07	0.14	13.98	44.69	41.12	4.27	151,728
FY 1992	0.06	0.14	16.62	46.41	36.77	4.20	149,810
FY 1991	0.06	0.14	17.85	47.25	34.70	4.16	148,983
FY 1990	0.06	0.16	19.52	49.73	30.54	4.11	143,219
FY 1989	0.08	0.23	22.33	49.41	27.94	4.05	138,017
FY 1988	0.09	0.27	25.54	48.07	26.05	4.00	129,345
FY 1987	0.13	0.37	28.75	47.04	23.71	3.94	121,879
FY 1986	0.12	0.35	31.21	46.48	21.84	3.90	113,522
FY 1985	0.10	1.14	30.05	47.99	20.72	3.88	103,964
GS 13-15 (Other)							
FY 1994	0.05	0.14	21.76	45.55	32.50	4.10	88,349
FY 1993	0.06	0.14	20.61	45.71	33.48	4.12	103,342
FY 1992	0.04	0.13	22.66	45.26	31.91	4.09	91,484
FY 1991	0.09	0.21	22.71	45.27	31.72	4.08	85,973
FY 1990	0.18	0.26	26.11	45.30	28.15	4.01	93,192
FY 1989	0.32	0.31	30.63	43.71	25.03	3.93	87,323
FY 1988 [1]	0.71	0.38	33.30	42.13	23.49	3.87	81,813
FY 1987 [2]	0.22	0.48	30.05	45.01	24.23	3.93	66,537
FY 1986 [2]	0.14	0.46	36.42	38.46	24.53	3.87	54,273
FY 1985	0.14	0.43	46.38	33.32	19.72	3.72	53,137
GS 1-12							
FY 1994	0.14	0.31	24.20	41.63	33.72	4.08	1,096,553
FY 1993	0.13	0.34	26.52	41.96	31.05	4.03	1,145,962
FY 1992	0.13	0.36	29.55	41.32	28.64	3.98	1,174,895
FY 1991	0.12	0.37	31.16	41.17	27.19	3.95	1,126,784
FY 1990	0.13	0.45	35.75	39.07	24.61	3.88	1,147,505
FY 1989	0.14	0.40	42.23	35.89	21.34	3.78	1,182,980
FY 1988	0.21	0.41	44.49	34.59	20.30	3.74	1,122,359
FY 1987 [2]	0.45	0.90	38.98	37.27	22.40	3.80	965,409
FY 1986 [2]	0.12	0.42	42.60	36.42	20.45	3.77	1,013,114
FY 1985	0.16	0.40	50.69	30.99	17.77	3.66	905,390
WG							
FY 1994	0.03	0.15	23.92	44.61	31.29	4.07	263,182
FY 1993	0.05	0.19	26.13	45.11	28.53	4.02	283,381
FY 1992	0.04	0.23	30.46	44.66	24.61	3.94	308,661
FY 1991	0.05	0.26	33.71	43.78	22.20	3.88	310,381
FY 1990	0.08	0.34	39.10	40.80	19.68	3.80	332,601
FY 1989	0.10	0.29	40.91	41.31	17.39	3.76	341,978
FY 1988	0.12	0.32	42.59	40.34	16.22	3.73	319,543
FY 1987 [2]	0.28	0.48	41.46	43.34	14.44	3.71	260,804
FY 1986 [2]	0.18	0.31	41.81	43.96	13.74	3.71	234,468
FY 1985	(Data not collected by OPM prior to FY 1986)						

NOTES: [1] Excludes General Accounting Office due to erroneous data submission.

[2] Excludes Treasury-IRS due to erroneous data submission.

Percentages may not add to 100 due to rounding.

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2) Please provide statistics on bonuses, incentive awards, Special Act/Achievement Awards, and performance-based base pay adjustments disbursed over the past ten years.

The attached tables provide data for:

- **lump-sum awards** (bonuses, incentive awards, Special Act/Achievement Awards), and
- **quality step increases**, which are adjustments to base pay that may be granted only to employees with "Outstanding" performance ratings.

Technically, all periodic step (within-grade) increases are "performance-based" in that the employee must have at least a "Fully Successful" performance rating to be granted the increase. However, these more routine increases are not considered among the general category of performance-based rewards such as quality step increases and other lump-sum awards.

FY85-94 AWARDS DATA--GOVERNMENTWIDE BY TYPE OF AWARD

	Type of Award	Spending (millions)	Spndg as % Tot Sal	Number of Awards	Average Amount	Avg Amt as % Avg Sal	Rate/100 Eligible Ees	Rate/100 Govt Ees
FY94	SES Rank Awards	$3.2	<0.01%	265	$12,151	12.0%	3.8	0.0
FIRST DRAFT	SES Performance Awards	$19.0	0.02%	2,683	$7,064	7.0%	38.0	0.1
CPDF &	PMRS Performance Awds	$93.1	0.12%	80,156	$1,161	1.7%	53.7	4.1
EIS data	PMS(GS+WG) Perf Awds	$497.1	0.65%	728,721	$682	1.9%	40.3	37.3
	Special Act/Other Awards	$143.3	0.19%	429,516	$334	0.9%	22.0	22.0
	Suggestion Awards	$5.0	0.01%	18,243	$276	0.7%	0.9	0.9
Tot Sal = $76,361.3	Gainshares	$0.2	0.00%	1,822	$90	n/a	n/a	0.1
(millions)	TOTAL--All Awards	$760.9	1.00%	1,261,406	$603	1.5%	n/a	64.6
FY93	SES Rank Awards	$3.4	<0.01%	275	$12,255	12.6%	3.7	0.0
FINAL DRAFT	SES Performance Awards	$21.2	0.03%	2,971	$7,129	7.3%	40.1	0.1
1465/CPDF &	PMRS Performance Awds	$142.1	0.19%	120,177	$1,183	1.8%	74.8	6.0
EIS data	PMS(GS+WG) Perf Awds	$447.5	0.59%	692,545	$646	1.9%	37.5	34.3
	Special Act/Other Awards	$161.3	0.21%	519,661	$310	0.8%	25.8	25.8
	Suggestion Awards	$5.6	0.01%	51,021	$109	0.3%	2.5	2.5
Tot Sal = $75,295.0	Gainshares	$8.5	0.01%	6,359	$1,342	n/a	n/a	0.3
(millions)	TOTAL--All Awards	$789.6	1.05%	1,393,009	$567	1.5%	n/a	69.1
FY92	SES Rank Awards	$4.8	0.01%	413	$11,646	11.3%	5.6	0.0
	SES Performance Awards	$20.3	0.03%	2,939	$6,891	6.7%	40.1	0.1
1465 &	PMRS Performance Awds	$131.2	0.18%	114,079	$1,150	1.8%	72.0	5.5
EIS data	PMS(GS+WG) Perf Awds	$418.5	0.58%	645,563	$648	2.0%	34.1	31.3
	Special Act/Other Awards	$144.3	0.23%	503,758	$336	1.0%	4.5	24.5
	Suggestion Awards	$7.6	0.01%	25,283	$301	0.9%	1.2	1.2
Tot Sal = $72,529.2	Gainshares	$23.4	0.03%	42,566	$550	n/a	n/a	2.1
(millions)	TOTAL--All Awards	$750.1	1.07%	1,334,601	$579	1.6%	n/a	64.8
FY91	SES Rank Awards	$4.7	0.01%	401	$11,671	11.7%	5.7	0.0
	SES Performance Awards	$14.4	0.02%	2,475	$5,793	5.8%	35.2	0.1
1465 &	PMRS Performance Awds	$118.1	0.18%	104,491	$1,130	1.9%	70.1	5.2
EIS data	PMS(GS+WG) Perf Awds	$369.4	0.55%	591,068	$625	2.0%	32.1	29.6
	Special Act/Other Awards	$143.4	0.21%	308,914	$352	1.0%	19.6	15.5
	Suggestion Awards	$7.4	0.01%	23,044	$319	0.9%	27.9	1.2
Tot Sal = $67,138.9	Gainshares	$6.5	0.01%	3,686	$1,763	n/a	n/a	0.2
(millions)	TOTAL--All Awards	$663.9	0.98%	1,034,079	$638	1.9%	n/a	51.8
FY90	SES Rank Awards	$4.5	0.01%	382	$11,728	14.9%	5.6	0.0
	SES Performance Awards	$13.8	0.02%	2,495	$5,517	7.0%	36.8	0.1
1465 &	PMRS Performance Awds	$110.5	0.17%	100,284	$1,102	1.9%	67.6	4.9
EIS data	PMS(GS+WG) Perf Awds	$373.1	0.59%	532,844	$625	2.2%	28.9	26.2
	Special Act/Other Awards	$124.6	0.20%	296,368	$419	1.3%	14.3	14.6
	Suggestion Awards	$8.1	0.01%	24,247	$334	1.1%	28.8	1.2
Tot Sal = $63,434.6	Gainshares	n/a	n/a	n/a	n/a	n/a	n/a	n/a
(millions)	TOTAL--All Awards	$634.6	1.00%	956,620	$663	2.1%	n/a	47.0
FY89	SES Rank Awards	$4.1	0.01%	349	$11,805	15.5%	5.3	0.0
	SES Performance Awards	$13.9	0.02%	2,535	$5,478	7.2%	38.7	0.1
1465 &	PMRS Performance Awds	$103.5	0.17%	92,774	$1,116	2.0%	63.7	4.6
EIS data	PMS(GS+WG) Perf Awds	$311.3	0.52%	472,364	$659	2.4%	25.0	23.2
	Special Act/Other Awards	$101.6	0.17%	204,156	$498	1.7%	10.0	10.0
	Suggestion Awards	$8.2	0.01%	24,494	$333	1.1%	27.2	1.2
Tot Sal = $59,714.0	Gainshares	n/a	n/a	n/a	n/a	n/a	n/a	n/a
(millions)	TOTAL--All Awards	$542.6	0.91%	796,672	$681	2.3%	n/a	39.2

FY85-94 AWARDS DATA--GOVERNMENTWIDE BY TYPE OF AWARD

	Type of Award	Spending (millions)	Spndg as % Tot Sal	Number of Awards	Average Amount	Avg Amt as % Avg Sal	Rate/100 Eligible Ees	Rate/100 Govt Ees
FY88	SES Rank Awards	$4.2	0.01%	356	$11,685	16.0%	5.6	0.0
	SES Performance Awards	$13.4	0.02%	2,398	$5,584	7.6%	38.0	0.1
1465 &	PMRS Performance Awds	$110.5	0.18%	83,555	$1,204	2.3%	61.5	4.1
EIS data	PMS(GS+WG) Perf Awds	$373.1	0.44%	391,642	$628	2.4%	21.0	19.2
	Special Act/Other Awards	$86.1	0.15%	182,030	$473	1.7%	9.1	8.9
	Suggestion Awards	$6.9	0.01%	23,505	$292	1.0%	27.2	1.2
Tot Sal = $56,019.9	Gainshares	n/a	n/a	n/a	n/a	n/a	n/a	n/a
(millions)	TOTAL--All Awards	$594.2	0.82%	683,486	$669	2.4%	n/a	33.6
FY87	SES Rank Awards	$3.8	0.01%	325	$11,785	16.2%	5.3	0.0
	SES Performance Awards	$11.8	0.02%	2,006	$5,894	8.1%	32.7	0.1
1465 &	PMRS Performance Awds	$82.7	0.15%	76,928	$1,075	2.1%	64.7	3.8
EIS data	PMS(GS+WG) Perf Awds	$205.2	0.38%	350,086	$586	2.3%	18.8	17.2
	Special Act/Other Awards	$68.0	0.12%	142,778	$476	1.7%	7.2	7.0
	Suggestion Awards	$7.9	0.01%	41,866	$215	0.8%	26.8	2.1
Tot Sal = $54,616.5	Gainshares	n/a	n/a	n/a	n/a	n/a	n/a	n/a
(millions)	TOTAL--All Awards	$379.4	0.69%	613,989	$618	2.3%	n/a	30.2
FY86	SES Rank Awards	$2.2	<0.01%	177	$12,486	18.4%	2.9	0.0
	SES Performance Awards	$12.0	0.02%	2,090	$5,758	8.5%	34.5	0.1
1465 &	PMRS Performance Awds	n/a	n/a	n/a	n/a	n/a	n/a	n/a
EIS data	GM+GS+WG Perf Awds	$250.0	0.47%	378,555	$660	2.5%	16.8	18.6
	Special Act/Other Awards	$63.0	0.12%	117,063	$538	2.0%	5.9	5.8
	Suggestion Awards	$8.8	0.02%	44,758	$222	0.8%	24.3	2.2
Tot Sal = $53,012.4	Gainshares	n/a	n/a	n/a	n/a	n/a	n/a	n/a
(millions)	TOTAL--All Awards	$336.0	0.63%	542,643	$619	2.3%	n/a	26.7
FY85	SES Rank Awards	$1.6	<0.01%	127	$12,520	18.5%	2.1	0.0
	SES Performance Awards	$11.5	0.02%	2,035	$5,646	8.4%	33.0	0.1
1465 &	PMRS Performance Awds	n/a	n/a	n/a	n/a	n/a	n/a	n/a
EIS data	GM+GS+WG Perf Awds	$176.0	0.34%	268,969	$655	2.5%	13.5	13.2
	Special Act/Other Awards	$57.8	0.11%	107,344	$539	2.1%	5.2	5.3
	Suggestion Awards	$8.0	0.02%	48,800	$286	1.1%	24.9	2.4
Tot Sal = $52,374.1	Gainshares	n/a	n/a	n/a	n/a	n/a	n/a	n/a
(millions)	TOTAL--All Awards	$254.9	0.49%	427,275	$597	2.3%	n/a	21.0

Please note: FY94 data are taken straight from CPDF and Executive Information System (EIS) reports.
Please consider the FY94 totals to be preliminary, draft figures for now.
Figures for FY85-FY93 are principally derived from manual reports submitted by agencies on OPM Form 1465.

FY85-94 QUALITY STEP INCREASES--GOVERNMENTWIDE

	Estimated 1st Year Cost (millions)	Number Granted	Average 1st Year Cost	Rate/100 Employees
FY94	$35.4	63,160	$560	4.3
FY93	$33.0	62,158	$530	4.6
FY92	$28.1	57,786	$486	3.7
FY91	$24.1	56,158	$430	3.5
FY90	$21.3	48,565	$438	3.3
FY89	$18.7	44,322	$422	2.9
FY88	$15.4	40,619	$379	2.7
FY87	$17.7	45,918	$386	3.9
FY86	$16.8	46,440	$362	4.0
FY85	$17.4	48,220	$361	3.9

3) Have there been any studies correlating these awards to performance ratings?

Although OPM does conduct general evaluations and oversight of the use of various awards authorities, we have no recent studies that specifically correlate awards with performance ratings. The principal reason for not looking at this in particular is that many, if not most, awards are rather strictly correlated to ratings by design. For instance, quality step increases require an "Outstanding" rating. (In the future, if an agency does not use the "Outstanding" level, specific criteria would have to be set up for identifying the exceptional performance that a QSI is intended to recognize and an employee would also be required to have the highest rating that is used by the agency.) Other performance, or rating-based, awards are typically granted under agency policies that require that larger award amounts be given to employees with higher ratings. This was a regulatory requirement within the Performance Management and Recognition System and many awards programs for other employees were designed and operated to mirror PMRS requirements.

PLEASE NOTE

The following charts are based on information obtained from the Central Personnel Data File (CPDF). The CPDF Library is a comprehensive information resource for program managers and analysts, workforce analysts, policy planners, and other users of Federal civilian workforce statistics. CPDF was developed and is maintained by the U.S. Office of Personnel Management, Human Resources Systems Service, Office of Workforce Information.

Central Personnel Data File Coverage

CPDF covers approximately 2.2 million Federal **civilian** employees including all agencies in the Executive Branch **except**: the U.S. Postal Service, Postal Rate Commission, Central Intelligence Agency, National Security Agency, Tennessee Valley Authority, White House Office, Office of the Vice President, Board of Governors of the Federal Reserve System, and Defense Intelligence Agency. And, the Federal Bureau of Investigation supplies only limited data to CPDF.

From the Legislative Branch, CPDF includes only the Government Printing Office, U.S. Tax Court, and selected commissions.

Exclusions from CPDF include the Judicial Branch, non-appropriated fund employees of DoD, Commissioned Officer Corps employees, foreign nationals outside of the U.S. or its territories, and contract employees.

4) Over the past ten years, how many Federal employees have been terminated per year?

Number of Terminations by Type

FY	Total[1]	(432) Performance	(752) Misconduct	(752) Performance & Misconduct	Probationary	NAR [2]	Other[3]	Federal Employment (in Millions)
94	8,680	364	2,799	314	2,318	2,322	553	2.027
93	9,460	432	2,974	311	2,519	2,945	279	2.096
92	10,498	386	2,726	368	3,576	3,199	243	2.167
91	11,858	388	2,599	346	4,344	3,947	234	2.176
90	13,368	403	2,521	373	5,052	4,706	313	2.147
89	14,555	425	2,780	413	5,215	5,430	292	2.148
88	13,396	478	2,630	422	4,426	5,265	175	2.123
87	12,273	427	2,110	422	3,822	5,338	154	2.141
86	12,128	527	2,389	427	4,183	4,366	236	2.100
85	12,090	500	2,238	383	4,088	4,681	200	2.131

[1] These totals reflect actions taken "for cause" and therefore specifically exclude actions taken under reduction in force procedures and nondisciplinary actions taken based on an employee's medical inability to perform.

[2] No appeal rights.

[3] Includes terminations not otherwise categorized in this chart, such as suitability or actions specific to certain agencies.

4a) What percentage was due to performance?
What percentage was due to misconduct?

Percentage Distribution of Performance and Misconduct Actions

FY	% due to Performance	% due to Misconduct	% due to Both Performance and Misconduct
94	10	81	9
93	12	80	8
92	11	78	11
91	12	78	10
90	12	76	11
89	12	77	11
88	14	75	12
87	14	71	14
86	16	71	13
85	16	72	12

Since probationary employees and those with no appeal rights receive no due process when they are terminated, the reasons for their removal may not be documented in their personnel record. Therefore, the percentages of performance-based and misconduct-based actions (or both) are calculated based only on the data where a reason for action was given.

NOTE: Percentages are independently rounded and may not add to up 100.

5) Over the past ten years how many Federal employees have been demoted?
What percentage was due to performance?
What percentage was due to misconduct?

Percentage Distribution of Demotion Actions

FY	Number	% due to Performance (432)	% due to Misconduct (752)
94	601	26	74
93	575	29	71
92	547	39	61
91	665	36	64
90	834	40	60
89	870	43	57
88	736	47	53
87	897	36	64
86	1,059	34	66
85	794	52	48

This data only reflects actions taken "for cause" and therefore excludes voluntary demotion actions, reclassification actions, and demotions taken under reduction in force procedures. Included in the number of voluntary demotions would be actions involving any employee who voluntarily accepted or requested a lower grade based on poor performance.

The data file does not contain a category for demotion taken for both misconduct and performance, therefore, those actions are coded under the Part 752 (misconduct) category.

NOTE: Percentages are independently rounded and may not add up to 100.

6) Please compare the frequency of removal actions taken during probationary period versus after the probationary period during the past ten years.

Terminations during Probation versus Removals after Probation

FY	Probation	Post Probationary Removals	Probationary/ Post Removal Ratio	Career Conditional Appointments
94	2,318	4,030	0.6	36,350
93	2,519	3,996	0.6	46,715
92	3,576	3,723	1.0	70,168
91	4,344	3,567	1.2	103,180
90	5,052	3,610	1.4	110,611
89	5,215	3,910	1.3	145,078
88	4,426	3,705	1.2	128,635
87	3,822	3,113	1.2	129,241
86	4,183	3,579	1.2	115,306
85	4,088	3,321	1.2	126,112

Since all new employees begin employment on different dates throughout the year, it was not possible (within the timeframes for this request) to provide the Committee with an actual frequency comparison of probationary removals to post-probationary removals within each fiscal year. Instead, we have provided the ratio of probationary removals to removals of employees who have completed a probationary period for each fiscal year. Additionally, we have included the number of employees who were appointed each fiscal year under a career conditional appointment (including conversions to career appointments) that require a probationary period.

7) Please provide statistical data of the past ten years on cases of resignations in lieu of removal or demotion.

What percentage was due to misconduct?

What percentage was due to performance?

Resignations In Lieu of Removal/Demotion

FY	Resignations	% Performance	% Misconduct
94	520	17	83
93	526	20	80
92	517	13	87
91	546	16	84
90	614	15	85
89	761	15	85
88	656	16	84
87	657	19	81
86	729	21	79
85	804	25	75

We are aware, through our routine contacts with agencies, that there is a common practice of not documenting a resignation personnel action to show that the action was in lieu of involuntary action. This can result from a formal or informal settlement agreement. Therefore, we do not believe these numbers accurately reflect the number of instances in which an employee resigns rather than face the consequences of unacceptable performance or misconduct.

8) Please provide statistical data of the past ten years on cases of retirement in lieu of removal or demotion.

What percentage was due to misconduct?

What percentage was due to performance?

Retirements In Lieu of Involuntary Separation

FY	Retirements
94	3,459
93	2,030
92	887
91	729
90	565
89	461
88	664
87	863
86	633
85	658

Our data files do not distinguish performance or misconduct from all other reasons for retirement in lieu of involuntary separation.

We believe the significant increase in these actions during the last two fiscal years reflects the large number of reduction in force actions occurring in the Federal government.

9. How many removal actions taken under Part 432 procedures are due to an employee's abandonment of his or her position?

Since abandonment is a voluntary action, neither Part 432 nor Part 752 procedures are used when an agency takes action for abandonment. Therefore, this chart reflects separate data, not included in the previous charts.

NOTE: The number of actions taken for AWOL or other leave-related misconduct is included in the previous charts, under Part 752 (misconduct) actions.

Removals for Abandonment of Position

FY	Number
94	692
93	641
92	813
91	926
90	1,542
89	1,652
88	1,664
87	1,607
86	1,274
85	955

Cardiss Collins, M.C.

**STATEMENT OF HONORABLE CARDISS COLLINS,
RANKING MEMBER OF THE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
BEFORE THE SUBCOMMITTEE ON CIVIL SERVICE
HEARING ON PERFORMANCE AND ACCOUNTABILITY**

October 26, 1995

Mr. Chairman, the performance of the Federal workforce is a subject under constant discussion, both inside and outside the government. This week, a local TV news program is running a series of stories called "Uncle Slam" in which several federal employees addressed the constant stereotyping and blanket criticism routinely heaped on federal workers by the press, the public, and even some Members of Congress. They expressed great frustration with the view that all federal workers are lazy, intrusive, red tape loving bureaucrats. They pointed out that the public depends greatly upon the jobs federal workers perform and that the vast majority of our work force performs those jobs very well.

I agree that the vast majority of our government's employees do their jobs well. They do them well despite the fact that annual pay raises are repeatedly scaled back. They do them well despite the fact we are in the midst of major restructuring and downsizing. They will continue to do them well despite the Majority's plan to raise the cost of federal pensions in order to pay for tax cuts for the rich. Federal workers are being "slammed." Their character, pay, and benefits are all under attack. I don't believe they deserve the poor treatment they are receiving. As I see it, federal workers deserve our gratitude and respect.

Today's hearing on "Performance and Accountability" should provide an opportunity to set the record straight. The testimony we will receive from the Office of Personnel Management and the Merit Systems Protection Board will provide us with hard data which shows that the number of personnel actions against poor performers is relatively small. This suggests to me that the competitive hiring process does bring many of the best and brightest into federal service. It also suggests that, in many instances where performance problems occur, federal managers are providing counseling or training to help resolve deficiencies before they deteriorates to where termination is warranted.

4

The Administration's 1993 National Performance Review concluded in its report that the existing processes for assessing performance, rewarding good performance, and taking action to address poor performance are not serving the needs of the federal government or its employees. The report recommends that the one size fits all approach to performance management be dropped and that agencies be allowed to design performance management systems tailored to their own needs. It also recommends that the system for dealing with poor performers be improved. On the surface, both of these proposals appear to have merit. I look forward to hearing the views of today's witnesses concerning them.

5

Again, Mr. Chairman, I believe that the Federal government has good workers who give the American public good service. I also believe, however, that to sustain a high level of performance, it is essential that we have modern and flexible performance management systems in place. I hope that the review which this subcommittee has undertaken will ensure that we do.

Motto: "If I cannot speak good of my comrade, I will not speak ill of him."

DISABLED AMERICAN VETERANS

NATIONAL SERVICE and LEGISLATIVE HEADQUARTERS
807 MAINE AVENUE, S.W.
WASHINGTON, D.C. 20024
(202) 554-3501

December 6, 1995

Honorable John L. Mica
Chairman, Civil Service Subcommittee
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Congressman Mica:

It was an honor and a privilege to be invited to address the House Civil Service Subcommittee which you chair.

Thank you for this opportunity to respond to additional questions.

Question: This Subcommittee heard a remarkable consensus during our hearing supporting stronger measures to address problems in the management of poor performers. How should we address veterans' preference in these actions?

Answer: Veterans' preference has not been a factor in efforts to address poor performance. We see no reason to make veteran status a factor.

Question: The Subcommittee understands your concerns about the role of veterans' preference under RIF rules. The Subcommittee has heard suggestions that any revision to RIF rules give greater consideration to outstanding performers. As we reduce the size of government, would you have any suggestions of factors that might be changed in revising RIF rules?

Answer: We appreciate what we believe is a conscientious concern for maintaining higher performing federal employees during agency reduction-in-force (RIF). There are those who argue that considering veterans' preference in RIF will necessarily conflict with this desirable goal. Frequently, veterans' preference is cited as a nonmeritorious consideration which seriously damages any rational RIF plan and therefore must be reduced or eliminated as a factor. We disagree.

Current RIF policy considers four elements: (1) tenure; (2) veterans' preference; (3) length of service; and (4) credit for performance.

Based on these factors, all affected employees are placed on a RIF register in rank order.

An employee's rank can be improved by adjusting their service date based on performance ratings, thus potentially adding several years of service and increasing their ranking based on performance.

We believe that veterans' preference should not be reduced in comparison to the effect of performance as factors in RIF.

In this debate, the Congress will have to weigh the government's obligation to ameliorate the burdens of military service against other interests. We urge the Congress to maintain a high level of consideration to be accorded veteran status in RIF.

The ability of the government to recruit quality military personnel into an all-volunteer "total" force is limited by the public perception that those who serve are cared for. Department of Defense data indicate that the pool of quality youth recruits is diminishing, not only in real numbers, but also in their interest in enlisting. While having minimal real effect on the average military recruit, the message de-emphasizing the assistance to overcome the burden of military service is another negative they will weigh along with lost seniority resulting from time in military training or on active duty.

Vietnam veterans--median age 48--are the last large pool of five-point veterans' preference eligibles, unless there is another war. When they were drafted or enlisted, the current RIF principles were in place. However, protections for certain military annuitants and those with the rank of Major and above are severely limited under current law.

These men and women entered the military young. Now the number of federal personnel is being reduced while these veterans are at the peak of their careers. Now that RIF protection is important to them, the RIF protections in place when they entered the service are being debated. The RIF policies are in debate because these veterans may benefit from these policies. How ironic. The debate is about a benefit which may do what it was designed to do. Those who were supposed to benefit because of this service, may lose the benefit because it benefits them. The rules of the game may be changed when they are most important to those who served, those who bore the burden of service.

For those who promote the desirable goal of performance as the primary consideration in personnel acquisition and downsizing, the discussion often ignores the subjective, mercurial and inconsistent appraisal instruments and their often erratic implementation. Even so, it is still an important factor but must be weighted against other legitimate government interests, such as the maintenance of a quality military and ameliorating the burden of service on those who served.

Congressman Mica, your letter refers to our recommendation for an administrative process which would enable veterans who believe they had improperly been denied their

veterans' preference rights in hiring to obtain remedies as though the original harm had not been done.

Question: Do you intend for such review authority to be located within OPM?

Is this recommendation intended to address all mistakes, or would you require a demonstration of intentional denial?

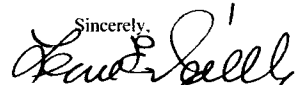
Answer: The answer to your first question is still being discussed among the Veterans' Service Organizations (VSOs). In general, these discussions support the notion that the veteran complainant should be able to start the initial informal administrative review in a geographic location near them. For example, the personnel office where the veteran applied for the federal job might accept the complaint and do an initial review.

However, VSOs believe the veterans should have the right to appeal their complaint to a central hearing body such as the Office of Personnel Management (OPM). The agency, having authority to provide a final administrative decision regarding the veteran's complaint, should be obligated to conduct a proceeding which would produce a record that would constitute evidence before the United States Court of Appeals for the Federal Circuit.

In answer to the second part of your question, this recommendation was intended only to address the damages inflicted on the veteran regardless of the intent of the parties who committed the error. However, if a federal employee intentionally violated the law, especially when someone is damaged, we believe that should be a factor in the employee evaluation, discipline might be appropriate, and they may be held liable for damages covered under the law.

We hope these views assist you in your deliberations. We would be pleased to meet with you or your staff to clarify our views as the civil service reform proposals begin to be drafted.

Sincerely,



LENNOX E. GILMER
Associate National Legislative Director

LEG:lmb

cc: American G.I. Forum, Art Solis
American Legion, Emil Naschinski
AMVETS, Bob Carbonneau
Non-Commissioned Officers Association, Richard Johnson
Paralyzed Veterans of America, Blake Ortner
Veterans of Foreign Wars, Sid Daniels
Vietnam Veterans of America, Bill Crandell

10/26/95

NAPA
National Academy Of Public Administration
Center for Human Resources Management

Chartered by Congress

December 4, 1995

Honorable John L. Mica
Chairman, Civil Service Subcommittee
Committee on Government Reform and Oversight
House of Representatives
Congress of the United States
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Congressman Mica:

Enclosed, as requested in your letter of November 9, are our responses to the additional questions arising from my testimony at the Civil Service Subcommittee's October 26 hearing on performance management and accountability. I appreciated the opportunity to represent the National Academy of Public Administration at this very important series of hearings on civil service reform issues and look forward to continuing to work with you and your staff as you consider this and other related topics.

Should you have any questions regarding the enclosed material or related human resources management matters please do not hesitate to contact us. Our new address and telephone number are:

National Academy of Public Administration
Center for Human Resources Management
800 North Capitol Street
Suite 115
Washington, DC 20002
(202) 682-4010

Thank you for your interest in the Academy and its efforts.

Sincerely,

Frank P. Cipolla
Director
Center for Human Resources Management

Enclosure

RESPONSES TO FOLLOW-ON QUESTIONS FROM THE

STATEMENT OF FRANK P. CIPOLLA

DIRECTOR

CENTER FOR HUMAN RESOURCES MANAGEMENT

NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

(October 26, 1995)

FOR THE

SUBCOMMITTEE ON CIVIL SERVICE

OF THE

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

DECEMBER 4, 1995

1. The Administration's draft civil service reform bill would allow agencies to appoint individuals to nonpermanent positions for up to five years. What if any performance problem would this type of hiring system address?

Expanded authority to hire nonpermanent federal workers is designed to give agencies more hiring flexibility to meet fluctuating workload needs in a more efficient and cost-effective manner. Under current hiring authorities, nonpermanent employees can be and are removed more easily. Thus, if the federal workforce of the future was composed of proportionately more nonpermanent employees, the proposed changes in appointment authorities would, as a by-product, help to alleviate the poor performer "problem". However, using this rationale to support expansion of nonpermanent hiring authorities seems inappropriate. First, the traditional way performance is measured is inadequate; a more effective employee performance management system should be linked with organizational performance measures. Secondly, changes in appointment authorities should be accompanied by changes in the availability of employee benefits to maintain and improve the quality of new hires and to allow federal hiring to be competitive in the job market. Finally, procedures for removing nonpermanent employees may need to be changed if nonpermanent employees become more representative of the bargaining unit segment of the workforce.

2. The Administration's draft civil service reform bill would permit extending probationary periods for up to three years. What if any performance problem would this address? Do you have any specific recommendations about an appropriate length of a probationary period?

Extending probationary periods beyond the current one-year limit would apply to permanent new hires only. Greater flexibility in setting probationary periods would give agencies more opportunity to identify performance issues before making a "career" commitment with the additional security and protections that provides. Agencies could decide how long a timeframe is needed to assess the new hire's capability to perform the full range of tasks required in the position. For instance, most professional-level occupations (those identified in the current position classification system as two-grade interval) have a three-year developmental cycle from trainee to full performance level. A probationary period of up to three years would allow the agency to assess the new hire's performance in the position over the entire developmental period. Even when some positions (e.g. scientific occupations) are filled at the full performance level, they include duties which require a cycle of more than one year to complete and assess the performance of the new hire. If regulations regarding removal during probation remain unchanged, allowing expanded probationary periods should provide for improved performance evaluation and removal as needed, thus reducing poor performer "problems". The appropriate length of probationary periods should be determined on an agency by agency basis to meet its organizational performance needs.

3. The Administration's draft civil service reform proposal provides for docking poorly performing employees pay for up to 25% for up to 120 days. Do you believe that this sanction could lead to any improvement in a targeted employee's performance?

Emphasizing measures such as docking pay as a method for improving poor performance does not get at the major issue unless it is part of a broader restructuring of the entire performance management system. Some poor performers may respond to negative stimuli such as the temporary reduction in pay proposed in the draft civil service reform package. What this type of measure does is to establish a clear link between pay and performance, albeit a negative one. If the ultimate objective is to establish a pay for performance system, our current laws on compensation and position classification are inadequate. The concept of pay (or lack thereof) for performance should recognize both ends of the performance spectrum. It may be more appropriate to concentrate efforts on redesigning the federal position classification and compensation system by considering alternative approaches such as broad-banding systems.

4. How would you suggest instituting greater flexibility in the tenure of federal employees?

To accommodate changes in the overall work environment and to compete in the job market for quality employees, the federal government will need to offer options to traditional career tenure benefits and protections. Some federal occupations, including many in law enforcement (e.g. FBI, Secret Service) and those directly supporting our military services, need employees who are dedicated to the agency mission. For them, tenure is a recruitment incentive and retention is cost-effective to the agency. Filling many of the Government's hiring needs should be more workload-driven than the current hiring process allows. Different incentives to attract quality candidates are needed. Greater flexibilities were actually begun with the implementation of the Federal Employees Retirement System (FERS) which was designed, in part, to be a portable system that would allow those covered by it to move, career-wise, within the public sector and between the public and private sector. Use of a "travelling" package of benefits needs to be broadened. Employees of the future should be able to go where their skills are needed, taking with them the level of health, developmental, and retirement security needed to protect themselves and their dependents. The up-to-three-year probationary period, renewable term contracts with employees such as those used by Australia and New Zealand for senior managers, and up-or-out promotion and development systems are additional approaches which could also be considered.

5. Has legislation such as the Government Performance and Results Act improved abilities to identify either organizational or individual poor performance?

The Government Performance and Results Act (GPRA), which requires implementation of a results-driven system, has created an opportunity to link the individual's and the organization's performance. In order to be an effective link, it needs to be supported by reliable and appropriate measurement tools. Currently, there does not appear to be much of an effort by

agency managers or the Office of Management and Budget to directly link individual performance management elements to the organizational performance measurement process. The two performance systems should be integrated as much as possible; expectations should be set in terms of projected results; and the measurement process should overlap. When individual employees are given performance expectations based on the organizational performance expectations spelled out in the GPRA action plan, both the agency and its employees are focused on achieving the desired outcomes.

6. Do you have any recommendations for improving the personnel management training for federal supervisors that would improve their ability to identify and address poor performance?

While some agencies have restructured their programs in recent years, in general, personnel management training for supervisors and managers needs to be updated. Training must be a valid response to a defined need. The trainee must be able to recognize that need and relate it to performance expectations and rewards/sanctions within his or her management environment. Personnel management training should concentrate more on refining skills that help supervisors perform their leadership and resource management duties and lessen the current emphasis on the administrative requirements of traditional courses. The roles and responsibilities of supervisors and managers are changing. Organizations today are experimenting with teams, including self-directed teams, in lieu of traditional methods to better accomplish an organization's work. Now is an ideal time for agencies to revitalize personnel management responsibilities and correspondingly redo training for supervisors.

7. Would we strengthen the hand of federal managers if the law were changed so that within-grade increases are no longer automatic and required affirmative management action?

The issue on within-grade increases is not the law itself; rather, it is how the law is implemented. The law does not intend that within-grade increases be automatically granted. Procedures for approving within-grade increases need to be more effectively utilized and supported. One way to do so is to assure that performance evaluation criteria are considered in the within-grade decision-making process.

8. Would that removal of an appeal right have much significance alone, or should we consider it in the context of changing the method of awarding the increases?

The removal of an appeal right to the Merit Systems Protection Board and substituting use of agency-level internal appeal procedures would both be helpful and consistent with current efforts to empower managers to make decisions including decisions to grant or withhold within-grade increases. Employees are entitled to an avenue to challenge within-grade denials but agency grievance processes, including negotiated processes are an adequate mechanism for that.

9. Do you have reason to believe that comparable reforms could be adapted into the American civil service? (NOTE: This refers to experiments to improve accountability such as putting managers under contract that appear to have worked in Australia and New Zealand.)

The concept of entering into term-type contracts with senior managers in the American civil service is not only feasible, it is consistent with " 'rethinking the concept of career and tenure-based employment' " as addressed in #4, above. Senior managers can be held accountable for their performance and that of their organizations through mechanisms such as the current performance agreements between the President and his Cabinet level agency heads which are driven by expected outcomes in the agency's performance as measured by the action plans required by the Government Performance and Results Act(GPRA). To insure accountability, senior managers must be allowed considerable delegation of authority to manage their programs and adequate resources to accomplish the agreed upon objectives; the tools for measuring performance must be adequate and consistent; and both Congress and the President must support the process.

10. Does the political context here--especially the situation where different political parties control the Congress and the executive--restrict the types of managerial reforms that could be adopted?

The tools for offsetting political considerations, including the situation where different political parties control the Congress and the Executive Branch, to implement reforms such as the use of term contracts with senior managers discussed in #9, above, are already in place. Congress, in legislating GPRA, recognized the need for both performance accountability among government agencies and broader civil service reform. It also recognized that converting to a system that measures outcomes and results requires timeframes that go beyond the political ones of elected public officials. Through the National Performance Review, the Administration has also called attention to the need for significant reform and greater accountability. Therefore, there is already a basis in principle for bi-partisan action which builds on these common goals and objectives.

11. How do you reconcile these different objectives and what kind of changes should we consider to the civil service to facilitate government reform? (NOTE: The question refers to a potential conflict between Congressional objectives of significant civil service reform including major changes in the scope of federal programs, the methods of federal regulations, and approaches to federal spending and the concept of a career civil service which promotes "continuity" and "stability").

As indicated in response to #10 above, there is already a basis in principle for building a consensual approach to major civil service reform. The concept of a career civil service system does not conflict with reform when the design of the system puts the employee in context as a **contributor** to the work of the team or organization rather than as an individual performer. Significant reforms in civil service systems in other countries and in other jurisdictions in this country are already underway with civil servants as major contributors to their success. This is the rationale for performance management, position classification (including broad-banding), and training reforms already underway in many organizations. If the basis in principle is clear, there should be no conflict; employees should buy into the reforms if they are aware of the expectations.

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Hay
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December 1, 1995

The Honorable John L. Mica
Chairman, Civil Service Subcommittee
Committee on Government Reform and Oversight
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Chairman Mica:

I appreciate the opportunity to add to my formal testimony before your Subcommittee on October 26 by responding to the thirteen additional questions contained in your letter of November 9. The responses are in the attachment to this letter.

I hope that these responses assist your Subcommittee in its deliberations to improve the civil service system. If you have any additional questions where I may be helpful, please feel free to contact me at any time.

Sincerely,

Joyce L. Shields, Ph.D.
Managing Director of Human Resources
Planning and Development for North America

Responses to Questions from Rep. John L. Mica, Chairman, Civil Service Subcommittee in his letter of 9 November 1995

1. Question: The Administration's draft civil service reform bill would allow agencies to appoint individuals to nonpermanent positions for up to five years. What if any performance-related problem would this type of hiring system address?

Response: First, such a hiring system would prevent obsolescence in rapidly changing fields requiring significant specialized training (e.g., in science or technology) or areas with rapidly changing priorities that also require significant specialized training (e.g., in certain legal and regulatory specialties). Criteria could be developed relatively easily for selecting categories of jobs appropriate for designation as this type of nonpermanent position. As an example, the National Science Foundation uses the concept of permanent "rotator" position for many of its program managers in scientific disciplines.

Second, such a hiring system would allow more time to determine mismatches between job and individual and ease termination or reassignment. This is most likely to be appropriate at the managerial level. For example, many newly-appointed first- and second-line managers who were substantively/technically very competent are found to be poor managers but this situation does not become apparent immediately. However, five years may be too long. Extending the probationary periods to three years for managers (covered in question 2 following) may be a more appropriate approach to this problem.

2. Question: The Administration's draft civil service reform bill would permit extending the probationary periods for up to three years. What if any performance problem would this address? Do you have any general recommendations about an appropriate length for a probationary period.

Response: The current probationary period is a "one-size-fits-all" approach. A three-year probationary period also is a "one-size-fits-all" approach. Managerial jobs are likely to need a longer probationary period than administrative and technical jobs; higher level jobs are more likely to need a longer probationary period than lower level jobs. Fortunately, there is the obvious correlation between managerial and higher level jobs. Thus, for SES and GS 13-15 level (or equivalent) positions, extending probationary periods for up to three years may be appropriate. For GS 7-12 (or equivalent) positions, the probationary period could be shorter: six months to a year. For the lowest level positions (GS 1-6 or equivalent), an even shorter probationary period than currently exists might be used: e.g., 90 to 120 days.

3. Question: The Administration's draft civil service reform proposal provides for docking a poorly performing employees' pay for up to 25% for up to 120 days. Do you believe that this sanction could lead to any improvement in a targeted employee's performance?

Response: In most case, docking pay is not an appropriate remedy. If the employee's problem is only poor motivation and prior counseling and warnings have not worked, docking of pay alone

may be the only remedy available. In instances other than motivation as the problem (e.g., person-job mismatch, grief, substance abuse), feedback to the employee and positive actions to remedy the situation are more appropriate and docking of pay may be necessary as a last resort to get the employee's attention and to focus the employee's efforts on steps to improve performance change.

4. Question: The Administration's draft bill would eliminate a employee's right to appeal the denial of a within-grade increase to the MSPB. What impact could this have on an employee's performance or a manager's ability to manage?

Response: From the employee's perspective, it would depend on the rationale for the appeal. For example, if the employee's perception is that the increase was denied because of discrimination (e.g., race, sex, age, political views), the employee is likely to need a determination by an independent third party (i.e., the MSPB) to be mollified. Rightly or wrongly, aggrieved employees tend to believe that agencies generally will back their managers. If not satisfied, the employee may be less motivated to perform and withdraw somewhat, a situation which will reinforce the potential problem.

From the manager's viewpoint, denial of a within-grade increase is one tool and a relatively drastic one for sanctioning poor performance. The elimination of the right of appeal to the MSPB is less important than improving the operational process for the denial of the increase itself. Although one or two steps short of termination, it is probably rarely used because of the lack of clear alignment between problem and sanction or because of the supporting documentation required. Regarding the alignment of problem and sanction, some of the same comments could be made here as listed in the response to question 3 above regarding docking of pay. Regarding the supporting documentation, the difficulty here is the lack of meaningful outcome-based performance standards and competency requirements for each job above the threshold job description and knowledge, skills, and abilities requirements. These latter are input measures not outcome-based performance measures. Without a change to reliance on such performance measures, it will tend to remain a rarely used tool, whether or not the right of appeal to the MSPB is eliminated.

5. Question: How might Congress proceed to add flexibility to the hiring system?

Response: The hiring system itself appears to have sufficient flexibility to accomplish its goals. Some of the detailed system-wide regulations and some of the regulations and operations by the personnel units in agencies make the implementation process cumbersome and make it appear relatively inflexible at times. For example, the time from creation of a job or need to fill a vacancy to actual employee on the job is much too long. But is this really an issue of flexibility? As another example, in an era of increased work by teams, team results depends in no small part on team cohesion, a factor that in turn is to no small extent personality ("chemistry") driven. Yet the traditional personnel approach is to provide only the top 3 or 5 candidates from the eligible pool. While these candidates may be more technically qualified than the remainder of the eligible pool

(although in many cases not by much), they may not be appropriate candidates for the team. The procedure for turning down these "top" candidates and requesting a longer list is somewhat cumbersome (e.g., written rationale) and often causes friction between the hiring unit and the personnel unit. Again, is this really an issue of flexibility? Finally, as noted in the response to question 7 and in my testimony of 26 October 1995 before your Subcommittee, introduction of job competency assessments would be a major improvement in the hiring system. However, again, is the issue addressed by such an improvement really one of flexibility?

6. Question: Is flexibility really what is needed (to improve the hiring process)?

Response: No. See response to question 5 above and 8 below.

7. Question: What methods do you recommend for incorporating other, less tangible factors (than knowledge, skills, and abilities) into pre-employment screening?

Response: A more competency-based human-resource management system would go a long way to improving the hiring process and have other significant performance results. As part of the hiring process, job competency assessments should be performed and job competency requirements should be matched with person competencies. Details on the Job Competency Assessment methodology were provided in my testimony of 26 October 1995 before your Subcommittee.

8. Question: What methods do you encourage organizations to use when they identify poor performers?

Response: We encourage organizations to adopt a competency-based human resource management system, including assessments for job-person match and competency-based and outcome-based performance standards. Using the job competency assessment approach, the improved job-person match decreases the likelihood of poor performance in the first place. Using such performance standards, a manager can more readily determine if and in what way an employee is a poor performer (despite the apparent job-person match). The diagnosis is easier (e.g., motivation, personal problems, job-related capability), and the remedy clearer (e.g., feedback, coaching, counseling, training). Performance against the standards can be measured continually during the remedy implementation period and the supporting documentation for reassignment or removal, if required, can be built more readily from these performance measures.

9. Question: Does your guidance differ between public and private organizations?

Response: Not as an overall approach. Implementation steps obviously are different.

10. Question: Do you find private sector organizations more effective in managing poor performers?

Response: No. We have found that many of the same forces are at work in both sectors, such as labor-management policies (although labor unions in the private sector have the power to strike, they represent a very small percentage of private sector workers holding jobs similar to those in the federal government), government laws and regulations (imposed on itself and on private organizations), and higher priorities of managers ("get on with the real job" of the organizational unit).

After all other remedies are tried, one approach available in the private sector is abolition of a job for lack of work (also called "lack of coverage"). The termination of employment of a targeted job holder can be accomplished gracefully with appropriate severance benefits and letters of recommendation. The only requirement is that the organization not re-create essentially the same job for which the targeted employee would have been eligible. There are some positions in the public sector where lack of work can be used, for example, organizations which require fees for services (also called "industrial funded"), e.g., Patent and Trademark Office, National Technical Information Services, federal laboratories, military repair and storage depots.

11. Question: What factors contribute most to this difference?

Response: Not applicable.

12. Question: In your opinion, have these laws (Chief Financial Officers Act and the Government Performance and Result Act) achieved effective links between effort and results?

Response: It is much too early to make such a determination. These laws go beyond formally prescribing activities and mandating processes (as most laws do) to informally expecting organizational change and cultural transformation. These changes are at the heart of an organization and its culture and thus take a significant amount of time to accomplish.

13. Question: What other steps should Congress take to link the performance of federal employees more closely to agencies' missions?

Response: Pay for performance and competencies is the logical next step in a competency-based human resource management system, after job competency assessments and outcome-based performance measurement systems.

November 17, 1995

The Honorable John L. Mica
Chairman
Committee on Government Reform and Oversight
2157 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

I have received your letter of November 6, 1995 requesting answers to additional questions on civil service reform. I am pleased to provide these answers to you and would be happy to provide any other information you deem necessary.

Question I: You noted examples of changes in work processes achieved through partnership councils that resulted in increased efficiency and productivity. Was there anything in civil service laws or regulations that prevented those productivity gains before the establishment of partnership councils?

Answer I: The changes in work processes that were noted in my testimony were achieved through the partnership councils in the various agencies. These partnership councils were created as a result of Executive Order 12871. The productivity gains simply would not have been achieved without the execution of the Executive Order. Unfortunately, prior to the Executive Order, neither management nor labor in the federal sector had the incentive to work together in a non-adversarial fashion. Although no laws specifically precluded partnership arrangements in the federal sector, I believe that unless it is mandated, both parties will be reluctant to change their old unproductive behaviors. In summary, although there were no laws or regulations preventing productivity gains before the establishment of partnership councils; without laws and regulations mandating partnership councils, there would be no productivity gains.

I want to remind you that often before parties make change, it must be mandated. I can think of many examples in the history of our Nation where Congress has had to act in order to ensure appropriate behavior among our citizens. For example, in 1965 civil rights laws were passed. Arguably, there was nothing to prevent people from not discriminating prior to the passage of this law. Discrimination hurts everyone, nevertheless people were reluctant to change their attitudes and behaviors. We believe the

same holds true for partnership. In order for the productivity gains to be realized, Congress will need to mandate that the partnership relationship be fostered.

Question II: You testified that you support incremental changes along the lines of the National Performance Review's recommendations regarding the hiring system, the classification system and the performance management system. Can you be more specific about the reform that you would support?

Answer II: As I discussed in my statement, I do not believe one blanket reform should be implemented on a government-wide basis for hiring or classification. I believe that each federal agency has its own mission and the accomplishment of this mission must be incorporated into the creation of any new hiring system, classification system or performance management system. The best way to determine which hiring, classification or performance management systems work is through demonstration projects which would allow agencies to experiment and reach the appropriate balance for their particular personnel needs.

Although I believe that agency demonstration projects are the best methods for determining appropriate personnel systems, I have offered various suggestions for alternative personnel systems that agencies may want to employ. If an agency seeks changes in its personnel system, I believe that employees must have a voice in this change. If employees are not brought along at each step of the change, the change will not be successful. Therefore, I recommend that all of these suggested changes be negotiated with the exclusive representative for the employees of that agency. In the area of hiring, NTEU has suggested that agencies be provided with more discretion to hire their own employees. In the area of classification reform, NTEU has suggested pay banding. In the area of performance management, NTEU has suggested eliminating the statutory procedures for removal cases and allowing parties to negotiate termination procedures. NTEU remains open to discussing these and other ideas with you.

Question 3: Which of these reforms would have highest priority for you?

Answer 3: I don't believe that any particular reform would have the highest order of priority. As I noted above, different agencies will have more compelling needs in specific areas. I believe that priority must be determined on an agency by agency basis rather than on a government-wide basis.

Question 4: During testimony, several witnesses agreed that federal managers need considerably more discretion in these areas to manage effectively. Would you support Congress giving greater discretion to agency managers in these --or other -- matters.

Answer 4: Yes, I believe that managers do need greater discretion in managing their employees. Managers' hands have been tied for too long because they have had to follow government-wide rules which are often inapplicable to their own agency. Employees have also had their hands tied for too long and have often followed rules when they have known them to be counterproductive. We do not believe that it makes sense to provide managers with carte blanche decision making authority. Employees on the front line are in the best position to offer constructive suggestions to increase the efficiency of their agency. Managerial discretion must be accompanied by employee discretion. Employee participation can be achieved through collective bargaining and in the context of partnership arrangements.

Question 5: In addition to change areas identified in your testimony, agencies are implementing work force restructuring plans, and Congress is enacting legislation that will make agencies smaller. Would you recommend any changes in regulations or laws governing Reductions in Force (RIF).

Answer 5: I believe that RIFs often result in the wrong person doing the wrong job. When an agency uses RIF procedures to downsize, managers often displace employees with decades of experience. The agency loses the employee with experience and ends up paying more money for less experience. NTEU firmly believes that early outs and other retirement incentives should be offered to implement downsizing changes. This ensures that people leave voluntarily and allows the agency to fill open slots with qualified and appropriately paid personnel. In addition, we believe that managers and supervisors should not be allowed to "bump down" to non-supervisory jobs. This does not occur in the private sector and should not occur in the federal sector.

Answer 6: Have the Partnership Councils contributed effectively to the development and implementation of work force reduction strategies at any agencies? Could you cite some examples?

Answer 6: At this time, NTEU has not been involved in any downsizing initiatives. We expect next year, as a result of the 1996 appropriations bills, that we will be involved in many initiatives. We plan to use the partnership councils in these agencies to ensure that agency and employee needs are best met.

Question 7: Several witnesses have testified that the critical need for many government organizations is increased flexibility -- including discarding the idea that individuals will have one career track through their working lives. This would include greater reliance on contractors for support services and for work that is temporary , short-term, or otherwise fluctuating. What changes in current operations, law, or regulations would be required to gain your support for more flexibility in these areas?

Answer 7: NTEU believes that federal employees recognize that they may have more than one career track through their working lives.

I believe that Congress also recognized this change when they created FERS. This system, unlike CSRS, is portable, recognizing that many federal employees will move on to new jobs in the private sector. I strongly disagree with the notion that the federal government should rely on contractors for support services or other fluctuating functions. Almost every GAO study has concluded that contracting out is not cost effective. I simply see no need or rationale to substitute contract employees for the hard working, experienced public servant. I am strongly opposed to the flimsy philosophical assumption underlining this proposal that the private sector can always do work faster and cheaper. Until I am convinced that there is a need in this area, I will continue to oppose any initiatives that increase the use of contract employees.

Thank you for allowing me the opportunity to share my opinion with you on these important matters.

Sincerely,

Robert M. Tobias
National President

SENIOR EXECUTIVES ASSOCIATION

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November 17, 1995

The Honorable John L. Mica
Chairman
Civil Service Subcommittee
Committee on Government Reform
and Oversight
Room 2157
Rayburn House Office Building
Washington, D.C. 20515-6143

Re: **Responses to Supplementary Questions from October 26, 1995 Subcommittee Hearing on Performance Management and Accountability**

Dear Mr. Chairman:

Following are the responses of SEA to your letter of November 9, 1995. In your letter, you asked additional questions to those posed to us at the October 26, 1995 hearing on performance management and accountability. We appreciate the opportunity to respond. Our responses conform to the numbered questions.

1. *The Congress allowed the much criticized Performance Management and Recognition System, which covered mid-level managers, to sunset in 1993. In your view, what were the problems with it and why were they not resolvable?*

The Performance Management and Recognition System (PMRS) was originally established to provide pay incentives to mid-level managers by allowing more frequent and more substantial within-grade increases and a "bonus pool" to reward managers when justified by performance. As is often the case, it was immediately criticized as providing too much money to some and not enough to others because the appraisals on which the bonuses and pay raises were based were allegedly "subjective." Rather than acknowledge that all appraisals are subjective to some extent, Congress and the Administration tried to tinker with the system to ensure that employees rated "highly successful" and "outstanding" all received equal raises. The stated purpose of the PMRS system was then nullified. Immediately, performance appraisals for mid-level managers all were raised to the highly successful or outstanding rating (primarily outstanding), and the determination of bonuses to

be received (in the form of a within-grade increase) became a mathematical calculation. The "bonus pools" were divided based on a numeric system among all those receiving "outstanding" appraisals and most of those receiving "highly successful" appraisals. As a result, the amount received by any one individual became quite small, and no longer served as an incentive.

The granting of within-grade increases was speeded up so that PMRS employees received within-grade increases or a portion thereof each year; and most rapidly moved to the top of their grade levels. Agency payroll costs escalated, and the awards based on performance from the "bonus pool" ceased to have any incentive value, since nearly everyone got a portion of the pool. Even then, employees were not satisfied and sought additional changes. Finally, Congress threw up its hands and allowed the system to sunset in 1993.

The problems made it clear that the system could not be made to function as originally envisioned. Every employee who did not get a "highly successful" or "outstanding" rating, (and many of those who did receive "highly successfuls" but not "outstandings"), filed grievances and fought for higher ratings. All of this occurred because the concept of "subjective judgment" was not accepted by PMRS managers. They argued that all indications that subjective judgment might have been exercised were instances of personal favoritism or discrimination, or had some other nefarious motive. No one was willing to take the position that senior managers should have some discretion in their performance appraisal systems and that it was absolutely impossible to quantify with precision, and reduce to numbers, all the management functions performed by PMRS managers.

If any form of the PMRS system were to be revived, the same objections would be raised. It would take a major change in the attitude of employees for a system like PMRS to work properly.

You devoted a significant portion of your testimony to describing methods that employees can use to file "affirmative defenses."

2. *Do you have any statistics or other data developed from agency records that would support your description of the "affirmative defense" approach that you described?*

We have limited statistics from the Merit Systems Protection Board's annual reports for FY 1988 through FY 1994. The only information we have from those reports is about "mixed cases," which are cases in which allegations of discrimination are made as affirmative defenses. We did not examine other affirmative defenses, but, obviously, there are many that were raised in

addition to EEO discrimination. We know that the Merit Systems Protection Board's annual reports contain these numbers. We are unable to get the information from the MSPB since, as of the day of this response, most government employees are on furlough, including those at the MSPB.

3. *Could you cite any inspectors general who have identified this problem in their reports?*

We do not know whether any inspectors general have identified this problem in their reports. We do not routinely see copies of IG reports, nor are they routinely circulated.

4. *Are there any penalties in current law for filing false charges with these agencies?*

There are no penalties for filing false charges with any of the appellate agencies. There are a few cases (we know of two) where agencies disciplined employees for making false allegations, when the agency was able to prove that an employee lied by a preponderance of the evidence. In the two instances of which we are aware, the Merit Systems Protection Board upheld the penalty of removal. We do not now believe appellate agencies make any attempt to monitor false charges.

5. *Are there any fees currently required to file such charges?*

There are no fees currently required to file any kind of charge.

6. *Would you recommend the institution of these (or other) barriers to frivolous filings?*

We would recommend the institution of some barriers. Currently, in EEO cases employees are allowed to use official government time to visit with the EEO counselor, to prepare their EEO complaint, to be present at any EEO hearing at the agency, the EEOC, or in court. We would suggest that employees be required to use their own time for all of these functions, but that if they prevail in their case, either through a favorable settlement or an ultimate decision, the leave that they took during the processing of the EEO case be retroactively converted to official time and their leave restored.

Many collective bargaining agreements provide for official time for employees to participate in the grievance process under the agency contract and to attend arbitration hearings, etc. We again suggest that employees not be granted official time for these

purposes, but be required to utilize their own leave. Subsequently, if they prevail or if there is a settlement which is favorable to the employee, the leave-taking could be converted to official time.

In addition in EEO cases, if the agency Director of EEO feels that, even though the employee did not achieve a settlement or a favorable decision but the complaint had substantial justification, the Director could be allowed the authority to change the annual leave taken to official time on a case by case basis.

There are also some instances where collective bargaining agreements allow official time in the presentation of unfair labor practices, etc. before the FLRA. We would propose that the same standard be applied in those matters as in the EEO and collective bargaining process cited above.

We do not, in general, favor filing fees. A fee large enough to act as a deterrent might prove to be a bar to justifiable complaints from lower-graded employees. However, we would suggest consideration of a fee if an employee filed in excess of one complaint or grievance in any one calendar year. This would prevent the multiplicity of complaints being filed by "frequent filers," because a price would have to be paid for excessive filings. For this purpose, we would suggest a $100 filing fee which could be utilized to offset the cost of processing the second and subsequent complaints in any calendar year.

7. *How do the MSPB's 120-day processing targets prevent agencies from providing managers with adequate assistance, including legal assistance before the action is taken?*

And isn't that really when such assistance is most valuable?

The MSPB's 120-day processing targets do not prevent agencies from providing managers with adequate assistance, including legal assistance before the action is taken. The 120-day limitation has only served to put pressure on administrative judges to force settlements because they lack the resources to handle all the appeals they receive. For an administrative judge to handle all the appeals he or she receives in 120 days would be an impossibility. It is a fact that, while employee appeals have increased or at least remained the same, the number of administrative judges and other resources of the MSPB have declined over the last few years. We strongly believe that the MSPB should be granted sufficient resources by Congress and the Administration to handle all appeals and, thus, not be required to force settlements in order to meet their time requirements.

As to matters before the adverse action is actually taken by the agency, the timing of the action is totally within the agency's discretion, and there is no difficulty in providing legal or other assistance to the manager. The rub comes once again from the insufficient resources of the MSPB and the resultant 50% settlement rates because agency counsel and employee relations officials tell managers that they are going to have to settle half of their cases anyway, so the agency should settle them early rather than bothering with going through the appeals process. This has a tendency to force agencies to back off of what might be meritorious actions and to achieve settlement by giving in on some possibly important aspect of the case.

You suggested that the MSPB's emphasis on settling cases impedes effective performance management.

8. *Have you studied actual settlements to determine their likely impact on the performance management process?*

We have not studied actual settlements. However, we have substantial informal feedback on the process through the courses that the SEA Professional Development League (PDL) sponsors. Since 1985, PDL has been the sponsor of a course, "How to Rehabilitate or Remove the Problem Employee." On average, we present eight to ten of these one day seminars per year to a cross-section of between 20 to 30 federal managers and executives. We, therefore, receive feedback from 200-300 managers each year from a cross-section of federal agencies. A substantial amount of discussion takes place in these courses, and it is not at all unusual for a manager to angrily denounce a settlement into which they were forced by their agency's employee relations or legal office. It is also normal for most of the rest of the participants in the class to join in the denunciation, indicating that similar incidents have occurred in their offices. We know from these experiences that there is an impact on the performance management process in many government agencies.

You recommend a system in which employees could not raise affirmative defenses in MSPB cases, but where the EEOC or the Office of Special Counsel had authority to seek stays from the MSPB.

9. *Would such a system adequately protect an employee with a legitimate claim that poor performance was caused by illegal discrimination?*

In our opinion, the answer is yes. Alleging that illegal discrimination caused poor performance is nearly universally an outcome of sexual harassment cases. It is alleged that the actual

physical sexual harassment or the "hostile environment" created in the workplace by such harassment destroyed an employee's work performance. The Office of Special Counsel is a vigorous intervenor in sexual harassment cases, as are agency Inspectors General. They vigorously pursue any allegation of sexual harassment and undoubtedly would intervene swiftly in a performance case where such an allegation was made. Suffice it to say, we believe that such a defense would be adequately investigated and thoroughly analyzed by the EEOC, Office of Special Counsel or Office of Inspector General of the agency. If the IG found sexual harassment, they have the authority to request the Special Counsel to intervene and seek a stay.

You argue that the multiple forums for appeals and grievances deter managers from taking actions that are warranted.

10. *Would you suggest that appeals stemming from a performance action be limited to one forum and that all claims be consolidated in one appeal?*

Yes, we are in favor of appeals being consolidated in one forum and with one appeal.

11. *Would that make it easier to fire poor performers?*

Yes, it would be easier to fire poor performers, but, as we have previously recommended, it is absolutely crucial to separate affirmative defenses raised in performance cases from the process. It makes no sense to keep a poor performer on the payroll in the same position if it has been established by substantial evidence that the employee's work is unsatisfactory. At the least, they should be moved to another area and another supervisor if a second chance is deemed appropriate. Putting a person proven to be a poor performer back in the office environment where they have done an unsuccessful job is destructive to the manager and the employees in that work unit and should not occur.

Mr. Tobias proposed eliminating the right to appeal an arbitrator's decision to the FLRA or to court.

12. *Would the SEA support prohibiting a similar judicial review of MSPB's decisions in performance-based actions?*

Mr. Tobias' proposal to give up FLRA or judicial review of arbitrators' decisions is not a substantial sacrifice. In fact, most of such appeals are made by agencies, because arbitrators have ruled in favor of the employee and the unions at much higher rates than the MSPB. Consequently, conceding this appeal right is not much of a concession. By contrast, MSPB decisions are much more in

favor of management and, in a high percentage of the cases, the Federal Circuit Court affirms the MSPB. However, in the 10% or so cases that the Federal Circuit does reverse the MSPB, they establish important precedent and prevent outrageous abuses of the process. We believe that it is important for an independent, federal court, beholden to neither the Executive or Legislative Branch, to have the final review in such cases. We would not support eliminating such judicial review.

Mr. Courtney Wheeler described Marriott's "Peer Review" system, in which a panel of managerial and non-managerial employees are given the authority to make a binding decision.

13. *Do you believe a similar system would work in the federal government? Why?*

No. In a high percentage of its operations, Marriott does not have employees represented by unions. Thus, there is noticeably absent a policy reason on the part of employees for opposing management actions. We do not believe the same holds true in the federal government. Unions sometimes resist management actions for reasons unrelated to the specific action. If such were to occur in government, it could have seriously adverse results. To begin with, the ratio of managerial to non-managerial level employees on such a panel would probably be negotiable. We doubt very much that federal unions would agree to be in the minority on such panels. The problems that such a "Peer Review" system in removal or disciplinary actions raises are huge, and the procedural fights would be enormous. We do not believe that it would be worth it.

14. *Would legislation be needed to permit or encourage such systems?*

Legislation would be necessary to permit or encourage such systems because federal employees would be deprived of valuable appeal rights they currently have. As noted in No. 13, we oppose such a system.

15. *Do federal managers currently receive adequate training on performance management?*

No. In our response to No. 8, we discussed the course that the SEA/Professional Development League sponsors on dealing with poor performers. This course was started because of a lack of adequate training of managers in dealing with problem employees. Many managers have never received training in supervisory or managerial skills and know little about their rights as a manager, let alone their responsibility to be in control of the workplace. This is especially true in matters involving time and leave

management.

16. *Should such training be made mandatory?*

Such training should be absolutely mandatory. While agencies have in the past been mandated to provide such training, often it has not occurred. We recommend that the training be made mandatory and the burden placed on the supervisors and managers to get such training. If they do not, they should be removed from supervisory or managerial positions for lack of training hours completed. This would cause the employees to put pressure on management to provide the training that they need and, we believe, would be a substantial spur to agency management to develop and provide the courses mandated.

17. *If so, how often should managers have to be trained? What subjects should be included in that training?*

Every manager should have a mandatory two weeks of basic supervisory training when first given <u>any</u> supervisory responsibility. They should then receive an additional week for every additional supervisory position achieved. The training would have to be completed before the employee had finished his or her probationary period in the new position. Lack of completion of the training would bar an employee from receiving permanent appointment to the position until it is completed. In addition, every supervisor and manager should be required to complete a minimum of 16 hours of continuing professional education annually and have the completion certified. This should be utilized to keep federal managers up to date with the latest management techniques utilized in the private (as well as public) sector. It would also allow agency officials the opportunity to ensure that supervisors and managers were updated each year on the agency's mission and the manner in which it should be accomplished under their leadership.

Subjects should include performance management, counseling skills and techniques, achieving customer satisfaction, dealing with citizens in a courteous and professional manner, utilizing the adverse action and disciplinary action processes, and time and leave management of employees, (including dealing with (a) tardiness; (b) misuse of sick leave; (c) the granting of annual leave; (d) when to grant leave-without-pay versus charging an employee with AWOL; and (e) the requirements of the Family Friendly Leave Act). Time management is one of the most misunderstood and under-utilized areas of personnel management in the federal government. Most managers are woefully unprepared to utilize effective time management techniques in fulfilling their duties and responsibilities, nor are they routinely updated on technological advances such as those in information technology.

Managers should also be trained in the granting of spot awards, bonuses, additional leave time off, flexi-place, flexi-time, employee indebtedness, EEO requirements, and how to identify and eliminate sexual harassment and other discrimination, and, as part of their annual CPE requirements, should be given a briefing on all new laws and regulations affecting government employees and managers enacted in the last year (such as results measurement). They could also be trained in how to supervise employees working at home, the use of telecommunications centers, how to establish and monitor performance requirements, and so forth.

In our view, there is no lack of subjects in which managers need to be trained. The lack is in the amount of training that they actually receive and in the failure to have that training upgraded annually so they can have new learning experiences such as being briefed on "best management" techniques.

Thank you for the opportunity to provide our views to the Subcommittee. If we can be of further assistance or if you would like any clarification of our answers, please do not hesitate to call us.

Sincerely,

Carol A. Bonosaro
President

G. Jerry Shaw
General Counsel

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